Book Wast

LECTURE

ON

CAPITAL PUNISHMENT.

Delibered

IN

THE PIEST UNIVERSALIST OHURON,

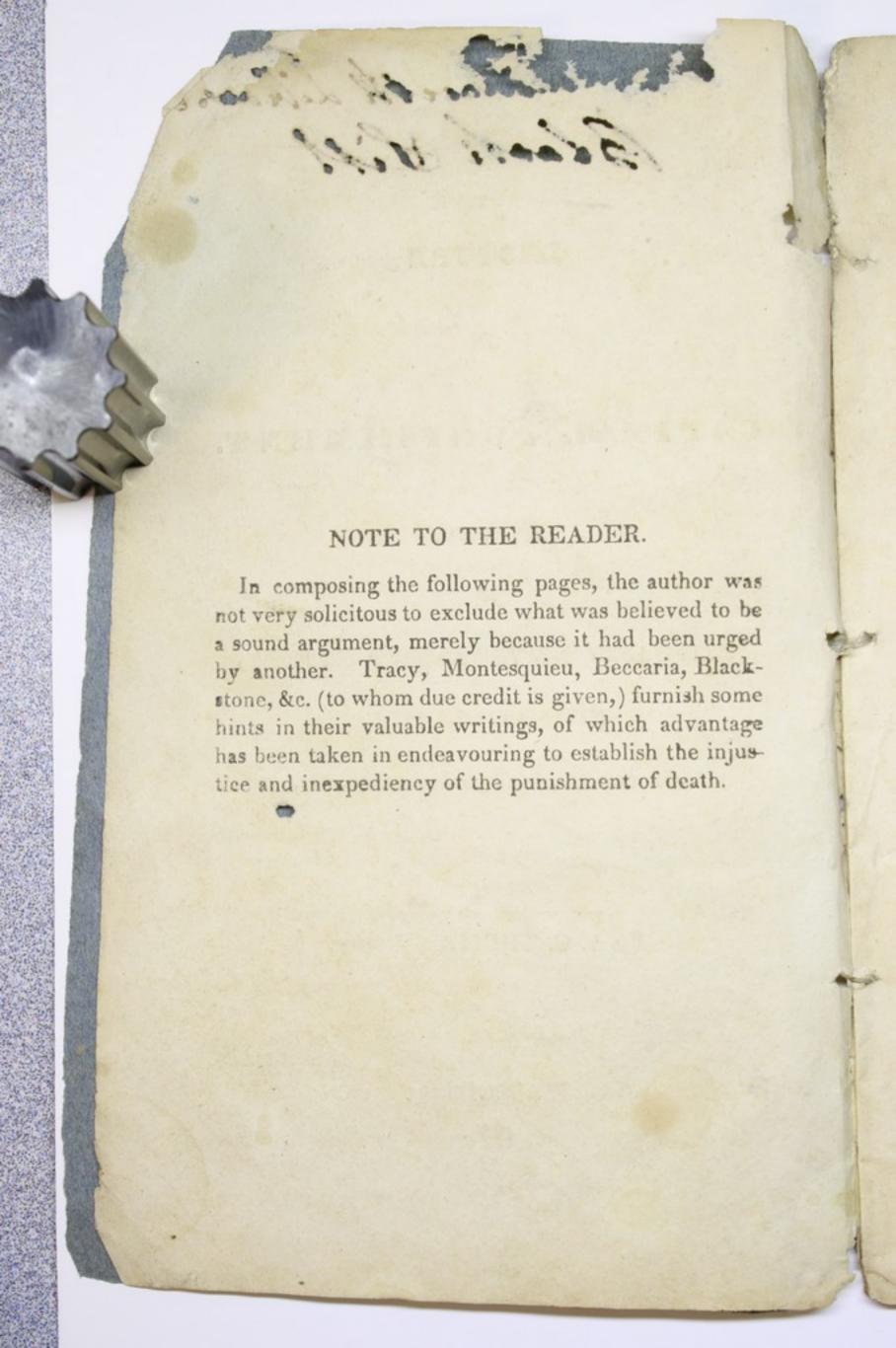
PHILADELPHIA,

ON THE EVENING OF JUNE 20, 1830.

By A. C. THOMAS, Pastor.

13 14

Philadelphia: 1830.



CAPITAL PUNISHMENT.

THERE is much bitter irony in the language of the traveller who thanked God for the evidence afforded him, by the appearance of a gallows, that he had reached the territory of a civilized, a Christian people? For it is certainly a reproach to any nation, that their civilization, in the particular of capital punishment,

is but a refined barbarism!

