

AN EXCERPT, A SPEECH
& A PAMPHLET

THE ABOLITION CLASSICS

The texts that built the case against the death penalty

V. 24

AN EXCERPT,
A SPEECH
& A PAMPHLET

1791 · 1830 · 1850

JEREMY BENTHAM
MAXIMILIEN ROBESPIERRE
JAMES HAUGHTON

Edited and Modernized by
JEFF HOOD

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COMPLICIT PRESS

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Bentham text from the 1830 Robert Heward edition of
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This edition newly set and modernized.

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CONTENTS

Front Matter

Foreword	vii
Editor's Note	ix

The Works

I. The Excerpt — Jeremy Bentham, 1830	3
Simple and Afflictive Death	4
The Most Severe Punishment Ever Devised	6
What the Punishment Has in Its Favor	8
The Irreparable Error	11
Recapitulation	14
II. The Speech — Maximilien Robespierre, 1791	19
A Defeated and Powerless Enemy	20
Is It Necessary?	21
The Voice of Justice and Reason	22
The Legislator's First Obligation	23
III. The Pamphlet — James Haughton, 1850	25
The Statistics of the Question	27
The Case of Murder Itself	29
Belgium's Experiment	29
The Spirit of Revenge	31
A Postscript from Liverpool	33

Editorial Apparatus

Definitions and Terms	35
Further Reading	37

FOREWORD

This is the only volume in the series with three names on the spine instead of one. A philosopher's excerpt from London, a revolutionary's speech from Paris, a merchant's paper from Dublin — 1830, 1791, 1850. This series began with a simple premise: that the case against the death penalty was already complete, sitting in the public domain, waiting to be read. This volume is the premise in miniature. Three genres, three countries, three generations. One argument.

Bentham gets there by arithmetic. No scripture, no tears — a ledger. He grants the gallows every honest credit it can claim and then shows that the account still doesn't balance. The pages I can't shake are the ones on the hook: the punishment reserved for enslaved people in the West Indies, hung on iron to die over days while the law forbade anyone to help them. Bentham wrote it as philosophy. I read it as prophecy. The death penalty and slavery were one instrument then, and in this country they never entirely stopped being one.

In the Dickens volume, you heard Robespierre secondhand — the warning to the National Assembly that legal killing breeds killing. Here is the speech entire, and I won't pretend the ending away: the man who said human judgments are never certain enough to kill later signed the lists of the Terror, and the argument he made in 1791 convicts no one so completely as its author. Print it anyway. An argument doesn't become false because the man who made it failed it. If it did, there would be no scripture.

And then Haughton — because the movement that filled these volumes was mostly not famous. For every Dickens there were a hundred Haughtons: ordinary members of provincial societies, standing up after dinner with parliamentary returns in hand, counting committals, refusing to let the question stagnate. I have spent my life around their descendants — the ones who hold

vigil outside prison gates at midnight, who file the petitions, who count. This volume belongs to them on purpose.

The argument was done long before this series was — Bentham finished his part of it before the United States had a constitution. What remains is not writing; it is the film on men's minds, as Haughton called it, and the machinery that film protects. Somewhere tonight that machinery is being tested and made ready. Everything these three men had to say against it was in print before anyone now living was born. I know what they would make of the argument, because they already made it. I'm just the one passing it along.

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

EDITOR'S NOTE

THE AUTHORS

Jeremy Bentham (1748–1832), the founder of utilitarianism, wrote his analysis of capital punishment as a young man in the 1770s. The manuscripts were assembled and translated into French by his editor Étienne Dumont as *Théorie des peines* (1811), and reached English — corrected against the original manuscripts — as *The Rationale of Punishment*, published by Robert Heward in London in 1830, two years before Bentham's death. The excerpt in this volume is the whole of his treatment of the punishment of death.

Maximilien Robespierre (1758–1794) was a thirty-two-year-old deputy from Arras when he rose in the Constituent Assembly, then rewriting France's penal code, to demand that death be erased from it. The Assembly kept the guillotine, and the reader already knows the rest: within three years the author of this speech presided over the Terror and died under the blade himself. The speech is printed here because it was right when he made it, right when he abandoned it, and right now.

James Haughton (1795–1873) was a Dublin merchant and social reformer — a tireless worker in the causes of temperance, anti-slavery, and abolition of the gallows — and a member of the Dublin Statistical Society, before which this paper was read. It was published for the Society by Hodges and Smith in 1850.

THE WORKS

The three works are arranged as an excerpt, a speech, and a pamphlet — the three containers in which the abolitionist argument actually traveled. Bentham supplies the analysis: a clause-by-clause audit of what the punishment of death

accomplishes, what it lacks, and what it makes impossible. Robespierre supplies the oratory: the case compressed for a legislature deciding, that season, whether France would kill. Haughton supplies the evidence: the parliamentary returns, crime by crime, showing that every offense England stopped hanging people for declined, and the experience of Belgium, France, Prussia, Tuscany, and Bombay besides.

Each work is preceded by a short editorial introduction — “A Note on the Work” — explaining what the reader is looking at and where it came from.

THE MODERNIZATION

This edition presents all three works in modernized form. Bentham's long periodic sentences have been simplified and his Latin translated; the Robespierre speech, which survives in translation, has been lightly smoothed; Haughton's paper has been condensed. Every statistic, every case, and every name has been preserved, along with the order of each argument. Obvious printing errors in the source texts have been corrected silently, and footnote markers removed. Nothing has been added to the record.

THE SERIES

This volume is part of *The Abolition Classics*, published by Complicit Press to make the essential texts of the abolitionist tradition available in contemporary language. It is the twenty-fourth of the series' twenty-five volumes. The series talks to itself here: Robespierre's warning is quoted by Dickens in *V.* 23; Sir James Mackintosh's Bombay experiment, cited by Haughton, appears in the Burleigh and Dickens volumes as well; Lord Wynford, who promised England would be “murdered in our beds,” is one of the law lords Dickens catalogues; and the text of Genesis 9:6, answered by Burleigh at chapter length and by Dickens in a paragraph, is answered here a third time by the Archbishop of Dublin. One argument, passed from hand to hand.

“Human judgments are never certain enough to justify a society of men, themselves subject to error, in putting a man to death.”

— MAXIMILIEN ROBESPIERRE
Constituent Assembly, 1791

THE WORKS

AN EXCERPT, A SPEECH & A PAMPHLET

By Jeremy Bentham, Maximilien Robespierre & James Haughton

London, 1830 · Paris, 1791 · Dublin, 1850. Modernized and condensed for
this edition.

I

THE EXCERPT

JEREMY BENTHAM

from The Rationale of Punishment

London, 1830

For death there is no remedy.

— from the excerpt

A NOTE ON THE WORK

What follows is not a pamphlet but a dissection. Bentham wrote these pages in the 1770s, working alone; they reached print only in 1830, assembled from his manuscripts by his editor Dumont. He proceeds the way he always proceeds — no appeals to sentiment, no scripture, just a ledger: what the punishment accomplishes, what it costs, what it forecloses. He grants the gallows everything it can honestly claim, and then shows that the account still does not balance.

Two passages deserve particular attention. The first is the description of the hook — the punishment reserved for enslaved people in the West Indies — where the death penalty and slavery stand exposed as a single instrument. The second is the section on irreparable error, which compresses into a few pages the argument every later abolitionist would make. Readers should also note where Bentham stops: he leaves a narrow exception for rebellion, and, failing abolition, for aggravated murder. The argument he built reaches further than he was willing to follow it.

