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THE ROYAL COMMISSION

AND THE

PUNISHMENT OF DEATH.

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BY

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Honorary Secretary to the Society for the Abolition of Capital Punishment.

SOCIETY FOR THE ABOLITION OF CAPITAL PUNISHMENT.

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PURCHASE OF DEED

The Great Lakes Region

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THE ROYAL COMMISSION AND THE PUNISHMENT OF DEATH.

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THERE is much doubt whether the Royal Commission appointed by Her Majesty in the last Session of Parliament, will be able to report during the present year, and it is impossible to conjecture what that report may recommend, or the results to which it may lead. From the known sentiments of several members of that Commission, it may be inferred that several alterations in the present law will be suggested. In all probability it will be the aim of the Report to relieve the Home Secretary from the discharge of duties which must have become intolerable to himself, and which in many instances give so little satisfaction to the public. There may be an attempt at a classification of the crime of murder into those of the first and second degree—discriminating those which have been the consequences of deliberate design from those which have been the result of sudden impulse, or temptation; and it is possible that the substitution of private for public executions may be recommended. It may also report in favour of a Court of Appeal. Something will be gained by the adoption of any or all of such expedients, but they can only be looked upon as steps towards the attainment of total abolition. Much will depend upon the public opinion out of Parliament, as well as the sentiments of those who sit within it; and it is therefore proposed in the present paper to discuss some of the more important points pressing for consideration. It is desirable to inquire, what is the real issue involved, and to separate from it all that is irrevelant, or that is only remotely related to it. To this end it may be necessary to look at some of the principal objections to the punishment of death, and then to examine how far these objections are likely to be met by any of the alterations to which reference has been made.

One of the principal objections to a death penalty is, that it provides the same punishment for all gradations of crime.

There is no offence against human law which presents so much difference in the shades of guilt—so far as men are able to judge of motive and to appreciate the force of circumstances acting upon the human will. In the case of Annette Myers, who was condemned for shooting a soldier, who had first seduced her and then tempted her to a life of prostitution to supply him with means to gratify his vices, and in that of Palmer, there is as wide a distinction as can possibly exist between two offences of the same kind. They were both cases of murder, and both were punishable by death. In the case of the poor girl, the prerogative of mercy saved her from the gallows. It would be easy to find cases within the present century where that prerogative might have been just as properly exerted—and probably the unusual and somewhat romantic character of the crime for which Annette Myers was condemned, had much to do with exciting that public sympathy which preserved her life. An instance is on record of a working man who perished on the public scaffold at Nottingham, and whose case furnished as good a plea for a merciful interposition on the part of the crown. The wife of this man was seduced from his home. He followed her to the house of her seducer, and begged her to return, promising to forgive all. She refused; when in a fit of desperation he took up a table-knife and cut her throat. What is there of guilt in such a case when compared with that of the Mannings? There can be no defence for a law thus indiscriminating in its awards but that which was given by the ancient lawgiver, and which justified the death penalty for all offences—that the smallest crime merited death, and there could not be found a heavier punishment for the gravest offence against the law.

The evil consequences of a law dealing out the same punishment to offences so variable in their delinquency, are seen in our daily experience. In some cases a false sympathy is created for the condemned, and after the judge and jury have decided upon the case, and the Home Office have confirmed the decision—the public take it up—put the case under another trial—go into the evidence, and demand a reversal of the verdict, or a mitigation of the sentence. No one who is

acquainted with the conduct of our criminal courts will hesitate to deprecate a course like this. If appeals from the decision of a criminal court have to be made, they ought to be made to a tribunal, capable of sifting evidence, and not to public opinion, which at all times, but especially in periods of excitement, is incapable of looking at facts with judicial eyes. It is only in cases of condemnation to death that these interferences are made. In cases where the severest secondary punishments is inflicted, any interference is exceedingly rare. It is the inevitable result of the death penalty that the public will sometimes think it too severe for the crime committed, or will be alarmed at the prospect of executing a man who may possibly be innocent, and therefore the excitement and the interference. Although the cases where men have gone to death with strong protestations of innocence, whose guilt admitted of no reasonable doubt, are numerous, still an uneasy feeling will always pervade the public mind when such declarations are made by men upon whom the door of earthly hope has closed for ever.

