A GENERAL REVIEW

OF THE SUBJECT OF

CAPITAL PUNISHMENT.

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BY

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SOCIETY FOR THE ABOLITION OF CAPITAL PUNISHMENT.

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THE large amount of public attention which has been drawn by recent events, and especially by the appointment of a Royal Commission of Enquiry, to the subject of Capital Punishment, renders the present a suitable time for a careful consideration of the question, "Whether the death-penalty renders life more secure?"

Before we proceed to answer this inquiry, it may be useful to glance at the changes which have been made in our penal code during the last fifty years.

At the commencement of the present century, about one hundred and fifty crimes, some of them very trivial, were punishable capitally, as for example, stealing one shilling from a dwelling, five shillings from a shop, forty shillings from a dwelling, or letting water out of a fishpond; and so frequently was the fatal sentence executed, that throughout the "good old days" of George the Third, London fully deserved the name given to it by a popular writer—"the City of the Gibbet;" and there was at least some reason for the poetic taunt of Dr. Johnson:—

> "Scarce can our fields, such crowds at Tyburn die,
> With hemp the gallows *and* the fleet supply."

But notwithstanding the number of executions, there were so many motives for interference with, and obstruction to, the enforcement of the law, that the great majority of criminals escaped. Mr. Wilberforce said in the House of Commons in the year 1812, "I remember having, many years ago, been informed by Mr. Justice Buller, that out of thirty-eight capital convictions, not more than one execution, upon an average, took place. Can it then be doubted that offenders will calculate upon the probability of escape?"

The first steps towards ameliorating the state of the law, in

respect of Capital Punishment, were taken in 1808 and 1810, when Sir Samuel Romilly introduced a bill into Parliament for abolishing the death-penalty for stealing from bleaching grounds. In 1811, this bill became law, chiefly through the earnest petitions of the Irish linen manufacturers, who pleaded the utter insecurity of their property in consequence of the determined resolution of juries not to convict capitally for an offence so comparatively small as that of stealing linen. Several other proposed ameliorations of the penal code were rejected, both at this period and in subsequent years.

Nearly a quarter-of-a-century elapsed without further progress in this direction.

In 1828, an Association for promoting further appeals of the capital statutes were organized (under the patronage of the Duke of Sussex) by Messrs. Sydney Taylor, Fowell Buxton, William Allen, and other gentlemen, including the Right Hon. Stephen Lushington, D.C.L., and the late Peter Bradford, Esq. With these was also associated the late John Thomas Barry, whose exertions were most indefatigable and effective. His friend, William Allen, records of him, on one occasion in his Journal: "I called on J. T. Barry, at Trinity Square; he works there constantly, doing almost all that any committee could do." In 1830, this Association procured the signatures of a thousand bankers to a petition for the abolition of the death-penalty for forgery; and although the Government did not immediately alter the law, yet no execution for that crime subsequently occurred.

In the year 1832, William Ewart, Esq., M.P., commenced that series of vigorous parliamentary efforts towards diminishing the number of capital statutes, which continued session after session, until, at the commencement of the reign of Queen Victoria, there were only ten capital offences remaining on the statute-book, as compared with one hundred and fifty in the previous generation. In 1833, the barbarous statute of "hanging in chains" was abolished; and in 1836, Mr. Aglionby carried a bill repealing the law for executing murderers within forty-eight hours after sentence. In 1836 and 1837 there was a sweeping abrogation of the death-penalty for a number of offences, leaving about eight nominally capital, and of these

only three continued virtually so. In 1840, the first parliamentary motion for the total abolition of Capital Punishment was introduced by Mr. Ewart, and receives the support of ninety-three members.

During the twenty years intervening between 1840 and 1860, the Society for the Abolition of Capital Punishment steadily continued its operations, which were greatly aided by the assistance of Messrs. Charles Gilpin, Thomas Beggs, and A. H. Dymond. These three gentlemen from time to time visited the principal towns in the kingdom, and held influential meetings, by which the expediency of totally abolishing the death-penalty was brought prominently and repeatedly before the public mind. During this period the parliamentary efforts of Mr. William Ewart were continued, and were especially aided by the co-operation of Sir Fitzroy Kelly, and the late Lord Nugent. Important service has also been rendered to the cause by the writings of Messrs. Charles Neate. M.P., Charles Phillips, Edward Webster, Frederic Rowden, and Thomas Beggs. Mr. Phillips' pamphlet, in particular, entitled "Vacation Thoughts on Capital Punishment" (London: Ridgway, Piccadilly, price one shilling), has had a very extensive circulation. Very recently two excellent pamphlets on the same subject have been put forth by Lord Hobart and Mr. Sheldon Amos. Lord Hobart's Essay (London: Longman and Co.) is distinguished by its impartiality, breadth and cogency.