Capital punishment may be divided into two kinds: simple and afflictive. I call it simple when no more bodily pain is produced than is necessary to produce death. I call it afflictive when any degree of pain is added beyond what that purpose requires.

SIMPLE AND AFFLICTIVE DEATH

There is no need, on this occasion, to catalogue every possible way of producing death with the least collateral suffering. The task would be nearly endless, and its only use would be to let us pick out of the catalogue the method that does the job best — which can be done without any such survey.

The method in use in England is far from the best that could be devised. In strangulation by hanging, the weight of the body alone is seldom enough to shut off breathing immediately and entirely. The condemned, left to himself, struggles for some time; it is not uncommon for the executioner, to shorten the suffering, to add his own weight to the body. Strangling by the bowstring may strike some as the severer method — partly from prejudice against anything used by despotic governments, partly because of the greater exertion of the executioners. In fact it is much less painful, because it is much quicker: the force is applied directly along the line it must take, and the force of two men pulling is greater than the weight of one man hanging.

Even in hanging, however, sensation stops before long, as is well enough known from the accounts of people who have survived the operation — and probably a good while before the convulsive struggling ends, so that in appearance the sufferer endures more than he does in reality. With beheading, there is reason to think the stop to sensation is not immediate: some sensibility may persist in the spinal cord a considerable time after it is separated from the brain, as appears to be the case, for different lengths of time, in animals that continue to move after their heads are off.

AFFLICTIVE PUNISHMENTS

To exhaust the subject of afflictive punishments would require a catalogue of every such punishment ever practiced, together with whatever the imagination could add — and once that ungrateful task was done, of what use would it be?

We may the more willingly decline it because the more modern European codes have discarded these punishments altogether, and where they have not been formally abolished they have long fallen into disuse. Let us rejoice in the improvement; the philosopher has few occasions to offer the governors of the world more just or more honorable congratulations. But the subject cannot be passed over in total silence. The system was established too long, and has had too many apologists and too many great names among its supporters. And it may be useful to show that reason agrees with humanity in condemning such punishments — not merely as useless, but as producing effects contrary to the legislator's intention.

Examine the several species of this class — those long since abolished, like crucifixion and exposure to wild beasts, and those used in various parts of modern Europe, like burning, impaling, tearing to pieces, and breaking on the wheel — and you will find that in all of them the most afflictive part is their duration. And that circumstance defeats the purpose. When a punishment is announced, what seizes the imagination is its intensity; its duration makes a much feebler impression. A slight visible addition of bodily suffering to the ordinary mode of execution produces a strong effect on the mind, while the idea of how long the pain lasts is almost wholly swallowed up in the terror of the principal part.

In the legal description of a punishment, duration is seldom distinctly brought into view. It is not mentioned, because it is naturally uncertain — depending partly on the physical strength of the sufferer and partly on accident — and there is no way to fix attention upon it: on those who reflect, it makes no impression; on those who do not, it is altogether lost. The law might, it is true, fix the duration — prescribe the hours and minutes to be spent in the prescribed operations. Even that would fail. Pictures can represent the intensity of a punishment more or less faithfully; they cannot represent time. The flames, the rack, all the engines of torture, the convulsions of the half-expiring sufferer can be depicted — but a punishment made to last two hours will look no different from one that lasts a quarter of an hour.

On bystanders, it is true, duration does make a strong impression — but even there, after a certain point, prolongation loses its effect and gives place to the very opposite of the intended feeling. Pity and sympathy for the sufferer succeed; the spectator's heart revolts at the scene; the cry of suffering humanity is heard. Nor is the suffering confined to the offender: the spectators share it —

faintings, dangerous convulsions, the most melancholy accidents accompany these tragic exhibitions. Such sanguinary executions, and the terrifying accounts spread about them, are the real causes of the deep-rooted antipathy felt against the laws and those who administer them — an antipathy which multiplies offenses by favoring the impunity of the guilty.

The only reason any government can give for persisting in so highly penal a mode of punishing is that the habitual condition of its people is so wretched that nothing gentler can restrain them. Will it be said that crimes are more frequent in countries where such punishments are unknown? The contrary is the fact. It is under such laws that the most ferocious robbers are found — and this is readily explained. The fate that threatens them hardens them against the feelings of others as well as their own; they become the bitterest of enemies, and every barbarity they inflict is regarded as a kind of reprisal.

On this subject, as on so many others, Montaigne was far beyond his age. All beyond simple death, he says, appears to me pure cruelty. The legislator should not expect that the offender who cannot be deterred by the fear of death — of being beheaded or hanged — will be more effectually deterred by the dread of the slow fire or the rack. It may well be that he is only made desperate.

The French Constituent Assembly abolished afflictive punishments. In the Code Napoléon, beheading is the prescribed mode of death, and only for parricide and attempts on the life of the sovereign is anything added to it. In this country, the only crime for which afflictive punishment remains in use is high treason. The judgment in high treason consists of seven distinct operations: dragging at a horse's tail through the streets from the prison to the place of execution; hanging by the neck, but not so as to destroy life; plucking out and burning the entrails while the sufferer still lives; beheading; quartering; and the exposure of the head and quarters wherever the King directs. The sentence is no longer executed in this form: in favor of the nobility it has usually been changed to beheading, and in favor of the lower classes, to hanging.

THE MOST SEVERE PUNISHMENT EVER DEvised

I wish we could end here. But there remains to be mentioned an afflictive punishment more excruciating and more hideous than any yet spoken of — and it is still in use. Not in Europe, but in European colonies: in our own West India islands.

The condemned is suspended from a post by a hook inserted under his shoulder or his breastbone. Hung this way, he can do nothing to help himself, and all persons are prohibited, under severe penalties, from relieving him. He remains there, exposed to the scorching heat of a nearly vertical sun by day and the chilling dews by night; his torn flesh draws swarms of insects that multiply his torments; and under the fever produced by these combined sufferings, joined to hunger and thirst raging at their utmost, he gradually expires. When we reflect that the intensity of this suffering surpasses anything the imagination can picture, and that its duration is measured not in hours but in days, it will be found by far the most severe punishment ever devised by the ingenuity of man.

The persons to whom this punishment has been appropriated are enslaved Africans, and their crime is what is called rebellion — called that because they are the weakest; if they were the strongest, it would be called self-defense. Their constitutions are, to their misfortune, in certain respects so much harder than ours that many are said to have lingered ten or twelve days under these frightful torments.

It is said this punishment is no more than is needed to restrain such a people and keep them in their servile state — that the general course of their lives is so miserable that simple death would be a relief, and a gentler death scarcely a restraint. Perhaps. It is certain that a punishment, to have any effect on a man, must bear a certain ratio to the ordinary condition of his life. But observe where this leads. The enslaved in these colonies outnumber the free by about six to one — some three hundred thousand against fifty thousand. Here, then, are three hundred thousand people kept in a way of life that appears to them, on the whole, worse than death, for the sake of keeping fifty thousand in a way of life not noticeably happier than the same number would enjoy where there is no slavery. Sugar and coffee and the other delicacies these islands produce add, no doubt, to the enjoyments of Europe. But taking everything into account — if they can be had only by keeping three hundred thousand human beings in a condition maintainable only by the terror of such executions, are there any considerations of luxury that can counterbalance such evils?

One thing, meanwhile, admits of very little doubt: the defenders of these punishments, to justify them, exaggerate the misery of slavery and the low value the enslaved set upon life. If they were really reduced to a misery that made such atrocious laws necessary, even such laws could not restrain them: having

nothing to lose, they would be regardless of all consequences, engaged in perpetual insurrection and massacre. But if existence is not a matter of indifference to them, the only pretense in favor of these laws falls to the ground. Let the colonists reflect on this. If such a code is necessary, the colonies are a disgrace and an outrage on humanity; if it is not necessary, the laws are a disgrace to the colonists themselves.