This is not the greatest evil. The worst part of it is in the sympathy which gathers about the murderer when any doubt of his guilt affects the public mind, or where there are mitigating circumstances in the case—a sympathy which seems to absorb all horror, or even recollection of the crime. In the case of Annette Myers, whatever the nature of her provocation, however gross the wrong and the insult to which she had been subjected, she had provided herself with a pistol, sought out the man, and deliberately shot him. She had in an instant sent a guilty man to his account without time for preparation, and this consideration seemed to weigh heavily upon her in the condemned cell, for there she called with much bitterness of feeling—"Oh, what has become of his soul?" It would be impossible to censure the feeling of commiseration which sprang up for this distressed but guilty girl. But it is not for the welfare of society that we should allow a sympathy like this to efface all horror of the crime. In some quarters she was looked upon in the light of a Roman heroine—as a sort of Lucretia, who had done a praiseworthy act in avenging her own shame. A reverend

gentleman, in a public meeting, declared—"It requires all my Christianity to check me from saying that I honour the woman." What can be expected from the uneducated and the vulgar, when men of education and position thus allow their feelings to overrun their sense of propriety? Is not this teaching indirectly that there may be and are circumstances which justify an act of vengeance even to the taking of human life? The fault is in the law. Had this unfortunate girl been condemned to a severe secondary punishment, there might have been some feeling of compassion, but no sound mind would have found an apology for the crime. "The safety of human life depends," as Mr. Bright expressed in the last debate, "upon the public reverence for life,"—and this reverence cannot be created or preserved by public exhibitions of death, nor by maintaining a law which by its very severity creates a sympathy for those who commit murder.

Another case presents in a still stronger light the evil complained of. On December 31st, 1841, a man of the name of John Jones, who sometimes bore the name of Moore, a shoemaker, murdered his sweetheart, Mary Hallam, the daughter of a respectable labourer at Mansfield, in the county of Nottingham. He was executed on March 23rd, 1842. He was a man of unsteady habits, and gave way to violent fits of passion. The girl declined his addresses, and he said that if he did not have her no one else should. After he had inflicted the first wound, which was not immediately fatal, she begged for her life; but seeing him resolved, asked for time to pray. He said that he would pray for both, and then completed his purpose. The wounds were inflicted by a shoemaker's knife, and her throat was cut barbarously. After this he kept on his knees some time and prayed to God to have mercy on two unfortunate lovers. He made no attempt to escape, and confessed the crime. After his confinement he behaved in the most decorous manner. He won upon the good opinion of the gaol chaplain, and he was visited by the Bishop of Lincoln. It does not appear that he expressed any contrition for the crime, but seemed to pass away with triumphant certainty that he was going to rejoin his victim in heaven. He was visited by some

pious and benevolent ladies of Nottingham, some of whom declared that he was a child of God if ever there was one, meaning, it is presumed, that his state of religious feeling after condemnation had wiped away all transgressions. The same lady sent him a white camelia to wear at his execution. Of course great crowds gathered at the execution, multitudes coming in from surrounding towns and villages; Mansfield, Newark and Derby supplying a large per centage of the strangers present at the scene.

The crowds came thronging in from six o'clock in the morning. It would be well for those who contend for the deterrent influence of death punishment to mingle with such crowds. The expression was almost universally, one of sympathy with the man about to suffer. The painful part of it appeared to be this—that the offence seemed to be entirely lost to the minds of those who were conversing about his fate. A horrible crime had been committed. A poor girl had been barbarously murdered; the supplications for her life, as well as those she made for a few minutes' time, that she might prepare for death by prayer, were disregarded. Her bereaved family were left with stricken hearts to mourn the loss of a daughter by a violent and sudden death; and yet all this seemed to have passed away from the minds of those who had come to see the murderer die. He was looked upon by many as the victim of a misplaced and unrewarded affection, and the sufferings of his victim were wholly disregarded. One man was heard to say to a companion, who seemed to be his son, "I wish you and me were as ready to die as he is." Similar extravagances were committed, so far as the treatment of the criminal was concerned, by benevolent visitors, in the case of Cook, who murdered Mr. Paas, and afterwards attempted to destroy the body by burning it.