In October, 1860, the Manchester Town Council unanimously memorialized the Home Secretary for an inquiry into the operation of the present law, on the motion of Mr. Councillor Fildes, whose speech on the occasion (published by Johnson and Rawson, 89, Market Street, Manchester) is one of the most valuable of modern essays in favour of the abolition of the death-penalty.

By the consolidation of the Criminal Statutes in 1861, several crimes, including attempts at murder, ceased to be capital—leaving actual murder the only crime, except treason, punishable with death in this country.

Considering the marked success that has attended this long course of repealing sanguinary laws;—considering the increased security from the crimes once capital, such as forgery, horse-

stealing, burglary, and sheep-stealing; and also considering the greater proportion of convictions now resulting from committals for these crimes;—it is strange that there has not been a universal readiness to effect a similar reform in the treatment of the crime of murder.

The plea of the necessity of Capital Punishment to ensure public safety and to deter the criminal, has been abundantly answered in relation to those crimes against property to which reference has been made. They have been removed from the imposition of the extreme penalty with the most favourable practical results. And there is every reason to believe that a similar course in respect to the crime of murder would also be efficacious. Indeed, experience has proved it to be so in various countries, as in Tuscany, Michigan, Wisconsin, Rhode Island, and in several States of Germany and Cantons of Switzerland, as well as, approximately, in Belgium, Prussia, Russia, and elsewhere, where murders have decreased as a less extreme penalty has been substituted for the punishment of death.

The experience of Tuscany is very interesting, as it has extended over a long period. Capital Punishment was virtually abolished in that State by the Grand Duke Leopold, about the year 1770, and absolutely so in 1786. The result was a remarkable diminution of murders. In consequence, eventfully, of the political confusion attendant on the wars of the French Revolution, and chiefly through Austrian influence and the dread of conspiracy, the death-penalty was re-enacted in Tuscany in 1790. But the remembrance of former experience procured its repeal a second time. Once more, however, did Austrian influence, as it is alleged, effect a re-imposition of Capital Punishment; but yet again have Tuscan convictions obtained for the third time the abolition of death punishments in the State. In 1864, the new code of the recently formed Kingdom of Italy, whilst nominally recognizing Capital Punishment as the extreme penalty throughout the Peninsula, yet makes provision for the virtual maintenance of its entire abrogation in the province of Tuscany, The infliction of permanent imprisonment is the substitute imposed.

The German States of Oldenburg, Anhalt, Nassau and Bremen,

abolished Capital Punishment in 1849, and have not seen reason to restore it. In Brunswick it has been virtually abolished since 1854. During the last five years it has also been abandoned in Venezuela, New Grenada, Equador, Moldavia, Wallachia, San Marino, and the Swiss Canton of Zurich. Also, virtually, in Portugal.

Two other Cantons abolished it at an earlier date, viz.: Neufchatel in 1854, and Freiburg in 1848.

In the latter Canton the effect of the repeal has been recently investigated by an official commission of inquiry, and the result is thus stated in a letter (dated January 4, 1864) addressed by the Swiss Minister of the Interior at Berne, to the writer, as Secretary to the Society for the Abolition of Capital Punishment:—"The Report resulting from this inquiry stated that neither crime in general nor special crimes against life and personal security have been, in any way, relatively more numerous in the fifteen years since the abolition of Capital Punishment than in the fifteen years which immediately preceded that abolition."

In the debate on Capital Punishment in the House of Commons, May 3, 1864, Mr. Bright read extracts from three letters addressed to him a few weeks previously by the Governors of Rhode Island, Michigan, and Wisconsin, in which they reported favourably on the practical experience of the abolition of the death-penalty in their respective States. The dates of the repeal in those States were as follows:—by Michigan in 1847; by Rhode Island in 1852; and by Wisconsin in 1853.

It is thus evident that both at home and abroad there is no ground for asserting that an increase of crime has resulted from the abrogation of Capital Punishment, so far as it has been tried.