WHAT THE PUNISHMENT HAS IN ITS FAVOR

In examining capital punishment itself, I will consider first its advantageous properties, then the desirable qualities it lacks, and finally the collateral ill effects of its frequent use.

The most remarkable feature of the punishment of death — the property it possesses in the greatest perfection — is that it takes from the offender the power of doing further injury. Whatever is feared from the criminal's force or cunning vanishes at once. Society is promptly and completely delivered from all alarm.

It is analogous to the offense in the case of murder; but there its analogy ends. It is popular with respect to that same crime, and that crime alone. And it is exemplary — in a higher degree, perhaps, than any other punishment; in countries where it is sparingly used, an execution makes a deep and lasting impression.

Beccaria held that the impression made by a punishment is proportioned to its duration rather than its intensity. "Our sensibility," he observes, "is more readily and permanently affected by slight but repeated attacks than by a violent but passing one; for this reason, putting an offender to death is a less effectual check on crime than the spectacle of a man kept in confinement and hard labor, repaying by his exertions the injury he has done society." Notwithstanding such respectable authority, I am inclined to think the contrary. Death is regarded by most men as the greatest of all evils; they will submit to any other suffering to avoid it. And death as a punishment is almost universally reckoned too severe — men plead, as a mercy, for any substitute. With respect to the higher class of offenders, Beccaria is not without reason: for them, a laborious punishment may impress more than the most excruciating death that could be devised. But for the generality of men — for all who are attached to life by ties

of reputation, affection, enjoyment, and hope — capital punishment is more exemplary than any other.

Though the apparent suffering in the punishment of death is at the highest pitch, the real suffering is perhaps less than in the greater part of afflictive punishments, which leave behind them a train of evils that make the remainder of a life one complication of suffering. In death the suffering is momentary: it is the negation of all sensation. Considering the last moment only, penal death is often gentler than natural death. The true suffering lies earlier — in apprehension. It begins the moment the crime is committed; it redoubles at arrest; it grows at every stage that makes condemnation more certain; and it is at its height in the interval between sentence and execution.

The solid argument in favor of the punishment of death results from the combination of these considerations: to men in general it is, of all punishments, the greatest in apparent magnitude, the most impressive and the most exemplary; while to the wretched class of beings who furnish the most atrocious criminals, it is less rigorous than it appears — putting a speedy end to an uneasy, dishonored existence, stripped of everything that makes life worth having.

WHAT THE PUNISHMENT LACKS

The punishment of death cannot be turned to profit; it cannot serve the purpose of compensation. So far as compensation might be drawn from the labor of the offender, the very source of it is destroyed. In frugality it is preeminently defective: to the community it produces a certain loss, in wealth and in strength alike.

Equability — a most important point — is another in which it is eminently deficient. To a person taken at random it is, on average, a very heavy punishment. But to a person taken from the class of first-rate criminals it varies far more widely: to some it is as heavy as to anyone; to many it is next to nothing.

Death is the absence of all pleasures, but also of all pains. When a man feels himself tempted to a crime punishable with death, his determination is the result of a calculation. On one side he sets the clear portion of happiness he expects if he abstains; on the other, the clear happiness he expects if he commits the crime, allowing for the chance that the punishment will cut that happiness short. If, in the first case, no clear happiness appears likely to come to him —

still more, if what appears is a clear portion of unhappiness — then the pleasure that constitutes the profit of the crime acts on him with a force that has nothing to oppose it. The probability of an abrupt end by death will subtract something from the balance; but a balance there will be.

And this is precisely the case with a multitude of malefactors. Made averse to labor by natural indolence or by disuse, or swept along by some impetuous passion, they regard the pleasures of honest industry as not worth living for when set against its pains; or they regard life itself as not worth keeping without some pleasure which, for people in their situation, is attainable only by crime. I do not say the calculation is made with all the formality I have given it; I do not say every item is carefully entered in the account. But well or ill, the calculation is made — otherwise a man could not act as he does. And in all these cases, which are unhappily too frequent, it is plain the punishment of death can be of no use.

WOULD THEY NOT DESTROY THEMSELVES?

It may be said: then no punishment would be of use. For any other punishment, to answer its purpose, must reduce such a man to a condition in which — by the supposition — death would be welcome to him; and death being in his own power, he will produce it. The conclusion does not follow. There are several reasons why an impulse strong enough to make a man risk death at the hands of justice is not strong enough to make him bring it on himself with his own hand.

First, the infliction of death as a punishment is by no means certain — and the passion that governs him, drawing his attention away from the chances against him, makes it look less certain still. Second, even were it certain, it is at any rate distant, while the mortification of not possessing the object of his passion is present. Third, death costs far more pain when a man must inflict it on himself than when all he does is put himself in the way of receiving it from another. The latter requires only a single, sudden act of will, during which he may keep his eyes shut, as it were, against the prospect; to die by his own hand, his resolution must hold up through the whole time needed to bring the event about — the manner foreseen, the moment immediate. Accordingly, when people are resolved on death, they commonly choose, when they can, to die by

another's hand: Saul by his armor-bearer's, Tiberius Gracchus by his freedman's, Nero by a servant's.

Fourth, when a man is prompted to seek relief in death, it is usually not by the sudden vehemence of some tempestuous passion but by a settled persuasion that the miseries of his life will outweigh its enjoyments — and when the resolution is once taken, he commonly rests satisfied for a while with the power, without proceeding, perhaps ever, to the act. This is likely enough to be the condition of those sentenced, instead of death, to some other punishment. They defer the execution of their design from hour to hour — now for want of means, now for want of inclination — until some incident starts a train of thought that turns them from it altogether. For in the mental as in the material frame of man there is, happily, a strong disposition to accommodate itself by degrees to forced and calamitous situations. When a great artery is disabled, the smaller vessels stretch and take on the whole duty of supply; loss of sight sharpens touch; a left hand learns the offices of the right. The mind has no less elasticity in accommodating itself to situations that at first appeared intolerable. In all sufferings there are remissions which, by force of contrast, become pleasures. How many men, fallen suddenly from the pinnacle of grandeur into the gulfs of misery, have gradually detached themselves from every recollection of their old enjoyments and created fresh sources of happiness — the Comte de Lauzun and his spider, the straw-work of the Bicêtre, the carved pieces of the French prisoners of war.

Variability is the point in which the punishment of death is more deficient than in any other. It subsists in one degree only; its quantity of evil can be neither increased nor lessened.

THE IRREPARABLE ERROR

And the punishment of death is not remissible. Other afflictive punishments are open to the same objection; but though irremissible, they are not irreparable. For death there is no remedy.

No man who has paid the least attention to criminal procedure can have failed to be struck by the very slight circumstances on which a man's life may depend, or to recall instances in which a man owed his safety to some unlooked-for accident that brought his innocence to light. The risk is greater under some systems than others — greatest where torture supplies the insuffi-

ciency of evidence, or where proceedings are secret; such systems are surrounded with precipices. But is there, or could there be, any system of procedure that would insure the judge against false evidence or the fallibility of his own judgment? No. Judges will continue fallible; witnesses will continue to lie, or to be deceived; however many swear to the same fact, its existence is not made certain. Circumstantial evidence that seems to admit of no explanation but guilt may be the effect of chance, or of arrangements made on purpose to deceive. The only evidence that seems entitled to perfect conviction is the voluntary confession of the accused — and even that does not produce certainty, since there have been instances, as in the case of witchcraft, of people confessing themselves guilty of impossible crimes.

