

## An Old Question in a New Form

John O. Yeiser, one of the three members of the Nebraska state pardon board, recently sent to the governor of Nebraska an interesting brief upon the subject of abolition of capital punishment. In a letter to the governor, Mr. Yeiser says:

"Herewith I submit recommendation for Albert Prince, condemned for execution on March 23; his trial being finally concluded by the supreme court. The opinion was submitted to the other members of the pardon board who at this time decline to join in any recommendation. Consulting my own official standing involved before the legislature now in session, I hesitate in filing this opinion, but duty demands the filing of the same immediately for the following reasons: First—The legislature should think on this subject now while in session regardless of what they may do with the pardon board. Second—The people should think in time to advise the governor; and the legislators. Third—The governor should think it over sixty days before the man can be hung. Fourth—If my conclusions are shown to be clearly in error I do not want this execution to be delayed. It should take place while the legislature is in session. Fifth—Because any further delay would prevent a proper consideration of this matter."

Because of the general interest in this question The Commoner prints Mr. Yeiser's brief in full:

### BEFORE THE ADVISORY BOARD OF PARDONS

In re Albert Prince. Opinion and recommendation by John O. Yeiser. To the Hon. John H. Morehead, governor of Nebraska:

In this case the murder was premeditated and heartless. I have nothing to recommend in behalf of the condemned man. But I desire to ask the governor of this state to seek light upon the question of whether it would be beneficial or detrimental for all the people if the state should take this human life.

It is my purpose and desire to urge the governor to stay this execution six months or one year that the following reasons against the death penalty may be given to the public for consideration urging all who favor arbitrary state executions to present their reasons and views for the further consideration of this case.

The basis for this recommendation is as follows:

The voluntary taking of a human life is a tremendous responsibility. I have been unable to find in literature, history or law any satisfactory justification for death imposed by any man or set of men upon another excepting for self defense.

Once before I urged many of these reasons in the defense of a murder trial. From a hurried study of the subject I absorbed and helped myself to anything in harmony with my judgment of what seems to be right and best in such cases. In the same way because of a busy life I am compelled to repeat much of what I have previously used.

As a preliminary approach to the subject let us inquire what the people of the world have done about legal executions:

The death penalty has been abolished in France, Switzerland, Holland, Norway, Finland, Russia (except political crimes) Argentine Republic, Belgium, Venezuela, Guatemala, Costa Rica and Italy.

The death penalty is retained in China and Japan, leading many other countries of the world in placing no value or reverence for the work of God impressed in a human soul.

No other country of the world looks so cheaply upon human life as does China with its long list of crimes punishable by death. Our mother country is a close second, having a record of everlasting shame for its human sacrifices.

In this country a few years ago of forty-eight states, twenty-four still retained the mandatory death penalty. Twenty-four threw the subject open as a philosophical question for each case giving some form of alternative. The alternative is for the jury in Nebraska, Iowa, Colorado, South Dakota, Kansas, Minnesota, Ohio, Illinois, Indiana, Alabama, Georgia, Kentucky and Oklahoma. This discretion is vested in the judge of North Dakota, Texas and New Mexico. Four states have absolutely abolished the death penalty, viz: Michigan, Wisconsin, Rhode Island and Maine. Possibly, also, the same may be said of Minnesota and Vermont,

so far as the effect is concerned. Likewise Kansas may be said to have abolished capital punishment because of a law providing that no execution may take place until the governor signs a warrant directing the execution. Governors of Kansas for years have taken the oath of office and retired without ever having signed such a document, although the condemned and guilty were being held in the penitentiary under sentence of death. There is less crime in Kansas I venture to predict, without statistics, than in surrounding states. At least we do not read of numerous crimes reported from that great state of this union.

The public is rapidly coming to a realization that the death penalty causes more harm than good as shown by the difficulty of drawing jurors who have not already changed their minds upon the question.

These examples of other countries and states and of our state and our citizens are cited to show the growth and development of this question in spite of the contrary influence of the strangling custom of ages. There must have been powerful reasons working against the death penalty to move such radical changes. These reasons must have been as convincing as a religious conviction of the aged to overcome the influence of a custom of centuries, although there is nothing back of the institution but its antiquity, cruel revenge, and monarchical safety. Habit, however, or custom, are parts of the corporal man and have to be broken or amputated like a deformity of the body when objectionable.

I do not desire to say anything as an abstract proposition against the death penalty in every possible case but I do contend that it is and should be the very rarest cases of absolute and not theoretical necessity in which the death penalty should be inflicted.

Although a murder may be committed for retaliation or revenge no state will ever admit any such reasons as a basis for legal executions. In general transactions civilization countenances no such barbarous motives to stand as a basis of either law or judicial decision. Our laws and acts are supposed to be based upon justice and reasons and have no place for the consideration of the inherited revenge of a savage society. However, many prosecuting attorneys take advantage of such motives in appealing to juries. Climax upon climax is resorted to in picturing the mutilated victim and his family for the purpose of wringing the death penalty as a glorious addition to the fame and renown of a brilliant prosecutor. They touch the sentiments of savagery for the extreme penalty by awakening a reflected revenge. They appeal to revenge instead of reason as a motive for the verdict, which motive is not recognized in political economy, law or moral philosophy.

