

CHRIST AND THE GALLOWS

THE ABOLITION CLASSICS

The texts that built the case against the death penalty

V. 13

CHRIST AND THE GALLOWS

*Or, Reasons for the Abolition
of Capital Punishment*

MARVIN H. BOVEE

Edited and Modernized by
JEFF HOOD

THE ABOLITION CLASSICS
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FOREWORD

Marvin Bovee was not a philosopher or a clergyman. He was a politician — a Wisconsin legislator who had made a public canvass of New York State in 1860 on behalf of the anti-capital punishment cause, and who delayed the publication of this book for nearly a decade because the Civil War intervened, and it seemed “ill-timed” to argue against state killing while the nation was drowning in it. That timing matters. This book was written in the shadow of the bloodiest conflict in American history, by a man who had watched his country slaughter six hundred thousand of its sons in four years, and who understood, as a result, something that more sheltered reformers sometimes missed: the question of capital punishment cannot be separated from the question of the state’s relationship to violence in all its forms.

Bovee turns almost immediately to the government’s war powers — an unusual second move for a death penalty book. His argument is that if the state claims the right to kill its enemies in war, it must at least be consistent: it cannot claim that killing is sometimes necessary and justified while also maintaining that the death penalty is a sacred and non-negotiable divine requirement. Either killing is sometimes permissible on grounds of necessity, in which case we must ask in every case whether it is actually necessary, or it is always impermissible, in which case war and capital punishment are both condemned together. Bovee

does not fully embrace either conclusion, but his framing of the problem exposes the inconsistency at the heart of the pro-death-penalty position: its advocates want the death penalty to have the moral weight of a divine command and the flexibility of a policy choice at the same time.

What I find most remarkable about this book — the thing that sets Bovee apart from Beccaria, Romilly, Livingston, Spear, and Burleigh — is Chapter V, on insanity as a predisposing cause of crime. This is the chapter no one else wrote. The others were arguing about deterrence, about the burden of proof, about the scripture, about the comparative statistics of nations. Bovee was arguing about something deeper: the nature of criminal responsibility itself.

His argument is that no human tribunal can ascertain the exact mental or moral condition of any criminal placed before it for trial. The motives that incite individuals to crime are as varied as the organizations through which crime manifests. The most deliberate judicial proceeding is always and necessarily conducted in the dark about what was happening in the defendant's mind. And if we cannot know the mind — if we cannot distinguish, with the certainty that irreversible punishment requires, between the sane murderer and the mentally ill person who has committed an act of violence from illness rather than will — then we have no right to inflict a penalty that admits of no correction.

Bovee illustrates this with the case of William Freeman, a Black man in New York who murdered

an entire family and was defended by William Seward — not yet the Secretary of State who would purchase Alaska, but already one of the great legal minds of the age. Seward argued insanity. The community was enraged; the crime was horrific; the verdict seemed obvious. Seward stood alone. Bovee does not tell us what became of Freeman, but the point stands regardless: how can we be certain enough, in any individual case, to justify a penalty that cannot be undone? We are always and necessarily operating with incomplete knowledge of the criminal mind. The irremediability of death is the argument from the possibility of factual error; Bovee adds to it the argument from the certainty of psychological uncertainty.

This chapter reads, in 2026, as extraordinarily modern. We know now, in ways that Bovee could only intuit, that mental illness, trauma, intellectual disability, and the developmental effects of poverty and violence are deeply implicated in the commission of violent crime. We know that a large proportion of death row inmates in the United States have histories of severe mental illness, intellectual disability, or childhood trauma so profound that it produced lasting neurological damage. We know that the system is no better equipped now than it was in 1869 to make the fine-grained psychological determinations that capital punishment requires. Bovee saw this problem coming and named it clearly, a century and a half before the neuroscience caught up.

The book concludes with two chapters on Christ and the gallows — a direct confrontation with the Rev. Dr. G. B. Cheever, who had become the most

prominent theological defender of capital punishment in America, and whom Bovee, Burleigh, Spear, and seemingly every abolitionist of the period spent considerable effort refuting. Bovee's argument is twofold. First, he examines the key proof text — Genesis 9:6, "whoso sheddeth man's blood, by man shall his blood be shed" — and shows that its mandatory interpretation is not required by the Hebrew, that it conflicts with God's own practice in sparing Cain and David, and that in any case the New Testament supersedes it. Second, he grounds his affirmative position in the Golden Rule: "Therefore all things whatsoever ye would that men should do to you, do ye even so to them." If we do not wish to be killed, we should not kill. If we do not wish the state to take our lives, we should not authorize the state to take others'. The Golden Rule, Bovee argues, is the final word on this question, and it condemns the gallows as clearly and unambiguously as any text in human moral literature.

I have stood in the shadow of the gallows. I have held the hands of men who were about to be killed by the state — killed by us, in our name, with our consent. And I have never found, in any of those experiences, anything that looked like justice. I have found grief, and terror, and the strange bureaucratic calm of people carrying out a terrible procedure they have been trained to regard as normal. I have found the irreversible act, done in the name of the people, by officials who will go home afterward and eat dinner and watch television and return to work the next morning. I have never found Christ.

Bovee's title is not a metaphor. It is a question, posed to every person who claims to follow Jesus while supporting the execution of human beings in the name of the state: where, in the gallows, do you find Christ? Not the Christ of the sword and the law — Bovee is too careful a reader of the New Testament to accept that version. The Christ of the Sermon on the Mount. The Christ who said "blessed are the merciful" and "resist not evil" and "love your enemies." The Christ who died on an instrument of state execution and whose followers, for the first three centuries, refused on principle to serve as executioners.