These are not imaginary apprehensions drawn from the region of possibility. The criminal records of every country supply instances of these melancholy errors; and the instances that have become notorious, through the concurrence of extraordinary events, cannot fail to raise the suspicion that many other innocent victims have perished unknown.

Nor should it be forgotten that the cases in which the word *evidence* is most confidently used are often those in which the testimony deserves most suspicion. When the alleged crime is of the kind that produces antipathy toward the offender, or excites party feeling against him, the witnesses become accusers almost without knowing it. They are the echoes of the public clamor; the fermentation rises; all doubt is laid aside. It was such a concurrence of circumstances that seduced first the people and then the judges in the melancholy affair of Calas.

Cases in which the most violent presumptions, falling little short of certainty, accumulate against a person afterward recognized as innocent carry their own excuse: they are the cruel effects of chance. But something more must be said of the judge himself. A judge whose business is with human nature in its worst forms — who has daily before his eyes the false pretenses and lies of the guilty, and is perpetually contriving expedients for unmasking imposture — gradually ceases to believe in the innocence of the accused, and expects in advance to find a criminal using all his arts to deceive him. I am far from thinking this the character of all judges. But when the question is whether to arm men with the power of inflicting death, it should not be forgotten, before the fatal weapon is put into their hands, that they are not exempt

from the weaknesses of humanity — that arming them adds nothing to their wisdom, and does not make them infallible.

The danger appears in a still more striking light when we reflect on the use that men in power may make of this punishment to gratify their passions, through a judge easily intimidated or corrupted. Iniquity robed in justice may then escape, if not all suspicion, at least all possibility of proof. Capital punishment offers the corrupt prosecutor and judge an advantage no other punishment affords: security against detection, by stifling in the death of the victim all danger of discovery from that quarter. While he lives, to whatever misery he is reduced, the oppressed man may meet some fortunate event that proves his innocence; he may become his own avenger. A judicial assassination, justified in the public eye by a false accusation, assures with almost complete certainty the triumph of its authors. In a lesser crime they would have everything to fear; the death of the victim seals their security.

Reflect, too, on those rare periods — which may nevertheless recur at any time — when government degenerates into anarchy or tyranny, and you will find that the punishment of death, established by law, is a weapon lying ready, more susceptible of abuse than any other. A tyrannical government may, it is true, re-establish the punishment after the legislature has abolished it; but such an innovation is not accomplished without difficulty — the violence it heralds is too much exposed; the alarm is sounded. Tyranny is far more at its ease when it operates under the sanction of law, with no appearance of departure from the ordinary course of justice, and finds the people already reconciled and accustomed to this mode of punishment. The Duke of Alba, ferocious as he was, would not have dared to sacrifice so many thousand victims in the Low Countries had it not been the received opinion that heresy deserved death. Biren, not less cruel — Biren, who peopled the deserts of Siberia with exiles — had them mutilated first, mutilation being the severest punishment in use in that country, and very rarely ventured to kill, because capital punishment was not in use. So little do even the most arbitrary despots dare to violate established custom. Here is a strong reason for seizing periods of tranquility to destroy these dangerous instruments — which, rusted and no longer dreaded, are brought back into use with such facility when passion invites their employment.

The objection arising from irremissibility applies to all cases, and can be removed only by complete abolition. Two branches of security must be provid-

ed for: security against crime, and security against the errors and corruptions of judicial procedure. Crime is to be feared from everyone capable of committing one — that is, from all men, at all times; the errors and corruptions of justice are the exceptions, the accidental and rare occurrences. But for the man they fall upon, there is no remedy at all.

AN UNPOPULAR PUNISHMENT

Finally, this punishment is far from popular, and becomes less so every day as mankind grows more enlightened and manners more gentle. The people flock in crowds to an execution; but this eagerness, disgraceful as it may at first appear to humanity, does not proceed from pleasure in the sight of men in the agonies of death — it arises from the pleasure of having the passions strongly excited by a tragic scene. In one case only does the punishment seem genuinely popular, and that in a high degree: the case of murder. The attachment is grounded partly on the fondness for analogy, partly on the principle of vengeance, and partly, perhaps, on the fear the character of the criminal inspires. Blood, it is said, will have blood; and the imagination is flattered by the resemblance between the suffering the punishment produces and the suffering the criminal inflicted.

In all other cases the punishment of death is unpopular — and its unpopularity produces dispositions all equally contrary to the ends of justice: a disposition in the injured not to prosecute, for fear of bringing the offender to the scaffold; in the public, to favor his escape; in witnesses, to withhold their testimony or weaken its effect; in judges, to allow a merciful prevarication in favor of the accused. All these anti-legal dispositions make the execution of the laws uncertain — to say nothing of the loss of respect that follows when preventing their execution comes to be considered meritorious.

RECAPITULATION

The punishment of death, then, possesses four desirable properties. In one case it is analogous to the offense. In that same case it is popular. It is in the highest degree efficacious in preventing further mischief from the same source. And it is exemplary, producing a livelier impression than any other punishment. Are these sufficient reasons for keeping it? Certainly not.

Analogy is a good recommendation, but not a justification. If a punishment is otherwise eligible, analogy is an added advantage; if it is otherwise ineligible, analogy alone cannot save it — and even for murder, other punishments can be devised whose analogy is sufficiently striking. As for popularity: any other punishment seen to be equally or more efficacious will become equally or more popular, for the approbation of the multitude naturally follows the efficacy of the punishment.

The third property — that it prevents further mischief from the same source — is more specious, but no better founded. It has been asserted that for murder it is absolutely necessary, there being no other means of averting the danger from that class of criminals. The assertion is greatly exaggerated, and its groundlessness may be seen in the most dangerous species of homicide: assassination for money, a disposition that puts every man's life indiscriminately in jeopardy. Even these criminals are less dangerous, and less difficult to manage, than the violently mad; for they kill only when there is something to be gained and a probability of safety, while the mischief to be feared from the mad is narrowed by neither circumstance. Yet it is never thought necessary to put the mad to death. They are not put to death; they are kept in confinement — and confinement is found effectually to answer the purpose.

I can see but one case in which death can ever be necessary, and that only occasionally: the case Beccaria himself allowed — rebellion, or offenses of a rebellious tendency, when discontent has spread so widely through a community that imprisonment may not answer the purpose of safe custody, the keepers being won over to the insurgent party, or overpowered. And even here the legislator should remember what an aged Irishman answered the executioner who showed him the bleeding head of a man just executed for rebellion. "Look at the head of your son." "My son," he replied, "has more than one head." By destroying one dangerous enemy, the punishment of death may only make an opening for a more formidable successor.

The fourth reason is the strongest: no other punishment makes so strong an impression. This is true of the majority of mankind; it is not true of the greatest criminals. For them, I believe the contemplation of perpetual imprisonment, with hard labor and occasional solitary confinement, would make a deeper impression than death itself — and on precisely the minds where the impression is most wanted. Life does not offer them what it offers the innocent and industrious; their very trade leads them to put their existence continually

at hazard, and the intemperance almost natural to them inflames a brutal, uncalculating courage. Every circumstance that makes death less formidable to them makes laborious restraint more irksome. The more their habitual existence is wandering, independent, and hostile to steady industry, the more they are terrified by a life of passive submission and laborious confinement — a mode of life supremely repugnant to their inclinations.