The principal, and now almost the only plea, urged in defence of the gallows, is its necessity as a deterrent. It is agreed that abstractedly no influence is so powerful for the repression of crime as the fear of death. The same plea was formerly set up for the retention of the extreme penalty in the case of other offences. But practical results have not justified these alarmist fears and objections.

There is no doubt but that the dread of absolutely certain death is a most powerful and overmastering feeling, although even this is often successfully defied, under the influence of duty, love and patriotism, and under the denomination of the fiercer passions. It is also beyond dispute that after arrest and sentence, condemned criminals are found to welcome almost any form of punishment, however enduring and severe, rather than be deprived of life. But none of these facts prove that Capital Punishment is the most deterrent of penalties. Its preventive influence ought to operate *before* the commission of crime, and with sufficient power to hinder its consummation. Dread of punishment only felt *after* the act, implies the impotence of that punishment to deter. And, on the other hand, even assuming the deterrence of a death-penalty under abstract conditions of positive certainty, this can no longer be logically urged for its retention, if it is found in practice that public feeling and the general circumstance of criminal trials necessarily impart a large and peculiar degree of uncertainty to its infliction. It is notorious that no secondary punishment can be compared with the capital penalty for the uncertainty of infliction, or for the great difficulties found to attend upon the attempts to convict the criminal. This special accompaniment of peculiar uncertainty is uniformly ignored by the defenders of death-punishment, although practically, it is the great difficulty—and one which goes far to nullify the claims for the assumed deterrence of what is only formidable under imaginary conditions not found to exist in reality. And further, it is found that a large proportion of the murders committed are perpetrated under circumstances either of headlong passion, blind fury, sudden impulse, intense jealousy, or drunken frenzy—conditions which show that the dread of punishment is not present, or not sufficiently powerful at the moment of temptation. Those temporarily overmastered by passion are often too exclusively possessed by such emotions to admit of calm and sufficient reflection upon probable consequences, and, if they are, they speculate upon the chances of escape. Again, it can be shown by numerous instances that there is a peculiar tendency in executions, and with the crimes which are rendered specially notorious, to reproduce

themselves through their influence on morbid minds of a certain type. At any rate, it is often observed that the occurrence of an execution in any town is a strong presumptive evidence that another will, before long, be witnessed in the same place.

Thus at Liverpool, in the spring of 1863, two men were hanged for the Ribchester murder. Again in the autumn, eleven persons were on trial for murder: of these, four men were hanged for four separate murders, all committed in Liverpool. Here were spectacles, sufficiently deterrent one would think, if capital punishments are deterrent at all. Yet in spite of them, at least four more murders occurred in the same town before the year 1863 ended.

Similarly, at Chatham, in 1863, a youth named Burton murdered an inoffensive child, and immediately afterwards surrendered himself to the police, exclaiming, "I want to be hanged;" and hanged he was. A few weeks afterwards, in the same town of Chatham, Alfred Holden, a soldier, murdered another innocent child. He too exclaimed, "I want to be hanged;" and he too was hanged accordingly. A third murder was subsequently perpetrated in Chatham in 1863. What evidence of deterrence is to be found in such instances?

As examples of the peculiar manner in which circumstances calculated to excite a morbid imitation and love of notoriety are peculiarly associated with Capital Punishment, and with the interest in the criminal, attendant on its prospective or actual execution, we may notice that a fortnight after the execution, in 1863, of George Vass at Newcastle, for a most horrible murder, there were at least two wax-work exhibitions of his effigy, conspicuously displayed as "correct models," and in leading thoroughfares of that populous town. For many years past, in a similar manner, the most notorious metropolitan or other murderers have been duly "immortalized" by being placed in effigy amongst the historic worthies at Madame Tussaud's Exhibition, for the contemplation of an admiring public. But it is rarely, if ever, the case that either transportation, imprisonment, or confinment in a lunatic asylum, is thus surrounded with such perverted "glorifications." The evil is

one of the class of mischievous accompaniments, peculiarly incident to the death-penalty.