That Christ and the gallows are incompatible is Bovee's conclusion. It is also, I believe, the truth.

Rev. Dr. Jeff Hood
North Little Rock, Arkansas
2026

EDITOR'S NOTE

THE AUTHOR

Marvin Henry Bovee (1827-1888) was a Wisconsin politician, businessman, and reform advocate. Born in New York, he moved west and established himself in Wisconsin, where he was active in Democratic Party politics and in a variety of reform causes. He served in the Wisconsin Legislature and was a persistent, if not always successful, advocate for penal reform. His 1860 canvass of New York State on behalf of the Anti-Capital Punishment Cause was one of his most notable reform efforts. He is not a major figure in histories of the period, but *Christ and the Gallows* gives him a place in the tradition of abolitionist writing that stretches from Beccaria to the present.

The book was substantially complete by 1861 but was delayed by the Civil War. Bovee considered it "ill-timed" to publish a work against state killing during the war; when it finally appeared in 1869, it had been revised and expanded, with fresh letters and opinions added to those collected before the war began.

THE BOOK'S UNUSUAL CHARACTER

Christ and the Gallows is different in kind from the other volumes in *The Abolition Classics*. Where Beccaria, Romilly, Livingston, and Burleigh are primarily works of philosophical and legal argument, Bovee's book is a hybrid: part argument,

part documentary anthology. The original contains extensive extracts from letters written to the author by prominent people — governors, senators, clergymen, poets, and reformers — solicited specifically for inclusion. Among those who contributed were Charles Dickens, John Stuart Mill, William Henry Seward, Henry Ward Beecher, John Greenleaf Whittier, William Cullen Bryant, Henry Wadsworth Longfellow, Wendell Phillips, and Theodore Tilton. The letters from these figures — expressing their views on capital punishment for the record — were a significant part of what Bovee was assembling.

This edition incorporates the substance of Bovee's documentary material into the narrative but does not reproduce the individual letters at length. The argument, not the anthology, is what has lasted.

THE PRINCIPAL OPPONENT

Like Burleigh, Bovee spends considerable space engaging with the Rev. Dr. George Barrell Cheever, whose *Defense of Capital Punishment* (1846) remained the standard theological justification for the gallows in American Protestant discourse. Bovee's two-chapter treatment of "Christ and the Gallows" is in part a direct reply to Cheever's biblical argument.

MODERNIZATION

Bovee's prose is that of a nineteenth-century American politician: energetic, rhetorical, fond of italics and exclamation points, occasionally

repetitive, and prone to long catalogs of testimony and authority. This edition modernizes the prose throughout. The structure of the original — fifteen chapters, many of them partly documentary — has been condensed into ten thematic chapters, preserving all of Bovee's arguments while eliminating much of the documentary apparatus that was specific to his 1869 audience. Where Bovee quotes prominent figures, their views are incorporated into the narrative rather than reproduced as letters.

What is not changed: Bovee's arguments, his cases, his statistics, and his conclusions. The unusual chapter on insanity as a predisposing cause of crime, which is unlike anything in any other volume in this series, is presented in full.

*“Therefore all things whatsoever ye
would that men should do to you, do
ye even so to them: for this is the
law and the prophets.”*

Matthew 7:12

BOVEE'S ARGUMENT

Preface and Principles

In the winter of 1860, the author of this volume made a public canvass of the State of New York on behalf of the Anti-Capital Punishment Cause. At the conclusion of this canvass, which resulted in securing important modifications to the Penal Code of the State, many friends of Penal Reform urged the preparation of a work setting forth the reasons for "the faith that was in us." The work was essentially complete by 1861, but before it could be presented to the public, the unhappy Civil War had been inaugurated. To have offered a work of this kind during the continuance of such a struggle would have been ill-timed, to say the least; and thus the work remained in manuscript until the present time. Now that peace has come, and come, we trust, to stay, we present this volume to a generous public, trusting that it may prove an auxiliary to the cause of Penal Reform and an aid to the cause of human progress.

The author's enunciation of principles:

Penalties which do not contemplate the reformation of the criminal are not punishments but cruelties.

The world is my church, for all mankind are my brothers.

Man is my creed, for, being made in the image of God, he is worthy of my highest care and constant study.

Humanity is my sacrament, for he who drinks deep from the fountain of benevolence will become strengthened in kindly purpose; and in the same ratio that he cherishes love for his fellow man, will he feel the benign influence of the Christian charities enlarging and beautifying his own soul.

M. H. B., New York, 1869

I

Introduction: The Challenge of Reform

All human reforms are accomplished only by intelligent and well-directed effort. Theories which contemplate the elevation of mankind may be fully accepted by society, yet years of incessant labor may intervene before practical effect is given them. Man, though credulous in many things he cannot reasonably understand, shakes his head doubtingly when asked to give practical force to views he may have embraced as reasonably true.

This hesitation to adapt to new and sometimes better conditions is nearly universal in the human mind, induced by the elements that constitute the conservatism of our nature. Cautious about leaving well-trodden paths; doubtful of promised benefits attainable only through radical changes; dreading the labor that the promulgation of progressive ideas naturally forces upon us; and fearing, above all else, the opposition, scorn, and criticism that the worker in the field of human reform ever receives — we shrink from the uninviting task, leaving it to the few individuals who possess the necessary faith, hope, and courage to fight the good fight through which beneficent results are achieved.