Weighing all these circumstances, the conclusion appears to be that the prodigal use legislators have made of the punishment of death has proceeded less from any blamable cause than from an error natural to their situation. Those who make laws belong to the highest classes of the community, among whom death is counted a great evil, and an ignominious death the greatest of evils. Were the punishment confined to that class, the intended effect might be produced. But it shows a total want of judgment and reflection to apply it to a degraded and wretched class of men who do not set the same value on life — to whom indigence and hard labor are more formidable than death, and whom the habitual infamy of their lives has made insensible to the infamy of the punishment.

If, despite these reasons — which appear to be conclusive — it is determined to preserve the punishment of death for the terror it produces, it ought at least to be confined to the offenses that shock the public feeling in the highest degree: to murders accompanied by circumstances of aggravation, above all where numbers may be destroyed. And in those cases, whatever can give the punishment the most tragic appearance may safely be employed — without recourse to complicated torments.

COLLATERAL EVILS

The punishment of death, applied to offenses in opposition to public opinion, far from preventing them, tends to increase them by the hope of impunity. The proposition may appear paradoxical, but the paradox vanishes when we consider the effects of the punishment's unpopularity. It relaxes prosecution in criminal matters; and it foment three vicious principles. It makes perjury appear meritorious, by founding it on humanity. It breeds contempt for the laws, by making it notorious that they are not executed. And it renders convictions arbitrary and pardons necessary. The relaxation of procedure results from a series of transgressions by the several public functionaries whose concurrence is

necessary to the execution of the laws: each alters the part allotted to him, weakening or breaking the legal chain that binds him and substituting his own will for the legislator's — and every cause of uncertainty in criminal procedure is one more encouragement to malefactors.

II

THE SPEECH

MAXIMILIEN ROBESPIERRE

On the Death Penalty

The Constituent Assembly, Paris — June 22, 1791

The horror of crime is diminished when the law punishes it with another crime.

— from the speech

A NOTE ON THE WORK

In the summer of 1791, the Constituent Assembly was rewriting France's penal code, and a thirty-two-year-old deputy from Arras rose to demand that death be erased from it. What he delivered is the most concentrated statement of the abolitionist case ever made in a legislature: the state that kills a captive is not doing justice but executing a defeated enemy; blood laws are the invention of tyrants; and the penalty teaches the very contempt for human life it claims to punish. The Assembly kept the guillotine.

The reader already knows the rest. Within three years the author of this speech presided over the Terror and died under the blade himself — the fate Dickens points to in the volume preceding this one, quoting Robespierre's warning from before he was “in blood steeped in so far.” The speech is printed here entire, because the argument was right when he made it, right when he abandoned it, and right now. Arguments are not disproved by the men who betray them.

When the news reached Athens that citizens had been condemned to death in the city of Argos, the people ran to the temples and called on the gods to turn Athenians away from such cruel and deadly thoughts. I come to ask — not the gods, but legislators, who should be the organs and interpreters of the eternal laws the divinity dictated to men — to erase from the code of the French the blood laws that command judicial murder, laws rejected alike by their morals and by their new constitution. I want to prove two things: first, that the death penalty is essentially unjust; and second, that it is not the most repressive of penalties, and that it multiplies crimes far more than it prevents them.

A DEFEATED AND POWERLESS ENEMY

Outside civil society, if a bitter enemy attacks my life — or if, driven off twenty times, he returns again to ravage the field I have cultivated with my own hands — then, having only my individual strength to oppose to his, I must perish or kill him, and the law of natural defense justifies and approves me. But in society, when the force of all is armed against a single man, what principle of justice can authorize it to kill him? What necessity can absolve it? A victor who kills his captive enemies is called a barbarian. A grown man who kills a child he could disarm and punish seems to us a monster. An accused man condemned by society is nothing to it but a defeated and powerless enemy. Before it, he is weaker than a child before a grown man.

In the eyes of truth and justice, then, these scenes of death that society orders with so much ceremony are nothing but cowardly assassinations — solemn crimes, committed not by individuals but by entire nations, using legal forms. However cruel, however extravagant such laws may be, do not be surprised: they are the work of a few tyrants; they are the chains with which they weigh down the human race; they are the weapons with which they subjugate it; they were written in blood. It was not permitted to put a Roman citizen to death: that was the law the people passed. But Sulla conquered, and said: all those who bore arms against me are worthy of death. Octavian, and his companions in crime, confirmed the law.

LAWS WRITTEN IN BLOOD

Under Tiberius, it was a crime worthy of death to praise Brutus. Caligula condemned to death those sacrilegious enough to undress before the image of the emperor. Once tyranny had invented the crime of *lèse-majesté* — out of actions that were either indifferent or heroic — who would have dared suggest it deserved any penalty gentler than death, without becoming guilty of the same crime himself?

And when fanaticism, born of the monstrous union of ignorance and despotism, invented in its turn the crime of divine *lèse-majesté* — when it conceived, in its delirium, the project of avenging God himself — was it not obliged to offer him blood, and to drag him down to the level of the monsters who called themselves his image?

IS IT NECESSARY?

The death penalty is necessary, say the partisans of ancient and barbarous routine; without it there is no brake strong enough on crime. Who told you so? Have you counted all the levers by which penal laws can act on human sensibility? Alas — short of death, how much physical and moral pain can a human being endure?

The desire to live yields to pride, the most imperious of all the passions that master the human heart. The most terrible of punishments for social man is disgrace — the overwhelming sight of public execration. When the legislator can strike the citizen in so many sensitive places and in so many ways, why should he stoop to employing death? Punishments are not imposed to torment the guilty; they are imposed to prevent crime through the fear of incurring them.

The legislator who prefers death and atrocious penalties to the gentler means in his power outrages public feeling and blunts the moral sentiment of the people he governs — like a clumsy tutor who, by the frequent use of cruel punishments, stupefies and degrades the soul of his student. He wears out and weakens the springs of government by trying to wind them too tight. And the legislator who establishes this penalty renounces the salutary principle that the most effective way to repress crime is to adapt the punishment to the character of the passion that produces it — to punish the passion, so to speak, by itself.

He confounds all ideas, disturbs all relations, and openly contradicts the purpose of penal law.

The death penalty is necessary, you say. If that is true, why have several peoples done without it? By what fatality have those peoples been the wisest, the happiest, and the freest? If the death penalty is the fittest to prevent great crimes, then great crimes should be rarest among the peoples who adopted and lavished it. The facts are precisely the contrary. Witness Japan: nowhere are death and torture more widely used, and nowhere are crimes so frequent and so atrocious — as if the Japanese meant to rival, in ferocity, the barbarous laws that outrage and provoke them. Did the Greek republics, where penalties were moderate and the death penalty either infinitely rare or absolutely unknown, show more crime and less virtue than the countries governed by blood laws? Do you believe Rome was soiled by more crimes in the days of its glory, when the Porcian laws had wiped out the severe penalties of the kings and the decemvirs, than under Sulla, who revived them, or under the emperors, who carried their rigor to an excess worthy of their infamous tyranny? Has Russia been overturned since the despot who governs it entirely suppressed the death penalty — as if by this act of humanity and philosophy she wished to expiate the crime of holding millions of men under the yoke of absolute power?

THE VOICE OF JUSTICE AND REASON

Listen to the voice of justice and reason. It cries out to you that human judgments are never certain enough to justify a society of men, themselves subject to error, in putting a man to death. Imagine the most perfect judicial order; find the most upright and enlightened judges — there will still remain some room for error or for haste. Why forbid yourselves the means of repairing it? Why condemn yourselves to helplessness before oppressed innocence? What good are sterile regrets and illusory reparations to a vain shadow, to insensible ashes? They are the sad testimony of the barbarous temerity of your penal laws. To take from a man the possibility of expiating his crime by repentance or by acts of virtue; to close off pitilessly every return to virtue and to self-respect; to hasten his descent, so to speak, into the tomb while it is still covered with the fresh stain of his crime — this is, in my eyes, the most horrible refinement of cruelty.

