

Amendment Restoring Capital Punishment Differs from Present Law in Only One Point

There is only one essential difference between the proposed law restoring capital punishment in Oregon upon which the people of the state will vote next May and the old law authorizing the death penalty in force prior to 1914, according to the affirmative argument on the measure prepared by the legislative committee and which was filed with the secretary of state's office for publication in the official voter's pamphlet today. This difference is found in the fact that under the proposed new law it is made optional with the jury as to whether the death penalty shall be imposed for first degree murder or the penalty shall be imprisonment for life. The argument which is prepared by State Senator B. L. Eddy and Representatives David E. Leffler and K. K. Kubli is a lengthy and exhaustive one of more than 1500 words and will occupy two pages in the official pamphlet. A similar space has been allotted to the negative argument on the measure which has not yet been filed.

The argument in full follows:

Senate joint resolution No. 5 proposes to amend the constitution of the state of Oregon by striking out the amendment adopted in 1914, which abolished capital punishment, or the death penalty for crime, and provided that the maximum punishment which may be inflicted shall be life imprisonment; and by adding a new provision, namely, that the penalty for murder in the first degree shall be death, except when the jury shall in its verdict recommend life imprisonment, in which case the penalty shall be life imprisonment.

The proposed amendment is easily understood. Let us remember the crime with which we are dealing. Murder in the first degree is defined in the Oregon criminal code as follows: "any person purposely, and of deliberate and premeditated malice, or in the commission or attempt to commit any rape, arson, robbery, or burglary, kill another, such person shall be deemed guilty of murder in the first degree." We suggest that those who are unacquainted with this definition, and who are disposed to vote against capital punishment, read it again, and be sure that all its elements are mentally grasped. The proposed amendment has nothing to do with the act of one who slays his fellow in the heat of passion, or who is mentally incapable of deliberation or premeditation and not in the act of committing another serious crime. It is proposed to affix a suitable penalty to deeds such as that of the murderer Johnson who with deliberate premeditation and malice, and in cold blood, slew his benefactor Mrs. Freeman, who had procured his parole from prison. We assume that the memory of that case is in the minds of all who will read these words.

Effect of Amendment.
Prior to 1914 the constitution contained no declaration upon the subject of capital punishment, but the legislature had power to prescribe and did prescribe the punishment of death for murder in the first degree. It was the purpose and effect of the amendment of 1914 to take this power from the legislature. The amendment now proposed will amount to this, that when a jury finds a person guilty of murder in the first degree, the punishment shall be death unless the jury shall recommend life imprisonment, and then the penalty shall be life imprisonment. This gives the jury a power which it did not have when capital punishment was formerly in force. This new provision means that the jury shall have the constitutional power to say, in effect, that because the defendant is convicted on circumstantial evidence, or there is a possibility that there was perjured testimony, or because the character of the defendant appears to be such that repentance and reformation are reasonably assured, or that because of any other reason, the ends of justice will be satisfied and society sufficiently protected by life imprisonment. Of course the jury will not be required to give any reason whatever for its recommendation of the lesser penalty. This throws a great safeguard around the infliction of the death penalty, and should satisfy the scruples of those, for example, who point out that occasionally an innocent man has been hanged upon circum-

stantial evidence. Experience shows that the average jury is chary of sending any man to the gallows. Under the operation of this proposed amendment in only the clear and flagrant cases will the jury fail to recommend life imprisonment.

Deterrent Effects.

To punish cold-blooded murder with death naturally has a tendency to deter the commission of that crime, because even the hardened criminal will give some consideration to the consequences of the deed he contemplates, and to such a one the prospect of a term in prison is not a serious hindrance to the operation of his criminal propensities, because he is sure of humane treatment, of provision for his physical needs, and has before him always the possibility of pardon or parole as well as of escape. But one of the great deterrent effects of the death penalty is against life imprisonment in perhaps seen in that subtle resulting public sentiment which brands murder as a peculiarly heinous offense, to be peculiarly punished, and in fact calling for the supreme condemnation of the law, and not to be punished in the same manner as other offenses. The psychological effect of this upon the minds of the young must be of the greatest deterrent value. We naturally come to rate an offense as serious in proportion to the weight of the penalty. Statistics upon the effects of capital punishment laws are not of great value, because no many elements enter in which are not disclosed by figures. For example, there are waves of crime even in stable populations, and in other populations the influx of immigration may be an important factor; legislation as to intoxicating liquor has a great effect, as where liquor has been banished, and new disturbing causes are not operating, crimes of all kind have decreased. Economic conditions are considered to cut an important figure. Many other causes may be more or less in operation to upset psychological conditions in a given territory during a given time. Statistics do not disclose these things. However, in passing we mention that Aachenburg, an European writer on "Crime and Its Repression," and who is not an advocate of capital punishment, states that statistics in Germany show that the number of those condemned to death decreased somewhat, while in Belgium, without enforcement of capital punishment, capital crimes increased. These statistics were gathered before the great war. It would seem if statistics could have any value it would be in settled population such as Germany and Belgium had prior to 1914.