By the way, the wretched man Jones was fondled, caressed, and flattered by a number of indiscreet persons, injury would be done to himself. Such treatment to a man whose hands were reeking with a foul murder, were calculated to nourish that vulgar, but profound egotism, which was the most marked feature in his character, and little calculated to awaken that humility which is essential to true penitence. An intense

egotism is the characteristic of all great criminals. In the case of a man who has consummated an irregular and criminal career, by the commission of a murder, it must be highly injudicious to inflate the mind by false hopes, either temporal or eternal. The result of such attentions as were paid to this man, were calculated to produce a display of ostentatious penitence, or to create a self confidence ill-suited to his position. The highest aspiration of the guilty, ought to be that taught in the prayer of the publican, "God be merciful to me a sinner." On the public mind outside, the effects were equally deplorable. To some, by the extraordinary attentions paid to him, he was raised into a hero or a saint, and made almost an object of envy among his own class.

There is another case of more recent date, that of Joseph Castle, who was executed in 1860, for the murder of his wife. His own confession made it clear that the crime was deliberate. After his condemnation he was petted much in the same way. His conduct was brutal and sensual throughout—and in his last moments he manifested no concern for the poor woman he had murdered, nor in fact any true penitence. He was eager for his meals, and anxious to secure all the indulgences the prison rules allowed, and the gaol authorities were lavish in their attentions. It is the doom of death which surrounds these men with all this factitious interest. What they say and do becomes an object of inquiry, and their daily state of health is looked for more greedily than is a royal bulletin. The man whose hours are fixed, becomes an object of pity to the gaol officials. It is the duty of the chaplain to awaken him to a sense of his condition, and prepare him for the world he has to enter. If there are circumstances in his case of an exceptional or extraordinary kind—he becomes an object of interest to a number of pious and kind people outside. The lesson taught to the multitude loses its impressiveness and its power, and that solemn awe which ought to be present at the punishment of a great criminal, is overwhelmed by other feelings. Change the doom of death to that of penal servitude, or any other equivalent, and he becomes at once an ordinary criminal. As soon as the respites for Hall, Townley, and Butler left the Home Office, the interest in them ceased. No one

would dare to assert that Victor Townley, doomed to penal servitude for life, receives more than his deserts,—and more than the law ought properly to inflict in any case, where a man invades the life of another. In the case of Roupell, he perpetrated a crime as flagrant and as heinous as any forgery ever committed. This punishment to a man of education and position, and who had once occupied a seat in the British Parliament, was perhaps more severe than even death. He passed away to commence his life-long punishment, without any of that maudlin sympathy being drawn out, which in all probability would have followed if the statute book had still retained the death penalty for the crime of forgery. It is therefore necessary to devise a punishment that will meet the national sense of justice—and divest atrocious criminals of the terrible interest with which their position as death doomed men is invested, and which will prevent those interpositions with the administration of the law which are so often made, to the injury of public morality, and the lowering of the dignity of the judicature in the eyes of the people.

These interferences with the law have the tendency to embarrass both judge and jury, and to throw a difficulty in the way of the Home Secretary. In fact the Home Office has become a court of appeal. Without being constitutionally judicial in its character, it is called upon to exert judicial functions. The recent cases are pregnant with much instruction. The Home Secretary has been in one case, that of Hall, compelled to yield to an expression of opinion outside in the correctness of which he could not acquiesce. It is known that under the pressure of great excitement the murdered woman was traduced to the affliction of her surviving relatives, in order to establish the plea urged on behalf of the convicted man. In the case of Jessie Maclachan again, an old decrepit man whose years and physical infirmities would seem to preclude the possibility of his having committed the crime, of which she was accused, was brought under a cloud of suspicion, in order to make out a case in her behalf. All doubt of her guilt was removed by her confession after the respite had been granted.