THE LEGISLATOR'S FIRST OBLIGATION

The first obligation of the legislator is to form and preserve public morals — the source of all freedom, the source of all social happiness. When, in running toward a particular goal, he turns away from this general and essential one, he commits the grossest and most deadly of errors. The law must present to the people the purest model of justice and reason. If, in place of that powerful, calm, and moderate severity which should characterize it, the law puts anger and vengeance; if it spills human blood that it could spare and has no right to shed; if it spreads before the people's eyes cruel scenes and corpses wounded by torture — then it alters, in the hearts of citizens, the very ideas of justice and injustice, and plants in the midst of society the seed of ferocious prejudices that will breed others in their turn. Man ceases to be so sacred an object to man; his dignity is held cheaper when public authority makes free with his life. The idea of murder inspires less fear when the law itself gives the example and the spectacle of it. The horror of crime is diminished when the law punishes it with another crime. Do not confuse the effectiveness of a penalty with an excess of severity: the one is absolutely opposed to the other. Everything works with moderate laws; everything conspires against cruel ones.

It has been observed that in free countries crime is rarer and penal laws are gentler. All ideas hold together. Free countries are those where the rights of man are respected, and where, in consequence, the laws are just. Wherever the laws offend humanity by an excess of rigor, it is proof that the dignity of man is not known there — that the dignity of the citizen does not exist; it is proof that the legislator is nothing but a master commanding slaves, punishing them pitilessly according to his whim. I conclude that the death penalty should be abolished.

III

THE PAMPHLET

JAMES HAUGHTON

Death Punishments

Read before the Dublin Statistical Society — Dublin, 1850

In no single instance in which the death penalty has been repealed, for any crime, in any country, has any other result followed than a decrease of the crime.

— from the pamphlet

A NOTE ON THE WORK

The third work belongs to neither a philosopher nor a revolutionary. James Haughton was a Dublin merchant — a temperance man, an anti-slavery man, an abolitionist of the gallows — and a member of the Dublin Statistical Society, founded “to promote the study of statistical and economical science.” This paper, read before the Society and published for it in 1850, does what the Society was founded to do: it counts. Horse-stealing, burglary, forgery — every crime England stopped hanging people for declined. Belgium abolished, prospered, relapsed, and paid for it. Tuscany, France, Prussia, and Mackintosh's Bombay all told the same story.

The paper shows the movement as it actually lived. For every famous name in this series there were a hundred men and women like Haughton — ordinary members of provincial societies, standing up after dinner with parliamentary returns in hand. By 1850, as he demonstrates, the statistics were settled. What remained, in his phrase, was the film woven by prejudice over men's minds.

The many public executions which have taken place in these kingdoms within a short and recent period have forcibly drawn renewed public attention to the subject of capital punishment. The subject is acknowledged by all to be one of deep importance, and, like every important question that touches the feelings and exercises the judgment of men, it is the cause of great difference of opinion. That is not to be wondered at; it would be surprising if it were otherwise — and if the life of man were not at stake, the delay incident to such difference of opinion would be little cause for regret. It is by the collision of sentiment, and the attrition of minds one against another, that true principles of action are discovered and laid down; and to make such principles our own, and graft them onto the practice of our lives, is no hasty work. But the friends of reform must take care that no indecision or want of perseverance on their part sanctions unnecessary delay in changes that man's increasing knowledge, advancing civilization, and purer views of the Divine government demand.

On this question of capital punishment, it does seem to me that those in this land who favor its entire abolition want the zeal and activity so great a work calls for. The public mind has been permitted to stagnate too much upon this great question of human duty and human responsibility. While we sleep, criminals are constantly being hurried out of existence; and instead of being always awake, and actively engaged in taking the film off men's minds — a film woven by prejudice in favor of ancient usage, and by erroneous views of our duty to God and our fellow man — we are roused to energetic action only when some horrible event takes place, and we hear the indignant cry of outraged humanity ringing in our ears, telling us there is a chord in man's inmost soul attuned to humanity, which cannot vibrate in harmony when the gallows strikes the key.

When a great principle is at stake, we should not wait for extraordinary occurrences to prompt us; the value of the object itself should be a never-ceasing motive for action. Believing that the entire abolition of death punishment would be advantageous to society, I bring the question before you so that it may receive ample discussion at your hands, and so add to that growing volume of public opinion which will, I expect, at no distant day erase from our statute-book this relic of a barbarous age. I am aware that many intelligent and

good men still hold that the safety of society demands the violent death of the murderer. It shall be my object to prove this an erroneous idea — to show that the safety of society will be best secured by a contrary course: by a resort to the law of kindness, instead of those notions of full justice, or vengeance, handed down to us by preceding generations. The statistics I mean to lay before you will, I expect, carry your judgment with me.

THE STATISTICS OF THE QUESTION

In the reign of George III, one hundred and sixty offenses were punishable with death — among them sheep-stealing, robbery, forgery, burglary, and horse-stealing. In those days it was considered that the safety of society required the death of everyone guilty of these crimes. The law has been altered; willful murder and high treason may now be considered the only capital offenses. What has been the consequence? Has society been injured? The parliamentary returns exhibit exactly the contrary result.

In the Reverend Mr. Pyne's *Plea for the Abolition of Capital Punishments*, the following results, extracted from official parliamentary returns down to the end of 1838, will be found. For horse-stealing, forty-six criminals were executed in the nine years ending December 1829, the committals being 1,626. In the next nine years, ending 1838, there were no executions for the crime — and the committals fell to 1,565.

For burglary and house-breaking — of which Lord Wynford said that if the capital penalty were repealed, “we should all be murdered in our beds” — fifty-six persons were executed in the six years ending December 1832, with 5,199 committals in the same period. In the next six years, ending December 1838, there were but three executions for these offenses, and the committals fell to 4,621.

For forgery — a crime some mercantile men would still visit with the extreme punishment of the law — sixty-four criminals were executed in the ten years ending December 1829, and 746 committed. In the next ten years none were executed, and the committals were 731.

I might readily multiply facts of this nature. Indeed, I believe that in no single instance in which death punishment has been repealed, for any crime, in any country, has any other result been realized.

THE PARLIAMENTARY RETURN OF 1846

By a parliamentary return dated the 14th of May, 1846, I find the following facts stated with reference to seventeen crimes there enumerated. During the five years ending with the last year of an execution, 7,726 individuals were committed, of whom 196 were executed. During the five years immediately following, in which capital punishment was not resorted to, the committals had fallen to 7,120. The committals for burglary and house-breaking in the five years ending with 1832 were 4,327, and the executions forty-six; during the following five years the executions were three, and the committals had fallen to 3,734.

Here are indisputable statistics — I could add to the catalogue without difficulty, but the recital would only weary you and add nothing to the argument — and they prove, to the satisfaction of every candid inquirer, that the safety of society, instead of being endangered by milder treatment of criminals than was the policy of our forefathers, is placed on a more secure foundation. It may reasonably be inferred that applying the milder rule in place of the sterner, even in the case of deliberate murder, would be attended by the same happy exemption from danger.

Lest any should say that this decrease of crime was caused by a better system of police deterring men from its commission, I must disabuse their minds of the idea; for the official records — the Home Office annual returns, from which some of these statistics are drawn — distinctly show that crimes of all inferior grades considerably *increased* during the very periods when the crimes relieved of the capital penalty grew less frequent.