This momentous question has not hitherto received the attention demanded by its importance. Life is the most valuable gift of God to his creatures. estimation in which it is held is exemplified in an universal dread of death. The philosopher and the Christian may be nerved by hope and faith to await the cold touch of the destroyer with comparative resignation, yet nature instinctively shrinks from the chill damps of the grave. Though miserable, we all cling to life. How solemn, then, the act of taking it away, in calm deliberation, in sober judgment, in cool blood!

The attention of many eminent jurists, however, has recently been directed to a careful consideration of the subject, and I feel confident that the period is not distant, when capital punishment will be forever erased from the penal code of the United States. In the remarks to be offered on the subject at this time, I wish it to be distinctly understood that no disrespect is intended to the excellent government under which we live. The faithful allegiance of the governed is not so fully exemplified by a servile acquiescence in the justice and expediency of every measure pursued by the governing power, as by the exercise of a candid expression of opinion, especially when that exerlove of country, and a desire that every stain may be washed from the escutcheon of that country's glory.

Capital punishment originated in revenge. The customs of savages recognised the principle, that the murderer was the lawful prey of the nearest relative of the murdered individual. With the course of conduct pursued by the "avenger of blood," the savage customs sanctioned no interference. The murderer's fate was solely in the hands of the avenger, who might be lenient, and spare him. Public vengeance has taken the place of private revenge, and pursues the same method, with this especial difference, that while in the savage state, it was a concern between man and man, it is now a war of extermination between a whole community and one offending individual, who is hunted like a ferocious beast of prey, for the sole purpose of destroying his life.

Far be it from me even to intimate that our judges in their charges, or our juries in their verdicts, are actuated by a spirit of revenge. They are but the servants of the law, charged with the execution of its penalties. Nor would I assign revenge as the motive of our legislators in authorizing the punishment of death. But neither the wisdom of the lawgivers, nor the justice of the judges, nor the purity of the most impartial juries, can shield the act of taking away life in any case of murder, from the just imputation of revenge. It was vengeance in its inception, and it will

ever be vengeance in its termination.

To direct the further investigation of the subject, the following propositions are presented:

I. No human tribunal possesses the right to inflict the punishment of death in any case.

II. Capital punishments are wholly unjust, and inexpedient.

If I succeed in establishing these two propositions, I shall have gained the cause of humanity and justice,

and stamped the charges of cruelty and revenge, indelibly, upon the forehead of capital punishments. For, let it be remembered that the second object of just punishment is to prevent a repetition of a similar offence by the same individual,* and all that is necessary to prove the injustice of the method designated by the penal code for the attainment of that end, is to disprove the right of any human tribunal to take away life in any case.

Before proceeding further in the examination of the subject, it is necessary to have some definite idea of laws, their foundation, &c. To which end, the fol-

lowing statements are presented:

1. Laws are certain rules of action, with penalties annexed, "prescribed by an authority invested with competent power, and a right so to do. This last condition is essential, and when it is not possessed, the rule is no longer a law, but an arbitrary command, an act of violence and usurpation.";

2. All positive laws prescribed by human tribunals must be "conformable to the laws of nature, originating in the same source, consequent of the natural

laws, and no wise repugnant thereto."

3. Every action is either right or wrong—the distinction between those qualities of actions being as strongly marked as that between light and darkness, or between bitter and sweet. Isaiah, v. 20. That distinction is eternal and immutable, and cannot, consequently, be affected, neither by time nor change of circumstances. And although we may designate an action to be right or wrong, just or unjust—yet we can only judge according to our right or wrong comprehension of the subject—the principle, founded on the eternal and immutable laws of nature, being unaffected by opinion, or by human laws.

^{*}Just punishments have a three-fold prospective object: 1. The emendation of the offender; 2. To prevent a repetition of a similar offence by the same individual; and 3. To deter others from the commission of crime. The first is an essential consideration, without designing which, the infliction of pain for a past offence is unjust, revengeful, and eruct.

† Tracy's Spirit of Laws.

This latter statement might be profitably illustrated, inasmuch as it will have considerable bearing on the subject under consideration. When it is said, "the Judge of all the earth will do right," it is presupposed that there is a right or wrong in every action-a distinction existing anterior to the promulgation of any express rule of action. Cain killed Abel before there was any express prohibition against murder. Cain was punished. Why? Because he had done wrong. He must have been conscious of guilt-he must have been conscious that he had performed a deed he had no right to perform-else he was not punished, for punishment presupposes a consciousness of guilt on the part of the offender. Every stripe inflicted on him, while destitute of that moral consciousness, would be as cruel and revengeful as though he were entirely innocent.

What knowledge, then, constituted the justice of Cain's punishment? Ans. He was conscious that he had violated a law of nature. The law of nature,

therefore, forbids murder.

Now, let it be remembered that the rule of action violated by Cain, is an eternal and immutable law of nature. Therefore, a violation thereof is equally wrong in an idiot, a philosopher, Jew, Pagan, or Christian. Equally wrong, for it equally violates the law of nature. But there is a difference in the moral turpitude of a similar act, when performed by different individuals, and that moral turpitude is graduated, on the plainest principles of reason and justice, by the knowledge of right and wrong possessed by the individual who performs the act.