Conservatism is the enemy of all progress. True to its instincts, it has opposed every step in progress and reform, from early barbarism to

present civilization. Canals, railroads, the telegraph, every labor-saving invention — these have uniformly failed to meet its approval. It has never favored a single proposition that sought to relieve or ameliorate the condition of the unfortunate and downtrodden.

And yet conservatism has its uses. It prevents us from rushing forward at a speed we cannot sustain. The reforms that endure are those that have been tested, challenged, and found sound under pressure.

The subject of capital punishment is one where the conflict between conservatism and reform is most sharply felt. We have been told, for centuries, that the taking of human life by the state is necessary, divinely ordained, and practically indispensable to the security of society. These claims must be examined with the same care and impartiality we would bring to any other subject. Let us approach this mighty question of life and death in the spirit of charity and reason, hoping to arrive at conclusions that will be approved by the virtuous, the wise, and the good.

II

The Right of Government

Government is frequently said to be a necessary evil. The proposition admits of no doubt. Were all mankind peacefully inclined, morally good, and at all times mindful of the rights of each other, the burdens that government now imposes would be sensibly lessened. But in the present condition of society, the choice is between anarchy and government, and government — however imperfectly it carries into effect its professed objects — is clearly preferable.

But from the necessity of government flows no unlimited grant of power. Government is constituted by individuals for the protection of life, liberty, and property. If individuals cannot consent among themselves to take a neighbor's life — if any such compact between two people would be murderous — then by what logic does a compact between fifty thousand or one million individuals acquire that power? The moral character of the transaction is not varied by the number of parties to it. A wrong shared among many does not become a right.

The right of government to take human life has been argued from the government's war powers. If the state may kill in war, why not in punishment? But this argument cuts the other way. If we accept that war and capital punishment are both exercises

of the same power, then neither can claim the absolute divine sanction that its advocates demand. Both are at best justifiable on grounds of necessity — and in that case both are subject to the same test: is this killing actually necessary? Could the legitimate purpose be achieved without it?

The ancient claim that capital punishment is divinely ordained rests on a passage of Scripture whose interpretation is, as we shall show, far from certain. But even granting the divine authority of the penal code of ancient Judea, we must observe that theologians have generally maintained that penal law must be adapted to the social conditions of those who live under it. The penal code of Moses was suited to a wandering people of limited civic development; it does not follow that it should govern a modern republic with established courts, prisons, and systems of rehabilitation. The transfer of ancient penal codes to modern societies, without examination of whether the purposes those codes served can now be served by milder means, is exactly the sort of unreflective conservatism that progress is called to overcome.

III

The Sacredness of Human Life

The inviolability of human life is one of the very first lessons that should be taught to every young mind. Human life should be invested with a reverence as sacred and as lasting as eternal truth. No fitful passion should lead us from the constant upholding of the idea that man is made in the image of God, and that under no circumstances must that image be marred by the hand of violence.

The commandment "Thou shalt not kill," though delivered amid the thunders of Sinai thousands of years ago, is written freshly upon every heart by the same divine hand, and binds with the same sacred power both citizen and ruler. No system of reasoning, however specious or plausible, should ever induce us to depart from a broad principle to stand upon a special instance. If human life is sacred today, it is sacred tomorrow. If it is sacred in the palace, it is sacred in the prison cell. If worthy of preservation in the saint, equally so in the sinner — for all are the children of one common Father, who is no respecter of persons.

John Bright, one of the great voices for penal reform in the British Parliament, put the matter with characteristic directness: "A deep reverence for human life is worth more than a thousand executions in the prevention of murder, and is, in fact, the great security for human life." This is not a

sentimental observation. It is a precise claim about the relationship between the state's attitude toward life and the public's attitude toward life. When the state treats life as cheaply expendable — when it says, in effect, that there are conditions under which a human being may be destroyed — it teaches that lesson to everyone. And the lesson, absorbed into the culture, produces exactly the violence it was supposed to prevent.

The state's power should be both negative and restrictive — not positive and aggressive. It should exercise its functions not in turbulence and passion, like the mountain torrent that injures and destroys by the vehemence of its power, but like the placid stream that imparts health and vigor in its calm, still flow — yielding an influence silent, peaceful, and blessed.

IV

The Irremediable Law

Among the grave objections to the continued use of the death penalty, the irremediability of the punishment stands chief and foremost. That innocent persons have frequently suffered its extreme application is a matter of record. That this alone should call for its immediate repeal would seem clear to every reflective mind — for life, once taken away, can never be restored.

To urge, in justification of the death penalty's retention, that innocent persons suffer wrongful punishment for other offenses, does not in the slightest degree lessen the force of this objection. Fines may be unjustly imposed and restitution made upon the discovery of innocence. Liberty may be taken away, afterward restored, and reparation made. But no legislative enactment nor executive decree can rekindle the lamp of life when it has once been extinguished.

The cases are not hypothetical. The execution of Charles Boynton at Mobile — a young man of fine character convicted on circumstantial evidence; the keeper of the tavern where he had boarded confessed on his deathbed that he had committed the murder and arranged the circumstances to fix suspicion on Boynton. The case of Dr. Hamilton of Kentucky, convicted and executed, the real murderers confessing on the gallows three months

later. The case of Margaret Houghtailing in Columbia County, New York — put to death on a charge of poisoning children left in her care, afterward proved innocent. These are not rare aberrations. They are the predictable output of a system that claims infallibility it does not possess.