SEVERITY OR CERTAINTY?

Some may doubt the force of my conclusions, and allege that it is contrary to common sense to suppose men will be more effectually deterred from great crimes by milder than by severe punishments. They overlook the consideration that the certainty of punishment has a greater effect than its severity in deterring from crime. Facts support my argument; false theory alone is the basis of the contrary view.

The true solution of this apparent anomaly, I apprehend, lies in a morbid feeling in many minds, which stimulates the performance of acts that are punished in a manner which, though severe, makes their perpetrators objects of

notoriety. Whatever the cause, we find from the history of man in all ages and countries that the infliction of death punishment — attended, as it necessarily is, with the excitement of an interest in the criminal — has tended to call this morbid feeling into activity, and to place the lives and property of men in jeopardy instead of affording them security.

THE CASE OF MURDER ITSELF

The death penalty is still resorted to in these countries in cases of willful murder; so some may say that here my argument falls to the ground for want of proof — that but for the severity of our law, we might have many more horrible murders, accompanied by even more revolting circumstances than those which now occur.

It is difficult to meet such reasoners; indeed they would be more correctly called opposers than reasoners. The analogy of other cases weighs nothing with them; they refuse to open their minds to the value of the evidence those cases afford; they incline to doubt facts which are undeniable. The ameliorations of our criminal law that have produced such blessed results were opposed by similar reasoners, on exactly similar grounds — the safety of society — and they still contend against the relinquishment of the gallows on the alleged, and oft-refuted, ground that it would be unsafe to try the experiment with murder. Our legislators have not permitted us to prove that in the case of murder, as in that of all other crimes, other means than legalized life-taking would be a surer guarantee of life. Yet we are not left without good evidence of the safety of abolition, even in the case of murderers.

BELGIUM'S EXPERIMENT

Other countries have gone beyond England in the career of benevolent — and wise, because benevolent — legislation, and the results have fully sustained the principles I am contending for. Belgium abolished death punishment altogether; and the facts there are of peculiar interest, for they prove the correctness of every opinion held by the advocates of abolition in these countries. Belgium then returned to the gallows as a protection to life and property, and the result was, as might have been predicted, increased danger to both. The following statistics are taken from official returns.

During the five years ending with 1829, twenty-two persons were executed out of thirty-four convicted of murder. During the five years ending with 1834, none were executed — and only twenty were convicted of the same offense. In 1835, death punishment was resorted to again, to allay the fears of those who alleged its necessity in defiance of plain proof to the contrary. In that year two criminals were executed, and between 1836 and 1839 two more. And what followed? Capital condemnations, which in the five years from 1830 to 1834 — the years without executions — numbered sixty-four, rose in the five years from 1835 to 1839, with four executions, to eighty: an increase of just twenty-five per cent. In this instance of mis-legislation — of going back toward barbarism instead of forward to a higher civilization — the revengeful feelings of our nature were stimulated into dangerous activity.

FRANCE, PRUSSIA, TUSCANY, AND BOMBAY

In France and in Prussia, where a comparatively mild administration of this penal law prevails, the anticipated results are experienced: as death punishment was relaxed, the committals for murder steadily decreased. The returns show that while executions diminished by two-thirds, the crime decreased by one-third.

In Tuscany, where death punishment was for a length of time entirely discontinued, the reigning grand duke declared, after an experience of twenty-three years, that the alteration, “instead of increasing the number of crimes, considerably diminished the smaller ones, and rendered those of an atrocious nature very rare.” Under the ascendancy of Napoleon — a man of violence, who appears to have had no faith in any law except the law of violence — death punishments were re-enacted, and were followed by an increase in atrocious crimes.

Again, view the effect of these principles when carried into operation in India by Sir James Mackintosh, who says, in a charge delivered at Bombay in 1811: “Two hundred thousand men have been governed for the last seven years without capital punishment, and without any increase of crime.” “Add to these,” says Mr. Pyne, “the well-known facts that delinquencies in the army and navy were of much more frequent occurrence when death was the award of each breach of duty than they are now, when a milder system prevails.”

THE SPIRIT OF REVENGE

For the foregoing statistics I am indebted to an admirable pamphlet by Frederick Rowton, entitled *The Punishment of Death Reviewed*, which I strongly recommend to all who hear me. It treats the subject in a masterly manner, and proves to demonstration that the safety of society would be best secured by the entire abandonment of capital punishment. Without referring at all to the moral and religious aspects of the question, it seems to me extraordinary that, in the face of the most incontestable evidence of the fallacy of a resort to violence for the prevention of murder, intelligent men are still found to advocate its necessity. The solid reasoning, sustained by statistics and experience, is all on the side of mercy; and yet men still advocate and pursue the vengeful course. They endeavor, it is true, to conceal from themselves that revenge forms any part of their feeling toward the criminal; when pressed, they repudiate the idea most strongly. And yet it seems to me the system rests altogether on that feeling.

It will be said that the act is done by government, and that government can feel no revenge. But government is made up of individual men; and however these may persuade themselves that in their collective capacity they consider only the good of the community, the facts prove that other feelings must operate in their minds — for if they judged intelligently and dispassionately, they would be forced to conclude that the course hitherto pursued has been a wrong one, and they would move in a better direction. It is clear to all that death punishment has not secured society from the most horrible of crimes, deliberate murder. This our opponents admit; but they support the law on the negative argument that without it the crime would be more frequent, rejecting altogether the positive evidence of its hurtful tendencies.

PROFESSOR HANCOCK AND THE JURORS

In the *Transactions of the Dublin Philosophical Society* for 1843 there is an abstract of an essay on capital punishment by Professor Hancock, urging an examination of the propriety of inflicting it — since, as Blackstone remarks, criminal law should be founded on principles that are “permanent, universal, always conformable to the dictates of truth and justice, the feelings of humanity and the indelible rights of mankind.” It requires no argument to prove that death punishment does not conform to those principles, and that, if we assume them correct, all such punishments should be abandoned. So long as human judg-

ment is fallible, some or all of those principles are outraged when we take the life of man.

The feelings of humanity, or some kindred sensation, in the minds of jurors have frequently — of late years, I might almost say universally — rendered the punishment of our greatest criminals so uncertain that there is good reason to suppose murderers are influenced by that consideration when balancing the chances in their minds. It often happens that jurors cannot bring themselves to be in any degree instrumental in inflicting an irremediable punishment; and a full justification of that course is found in the fact that innocent men have been found guilty and executed on evidence apparently so clear that no man could have entertained a reasonable doubt. This is one of the grounds on which I contend that death punishment must always render the conviction of the accused more uncertain than where that extreme penalty is not present to the jurors' minds — which is itself proof of the uncertainty of any punishment for the crime of murder.

Professor Hancock maintained that the justice of inflicting death depends on its expediency — that is, on whether it is the most effectual punishment for preventing certain crimes. Without entering at large into that view, I think I have proved, in the earlier portions of this paper, that by the learned professor's own definition the punishment cannot be just, since it is never expedient: there is sound reason for believing that it tends to increase, and not diminish, the crime of murder. Indeed, this may be taken as a fact proved by the statistics I have given.

THE TEXT OF GENESIS

Professor Hancock also noticed the objection frequently made to abolition from the text of Scripture, "Whoso sheddeth man's blood, by man shall his blood be shed." He answered it as the Archbishop of Dublin answered a similar objection to political economy: that Scripture was intended to reveal religious truths, not to teach a complete system of jurisprudence any more than of any other science; that the passage should be read as teaching the sacred inviolability of human life, commanding what was, in the state of mankind when it was revealed, the most expedient and therefore the justest punishment for murder; and that in applying it to the present state of society, it must be understood as

commanding us to inflict whatever punishment we can discover to be most effectual in preventing murder.