These are some of the gravest objections to the punish-

ment of death. The escape of the guilty is favoured. But besides this there is an amount of feeling created in relation to atrocious criminals, where the popular voice would approve the sentence, which leads to inflame the passions and deteriorate the morals of the multitude. It is not only that scenes of cruelty and death are demoralizing in themselves, but the discussions and descriptions given in the public press are calculated to do mischief. The town of Nottingham will supply another example. On May 18th, 1844, a man of the name of William Saville murdered his wife and three children under particularly atrocious circumstances. He was an idle and dissipated man, known among his vicious companions as "liar Saville," and one of his former employers stated that his fellow-workmen often said that he ought on account of his fierce character to be called *savage*. In consequence of his bad conduct and neglect, his wife and three children had to go to the workhouse. Saville then formed an attachment to a servant girl of the name of Tait, residing at Radford, a village three miles from Nottingham. It is supposed that he wished to get his wife and children out of the way, in order that he might marry this woman. Be that as it may, he went one day to the workhouse and took out his wife and children for a walk, the three children being respectively of the ages of seven, five, and four. He took them to a retired place in Colwick wood, and there murdered them by cutting their throats with a razor. He placed the razor in his wife's hand to favour the idea of suicide, but it was found to be his own razor, which she was not likely to have had in her possession, but he was seen leaving the wood over a stile, by a milk-boy, who identified him after his apprehension. This crime created great excitement. There was no doubt of his guilt, no palliation for so horrible a crime. The public indignation was most intense, and the crowd assembled to witness the execution was greater than ever known at any previous one. At the execution a horrible scene took place. Almost immediately after the drop fell, some commotion took place in the crowd, and a number of people were thrown down the steps leading from the street in which executions take place to one of much lower elevation. The result was

that some sixteen or seventeen persons were killed, and fifty or sixty more or less maimed for life. By some it was supposed that the panic was created by a body of pickpockets from Derby, who had done it to avail themselves of the confusion to follow more easily their vocation.

This was never proved ; but if it was the case, it shows another instance of crime being committed at the foot of the gallows—of which there are so many on record. This is not the fact however, to which the case points. A gentleman who took much interest in the humbler classes, embraced the opportunity of mingling among them on this occasion, for purposes of observation. A letter of his is preserved, and the following quotation may suffice. “I wish our legislators who insist upon maintaining capital punishment, could have been present this morning. It has made me sick with horror and shame. I do not refer to the horrible disaster which has ended in the destruction of so much life, for that I did not hear of until two hours after the execution—but to what took place among the crowds coming in at an early hour in the morning to witness the execution. The crime was bad enough—but the people seemed turned into savages. Indians round the stake to which one of their prisoners is pinioned could not exult with more wild ferocity in the tortures they inflicted, than these people did in imagination over what they would do to torture such a wretch if he was given up to them. I heard one group of women relating to each other what they would do to punish him, and the devices were certainly ingenious, but made me shudder,—the prevailing opinion was that hanging was much too good for him.”

It will be said that much of all this feeling was the effect of the crime and not the punishment, and there is no doubt much truth in that. No doubt, whatever, had been the nature of the punishment the popular indignation would have been fierce and loud, especially among women, at the murder of a neglected wife, and innocent children ; but by those who have studied the habits, feelings and opinions of the humbler classes, it will be at once acceded that it is most impolitic to gather them in large crowds under such circumstances. By communion with each other these natural feelings of indigna-

tion and rude desires for vengeance get stimulated. In truth, the passions are inflamed from which acts of violence arise. The hour of death concentrates in that brief space of time all passion and indignation which under other circumstances would gradually consume itself away. In the case of the execution of the pirates—and in that of Müller—it may be fairly doubted whether the riot and demoralization which have been so vividly described, are the worst results of such exhibitions; probably the savage vengeance which is brought to its culminating point at the time of an execution, but which is in some cases left unsatisfied, leaves behind it more dangerous elements. The spectators are gathered from the vicious and depraved of all classes—the uneducated—the rough and the brutal—those with morbid tastes and inclinations. A spectacle of death, and a lesson of vengeance can only render more inveterate their own evil desires. Those only who know nothing of the crowds who hasten to such spectacles can say a single word in favour of the example of the gallows. By some imperfectly understood law of sympathy large assemblages of people are affected by almost simultaneous emotions of grief, anger, and fierce passion. It is therefore unwise to gather them in crowds—where they may be excited to strong sympathy for a murderer, or to gloat over his punishment.