As to the great "moral lesson" taught by the gallows, it has been most ably treated of by Dickens and Thackeray. Mr. Dickens' five letters to the *Daily News*, in January, February, and March, 1846, form a masterly exposition of the impotence (except for evil) of the extreme penalty of the law. And we may add, that if anything was wanting to explode the plea for the "teachings" of the gallows, it is to be found in the report of Müller's execution, as given in the *Times* of November 15th, 1864. The reporter of that newspaper writes, "It was one long revelry of songs and laughter, shouting and often quarreling,—worse in conduct it could not be." And, after the drop had fallen, he adds, "For five or ten minutes the crowd who knew nothing of his (Müller's) confession, were awed and stilled. The impression however, if any real impression it was, beyond that of mere curiosity, did not last for long, and before the slight slow vibrations of the body had well ended, robbery and violence, loud laughing, oaths, fighting, obscene conduct, and still more filthy language reigned round the gallows far and near."

A similarly powerful testimony to the failure of death punishments to deter their witnesses, was recently borne by Mr. Sheriff Nissen, in a paper read at the Social Science Congress at York. That gentleman is peculiarly qualified to give an opinion on the subject, inasmuch as during his shrievalty in 1864, he had to witness, officially, more executions in London than it has probably fallen to the lot of any sheriff, in England and Wales, to witness during the past quarter-of-a-century.

So far from securing the community from murderers, the enactment of Capital Punishment peculiarly aids their escape and non-conviction,—and more especially because, at present, there is *no intermediate course* possible, for a jury in murder trials, between absolute acquittal and a verdict involving an *irreparable* result. There is no alternative. The prisoner is, by the law of murder, either entirely innocent or guilty to the utmost extent; and no legal plea but that of insanity can avail him. Yet it is evident that there may be

circumstances, and such constantly occur, of greater or less aggravation or qualification, which largely modify the guilt. It is true that a recommendation to mercy may be expressed by a jury, but it is by no means a uniform practice to act on that recommendation. Neither can a verdict of manslaughter be substituted for one of murder; or at least not in a variety of cases of homicidal crime. Thus at the trial of Taylor, for the Manchester murder, the judge told the jurors that it was "murder or nothing." (*Times*, March 31st, 1863.)

The Hon. George Denman, recently stated in the House of Commons (May 3rd, 1864), that "The escapes in trials for murder are fifty per cent. In cases of murder, evidence to a perfectly ridiculous extent is required to insure a conviction." This is not unreasonable. For a capital penalty being *irreparable*, renders necessary an amount, and an absolute certainty, of evidence, which would not be demanded with any penalty short of death. But such evidence it is very difficult, and often impossible, to obtain. Such difficulties in coming to a decision would be obviated by the substitution of a secondary punishment, however severe. Opportunity and time would be afforded for the ultimate discovery of possible mistakes in conviction; and in such an eventuality, some amount of compensation could be made to the sufferer. Meanwhile, under any circumstances, no irrevocable error would have been committed, and none of that awful responsibility incurred which specially attends the taking away of human life. Jurors, in repeated cases, have been left no option but either to acquit a man, of whose partial inculpation in guilt they had no doubt, or else to condemn him to the fatal sentence, whilst grave reasons existed for doubting his absolute and entire guilt. What wonder that in such cases they have adopted, though most reluctantly, what has appeared to be the less of two serious evils. If it be argued that jurors ought not to take such a course all experience shows that, whether rightly or wrongly, they have done so; and it cannot be doubted that they will continue to do so, until the law relieves their irrepressible scruples in such difficult cases. The abolition of

Capital Punishment would effect the removal of this evil, and largely increase the certainty of punishing the murderers.

At the Hertford Assizes, some years ago, two men were tried for two different offences, one capital and the other not capital, but under circumstances otherwise very similar and with evidence almost identical in nature in each case respectively. The man tried for the non-capital offence was convicted and transported. The one tried for the capital crime was acquitted. A juror was afterwards remonstrated with for such apparent injustice and inconsistency, considering the identical circumstances of evidence. He replied, "Why surely you wouldn't hang a man on the same evidence that you would transport him for?" He was right. For, as already observed, a man if wrongly transported can have compensation made, but if wrongly hanged, the injury is irreparable. Thus it occurs that, not unfrequently, murderers escape conviction, sorely against the feelings both of the public and the jurors themselves.