There is a distinction between wrong and guilt, as strongly marked as the distinction between right and wrong. A man may be wrong without being guilty, but he cannot be guilty without being wrong. To illustrate—the savage who revenges his relative by slaying the murderer, is wrong in so doing, because he violates the eternal and immutable law of nature hefore noticed, yet he is not guilty, because he be-

vation, that although he believes he does right in revenging his relative, he believes the murderer did wrong. Hence my proposition, that a savage is wrong in slaying the murderer, but he is not guilty, because

he believes he is doing right.

A Christian who knows, or believes, an action to be wrong, is guilty, if he performs it, for moral turpitude is graduated by the light or knowledge possessed. But neither the most capacious knowledge, blinded ignorance, virtuous intentions, nor vicious designs, can in the least affect the right or wrong of an action. An idiot, who acts without design, cannot be guilty, yet who would say that he would be doing right, were he to commit murder! The action is in itself wrong, be it committed by an idiot, or by an individual of the most enlarged capacity.

This principle of immutable right or wrong, is recognized by all human laws, even by those which authorize the punishment of death, as will appear in the examination, to which I now proceed, of the first

general proposition, viz.-

I. No human tribunal possesses the right to inflict the punishment of death in any case. If this proposition be established, the deduction from the definition of laws will apply with emphasis—that the rule of action with the penalty of death annexed, is no longer a law, but an arbitrary command, an act of violence and usurpation.

1. Let it be distinctly understood, however, that guilt cannot attach to those lawgivers who believed they were doing right in enacting the laws under consideration. They were not guilty, but they were wrong. And hence those laws must destroy their own authority, because they are opposed to the laws

of nature.

Why do the laws of a community authorize the punishment of death to be inflicted on a murderer? Ans. Because, in their view, that murderer performed an act he had no right to perform. But whence de-

rive they the authority to question the right of one man to kill another? I am persuaded that a correct answer will disprove their own right to kill the murderer.

All human laws to be just must be consequent of the laws of nature, originating in the same source, and no wise repugnant thereto. Human laws forbid murder, and on the same ground that natural laws forbid the act of taking away life in any case, viz. because a natural right so to do does not exist. So that the laws of a community which authorize the infliction of capital punishment, imply that they possess no right to inflict it. They effectually destroy their own authority, for no one individual possesses a natural right to destroy the life of another, and, as human laws must be conformable to the laws of nature, community cannot possess a right to destroy the life of one of its members.

All the authority possessed by human tribunals must have been conceded by the people. Did the people ever delegate to a human tribunal the right of inflicting capital punishment? If they did not, the rule of action with that penalty annexed, is an unwarranted usurpation of right; and, being such, is virtual despotism. If they did delegate such authority, the question remains to be considered, Did the People possess either a delegated or an inherent right, to invest a human tribunal with authority and power to inflict the punishment of death? If they did not, the right in debate is not founded on the laws of nature, and, consequently, is not valid. The questions will be separately considered.

2. Did the people ever delegate to a human tribunal the right of inflicting capital punishment? The answer involves a brief consideration of the formation of society.

Mankind, in a state of nature, were wholly independent one of the other—no individual possessing any natural right over the liberty, property, or person of another. In the formation, thence, of a social comThe spring of human action is self-love, controlled by reason. Disinterested benevolence, among creatures of want and desire, is a romantic fiction. Human nature is the same in all ages of the world, and every sentient being is invariably prompted to action by a desire to obtain the greatest possible amount of happiness, positively, by fruition, and negatively, by the prevention of the most evil.

What, then, was the motive which induced the formation of an original social compact? Not primarily the general welfare, except so far as it was believed the general good would subserve the private interest of the parties. The latter was the primary motive. Individual happiness was the spring to action. This

was the first and principal object.

But how was that object to be attained? Not by yielding all personal property to the disposal of the community thus formed. Nor could individual happiness be subserved by yielding all right to the most valuable possession. No—social compacts are formed of the smallest portions possible of the liberty of each individual. And as "all that a man hath he will give for his life," the right of taking it away in any case whatever, formed no part of the original social compact. Therefore, no human tribunal possesses the right of inflicting capital punishment on any member of the community.

Although Sir William Blackstone, in his Commentaries on the Laws of England, does not wish to be understood as denying the *right* of the legislature to enforce its own laws by the punishment of death, yet he lays down premises, the conclusions from which I feel disposed to urge against the right in question.

He says, Book IV. ch. 1, "It is clear, that the right of punishing crimes against the law of nature, as murder and the like, is in a state of mere nature vested in every individual. For it must be vested in somebody, otherwise the laws of nature would be vain and fruitless, if none were empowered to put them in execu-

tion; and if that power is vested in any one, it must also be vested in all mankind, since they are all by

nature equal."