In this passage, with one exception, I entirely concur — an ingenious, and may I say beautiful, interpretation of that much-used, and much-abused, text. The exception is that I do not believe the death penalty was ever expedient. The Archbishop observes, in his second lecture on that subject, that the complaint of political economy as hostile to religion will probably be regarded a century hence with the same wonder, almost incredulity, with which we now hear of men sincerely opposing the Copernican system on religious grounds; and that until the advocates of Christianity become universally better acquainted with the true character of their religion, every new branch of study will be assailed on religious grounds by those who have not studied it, or are incompetent judges of it, or wish to take advantage of the ignorant. I gladly avail myself of these enlightened sentiments, and apply them to the subject in hand, in full confidence that men will yet see in this light the present opinion of many concerning scriptural declarations on death punishment.

NO REPENTANCE IN THE GRAVE

There is one other point to which my time permits me only to allude. It is to me a matter of deep astonishment how men who believe in an eternity of punishment so severe that we have no words to convey an adequate idea of its horrors can be found advocating the hastening of their guilty brethren out of life, and away from the possibility of repentance — for they say there is no repentance in the grave. The point is of deep importance, and should be seriously considered by all who have any doubts about the propriety and expediency of abolishing capital punishment.

I commend this great question to your warmest feelings and to your soundest judgment, and from both I confidently anticipate a favorable verdict.

A POSTSCRIPT FROM LIVERPOOL

Since I wrote the foregoing lines, the following evidence of the inefficacy of death punishment has been placed in my hands. It is taken from the charge of Judge Wightman to the grand jury at Liverpool on the 10th of December last, in which he stated that although the assizes had been held not four calendar months before, with a general jail delivery in the county, there was now an ac-

cumulation of no fewer than eighty-seven prisoners for trial — requiring the special commission then assembled — and that among them were seven distinct charges of willful murder and seven of manslaughter: fourteen distinct cases of homicide.

Is it not clear from this statement that death punishment is no deterrent from the crime of murder, and affords no adequate safety to society? The scaffold has reeked with blood in these lands during the past year, and yet murder is rife among us notwithstanding. To what cause does Judge Wightman attribute this recklessness of human life? Here are his own words, and to a great extent they give the true solution: in almost all the cases, “the violence exhibited appears to be the result of mere intemperance, operating on minds wholly unaccustomed to forbearance or moral restraint, yielding to every impulse of their wicked feelings when exasperated.” Of those eighty-seven prisoners, twenty-five could neither read nor write; thirty-one could read and write imperfectly; fifteen could only read; three could read and write in a superior manner; of thirteen, no account was given.

Gentlemen, intemperance and ignorance are the great promoters of crime. So long as these predisposing causes are allowed to exist, so long will the statistics of murder fearfully attest the inefficacy of the scaffold as a deterrent from crime.

DEFINITIONS AND TERMS

Jeremy Bentham (1748–1832): English philosopher and legal reformer, founder of utilitarianism. He wrote his analysis of capital punishment in the 1770s; it reached English print as *The Rationale of Punishment* in 1830, two years before his death.

Étienne Dumont (1759–1829): Genevan editor who assembled Bentham's manuscripts into readable French. His *Théorie des peines* (1811) is the book through which Bentham's penal theory reached the world; the English *Rationale* was corrected against Bentham's original manuscripts.

Maximilien Robespierre (1758–1794): Deputy from Arras to the Constituent Assembly, later the dominant figure of the Terror, under which thousands went to the guillotine before he did. Dickens invokes his early warning against legal killing in V. 23 of this series; the speech itself appears here.

The Constituent Assembly: France's revolutionary legislature of 1789–1791, which rewrote the nation's laws — abolishing afflictive punishments, as Bentham notes with approval, but keeping the death penalty over Robespierre's objection.

James Haughton (1795–1873): Dublin merchant and social reformer — a life-long worker for temperance, anti-slavery, and the abolition of the gallows — and a member of the Dublin Statistical Society, before which his paper was read.

The Dublin Statistical Society: Founded in 1847 “to promote the study of statistical and economical science.” It survives today as the Statistical and Social Inquiry Society of Ireland.

Michel de Montaigne (1533–1592): French essayist whose verdict Bentham adopts: all beyond simple death is pure cruelty.

Cesare Beccaria (1738–1794): Author of *On Crimes and Punishments* (1764), V. 5 of this series. Bentham argues with him here — accepting his conclusion while disputing his claim that duration impresses more than intensity.

The Calas affair: Jean Calas, a Protestant merchant of Toulouse, was broken on the wheel in 1762 for the murder of a son who had in fact died by his own hand. Voltaire's campaign won his posthumous exoneration; Bentham cites the case as the pattern of judicial error driven by public clamor.

Lord Wynford: The law lord who warned that repealing the capital penalty for burglary would leave England “murdered in our beds” — and one of the four law lords Dickens catalogues, in V. 23, as opposing the repeal of death for forgery. The committals fell anyway.

Sir James Mackintosh (1765–1832): Scottish jurist who governed two hundred thousand people at Bombay for seven years without an execution and without an increase of crime — the experiment cited in the Burleigh and Dickens volumes, and by Haughton here.

Frederick Rowton: Author of *The Punishment of Death Reviewed* (1846), the pamphlet from which Haughton draws his statistics.

Richard Whately (1787–1863): Archbishop of Dublin, logician and political economist, whose reading of Genesis 9:6 — as teaching the inviolability of life, not commanding the gallows — Haughton adopts. The same text is answered by Burleigh in V. 22 and by Dickens in V. 23.

William Neilson Hancock (1820–1888): Irish economist and professor whose essay on capital punishment, abstracted in the *Transactions of the Dublin Philosophical Society* for 1843, Haughton engages at length.

FURTHER READING

ON THE THREE WORKS

- Bentham, Jeremy.** *The Rationale of Punishment*. Robert Heward, London, 1830. Translated and assembled from Étienne Dumont's *Théorie des peines* (1811) and Bentham's original manuscripts. The source of the excerpt.
- Robespierre, Maximilien.** Speech on the death penalty, delivered in the Constituent Assembly, Paris, June 22, 1791. The source of the speech.
- Haughton, James.** *Death Punishments*. A paper read before the Dublin Statistical Society. Hodges and Smith, Dublin, 1850. The source of the pamphlet.
- Rowton, Frederick.** *The Punishment of Death Reviewed*. London, 1846. The pamphlet from which Haughton draws his statistics.

RELATED VOLUMES IN THE ABOLITION CLASSICS

- Beccaria, Cesare.** *An Essay on Crimes and Punishments*. V. 5. 1764. Edited and modernized by Jeff Hood. Complicit Press, 2026. The book Bentham answers, extends, and in one place disputes.
- 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. The fullest legislative statement of the argument made here in a legislature by Robespierre.
- Burleigh, Charles C.** *Thoughts on the Death Penalty*. V. 22. 1845. Edited and modernized by Jeff Hood. Complicit Press, 2026. Cites Mackintosh's Bombay experiment and answers Genesis 9:6 at chapter length.

Dickens, Charles. *Capital Punishment*. V. 23. 1846. Edited and modernized by Jeff Hood. Complicit Press, 2026. Quotes Robespierre's warning, catalogues Lord Wynford among the gallows' defenders, and closes the argument this volume's three authors began.

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The texts that built the case against the death penalty