One of the jurors empannelled to try the six persons charged (March, 1856) with the Matfen murder (a peculiarly brutal one), near Newcastle, was remonstrated with by a gentleman who expressed the astonishment of himself and of the local public generally, at the verdict of acquittal then returned. The juror admitted that he and his fellow jurymen believed the charge to have been substantiated, but added that there was not absolute certainty, and, said he, "We could not consent to hang six persons except on perfectly certain evidence." Now, as a legal gentleman has remarked, murder, of all crimes, is the most likely to be secretly committed; for example, murders by poison, murders by night, or in lonely places, and on solitary unprotected persons. How can perfectly indubitable evidence of such murders ever be expected? The statement of Lord Tenderden, that in such cases we should be satisfied with "that certainty with which you would transact your own most important concerns in life," is not a fair comparison. For, in the first place, a probability, however great, can never constitute a "certainty," and, secondly, even the "most important concerns in life" stand in a quite different position from a matter of *death*,

even the most important step in ordinary life, that of marriage, is not *absolutely* irreparable, if a mistake has been made. Either the divorce court or some kind of modifying arrangement can qualify its worst abuse; but the infliction of death stands widely apart from all such comparison, by being absolutely irrevocable, and capable of being qualified by no kind of reparation to an innocent sufferer.

It is the wide spread and irrepressible feeling as to the possibility of mistake which gives rise to frequent interferences with the executive authorities in capital cases. Thousands of signatures are appended to petitions; committees sit daily; deputations besiege the Home Office; all kinds of private pressure and influence are exerted on the authorities, in the efforts to obtain a commutation, or at least a delay in those instances (and they form a majority) where there is not absolutely certain proof of the guilt of the condemned. This was evidenced in the atrocious murder case of Müller. Not only was there the vigorous action of the German Defence Association, but even the King of Prussia, it is stated, and the Duke of Saxe Cobourg, telegraphed for her Majesty's interposition, and a similar message was sent by the Duke of Saxe Weimar to his consul in England.

Such interferences are, in themselves, most undesirable. They are mischievous in their effect on the certainty and dignity of legal administration. But at present they are inevitable, for they are a less evil than the danger and difficulty inseparable from a capital penalty.

This interposition with judicial procedure is rendered still more frequent, and even justifiable, at times, by the collision which often arises between the highest legal and the most experienced medical authorities. These collisions have occurred in numerous cases of murder committed by persons whose physiological or mental condition has raised just apprehensions of their moral responsibility. The Law, at present, virtually declares that however powerless a man may be to control an homicidal impulse, yet if he commits the act, he ought to be held responsible, so long as he knows the difference between right and wrong. It is universally admitted that in such a case he ought to be held responsible. The

safety of society demands it. But the question is, shall he be held responsible to the extent of forfeiting his *life* or merely of his *liberty* for the rest of his life? The Law pronounces that he ought to die, however morally impotent, provided only that he knows the nature of an homicidal act as being a criminal one. The possession of knowledge is here confounded with the possession of self-control. But experience shows that the former often exists where the latter has not been possessed even from infancy. Indeed the very government of lunatic asylums is generally based on the principle that their inmates have a sense of right and wrong, independently of indubitable and dangerous insanity. As a proof of the inevitableness of the medico-legal collisions which at present frequently interrupt our courts of justice, we may quote from the *Lancet* of July 30th, 1864, the following important resolution, which was carried unanimously at a meeting of eminent medical men, at the Royal College of Physicians on the 14th July:—"At the seventeenth annual meeting of the Association of Medical Officers of Asylums and Hospitals for the Insane, it was resolved unanimously, 'That so much of the legal test of the mental condition of an alleged criminal lunatic which renders him a responsible agent because he knows the difference between right and wrong, is inconsistent with the fact well known to every member of this meeting, that the power of distinguishing between right and wrong exists frequently among those who are undoubtedly insane, and is often associated with dangerous and uncontrollable illusions.'" Certainly as long as the law on this subject remains, there will also continue the vigorous, and often successful, opposition of persons resolved to prevent, if possible, the unseemly spectacle of an unfortunate person labouring under an attack of homicidal mania being punished with death for a natural and unavoidable calamity. Yet we see no prospects of any such attainments in medical science, or any such careful alteration of the law, as shall secure a positive and clear line of demarcation between sanity and insanity. The removal of the death-penalty for murder would remove the cause of the present collision, so much to be deprecated, between jurists and physicians. Under any cir-

cumstances a murderer, whether sane or insane, should be permanently separated from society; whether this takes place in a penal or a medical establishment is a matter of comparatively little moment, and would at any rate involve little if any practical dispute. Again, such anomolies and difficulties as were presented by the trials of Townley, Mac Naghten, and others, would disappear with the abolition of Capital Punishment.