This appears perfectly reasonable. But, although it may be clear that the right of punishing crimes was vested in every individual, it is by no means so clear that their right extended to taking away life. I think it has been already established that no such natural right exists. Therefore, the whole strength of the learned jurist's argument is in favour of my position. For, as he well observes, "Whatever power individuals had of punishing offences against the law of nature, is now vested in the magistrate alone." "This right, therefore, being thus conferred by universal consent, gives to the state exactly the same power, and no more, over all its members, as each individual member had naturally over himself or others." Very well. "All men are created free and equal." No one individual possesses a natural right to the life of another, and I shall subsequently attempt to prove that man possesses no natural right to destroy his own life. How, then, can the "state" possess a right to inflict the punishment of death, when it possesses "exactly the same [right] power, and no more, over all its members, as each individual had naturally over himself or others?" The "state" cannot possess the right in question, for it no where exists.

It has been asserted, "that society possesses the right of previously announcing, that it will punish with death, any person who shall commit a given crime: and that such persons as are unwilling to submit to the consequences of such an established law, should renounce the society which adopts it, before they render themselves liable thereto." The force of this argument depends on a mere assumption of right on the part of society to inflict the punishment of death. It has been shown that no such right exists.

There is no force, that I can perceive, in the argument founded on the tacit acknowledgment of right, arising from the acquiescence of the governed, for

human laws must be conformable to the laws of nature, and no wise repugnant thereto. What is the law of nature in the particular under consideration? Ans. The universal principle of self-interest naturally implanted in the human mind, as a motive to action. This is a law of nature. Human laws must not be repugnant thereto. That principle of self-interest recognizes the preservation of life as a paramount duty. All other blessings, being dependent thereon, cannot be placed in competition with life. The natural motive to action would naturally revolt at the idea of delegating to others the right of destroying the most valuable blessing, and the foundation of all others.

The benefits derived from a social compact must be greater than the evils which may be consequent thereon, else it is not a blessing, and it appears evident that, on the positions before established, the right of taking away life, (which would more than counterbalance all the good accruing from society, thus rendering it a curse,) was never intended to be delegated by the

people to any human tribunal.

But even waiving this argument for the present, another and more important question remains to be considered.

3. Did the PEOPLE possess either a delegated or an inherent right, to invest a human tribunal with authority and power to inflict the punishment of death? Here is the grand point of the subject, for, if they did not, the right in debate is not founded on the laws of nature, and, consequently, is not valid.

A right, to be transferred, must first be possessed. Has man a right to destroy his own life? If the negative be established, all that is said relative to the right of human laws to inflict the punishment of death

must go for naught.

(1.) Man has a right to do whatever is not contrary to the laws, without fearing any other inconveniences than those which are the natural consequences of the action itself. Do the laws forbid suicide? Yes—by implication. For by the contract entered into between

the individual and society, it is implied that they will promote the mutual welfare. And although society has no right to the life of that individual, it has a right to his services. If he commits suicide, he violates the contract, which he has no right to do.

The laws of England consider suicide an offence against the king, who has an interest in the preservation of all his subjects, and rank it among the highest crimes, making it a peculiar species of felony. Black-

stone, Book IV. ch. 14.

A sentinel has no right to sleep on his post, for in so doing he violates the contract between himself and the army, which, although it has no right to his life, has a just claim upon his services. So, an individual whose life has been preserved and well being promoted by his connexion with society, has no right to destroy his own life, for this is impliedly forbidden by the contract.

I will go further. The contract between the individual and society, implies that they will promote the mutual welfare. Neither of the parties has a right to violate the conditions of the contract, hence society has no right to do aught to that individual which will not ultimately promote his welfare. Can this end be attained by killing him? No—therefore society pos-

sesses no right to do so.

It may be said that the individual may promote the welfare of society by committing suicide, and the question may be asked, Is not that individual bound to promote the general welfare? In reply, I would ask, Can a contract be rightfully annulled without the consent of both parties? No. I have shown that the laws forbid suicide. Has any individual a right to violate those laws? He has not. Laws which sanction an infringement of their own authority, are necessarily null and void. But further:

(2.) It will be remembered that human laws must be conformable to the laws of nature. One of the primary laws of nature is the preservation of existence. He, therefore, who destroys his own life, violates a

primary law of nature. Man has a right to do whatever is not contrary to natural laws, but he has no right to do what is contrary to those laws. Therefore, he has no right to destroy his own life, for the preservation of existence is a primary natural law.

