

“From the Chair”

Column by Honey Kessler Amado

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When I became a mother, I favored the death penalty as a defense against the amorphous fear that someone could hurt my children. But over the years I concluded that a civilized society diminishes itself and its respect for life when it kills a human being.

The conventional argument in favor of the death penalty is that it deters crime. But statistics disprove this contention. According to a *New York Times* survey published in September 2000, 10 of the 12 states without capital punishment have homicide rates below the national average, while one-half of the states with the death penalty have homicides above the national average. *The Times* findings suggest that the threat of the death penalty rarely deters criminals. The deterrence argument is also rebutted by anecdotal evidence that those who commit capital crimes do not consider the consequences of their acts. I submit that the State itself does not believe that the death penalty deters crime. Indeed, if it did, then, as Albert Camus suggested in his compelling essay “Reflections on the Guillotine,” executions would be open to the public. But they are not. They are private affairs because they are disgusting and the act of a civilized society taking the life of a human being would appall most who watch it. The act of the State killing a person adds, as Camus wrote, “a second defilement to the first.”

If capital punishment is not a deterrent, then it can only be retaliation – a societal revenge. But two points must be considered very carefully. First, retaliation is not a value in our society. We do not routinely burn down the homes of arsonists. We abhor vigilante justice. Indeed, we recoil when we hear of the retaliation in other societies, such as cutting off a person’s hand for stealing. Second, we mete out this punishment unevenly. According to recent reports from the N.A.A.C.P. Legal Defense and Educational Fund and the A.C.L.U., a disproportionate number of people on death row across the nation are African-Americans. And, according to the *New York Times* study, the death penalty is imposed much more often when the victim is white. Affluence plays a part as well: according to the A.C.L.U., the overwhelming majority of people on death row received substandard legal representation at trial.

Camus made an important point regarding revenge and retaliation: “[I]t must be admitted that even in its primitive form it is legitimate only between two individuals of whom one is absolutely innocent and the other absolutely guilty. Certainly the victim is innocent. But can society, which is supposed to represent the victim claim a comparable innocence?” Camus suggested that “every society has the criminals it deserves.” The implications of absolute innocence and absolute guilt mandate that we look cold and hard at the social phenomena which continue to give rise to criminal behavior in our society.

A final consideration, convictions are too frequently wrong or are secured in violation of due process. Scientific developments increasingly establish that not all the condemned are guilty. Where the death penalty is imposed, the State can never correct its wrong. Victor Hugo called the guillotine *Lesurques* – in memory of an innocent man guillotined – not to mean that every man who was executed was a *Lesurques*, but to underscore that one *Lesurques* was enough to wipe out the value of capital punishment forever. Camus asked rhetorically, “If human justice knows itself to be imperfect, might not that knowledge be more suitably and modestly demonstrated by leaving a significant margin around our condemnations for the eventual reparation of error?” I answer yes.

We have the tools to safeguard our society against criminals and to punish those who commit crimes, even heinous crimes. Let us impose a penalty of life in prison without possibility of parole. Only those with impoverished imaginations cannot envision what a terrible punishment that is: condemned to live forever in prison, without family, without personal freedom, left only with one’s thoughts and the life-long consequence of one’s deeds.

Justice Louis E. Brandeis said that government is a teacher, for good or for bad, and that the government “teaches the whole people by its examples.” Engaging in violence or retribution is not the right example.

The time has come for our State to abandon the death penalty.

Your thoughts, ideas, and concerns regarding this magazine are welcome. You can reach me through the Los Angeles Lawyer magazine offices (213/896-6503) or at my e-mail HoneyAmado2@gmail.com.

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