Lafayette stated the principle with clarity: “I shall ask for the abolition of capital punishment until I have the infallibility of human judgment demonstrated to me.” No such demonstration has been made. No such demonstration is possible. Courts and juries act on evidence, and evidence is always incomplete. Witnesses misremember, or lie. Circumstantial evidence that seems conclusive in the courtroom proves, in retrospect, to have pointed elsewhere. Even confession — sometimes offered by a genuine penitent, sometimes extracted by coercion, sometimes made in a confusion of guilt and innocence — is not certain proof of guilt. Crimes have been confessed that were never committed.

Jeremy Bentham identified the same problem from the philosopher’s chair: “The punishment of death is not remissible, no infallible system of jurisprudence having yet been devised, no test for the evidence of witnesses having yet been laid down, to render testimony equally conclusive for proving a fact, an action, or an intention, as a mathematical proof for a given proposition. In every other case of judicial error, compensation can be made to the injured person. Death admits of no compensation.”

We ask those who advocate the death penalty: Are you prepared, in the next case, and the one after that, and the one after that, to guarantee that the person executed is in fact guilty? The answer is no. No one can guarantee it. And without that guarantee, the execution is not justice — it is a gamble with an irreplaceable stake.

V

Insanity and Crime

No human tribunal can ascertain the exact mental or moral condition of any criminal placed before it for trial. The motives that incite individuals to the commission of crime are as varied as the organizations through which crime manifests itself. The wisest judges, the most cautious jurors, and the most impartial witnesses are too often left to guess at the condition of the criminal; and as doubt and uncertainty must ever envelop even the most deliberate judicial proceedings, it is presumptuous in the extreme to insist upon the infliction of any penalty which is irremediable in its nature.

Judges and juries, in justice to themselves if not to the criminal, ought to be allowed the privilege of correcting their own mistakes. In capital cases, that privilege is permanently foreclosed.

Every treatise on criminal jurisprudence ever written recognizes a felonious intent as an indispensable element of the crime; and proof of its absence acquits the slayer of guilt in every tribunal on earth. But how are we to ascertain the mind of the criminal? How are we to draw the precise line that separates sanity from insanity, or moral responsibility from moral irresponsibility? These are questions of the greatest importance, which must be settled conclusively before we can justify irreversible punishment.

The case of William Freeman illustrates the problem with painful clarity. Freeman, a Black man in Auburn, New York, murdered an entire family — an act so horrifying that the community's rage left no space for reflection. No lawyer of reputation would touch the case. The crime seemed to speak for itself. But William Henry Seward, whose greatness as a man was never better demonstrated than in this moment, entered the courtroom and interposed the plea of insanity. Standing alone, with judge, jury, friends, and the entire community arrayed against him, Seward gave to the cause the whole energy of his great mind.

It was not family nor friends that placed Seward at the side of Freeman, for the criminal had neither. It was not money, for Freeman was poor indeed. It was not popularity, for never had any man a more thankless task to perform. It was Seward's great love for humanity, his innate hatred of injustice and wrong, that aroused his energies. Freeman had, in fact, suffered a head injury in his youth that produced, over the subsequent years, a deterioration of his mental capacities that those who knew him had observed and remarked upon. He was not the calculating murderer the community assumed him to be. He was a mentally broken man.

This case points to a truth that becomes clearer with every decade of medical and psychological research: the line between crime and illness is not as sharp as the law requires us to pretend. Mental illness, intellectual disability, the neurological damage produced by poverty, abuse, and deprivation in childhood — all of these are

predisposing causes of violence. The criminal justice system, designed to assign individual moral responsibility for individual acts of will, is a blunt instrument for dealing with what is, at bottom, a problem of damaged human beings acting in ways their damage has made more likely.

The death penalty's irremediability is, in this context, doubly damning. Not only may we execute the factually innocent — those who did not commit the act; we may also execute those who committed the act but whose moral responsibility for it is genuinely uncertain, compromised by the mental states we cannot see and the legal system cannot reliably assess. In both cases, we kill without the certainty we would need to justify killing. And we cannot get that certainty back.

VI

The Death Penalty Does Not Deter

We are frequently told that the threat of death is necessary to hold in check those who would otherwise commit the most terrible crimes. That death is the greatest possible deterrent, because it is the greatest possible punishment.

This argument proves too much. If punishment should be as terrible as possible, then simple death is not the most terrible thing available. Torture is worse than death. The most creative historical executioners understood this, and acted on it — the rack, the wheel, the pyre were all designed to inflict something worse than quick killing. The argument that severity alone justifies the death penalty commits its advocates either to embracing torture as equally justified, or to admitting that something other than pure severity governs their position. Every defender of the gallows recoils from torture; every such recoiling is an implicit concession that the severity argument has limits — and that the question of where to draw the line is still open.

The empirical evidence is no kinder to the deterrence argument than the philosophical. Lord Bacon was not wrong when he observed that there is no passion in the mind of man so weak that it does not sometimes overcome the fear of death. We need only observe the cases in which murder is

committed without any concealment or hope of escape — in which the killer acts openly, avows the act, and accepts the consequence. Such cases are not exceptional. They are a documented regularity in the records of violent crime. The person who kills in a passion of jealousy, of wounded pride, of furious grief, is not calculating odds. The fear of legal consequences is not present in that moment, or if present, is overmastered by forces stronger than fear.