The laws of nature are eternal and immutable, as is, also, the distinction between virtue and vice. Suicide, then, is either right or wrong. If it be right, all who do not commit it, do not act right. If it be wrong, I have either established my position, or, man has a right to do wrong. If he has a right to do wrong in any given instance, the principle will be established that man has an unlimited, inherent, natural right to do wrong, and, consequently, it is wrong to punish him for doing it. So that one or other of the following positions must be true: either ALL human and divine punishments are arbitrary, vindictive, and cruel; or else, man has no right to destroy his own life. The former must be false; the truth of the latter is established.

The eternal and immutable distinction between right and wrong is an essential point, upon which it may be profitable to enlarge. To assert that an action may be right under certain circumstances, which would be wrong were those circumstances different, is to confound virtue and vice, to destroy the distinction between right and wrong. An immutable distinction cannot be affected, neither by time nor change of circumstances. Every action is either right or wrong. To assert that an individual would be doing right to destroy his own life, in any condition whatever, is to assert that right and wrong are mere creatures of circumstance, than which nothing can be more absurd.

The whole apparent difficulty is removed, when it is remembered that there is a distinction between wrong and guilt. Guilt presupposes a conviction of wrong, but wrong is wrong, and right is right, immutably. To illustrate—suppose you are attacked by an assassin: you have no natural right to destroy his life, to kill him would be doing wrong, but you would

not be guilty were you to preserve your own life at his expense; provided, that one of you must die, and you believe self-preservation to be a paramount duty. But the right or wrong of the question is not affected by the circumstances of the case.*

Again—a man commits suicide; he has no right to destroy his own life, therefore he does wrong, but he

is not guilty if he believes he is doing right.

I hold that no man destroys his own life while in the full possession of his reason. Suicide is an unnatural act, it is therefore unreasonable. That it is unnatural is evident, for it must either be natural or unnatural. If it were natural, we should discover a majority of instances of it, through the whole range of animated nature. But it has been said, with what truth I know not, that the human species and the snake alone commit suicide. The deed is therefore unnatural and unreasonable.

It has been asserted that men frequently destroy their lives deliberately. Were the fact admitted, it would not prove their right to commit the act. If calculation be an evidence of reason in a felo de se, it is equally an evidence of the sanity of a madman, for madmen frequently manifest some degree of calculation. Instances are numerous in which persons evidently crazed have eluded the vigilance of their keepers, and destroyed their own lives.

A dread of death is natural, to seek it is unnatural.

* Apply the illustration to capital punishment, and the case will stand thus. A has violated the laws of nature and society by killing B. Society has no more a natural or delegated right to kill A, than A had to kill B. To kill A would be wrong, to permit him to run at large would be wrong, for the peace and safety of society would thereby be endangered. Here are two wrongs. Of two wrongs, it is the part of wisdom to perform the least, if one must be performed. But, in the present state of society, we are under no necessity of performing either, as shall afterwards be shown.

† The moral turpitude of an action is determined by the intention of the agent. A suicide designs no evil to himself, nor can be intend injury to others by destroying his own life. He is, therefore, guiltless is moral point of view. Yet in view of the laws of society he is guilty, so matter what may have been his design; and, were it possible, he

would be punished as a felon.

The very act of suicide is an evidence of insanity. It has been objected, that "the same argument would prove every other criminal non compos, as well as the self-murderer." Granted. Every individual who departs from the strict line of moral rectitude, acts more or less unreasonably. Reason is a mere relative term. We say that one man is reasonable, which implies that we have compared the evidences of his rationality with something unreasonable. We all desire happiness-this is our being's end and aim, and we never voluntarily render ourselves wretched. Errors of judgment alone, induce the commission of guilt. And this affords me another argument against capital punishment. For, is there either justice or mercy in destroying a man's life, because his reason and judgment were perverted? No-justice and mercy equally forbid the infliction of more pain than will ultimate in the benefit of the sufferer. All the excess is CRUELTY."

I have not yet granted, nor do I intend to grant, that suicide is ever committed while reason controls the judgment. A variety of causes, unknown to others, may distract the mind and pervert the reason to so great an extent, as to induce the fatal act. The human mind is influenced by hope and fear. Suicide may be committed to avoid what is believed to be a greater evil than immediate death; or it may be committed in despair, which is an unnatural state of the mind.

From the foregoing reasoning I think I may safely infer, without fear of successful contradiction, that man has no right to destroy his own life; and it is evident that a right to be delegated must first be possessed. The second general proposition is as follows:

II. Capital punishments are wholly unjust and inexpedient.

^{*}Justice and mercy are not opposing principles. They are identified in their legitimate operations. The former is a modification of the latter—the latter a manifestation of the former. There can be no mercy in injustice, nor can an act be just which is opposed to the dictates of mercy.