There are but two prominent reasons for the support of capital punishment which may be stated in various phrases:

First—To get rid of a criminal—to keep him from killing others—a sort of national self-defense justification.

Second—As an example to keep others from killing.

Penitentiaries are reasonably safe in their construction if under modern regulation and engineering. The abuse of the pardoning power is the greatest weakness in penitentiaries. If we should repeal our maudlin Fourth of July pardon law, passed to release men hopelessly condemned on sentiment and keep cold blooded common law first degree murderers in confinement for real life instead of nominal life the death penalty brigade would lose half its adherents.

Throughout all nature we find extremes which are usually dangerous. We want it neither too hot nor too cold—too radical nor too conservative—too pious nor too liberal. A soft-hearted executive too generous with the pardoning power may be indirectly responsible for the other extreme of thirst for blood too often reflected from the public in the judicial branch of government as was the case with Pontius Pilate. A firm and rational punishment—between extremes—just but sure—will satisfy the reasoning body of our present civilization and would thereby make the penitentiary a safe place of confinement for men guilty of premeditated murders whom we have been accustomed to hang. The proper answer for the abuse of the pardon power argument in favor of the death penalty is not to concede the unholy demand,

but rather watch with care that no abuse of the pardon may be used as a justification for the hanging of men.

If we hang a man because we think some governor of the future will pardon him we are not hanging him for his crime nor to help society but because we think some governor of the future would commit the error of letting him loose. If a future governor should commit such an error even that would not be as harmful as the act of society by clinging to the idea and instructing our citizens from the cradle to old age that a human life which man can not recall may be destroyed by law.

The state does not kill people merely because they are worthless and to be rid of them. Insane asylums are built at great expense for the incurable upon whom relatives can not bear to look who personally may be better off dead. The state tenderly cares for all such cases. This is done because the example of kindness and humanity to the unfortunate is of an inestimable benefit to society. A man would be a brute—lower than the dogs that devoured the body of Jezebel—who would say kill them to be rid of these imbecile burdens. It is not possible to imagine the effect society would feel if we were to destroy all imbeciles and the incurable insane. What a horrible example would be set for the people of the state to follow. No calculation could be made of the injury to the morals of the state by countenancing such conduct. One of the greatest advantages to the state from the preservation and tender care and treatment of the hopeless insane is this example of humane treatment and of the tender consideration of a human life however useless and pitiable it may seem. Our citizens are taught to be kind and gentle to the unfortunate by this example of the state. May I ask your excellency what the people of the state if you believe any boy—any mother's son, black or white, however depraved, should be hung—killed just to get rid of him? Can we afford to do it?

What is the theory of providing a punishment for cruelty to animals? It is not to protect the millions of animals or give to them a standing or right in court, but it is done to deter men from cultivating brutal natures and thus indirectly it furnishes protection for human life from those having tendencies toward ungovernable tempers. Punishment in such cases is not so much for what is done to the animal as for what is done to the offender's nature. It is to prevent the development of an abnormal desire to inflict pain and suffering or a disregard for pain and suffering. The state intercedes to discourage and check thoughts and ideas in this respect concerning animals to obtain better results of fellowship with man. Why then, should such a noble state reverse this policy by demanding judicial murder thereby counteracting all of the good of the humane treatment of animals and tenderness for the insane?

The policy of the state should be to increase every man's estimate of human life as something too sacred for either a man or the state to take. If the whole world would refrain from killing men by law for only one generation, the children of the next would experience a marvelous reduction in the thoughts of death as an ideal of governmental punishment. Consequently in fits of anger they would not be so likely to adopt the state's punishment for grievous private wrongs or reasons. It should seem clear if the state kills for punishment, its citizens blazing with anger would naturally be disposed to think of killing.

A principle or right is not discounted when combined as commercial commodities are sold at wholesale. A hundred or a thousand people have no different moral rights than one person has. They may combine but they can not by numbers change principles from wrong to right. A state in this respect is only a large collection of individuals and should not in principle kill for any reason which it does not permit in its citizens. If it is true that our government—exempt from the encumbrance of the divine right of kings—is for, of, and by the people the right to deliberately kill on the part of the state must have been in theory at least, conferred by the people. Did the people ever have a right to kill which they could, in the forum of morals, convey or give to a government? Conceding a man has the right under natural instinct and divine and statutory laws to kill another in self defense (that is always when there is no chance of escape), could he establish self-defense by shooting another who was known to be as helpless as if handcuffed? It is no better in principle for the state to do this than it is for a citizen. Society has no more right than a person to trifle with the most sacred work of