The class of persons most likely to commit the crimes that capital punishment is supposed to deter are precisely those for whom the fear of death has the least practical weight. They are, as a rule, those who have least to lose — those for whom life has provided few pleasures and little hope. The threat of losing a life that has provided little is a weak deterrent indeed.

The statistical evidence confirms what moral psychology suggests. Wherever the penalty has been reduced or set aside, the crimes it was supposed to prevent have not multiplied; the record of those experiments is set out in a later chapter, and it is uniform. What deserves notice here is the reverse proposition, which the same records establish just as plainly. The London Morning Herald, reviewing official returns, concluded that “frequency of executions in any country is generally followed by a proportionate increase of crimes of violence and blood.”

VII

The Moral Effect of Executions

Capital punishment does not merely fail to prevent crime. It actively generates the conditions in which crime flourishes, by teaching the public that killing is an appropriate response to human wrongdoing.

The execution ground has never been a school of virtue. The records are consistent across two centuries of observation: public executions are occasions of license, drunkenness, and violence. The day of Lechler's execution in Lancaster, Pennsylvania — twenty-eight offenders committed to jail that night, and one spectator murdered another on his way home, arrested in irons "which had scarcely been laid off long enough by Lechler to get cold." At the hanging of two men in England for pocket-picking, forty arrests were made at the gallows for the same crime. When the state staged executions and called them lessons in the value of life, the crowd understood the lesson differently.

The character of the executioner tells the same story. In every age and country, those who have held the office of public hangman have been objects of disgust and contempt — avoided by decent society, compelled to wear masks in some jurisdictions lest they be recognized and shunned. This universal reaction is not irrational. It reflects a deep moral truth that people feel even when they cannot articulate it: the person who kills for a

living, whatever legal authority sanctions the killing, has been degraded by the work. The killing is degrading to all who touch it — not only the executioner, but the officials who order it, the witnesses who attend it, and the public in whose name it is carried out.

Charles Dickens, writing to us, described what he had seen at English executions: the degradation of the crowd, the carnival atmosphere, the way the spectacle seemed to produce in observers not solemnity but excitement. He concluded that public executions were brutalizing influences, and that the question was not how to conduct them more decorously but whether to conduct them at all. John Stuart Mill, who rose in the Commons last spring to defend the penalty in its narrowest application, nonetheless made his defense turn on sparing the condemned a worse cruelty rather than on any good the spectacle does the public. Even the ablest advocate the gallows has found in our generation does not argue that watching a man hang improves those who watch.

The most penetrating analysis of this problem comes from the judge's bench, not the reformer's platform. "It is not by the fear of death," said the English judge Sir W. Grant, "but by exciting in the community a sentiment of horror against any particular crime, that we can hope to deter offenders from committing it." The best protection against murder is not the threat of execution — it is a culture in which human life is genuinely valued, in which the sacredness of persons is deeply felt and broadly inculcated. The death penalty, by making state killing familiar, corrodes exactly that culture.

It teaches that life is available as an instrument of public policy. That lesson is absorbed and acted upon.

VIII

The Evidence of Nations

The argument from experience points consistently in one direction. Wherever the death penalty has been substantially reduced or abolished, society has not collapsed into the predicted chaos of unpunished crime. Wherever it has been vigorously applied, it has not produced the predicted order and deterrence.

The ancient precedents are instructive. During two centuries and a half of the Roman Republic, no citizen could lawfully be put to death for crime under the Porcian Law. Montesquieu observed that the Republic was not the worse regulated, and no injury was done to the public peace. When Sabachus ruled Egypt, he abolished capital punishment for fifty years, as recorded by both Herodotus and Diodorus Siculus, and substituted hard labor for the crimes that had previously been capital. The result, by the testimony of antiquity, was not an increase in those crimes.

Russia abolished capital punishment as part of ordinary penal law more than a century before Bovee wrote — under the Empress Elizabeth, continued by Catherine the Great. Catherine stated her reasoning plainly: "Experience proves that the frequent repetition of capital punishment never made men better." Under this policy, Russia had, by the testimony of contemporary observers, fewer

murders in proportion to population than the nations that continued to execute. George Dallas, serving as American Minister at the Imperial Court, confirmed this on his return: the milder code had produced a milder people, and none among the Russian statesmen and jurists with whom he conversed ever dreamed of returning to the old system.

Tuscany abolished the death penalty in 1786. The Grand Duke Leopold testified twenty-one years later that the number of crimes of violence had diminished considerably, and that there was a time when the prisons of the Grand Duchy were entirely empty. Belgium progressively reduced executions through the first half of the nineteenth century, reaching zero by 1830; the number of capital crimes tracked the executions downward. In Michigan, where capital punishment for murder was abolished in 1847, the subsequent decades produced no evidence that homicide had increased as a result.

These facts, accumulated from every corner of the civilized world, form a body of evidence that cannot be dismissed as coincidental. The pattern is too consistent, the range of societies too diverse, for any other conclusion: the death penalty is not necessary to protect society from violent crime. It never was.

What matters is not the severity of punishment but its certainty and its justice. A system in which every person convicted of murder could be assured of permanent, humane imprisonment — where rehabilitation is genuinely attempted, where the

community of prisoners is managed with the goal of reformation — would achieve every legitimate purpose that the death penalty claims while achieving none of its harms. Certainty of consequence, not severity, is what deters. And certainty of consequence is far better achieved by a system that is reliably enforced than by one that is too severe to be consistently applied.