I do not perceive the necessity of enlarging on the injustice of the punishment of death, for it has been shown that no human tribunal possesses the right to inflict it. The rule of action with the penalty of death annexed is, therefore, no longer a law, but an arbitrary command, an act of violence and usurpation, consequently unjust. I shall, however, waive, for the present, all the evidence thence legitimately afforded, and to the force of which my proposition is justly entitled, being confident that there is sufficient proof to establish the injustice and inexpediency of capital punishments, independent of the arguments already advanced.

1. No punishment can be just which wholly excludes one of the greatest ends thereof, viz. the emendation of the offender. This is the distinguishing feature between punishment and cruelty or revenge. The death of the offender may, therefore, be termed with propriety, "unjust punishment"—punishment, because it is designed to deter others; and unjust, because it does not design the future benefit of the sufferer.

2. Punishments to be just must be absolutely neces-Are capital punishments absolutely necessary? Are they necessary to ensure the safety of society from the repetition of a similar offence by the same individual? No—they are not. In the rude state of nature. it might have been necessary to put the murderer to death. Then, two wrongs were presented, either to permit the murderer to run at large, or to put him to There was no other alternative. But in the present state of civilization, the case is different. have prisons in which to secure the criminal. would not be dealing justly towards him, were we to permit him to be at large; provided always, his future benefit be included in our intentions. Punishment, with this design, is just; without it, unjust. Now let candour decide, whether it is not better to deal justly and righteously in confining a criminal, than to deal unjustly and commit wrong in destroying his life. For, let it be remembered, that the decision is not now, wrongs, but between a right and a wrong. It is right to punish a man, designing his good; it is wrong to destroy his life, which is not intended to benefit him. Between these rests the choice. The former is morally right, which cannot be politically wrong; the latter is morally wrong, which cannot be politically

right.

3. Are capital punishments absolutely necessary to deter others from the commission of crime? I assume the negative for several reasons: 1st, Because so long as they are continued, a pardoning power appears to be necessary.* The knowledge that there is such a power, naturally removes much of the terror which the punishment of death appears calculated to inspire. The impunity of the transgressor is the consequence, when prompted by a secret hope that the pardoning power may be extended to him. Crimes are not so effectually prevented by the SEVERITY or QUANTITY, as by the CERTAINTY of punishment, and uncertainty induces a proportional impunity. 2d, Capital punishments are not absolutely necessary to deter others from the perpetration of crime, because we have other and more effectual means for the attainment of that object. I say more effectual, for the effects produced upon the public mind by an execution soon pass away, and are forgotten; whereas, every criminal who is punished within the walls of a prison is a standing monument of the consequences of crime, a continual warning to others. Add to this, that if capital punishments were abolished, there would be no necessity for a pardoning power; and you present the certainty of punishment in fearful prospective to the mind of every member of

^{*}Were capital punishments wholly abolished, a pardoning power would still be necessary in one case, viz. when an individual who has been condemned to imprisonment on testimony which is afterwards found to be false. And this affords me another argument against capital punishment. Moral certainty, strictly speaking, is only the highest degree of probability; and should an innocent person be put to death, which may be the case, how can reparation be made? Life cannot be restored. It were better that an hundred criminals should be acquitted, than that one innocent person should be put to death.

community, which would have a greater tendency in preventing crime than the uncertain prospect of death The punishment of death is not absolutely necessary, it is therefore unjust and inexpedient.

4. Capital punishments are unjust, because they do not admit of grades. Crimes against human laws should be estimated by the injury society sustains. Should an useful member of community kill an infant, or a decrepid pauper, would the injury sustained be so great as to justify a greater in the death of the useful member committing it? I trow not. Yet he receives the same amount of punishment, as though he had murdered the president of the United States. In a moral point of view, the deed might be equally criminal-

not so in the view of human laws.

The physical and mental powers of man are limited. Beyond a certain degree pain cannot be endured. And hence it is impossible that human laws should in all cases administer a punishment adequate to the injury done to society. Therefore, "the degree of punishment, and the consequences of a crime, ought to be so contrived as to have the greatest possible effect on others, with the least possible pain to the delinquent. If there be any society in which this is not a fundamental principle, it is an unlawful society; for mankind, by their union, originally intended to subject themselves to the least possible evils."*

5. The remarks of Blackstone, on the expediency of capital punishment, are deserving of serious consideration. "Though the end of punishment is to deter men from offending, it never can follow from thence that it is lawful to deter them at any rate and by any means; since there may be unlawful methodst of enforcing obedience to the justest laws. Every humane

* Beccaria on Crimes and Punishments, ch. xix, a work from which I have derived much satisfaction, and to which I am indebted for seve-

ral remarks on the subject under consideration. † It is left for the reader to judge, whether the punishment of death is not an " unlawful method" of deterring others from the commission of crime. Human tribunals possess no right to indict it; it is, cousequentiy, unlawful.

legislator will, therefore, be extremely cautious of establishing laws that inflict the penalty of death, especially for slight offences, or such as are merely positive. He will expect a better reason for his so doing, than that loose one which is generally giventhat it is found by former experience that no lighter penalty will be effectual. For is it found upon farther experience that capital punishments are more effectual? Was the vast territory of all the Russias worse regulated under the empress Elizabeth, than under her more sanguinary predecessors? Was it, under Catherine II., less civilized, less social, less secure? And yet we are assured, that neither of those illustrious princesses, throughout their whole administrations. inflicted the penalty of death; and the latter, upon full persuasion of its being useless, nay, even pernicious, gave orders for abolishing it entirely throughout her extensive dominions."