Little need be said of the importance of protecting society against and relieving the public of the support of those dangerous criminals whose characters show them to be beyond the reach of human reformatory influences, and whose restraint amounts to no more than holding in leash dangerous beasts who may at any time break away. For these, when convicted of murder in the first degree, the average jury would rightly make no recommendation of life imprisonment, and yet as our constitution now stands the lives of these are spared and other lives are thereby placed in jeopardy. As generally happens in human affairs in the modern reaction against the harsh laws and brutal treatment of the accused in former times the pendulum has swung too far. We need to recover sound judgment and avoid the excesses of sentimentality.

Opposing Arguments.
Three classes of arguments sometimes heard against the death penalty might be roughly denominated, respectively, Christian, psychological, humanitarian. Those advancing the first ask how a Christian can advocate the death penalty, which seems contrary to the teachings of mercy set forth by Jesus Christ. Jesus condemned private vengeance, not the vengeance of the civil law. Besides, a Christian accepts the Old Testament as well as the New. Some seem to have forgotten that when human government was established under Noah and his sons, God ordained that "Whoso sheddeth man's blood, by man shall his blood be shed." Gen. 9:6. This has never been repealed. It was not a Jewish ordinance. It was promulgated centuries before there was a Jew on earth, and was for all mankind.

The psychological argument (not advanced, however, by sound psychology) is that all criminals are simply mentally sick and should be coddled and cured, not electrocuted. Those who have practically dealt with crime say there are three classes of criminals:

(1), the mental defective who is dangerous; (2) the wilful and wicked miscreant, and (3) the careless youth who unintentionally develops into a criminal. The first class should be treated, but when it is proposed, for example, to sterilize them, as great a protest arises as if it were proposed to hang them. If treatment can reach them well and good. If it cannot, how many wish their loved ones exposed to even the remote possibility of their criminal outbreak? The second class must take their punishment for reasons already set forth. The third class appeals to men's sympathies everywhere, and juries may be depended upon, under this proposed amendment and the humane administration of our criminal laws to deal rightly with the individual cases as they arise.

The humanitarian argument is that the mere infliction of the death penalty is brutal in itself, and that sometimes there is a miscarriage of justice and an innocent man suffers death. The proposed amendment leaves the method of infliction of the penalty to the legislature, and under modern methods the brutality is largely removed. As to the possibility of a miscarriage of justice, under the discretion given the jury, as already explained, this can be reduced to practically zero. Even under the old law the chance of an innocent man hanging, as compared with the chance of a guilty man escaping, was about as one to several hundred.

Waconda

Waconda, Feb. 28.—As is almost every other city and village in the country, Waconda also seems to be having his share of sickness.

Frank Hagenauser has been confined to his bed for a couple of weeks and is still very weak, but we are all hoping for his early recovery.

Mrs. Timm and family have also

been taking their turn with sickness. The Keene family is all right now, but they had quite a siege of the epidemic too.

Mr. Blackburn and family are the proud possessors of a new Buick four.

George Thurman was a Portland visitor Thursday.

Mrs. Palmer is home from a couple of weeks stay in Salem, where she was taking care of her daughter who has been quite ill.

Mr. and Mrs. J. C. Savage were Waconda visitors Wednesday.

Mrs. M. F. Vinyard, who has been in eastern Oregon for about a month visiting her daughter, returned home Tuesday.

Mr. and Mrs. Henry Stafford attended a party in Gervais last week.

Mrs. George Markee spent the week end visiting friends in Dundee.

Mr. and Mrs. Black of Pirtle were guests of the Blackburn family Wednesday.

Mr. and Mrs. Frank Matthes and son, Merle, had the discomfort of all being sick at the same time. They are all up and around again now, and feeling quite well.

Henry Lamb is also one of the new auto owners of this part of the country, having purchased a Chevrolet sometime ago.

Mr. and Mrs. Bryan Goodenough spent Sunday in Salem visiting friends and relatives.

The Ladies Aid society which was to have met at Mrs. Thurman's last Wednesday, was postponed until further notice, on account of sickness in the community.

Presence of all members of organized labor and other workmen not affiliated with unions, at the special meeting called for 3:30 p. m. Sunday at the Labor Temple, that full expression

of views regarding the participation of labor in the Salem general hospital fund campaign, is urged in an announcement made by L. J. Smieral, president of the Salem Central Trades and Labor Council, Saturday.

Organized laborers who have been interviewed relative to their feeling to-

ward the hospital campaign have expressed the opinion that such a feeling will permeate the special meeting Sunday.

Plans for the participation of workmen in the campaign will be laid at this meeting.

Permission is granted to the northern Pacific Terminal of Oregon to construct certain spur track, sidings and switches at grade on 21st street, 27th street and Wilson in the city of Portland in an order issued by the public service commission today.

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