One other objection to Capital Punishment may be thus stated: that it makes no classification of the criminals. Is it real justice to recognize no difference between a cold calculating murderer like Palmer of Rugeley, and such exasperated passion-driven wretches as Wright of Southwark (1863), and Hall of Birmingham (1864)? Does justice truly balance her "scales," when the vast actual difference in cases like these is not even recognized by her award? It is however very doubtful whether it will be found practicable to decrease the present difficulties of the question, by an attempt to classify murders, whilst retaining the capital penalty. For whilst some anomalies would thereby be lessened, other new sources of impediment would be opened up. But the abolition of the fatal punishment would entirely obviate such difficulties.

With a particular reference to the medico-legal embarrassments, and to the inequalities of punishment just alluded to, it may be further remarked, that those who plead for Capital Punishment in all cases of murder, should consider the serious mischief of effecting a separation between the national conscience of justice and the statutes of law. Law and justice should be synonymous, or at least united, where the former is to retain that uniform reverence and authority which all true Britons would wish to be ever associated with it.

The substitution of an absolutely certain punishment, of whatever kind (in some countries it is permanent imprisonment, with active employment for body and mind), in place of Capital Punishment for murderers, would remove the difficulties and dangers of the present system, would meet the scruples of conscientious and just jurors, would promote certainty of conviction, would secure society from future violence from the murderers, and would also destroy their present abundant chances of escape.

The practical experience of other countries proves that these advantages do accrue from the total abolition of Capital Punishment, and that the advocacy of the repeal is not based on mere theoretical grounds. But even if there were no such foreign experimental confirmations, the result of British Legislation, *so far* as it has proceeded in this direction during the past half-century, is abundantly sufficient to warrant the adoption of the remaining measure needful to complete that long and noble work of justice and mercy which has removed from our administration for every offence save one, that impotent and brutalizing remnant of barbarism—the gallows.

With reference to the objection sometimes made that the substitutes proposed in lieu of Capital Punishment are open to grave objections, we may briefly reply that :

Firstly, permanent detention is, when rightly managed, as for instance, at present in some of the American States, found to be neither productive of physical nor mental disease. This statement is confirmed by recent official documents.

Secondly, a considerable proportion of our murderers are at present and long have been (by the commutations of their capital sentences) punished by secondary penalties without any grave injury to the public security or to the prison officers.

Thirdly, the most dangerous class of all criminals, viz. : insane murderers, are committed to the Government Asylum at Broadmoor, where about 500 of these most ferocious and incurable homicidal lunatics are permanently confined with absolute safety to the public and also with scarcely any exception, even to their care-takers. See a lengthy and most interesting account of Broadmoor, in the *Times* of January 13th, 1865. The writer, amongst other observations, records "A committal to Broadmoor for murderous madness is as final as regards the chances of return to the world, as death itself."

Fourthly, it appears clear that, however difficult the question of a substitute may be, the capital penalty is attended by still *greater* difficulties and by far graver evils than any that exist under the strictest secondary systems.

In conclusion, we may just allude to the religious argument sometimes adduced in favour of retaining Capital Punishment, chiefly because of certain texts in Genesis and Deuteronomy,

From these and others, it is undoubtedly evident that Capita Punishment was both sanctified and commanded temporarily, and on account of the semi-barbarous and comparatively dark condition even of the most favoured people in those early ages. But who will claim as binding amid the generally diffused lights of modern Christianity and civilization, the institutes of a race just emerged from centuries of bondage, amid the degrading influences of pagan Egypt.

Those who plead for Capital Punishment on the basis of a Mosaic permission, must, to be consistent, also plead for its full restoration for the thirty offences for which it was enacted. Further, if the Mosaic civil system is still binding on one point, it is so in all. On the same plea, both slavery and polygamy might be enforced, as indeed the former is still in the Southern States of America. And in reference to polygamy and easy divorce under the Mosaic system, a greater than Moses declared that such arrangements were temporarily permitted as the less of two evils, or, "because of the hardness of your hearts."

There are some persons who relinquished the Mosaic defence of Capital Punishment, but yet plead the Noachian or Patriarchal. These also, to be consistent, must demand the restitution of altars for sacrifice, of circumcision, and of the penalties of eating any flesh containing blood. Of at least one of these institutes, our Saviour declared that it had been re-embodied by Moses in his ordinances, "not because it is of Moses, but of the Fathers," thus indicating that the Mosaic system entirely took the place of the Noachian, as Christianity has of both. By the quotation of isolated texts, apart from the spirit and scope of scripture, almost any form of wrong and injustice may be apparently authorized. Thus the Devil quoted texts to tempt our Lord.