With such testimony in full view, it would seem that the question at issue should be settled to the entire satisfaction of every candid mind. What has been our personal observation in relation to this subject? Have we observed that capital punishments tend to the prevention of crime? No: I may venture to affirm that no beneficial results have been observable. Have they tended to exalt the standard of character? No: they have tended, on the contrary, to vitiate the public moral sense. They do violence to human nature. They shock the more dignified feelings of the mind. They induce hardness of heart, and consequent insensibility to the better affections of humanity. What can be a more horrid spectacle than a fellow being hung between heaven and earth, struggling in the last agonies of life, with the giant grasp of death? It must be horrible. I have never witnessed an execution. I never will, if I can avoid it. But such a spectacle cannot be otherwise than appalling. It must naturally produce an instinctive shuddering in the feelings of every spectator. And what are they benefitted? Are their morals improved? Are they impressed with a

deeper hatred of transgression? Far otherwise. The crime of the offender is forgotten in commiseration of his fate. And I believe I am justified in affirming that he is looked upon more as a martyr to the cruelty of the laws, than as the victim of justice. Reflect!

or revenge, are determined on the perpetration of crime, they pay very little regard to consequences, and if they cannot be deterred by the fear of a just and reasonable punishment, they will not be deterred by a greater. Death is looked upon as a momentary pang, whereas there is something horrible in the very thought of a protracted imprisonment. Hence the assertion, that the former is the more merciful punishment. When it can be established that mercy to the criminal is the design of the laws in authorizing the infliction of capital punishment, this assertion may have some weight, but not before. Life is destroyed, because it is believed to be the greatest evil man can possibly inflict on his fellow man.

But shall society be burthened with the expense of keeping criminals confined? Yes. Society is as much bound to individuals, as individuals are to society. Should the latter neglect their duty, the former would not be justified in imitating their example. Shall we put our criminals to death, for sooth, to save the expense of keeping them? The same reason might be urged in favour of putting to death the poor, the sick, the lame, the halt, the blind. I hold that a murderer is as much an object of commiseration as a man afflicted with a loath some bodily disease; and it is as much our duty to heal the moral malady of the former, as the

physical infirmity of the latter.

The excellent observation of Montesquieu cannot be too much admired, that "in proportion as the government is animated by the spirit of liberty, the more mild will be the punishments." Our government professes to be solely animated by the spirit of liberty. What course, then, should it pursue in relation to eapital punishment? Shall it continue to sanction this

refined barbarism? Shall the spirit of liberty infuse vitality into the withering veins of injustice? God forbid. The "schoolmaster is abroad," the spirit of liberty is sounding the death-knell of political and mental slavery, in the most remote corners of the earth, yet inhumanity and injustice are still sanctioned in the

United States, the temple of Freedom!

I have spoken freely on this subject. I have spoken my honest convictions. My object is to call public attention to this important subject. Let humanity speak, and capital punishments will be abolished. Let justice command it, and this foul stain on the humanity of a free people will be blotted out forever!

APPENDIX.

In the foregoing pages, the subject of capital punishment is considered without relation to the testimony of the Scriptures. The object designed, was to exclude even the appearance of sectarianism, inasmuch as the distinguishing tenets of any sect or denomination of Christians should not be permitted to mar the union of the friends of justice and humanity, in so important a question as that of procuring the entire abolishment of the punishment of death. It is deemed advisable, however, to add, by way of an appendix, a few remarks on the argument in favour of capital punishment, founded on the Old Testament.

GENESIS, ix. 6, "Whoso sheddeth man's blood, by man shall his blood be shed. Exopus, xxi. 23, "Thou shalt give life for life." On these two passages the argument is founded, which supposes that, as those laws were of Divine origin, they are of perpetual au-The answer embraces many considerations:

I. The argument, if admitted, proves too much, and therefore proves nothing; for if we are bound by the Mosaic law, (in which may be included the first quotation, inasmuch as the latter is evidently founded thereon,) if we are bound by the Mosaic law in any one particular, it is reasonable to suppose we should be bound to fulfil all its requirements. If, then, we are required, on the authority of the old dispensation, to give life for life, we are also required,

1. To keep the Passover—for the command is equally imperative. Exodus, 12. Yet in the same chapter it is said, "Ye shall keep it a feast to the Lord

throughout your generations."