Private executions may at first sight appear to remove some of these objections. The evils would not seem to be much alleviated—so long as a large portion of the press have an interest in finding aliment for the lovers of sensation, so long will the morbid appetites of the people be fed by reports of the daily conduct of the criminal. The accounts of the executions, with their ghastly accompaniments would find their way out, and the apparent mystery by which they were attempted to be concealed, and would add to the interest in the minds of the people.

Whether death punishments are deterrent or otherwise does not admit of positive demonstration, but it is worthy of grave consideration whether men led to the commission of a great crime ever think of the consequences at all; or if they do, whether they do not flatter themselves with the notion that they had laid their plans with such care and circumspection as to escape detection or conviction. It is no novelty in the

annals of criminal jurisprudence to find cases like that of the man Wane who was lately executed at Chelmsford for murder. He said—"I had the thoughts on me for months that I must do it, and I struggled with them over and over again, but it was no use, they were too much for me."

There is one part of this subject which must not be passed without remark. An objection has been raised that death punishments operate as a deterrent upon the criminal classes, and that chaplains and governors of prisons state that it is only the fear of death which in many instances prevents the warders and attendants being murdered. Now, it so happens that it is not the criminal classes that produce the murderers. What we understand by the criminal classes are those who systematically follow a course of crime and fraud. Very few murderers are from such classes—Palmer, Rush, the Mannings, Townley, Hall, Wright, Mullens, and many others, were not criminals in that sense, and only became so by the committal of the offence for which they suffered. Those who lead a life of crime content themselves with depredations upon property. This notion of a deterrent upon the criminal classes is most probably derived from the strange and savage threats in which practised thieves will indulge. They often say to an officer who has captured them, that if it was not for the law they would kill him. Too much importance must not be attached to utterances like these, which after all mean little more than a mere angry defiance. The criminal classes—those trained in crime—have their own way of calculating chances; they throw their all into a lottery, which presents blanks and prizes. They are usually men of some degree of physical daring, but of no moral courage. It is a part of their daily occupation to brave the dangers of detection; but they are too much accustomed to measure consequences, to incur unnecessary risk. If there were anything in the argument, it would appear much more likely that they would endeavour to destroy the officer who first detected them than the one who was appointed to detain them in prison. In the latter case, from the discipline of our prisons, it would be all but impossible for a criminal to murder his gaoler and escape. But in the other case, the chances are somewhat in his favour. Sup-

pose a man to be detected by a policeman or other person in the act of burglary or robbery from the person. There is the temptation to destroy the only witness of his offence from the fact that it is more difficult to convict a man for the crime of murder than for any other offence. The chances of escape are as three to one. Mr. Francart, an avocat at Mons, in a speech made at Liège, makes use of a fact corroborative of the experience of practical men in this country. He is speaking of the impunity which is afforded to the murderer from the difficulty of securing convictions. This speech was made at Liège, 29th November, 1863:—

“Let another result of these researches be mentioned; in eight hundred and twenty-six cases of assassination, murder, poisoning, &c., there have been twenty-three executions, that is to say, about one execution for thirty-six crimes. *L'Economiste Belge*, made this remarkable comparison. In the decennial period from 1835 to 1844, it was estimated that about thirty-five thousand colliers worked in the interior of the mines; there were two thousand and thirty-five victims, of whom one thousand one hundred and seventy-five were killed. The risk of death was then one in thirty for the collier; it was only one in thirty-six for the assassin.

“That signifies, adds '*l'Economiste*' with much reason, that it is more dangerous with us to expose one's-self to the *fire-damp* than to the guillotine.”

“I should admit with ease, as may be imagined, the efficacy of the punishment of death, if the author of every crime against which it is in force, might consider it as almost certain that he would be discovered, arrested, condemned and executed. But when I see that he may hope for such chances, first of escaping from all pursuit of justice, then of being acquitted, often for want of sufficient proofs, and lastly, of not being executed, I say, that the criminal has every reason to regard the menace of death only as it appears to the collier who descends into the mine, and, in general, to every one liable to a certain extent to lose his life in consequence of the profession that he exercises; it is nothing more than a remote danger, the ordinary risk of a trade more or less dangerous.”