William Tallack, Secretary of the London Howard Association, put the reform agenda plainly in a letter to us: the movement for penal reform was not a sentimental movement for the comfort of criminals. It was a rational movement for the protection of society by the most effective means available — means that had been tested and found superior to those they replaced.

IX

Christ and the Gallows: The Scripture Argument

Every argument against capital punishment — from expediency, from justice, from the evidence of nations — has now been set out. But the advocates of the gallows hold one argument in reserve, which they regard as conclusive regardless of all others: the argument from divine command.

When driven from every position in the practical and moral debate, the defenders of capital punishment take refuge in Scripture. The passage most frequently cited is Genesis 9:6: "Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man." On this text, the Rev. Dr. Cheever rested his entire case. "It is the citadel of our argument," he wrote, "commanding and sweeping the whole subject."

Let us examine this citadel.

The first observation is textual. The Hebrew verb in the clause "shall his blood be shed" is in a form that serves equally for present or future indicative, as well as sometimes for the imperative. The mandatory reading — it is a command — is not required by the language. The Septuagint, the Latin Vulgate, and multiple Continental translations render the clause as a statement of what will happen, not as a command for what must happen. Fabre d'Olivet, one of the most eminent

Hebrew scholars of his era, translated the last clause as “through man will his blood be shed” — a description of natural consequences, not a legal prescription. John Calvin observed that rendering the preposition as “by man” rather than “through man” or “among men” is a forced construction. At minimum, the text is not as unambiguous as its mandatory interpreters require.

The second observation is historical. If Genesis 9:6 is a permanent and universal law — “co-eval and co-essential with the race,” as Cheever maintained — then it must have been in force in every age since the creation of man in God’s image. But God’s own practice contradicts this. When Cain murdered Abel — the first murder, committed under circumstances as aggravated as any in Scripture — God did not apply the penalty of death. He marked Cain for protection and sent him away. Cheever’s response — that “God spared Cain, and the consequence was that every murderer felt himself secure” — amounts to an impeachment of divine wisdom. We decline to worship a God whose mercy toward the first murderer was a blunder.

The case of David is equally instructive. For the murder of Uriah, David received the prophet’s assurance: “The Lord hath put away thy sin; thou shalt not die.” The law Cheever insists is permanent and universal was not applied to David. Nor to Moses, who killed the Egyptian. Nor to Simeon and Levi, who massacred an entire city. The evidence of God’s own dealings with murderers throughout the history of Israel demonstrates that he has not ordained a permanent and universal law requiring their execution.

The consequences of the mandatory reading are, moreover, internally absurd. If “whoso sheddeth man’s blood” commands death for all who shed blood, it commands death for the accidental killer, for the person who kills in self-defense, and for the executioner who carries out the sentence — and then for his executioner, and so on without end. The only way to limit the command to willful murderers is to add to the text a restriction that the text does not contain. And if we add restrictions based on context and purpose, we must ask: what is the purpose of this passage? Its manifest purpose, in its context, is to affirm the sacredness of human life. A command to destroy life in the name of that sacredness is self-contradictory. The mandatory reading defeats the evident purpose of the passage it claims to enforce.

X

Christ and the Gallows: The Golden Rule

The Old Testament argument for capital punishment is doubtful at best, and we have let it detain us long enough. There is a more important question, and it is the one that gives this book its title. If we are, as we claim, followers of Jesus Christ, what does his teaching require of us? What did Jesus teach?

He taught: "Resist not evil." He taught: "Love your enemies." He taught: "Blessed are the merciful, for they shall obtain mercy." He taught: "Forgive, and you will be forgiven." He taught: "Do unto others as you would have them do unto you."

This last is the text we place at the head of this chapter, and it is the decisive one. "Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets."

Do we wish to be executed for our worst acts? Then we must not execute others for theirs. The Golden Rule does not say: treat others as they deserve. It says: treat others as you would wish to be treated. The criminal, by definition, has treated others worse than he wished to be treated. He has violated the Golden Rule in his crime. The question is whether we will violate it in our response —

whether we will meet the murderer's disregard for human life with our own.

Jesus said no. In unmistakable terms, he said no. "Recompense to no man evil for evil" is the instruction of Romans 12:17, which stands as the epigraph to the chapter preceding this one. "Ye have heard that it hath been said, an eye for an eye and a tooth for a tooth: but I say unto you, resist not evil." The principle of retaliation — life for life, the very principle on which the death penalty rests — was precisely what Jesus condemned when he superseded the *lex talionis*.

Henry Ward Beecher, one of the most influential preachers in America and no theological weakling, wrote to us: "I hold it to be the duty of Christian governments to abolish capital punishment." Beecher was not a sentimental man. He had preached in favor of arming the Free State settlers in Kansas. He understood that moral clarity sometimes requires courage. But on this question he was unequivocal.

Theodore Tilton of the Independent put the argument as plainly as it can be put: "Capital punishment is a relic of barbarism, inconsistent with the spirit of Christianity, and the sooner it is abolished the better."

The spirit of Christianity. This is what the title of this book gestures toward. Christ was executed by the state — crucified by the legal authority of Rome, on the demand of the religious establishment of Judea. The instrument of his death was the instrument of Roman capital punishment. To maintain the gallows in his name, to claim

scriptural authority for state killing from the same Old Testament texts that the people who demanded his death would have recognized — this is not Christian. It is the exact opposite.