2. We are also required, on the same authority, to adhere to the rite of circumcision. The command is equally imperative with that of shedding blood for blood. See Gen. xvii. 9—11.

3. The rites and ceremonies of the Levitical priesthood are also enjoined, on the same authority, as may be seen by consulting the books of Moses. Yet all Christians allow that the priesthood of Aaron has been

superseded by that of Christ.

4. It will be remembered that murder was not the only crime punishable with death under the old dispensation. The following are among the offences, with the penalty of capital punishment annexed: 1. Murder, for which no satisfaction was to be taken.

2. Crime against nature. 3. Kidnapping. 4. If a stranger approached the tabernacle he was put to death.

5. Adultery. 6. If an unruly ox killed a man or woman, the owner and ox were put to death.

7. Smiting father or mother.

8. Cursing father or mother.

9. Filial disobedience.

10. Deut. xiii. 5.

11. Deut. xxii. 21.

12. Witchcraft.

13. Kindling a fire, gathering sticks, or performing any kind of work on the Sabbath, (7th day.)

All these offences were punished by death under the law of Moses. Why has our penal code selected murder from the number? Let it be remembered that there is as much authority for putting a child to death for gathering sticks on Saturday, as there is for inflicting capital punishment on a murderer, i. e. so far as the authority of the law of Moses is concerned.

5. Our laws in relation to the punishment of death, are deficient in several other particulars, if the laws

of Moses are the standard: 1. Under the legal dispensation, "cities of refuge" were appointed, in which the murderer would be safe, not only from the laws, but from the "ayenger of blood." Where are our "cities of refuge?" We have none. 2. Under the Mosaic law, there were no degrees of murder. Our penal code makes a distinction, and wisely, between murder and manslaughter. Why is this done? Why is not every one who sheds blood, treated as the Jewish lawgiver directs? 3. Under the legal dispensation, if a master killed a slave, he could evade the penalty of death, by the payment of a stipulated sum of money. Why is not this a constituent portion of our penal code? For let it be remembered, that there is no more authority in one case than the other.

II. The command to take life for life is evidently a law of retaliation. Exodus, xxi. 23-25. "Thou shalt give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot burning for burning,

wound for wound, stripe for stripe."

1. Why are not these requisitions obeyed by our laws? Will the advocates of capital punishment, so far as their arguments are drawn from the laws of Moses, be consistent? If so, they must contend for the propriety of taking eye for eye, and tooth for tooth, for these commands are connected with the command, if such it be, to take life for life. The Greeks and Romans adhered to the law of retaliation. And so far did they extend the principle at Athens, that if a man put out the eye of another who had but one, the offender was condemned to lose both his eyes, as the loss of one would not be an equivalent misfortune.

2. Jesus Christ condemned the law of retaliation. "Ye have heard that it hath been said, an eye for an eye, and a tooth for a tooth; but I say unto you that ye resist not evil." The same passage which says, "eye for eye, tooth for tooth," says also, "thou shalt give life for life." They are, therefore, united in the condemnation. By commanding us to "resist not evil," the Saviour undoubtedly intended to dissuade

stands capital punishment in the light of the subject? Is it not perfect retaliation to take the life of a murderer? I am not accountable for the objection, that imprisonment is as much retaliation as capital punishment, for I deny the existence of a right to inflict more pain upon an individual than will ultimate in his benefit.

3. I consider the passage quoted from Genesis, "Whoso sheddeth man's blood, by man shall his blood be shed," to be nothing more than a declaration, that the untutored passions of mankind would manifest such a result. Jesus said to Peter, "all they that take the sword, shall perish with the sword," Matt. xxvi. 52, which by no means implies that they are cause and effect, inevitably. Washington took the sword; he did not perish with the sword. I am persuaded that Moses so understood the passage under consideration. He represents Cain as fearing that he should be slain by whoever met him. The Almighty, who was judge of the cause, instead of sanctioning, prohibited retaliation, by placing a mark on the murderer.

On the whole of the foregoing argument I would remark, that Moses was the lawgiver of the Israelites. In the then rude state of society, those sanguinary laws might have been necessary, but as they were evidently founded in the principle of retaliation, which our Saviour condemned, I cannot admit, as evidence of capital punishment, in the present state of society, the

bloody code of the Jewish lawgiver.

The cruelty of putting a child to death for filial disobedience, the worse than savage barbarity of inflicting the punishment of death for picking up sticks or
kindling a fire on the seventh day of the week, is so
very repugnant to the better feelings of humanity, so
opposed to the mild precepts of the Christian religion,
and so destructive of the ends of justice, that I marvel
greatly when a bloody law of an abrogated covenant
is adduced, in the present enlightened age, in favour
of capital punishment.