We may, however, securely rest on the broad principles of love, mercy, and true justice, which characterize Christianity. No isolated texts can be fairly interpreted if they appear to justify evident injustice, to legalize cruelty, or to promote the insecurity of society and the confusion of law.

No scripture can fairly be adduced, warranting us in taking away criminals' lives, when abundant experience demonstrates

that such an extreme measure can be safely dispensed with.

Christian mercy never teaches us that, by our laws of homicide, we should visit with the gallows, in any instance, the unfortunate victims of natural moral impotence or hereditary mania, however subtle in its manifestations.

Nor can any reasonable definition of Christian justice accord with the irrevocable infliction of death on uncertain proof of guilt, and still less with the inexorable enactment of such a doom, even on the most violent of criminals, apart from any virtual consideration of the circumstances which rendered them such. Christian justice implies no sentimental weakness. It involves no impunity to murderers; but neither does it sanction that even these should be hurried out of life, without any regard to possible reform on the one hand, or on the other to the often almost irresistible temptations which have formed their usual antecedents:—as orphanage, parental neglect, or perhaps even parental nurture in vice and crime; a childhood of squalor, ignorance, and of strongly hereditary deficiencies; a youth too frequently trained amid want, profligacy, and evil companionship:—"dragged up" rather than brought up—and often a manhood (like that of Victor Hugo's Jean Valjean) not a stranger to noble efforts and aspirations, but again and again repressed, dwarfed and finally petrified, by repeated failure, by excess of difficulty, and by an overwhelming sense of aid withheld and sympathy refused.

To assert that Christianity authorizes, or that the Bible admits, the infliction of the gallows under these circumstances, appears to us inconsistent with the glorious perfection of the one, and with the sacred wisdom of the other.

Since the foregoing article on Capital Punishment was prepared, the writer has received an interesting letter (dated Heidelberg, Dec. 6, 1864), addressed to him by Professor Mittermaier, and from which the following is taken:—

"Concerning the experience of the countries which have abolished "the Capital Punishment, we have only three governments which have "abolished this punishment since 1849, Anhalt Dessau, Nassau, and "Oldenburg. Unfortunately, in the three states, official criminal tables "are not published.

"But I am in correspondence with eminent lawyers of Nassau and "Oldenburg, and can assure you that, according to the letters received, "the general opinion among the lawyers and citizens of Oldenburg and "Nassau is, that the number of murders is not increased, and that "there is not any reason to re-establish the punishment of death.

"MITTERMAIER."

The writer has also received a letter from Mrs. Harriet Beecher Stowe, enclosing another letter from the well-known American author and theologian, Professor Thomas Upham, of Maine, to whom Mrs. Stowe has applied for information on the subject. He gives the following brief extracts :—

"In answer to Mr. Tallack's first inquiry, namely, what has been "the result of the abolition of the death-penalty in Rhode Island, Michigan, "and Winconsin, I would say, so far as my information goes, the majority "of the people continue to be satisfied with the change. Were it otherwise "in any considerable degree, they would be likely to return to their "former system. I have not learned that any of the States of the "American Union, which have abolished capital punishment, or have "greatly modified their criminal codes, in that particular, have taken any "steps backward. I understand that some attempts of this kind have "been made in Rhode Island and Michigan, but have failed.

"On the third question, namely, whether imprisonment with hard "labour for life, or for a term of years, can be adopted as a safe "substitute for the gallows, it is certainly right to say, that the experiences "of this country look favourably in that direction.

"It is right, in my opinion, to remember that the criminal is still "a man; and while we make the protection of society the first object, "we are not to cease to do him good. In some cases at least, only the "Infinite Mind can understand the amount of his temptations and "sufferings. And we all stand in need of forgiveness.

"THOMAS C. UPHAM."

P.S. The most recent work in advocacy of the Abolition of Capital Punishment, is entitled "CAPITAL PUNISHMENT, based on Professor Mittermaier's Todes-strafe," by John Macrae Moir, M.A., of the Middle Temple, Barrister-at-law. London : Smith, Elder and Co., 1865. Price Six Shillings.

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