The early church understood this. The Emperor Julian, in the fourth century, refused to allow Christians to serve as prefects because, as Milman records, “their laws prohibited their adjudging capital punishments.” For three centuries, the followers of Jesus would not participate in state killing, because their master had been killed by the state and had taught them to respond to evil with forgiveness rather than retaliation. That witness was eventually compromised — as so many Christian witnesses have been compromised — by the entanglement of the church with the empire. But it has never been entirely lost.

The gallows and the cross face each other across the centuries, and they are the same object. Both are instruments by which the state destroys a human being and calls the destruction justice. The difference is not in the wood or the rope but in where the Christian is asked to stand: on the scaffold or beneath it. Jesus asked his Father to forgive the men who drove in the nails. He did not demand their deaths.

Conclusion

We have now surveyed the case against capital punishment from every direction in which it can be approached.

From the question of government's right: no social compact — however large the number of parties — can confer the right to kill those whom it could otherwise safely confine. The moral character of killing is not altered by the number who vote for it.

From the sacredness of human life: the state that kills teaches that life is expendable, and the lesson corrupts the culture it was supposed to protect. A deep reverence for human life is worth more than a thousand executions in the prevention of murder.

From the irremediability of error: innocent people have been executed. They will be executed again as long as the penalty exists. No certainty of guilt sufficient to justify irreversible punishment can be achieved by any human tribunal; the error rate, though unmeasured, is not zero.

From the nature of criminal responsibility: the mental states that produce violence are not fully visible to any court. The line between crime and illness, between choice and compulsion, cannot be drawn with the precision that permanent punishment demands.

From the evidence of deterrence: the death penalty does not prevent the crimes it is supposed to deter. The fear of death is overcome by passion, by necessity, by mental illness, and by the near-universal human tendency to believe that the worst consequences will not happen to us. The certainty of a lesser penalty is more effective than the remote threat of the ultimate one.

From the moral effect of executions: state killing brutalizes the culture, teaches that violence is an appropriate response to wrongdoing, and generates in its execution grounds the very license and disorder it was supposed to suppress.

From the evidence of nations: every country and every state that has abolished or substantially reduced capital punishment has found that public safety was not impaired and that the frequency of violent crime was not increased.

From the Scripture: the mandatory reading of Genesis 9:6 is not required by the text, is contradicted by God's own practice in the cases of Cain and David, and is inconsistent with the plain teaching of Jesus, who condemned the principle of retaliation and commanded his followers to treat others as they wished to be treated.

The argument is complete. Wisdom and mercy together require the abolition of the death penalty. The gallows must come down — not because we do not take murder seriously, but because we take human life seriously, all human life, including the lives of those who have done terrible things. The same reverence for life that makes murder a horror makes execution a wrong.

Lord Bacon, whose judgment on the fear of death we have already had occasion to cite, left us a sentence that may stand as the last word here: there is more true honor in a civic garland for the preserving of one subject than in the laurel for victory over many enemies.

EDITORIAL APPARATUS

Definitions and Terms

Marvin H. Bovee (1827-1888): The author of this work — Wisconsin politician, businessman, and penal reform advocate. He made a public canvass of New York State in 1860 on behalf of the Anti-Capital Punishment Cause, which he credited with securing modifications to that state's penal code. His book was largely drafted by 1861 but delayed nearly a decade by the Civil War.

The Irremediable Law: Bovee's term for capital punishment understood as a punishment that, once inflicted, admits of no correction. Where fines can be repaid and imprisonment can be ended upon discovery of innocence, execution cannot be undone. The irremediability of the punishment is Bovee's central structural argument: it demands a certainty of guilt that no human tribunal can provide.

Rev. Dr. George Barrell Cheever (1807-1890): The principal theological defender of capital punishment in mid-nineteenth-century America, and Bovee's chief adversary in the scripture argument. Cheever's *Defense of Capital Punishment* (1846) argued that Genesis 9:6 constituted a permanent divine mandate for executing murderers. He also wrote to Bovee directly for inclusion in the volume, in a letter that the original reviewed and rebutted at length.

Genesis 9:6: “Whoso sheddeth man’s blood, by man shall his blood be shed: for in the image of God made he man.” The central proof text cited by defenders of capital punishment as divine authorization for execution. Bovee’s extended analysis in Chapters IX and X argues that the Hebrew is ambiguous, the mandatory reading is not required, the text is contradicted by God’s own practice toward Cain and David, and that in any case the New Testament teaching of Jesus supersedes it.

The Golden Rule: Matthew 7:12 — “Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets.” Bovee places this at the center of his positive theological argument: the principle of retaliation on which capital punishment rests — life for life — is precisely what Jesus condemned when he superseded the *lex talionis*. The Golden Rule, consistently applied, prohibits the death penalty.

William Freeman case: A highly publicized murder case in Auburn, New York, in which a Black man named William Freeman killed an entire family and was defended on grounds of insanity by William Henry Seward, later Abraham Lincoln’s Secretary of State. Bovee uses the case to illustrate the impossibility of reliably assessing criminal mental states — and the particular injustice of inflicting an irremediable penalty when that assessment is unavoidable but uncertain. Bovee, writing in 1869, does not follow the case to its end. Freeman was convicted in June 1846 and sentenced to hang. Seward appealed, and in January 1847 the New

York Supreme Court reversed the conviction and ordered a new trial, holding that a finding of competence to stand trial did not bar medical evidence of insanity at the time of the act. Freeman died of tuberculosis in his cell on August 21, 1847, at twenty-two, before he could be retried. The post-mortem found advanced deterioration of the brain, consistent with the head injury he had received from an overseer while serving a sentence for a horse theft he had always denied. The community that wanted him hanged was wrong about him, and the evidence that it was wrong arrived only after he was dead.

