

*Criminal Code*

legal or appropriate to exercise it, at least in some countries; conversely, among those who favour maintaining the death penalty, many admit that some day circumstances might make it possible to recommend its abolition but they feel that those conditions do not yet prevail.

The right itself is denied by some or, on the contrary, claimed under a concept of the state which makes it an end in itself and makes it independent from any higher authority, that is divine authority. In a theistic and Christian concept of the world, it must be possible to prove that right, if it exists, by theological and philosophical arguments, but the opportunity to exercise that right depends mostly on sociological factors and, in the last analysis, on political wisdom.

We will see to what extent the problem is complex and why, consequently, differences of opinion can exist even among Catholics who try to study the problem seriously, objectively.

There is no doubt that the application of the death penalty has led to many abuses which could be gathered under three headings:

First, the number of crimes punishable by death. Thus, in England, in 1770, 350 various offences were liable to bring about the death penalty. Around 1825, 220 offences; and children over 14 hanged regularly, whereas children over 7 were hanged also "if there was strong evidence of malice".

In France, 115 crimes were punishable by death under the ordinance of 1670; 36, under the penal code of 1810; 16, in 1848.

Second, the execution method, sometimes rather inhuman, without taking into account torture or ill-treatment which the condemned sometimes had to undergo before execution. Without taking into account also, in some cases, the long waiting period as experienced by Caryl Chessman, executed on May 2, 1960, after 12 years of legal battles, trials and reprieves, which stirred up indignation throughout the world.

Third, the feelings of those who pass sentence of death or who execute it. Very low motives based on hatred, vengeance, have often dictated acts which, to be legitimate, should always be inspired by justice and accompanied by love.

Yes, there has been much abuse. But that abuse does not necessarily prove the law should be abolished. The law must be studied first of all, and then if it is well grounded and

if we feel it is expedient to apply it, let us do so with the utmost respect for human dignity, excluding all forms of subtle tortures, and in a true spirit of justice.

Now, Mr. Speaker, here is what Pope Pius XII thought about the matter.

In his numerous speeches to jurists, Pope Pius XII never discussed capital punishment officially. But in his speech to the members of the first international convention on the his-topathology of the nervous system, on September 14, 1952, pointing out that the state has no direct power over human life, Pope Pius XII spoke the following enlightening words:

Even when carrying out a capital sentence, the state does not hold a right over the individual's life. It then rests with the public powers to deprive the condemned person from the gift of life, in atonement for his sin, as his very crime already deprived him of the right to live.

Just like, by imprisoning a man guilty of robbery, the state does not deprive him of his right to freedom, but denies him the weal of freedom to which, because of his crime, he has lost his right.

In the principle thus laid down by Pius XII, G. Ermecke sees the only argument on which capital punishment can be philosophically based. One may wonder, however, whether in the mind of Pius XII, the loss of the right to live is consecutive to crime as such, or consecutive to crime inasmuch as it is expiable by the death penalty in some countries. But anyway, it is difficult not to see here an affirmation of the theoretical legitimacy of the death penalty, an affirmation of the right itself.

## Rationality of the death penalty.

1. The reasons that can be given in favour of the legitimacy of the death penalty, that is in order to prove the right itself, may be summarized as follows: compensation, redress or expiation, safety and exemplariness. The former directly concern the offence and the guilty person with a view to satisfying justice; the latter have to do with the commonweal and the protection of the state.

It is easy to raise objections against each of the reasons taken separately. If the death penalty is considered only as a compensation, then it can be said to be nothing but the application of the *lex talionis*.

If one wants to refer to redress within the strict meaning of the word, it is obvious that the death of the guilty redresses nothing, since it cannot bring the victim back to life.