The argument of Mr. Francart would of course only apply

to cases where the murderers had entered into calculations of their chances of escape. It could not apply to cases like that of Jones, which has been cited in this article, or that of Hall of Birmingham. It could not apply to cases where the murder was committed under sudden impulse or provocation.

But surely the people who urge this objection of danger to warders and gaolers—overlook what is done at Broadmoor Asylum. In that establishment there are above four hundred and fifty inmates, about four hundred men, and from fifty to sixty women. They are nearly all persons who have committed murder, but who have been respited during Her Majesty's pleasure, on the ground of insanity. There is this large number of criminal lunatics, and if they are really such, a most dangerous class. Many of them no doubt will have strong desires to escape, and as it is the character of the class to be artful and cunning beyond that of sane men, they will be adroit in their attempts to do so. It is only necessary to adopt the same system of precaution and restraints in relation to the murderer, whether pronounced sane or insane. From the known capabilities of the human mind, it may safely be inferred, *ceteris paribus* that what a man has done once, he will be liable to do again. It would therefore follow, that the protection of society demands that the man or woman who has committed murder, should be prevented from repeating the offence. If the arrangements carried out at Broadmoor be fully considered, they supply in great part an answer to the inquiry so often raised, what is the substitute you would recommend, if you abolish Capital Punishment?

In the last number of *Meliora*, a publication which has obtained a reputation for its advanced opinions on most social subjects, this objection—for it really assumes that shape—appears in a report of the last Social Science Congress. It is stated "that it is doubtful whether one of the real questions at issue has attracted the full share of attention it deserves." And again that "there would seem to be less difficulty in obtaining the abolition of Capital Punishment, than in providing a substitute." This is an instance of common place reasoning, and the writer has obviously not considered the propositions he lays down. It ought to be known by the writers in *Meliora*, who have

as yet; an unpopular but correct principle to advocate, that it is usual for objectors and opponents to ride off upon issues which are only remotely connected with—or which are totally irrelevant to the main issue. It is often honestly done—and not intended for that purpose, but whatever be the motive, it succeeds in creating a diversion, and delays the acceptance of the truth embodied in the major proposition, or great principle enunciated.

Thus the men who came forward to advocate the anti-slavery cause, on the broad, plain and intelligible ground that it was a crime against God to make a commercial article of a man—like a horse or a pig—were met very often by the plea that it would be dangerous to liberate all the slaves; or by the question—What do you propose to do with all those slaves unused and unfit for freedom, if you carry out your doctrines of abolition? It was of course a matter of sound policy, and wise statesmanship, to consider well what should be done to put the slaves, which the infernal system of slavery had degraded, in the pathway of civilization and improvement. It is a question which prudent men would not neglect, but it did not affect the main issue. The first principle was to decide whether it was right or wrong for man to hold property in man. All questions of policy, expediency and precaution, were subordinate to the settlement of that question; and in fact it was absolutely necessary in that, as it is in all other cases, to settle the principle before the questions of policy could be entered upon. First establish whether the slave is properly held in bondage, and then it will be much easier to decide what is the duty to him when his chains are struck off. It is the misfortune of all movements that the details are mixed up with principles, and men are accustomed to reason from the tail to the head of a series of propositions rather than in the logical way.

Another instance may be named. A number of economists, among whom is Mr. Cobden, have protested against the increase of our armaments on the ground that such increase was unnecessary and mischievous. There was a principle enunciated, and the answer would have been to show that the increase was necessary. In how many instances was the

main question evaded, and in how few was it ever met? But it was attempted to show the danger of disbanding the whole army and navy, throwing upon society a large body of men who had been trained to the use of arms, and who by that training had been rendered unfit for any other pursuit.