William Henry Seward (1801-1872): American statesman, later Lincoln's Secretary of State and negotiator of the Alaska Purchase, who as a young lawyer defended William Freeman on an insanity plea in the teeth of overwhelming public hostility. Bovee cites his defense as an example of principled advocacy for the mentally ill defendant — standing alone “in that singleness of purpose and unflagging perseverance” that genuine moral courage requires.

John Howard (1726-1790): English prison reformer whose investigations of English and continental prisons — published as *The State of the Prisons* (1777) — exposed conditions of systematic cruelty and disease, and initiated the reform movement in British penal administration. Bovee cites him as the highest type of the self-sacrificing reformer who achieves important changes in the face of intense opposition.

Jeremy Bentham (1748-1832): English utilitarian philosopher and legal reformer, contemporary of John Howard, whose arguments against capital punishment are cited by Bovee. Bentham: “The punishment of death is not remissible, no infallible system of jurisprudence having yet been devised... In every other case of judicial error, compensation can be made to the injured person. Death admits of no compensation.”

William Tallack: Secretary of the London Howard Association (the principal British penal reform organization of the period), who corresponded with Bovee and contributed a lengthy letter to the volume on the state of penal reform in Great Britain.

The lex talionis: The law of retaliation — “an eye for an eye, a tooth for a tooth, a life for a life” — the ancient principle on which capital punishment is ultimately based. Bovee argues that Jesus explicitly condemned this principle in the Sermon on the Mount (“Ye have heard that it hath been said, an eye for an eye... but I say unto you, resist not evil”) and that the Golden Rule displaces it with a fundamentally different ethic.

The Porcian Law: The Roman law, operative during the Republic, that prohibited the execution of Roman citizens for crime. Bovee cites it as evidence that even ancient Rome managed for centuries without capital punishment and was not thereby less well regulated.

Catherine the Great (1729-1796): Empress of Russia who continued the abolition of capital

punishment initiated by her predecessor Empress Elizabeth, and who articulated its rationale in the instructions for her new legal code: "Experience proves that the frequent repetition of capital punishment never made men better. If therefore I can show that in the ordinary state of society, the death of a citizen is neither useful nor necessary, I shall have pleaded the cause of humanity with success."

Further Reading

BOVEE'S SOURCES AND CONTEMPORARIES

O'Sullivan, John L. Report in Favor of the Abolition of the Punishment of Death by Law. V. 12. 1841. Edited and modernized by Jeff Hood. Complicit Press, 2026. Bovee's most-cited American source; O'Sullivan's statistics on ancient penal practice and on the American experience of abolition run throughout this volume.

Cheever, George Barrell. Defense of Capital Punishment. New York, 1846. The principal theological work Bovee is answering in Chapters IX and X; essential for understanding the contours of the debate.

Spear, Charles. Essays on the Punishment of Death. V. 10. Edited and modernized by Jeff Hood and Kat Bodrie. Complicit Press, 2026. Published fifteen years before Bovee's canvass of New York; Bovee knew Spear's work and draws on it.

Burleigh, Charles C. Thoughts on the Death Penalty. Edited and modernized by Jeff Hood. Complicit Press, 2026. The companion volume in this series, which also engages at length with Cheever's defense and shares many of Bovee's arguments, particularly on deterrence and scripture.

ON CRIMINAL RESPONSIBILITY AND MENTAL ILLNESS

Maeder, Thomas. Crime and Madness: The Origins and Evolution of the Insanity Defense. Harper & Row, 1985. Background on the legal history of mental illness as a defense, from the M’Naghten rules of 1843 — just a few years before Bovee’s Freeman example — to the modern era.

Fazel, Seena, and Martin Grann. “The Population Impact of Severe Mental Disorder on Violent Crime.” American Journal of Psychiatry 163 (2006). One of many studies confirming Bovee’s intuition that mental illness is a statistically significant predisposing cause of violent crime.

THE BROADER TRADITION

Beccaria, Cesare. An Essay on Crimes and Punishments. V. 5. Edited and modernized by Jeff Hood. Complicit Press, 2026. The foundational Enlightenment argument, 1764; the source of many of the deterrence arguments Bovee rehearses.

Livingston, Edward. Argument Against Capital Punishment. V. 6. Edited and modernized by Jeff Hood. Complicit Press, 2026. Bovee cites Livingston’s Louisiana code reform as a landmark of American penal reform.

Romilly, Samuel. Observations on the Criminal Law of England. V. 7. Edited and modernized by Jeff Hood. Complicit Press, 2026. The English parliamentary argument, 1810; source of the

British statistical evidence on certainty vs. severity that runs through the abolitionist tradition.

CONTEMPORARY SCHOLARSHIP

Banner, Stuart. The Death Penalty: An American History. Harvard University Press, 2002. The standard historical survey; covers Bovee's era and the antebellum abolition movement in which he participated.

Sarat, Austin. Gruesome Spectacles: Botched Executions and America's Death Penalty. Stanford University Press, 2014. Brings Bovee's argument about the irremediability of execution into the contemporary American context.

Stevenson, Bryan. Just Mercy: A Story of Justice and Redemption. Spiegel & Grau, 2014. The contemporary account most resonant with Bovee's arguments about mental illness, the irremediability of error, and the personal cost of confronting the death penalty directly.

COMPLICIT PRESS

THE ABOLITION CLASSICS

The texts that built the case against the death penalty