Not to multiply illustrations—abundance of which are at hand—the Alliance movement, of which *Meliora* is one of the organs, is a case strictly in point. The Alliance advocates a Permissive Bill which seeks to give power to every municipality, on the petition of two-thirds of the rate-payers, to pass a local law, to prohibit the sale of intoxicating drinks, on the ground that such traffic is productive of crime, poverty, and a host of social evils. The question is a simple one enough, and before a single step is taken—it is necessary to ascertain whether this allegation against the traffic be well founded, and then whether such power ought to be placed in the hands of the people. It is simply absurd to discuss details until this principle be settled. But what are the advocates of the Permissive Bill called upon to do? They are drawn away upon a number of minor issues, and at York, one of their ablest advocates, occupied nearly all the time allotted to him, as one of the speakers, at a public meeting, in chasing through a number of fantastic mazes the fallacies uttered in the House of Commons in a recent debate—it would seem just as reasonable for the advocates of Prohibition, to be expected to show what is to be done with all the interests engaged in the liquor traffic, before an assent is given to their first principle—as to ask what is the substitute for the gallows.

The main issue, so far as capital punishment is concerned, rests therefore upon the expediency of retaining or abolishing it. It would argue a great poverty of resources in a Christian and civilized state to confess that we do not know what to do with men if we do not hang them. We execute on the average some dozen murderers in a year. Would there be any great difficulty in sending them to Broadmoor for a limited time to admit of proper scientific examination. If they were pronounced of sound mind, put them to labour which would be remunerative to the society whose laws they have violated—

treat the sane murderer as Victor Townley has been treated. If he be insane, let him be treated as Macnaughten is. In either case he is under restraint; and surely the devices of our prisons and asylums, which have had expended upon them so much money, skill and labour, can protect society from the return of the murderer, just as effectually as by hanging him and interring the body in the precincts of the prison. Under the present system it is a question whether some of the most dangerous murderers do not escape from death and also from restraint, owing to the growing repugnance to capital punishment.

It is not incumbent upon those who seek the abolition of the death penalty to find or suggest the substitute. They object to the penalty as not answering its purpose, and they have proved their case. It is quite a supplemental matter to design the substitute. It is a stale objection. In all debates in Parliament, whenever a capital penalty was sought to be abolished, the argument was used. There is no difference except in the form which the argument assumes. When Mr. Thomas Fowell Buxton moved, May 23, 1821, for mitigating the severity of punishment in certain cases of forgery, he was met by the Solicitor-General, who pleaded for the retention of the punishment of death on the ground of—(1) its necessity; (2) that no efficient substitute had been provided. In the very second sentence of Mr. Buxton's speech, he thus refers to it. "The Solicitor-General has stated that no efficient substitute for capital punishment has *as yet* been discovered, and therefore *as yet* the House is not in a condition to discuss that species of penalty." This was in 1821.

The death penalty has however been repealed in cases of forgery, burglary, arson, and a host of other offences, with a decided advantage, and a substitute has been found; and so it will be in cases of murder, whenever public opinion is prepared to abolish the office of the hangman. No one wishes to return to the errors of a past and sanguinary jurisprudence, Improved manners and milder laws have kept marching on together, acting and reacting upon each other, and whatever may be the report of the present Commission, the Abolition of Death Punishment must ultimately be carried out in all

civilized communities. Jurists in all parts of Europe have lost reliance upon punishment of any kind as a deterrent from crime in any large degree, and this is the best guarantee of progress in the amelioration of criminal codes. Wherever they are more severe than the temper of the people, they lose their efficacy altogether, and promote the perpetration of crimes they are intended to repress.

The following statement, made by Professor Thonissen, of the University of Louvain, is worthy of attention.

“In Belgium, as we shall see further on, all those condemned to death received a commutation of the punishment from 1830 to 1833; and yet capital crimes were more rare there than under the *régime* of the Low Countries, where the judicial power constantly displayed an unusual severity.

“After the revolution of September, during three years, from 1830 to 1833, the punishment of death was in reality repealed, and, according to official documents which must inspire entire confidence, the following results are arrived at:—

“In 1830, the number of capital condemnations was two; in 1831, nine; in 1832, fourteen, comprising four condemnations by outlaw; in 1833, seven, comprising two condemnations by outlaw.

“The adversaries of the punishment of death lay hold of these results as a peremptory demonstration of the excellence of their doctrine. Under the government of the Low Countries, where out of one hundred and fifty condemnations, there had been seventy-four executions, the number of capital decrees reached, on an average, nearly fourteen per year for seven provinces; while, under the *régime* issuing from the barricades of September, in the absence of all executions, the number of condemnations, for the nine provinces of the kingdom, had only reached, on an average, the number of eleven.”