

THOUGHTS ON THE DEATH PENALTY

THE ABOLITION CLASSICS

The texts that built the case against the death penalty

V. 22

THOUGHTS
ON THE
DEATH PENALTY

Philadelphia, 1845

CHARLES C. BURLEIGH

Edited and Modernized by

JEFF HOOD

THE ABOLITION CLASSICS

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COMPLICIT PRESS

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FOREWORD

Charles Burleigh was thirty-four when he published this, and he'd already spent a decade doing the actual work — walking into towns across Pennsylvania and New England to argue against slavery in rooms where people sometimes threw things at him. He wore his hair and beard long and refused to cut them until slavery ended, which meant that by the time he sat down to write about the death penalty, most people in the movement already knew him by sight before he opened his mouth. He was, by every account I can find, a strange man to look at and a very hard man to out-argue.

I didn't know any of that the first time I read this pamphlet. What got me was a single sentence, early on, where he says the criminal "has not ceased to be a brother by disregarding the solemn obligations of his brotherhood." I've been in the room with men an hour before the state killed them. I have said something close to that sentence to chaplains, to wardens, to reporters, to nobody in particular at two in the morning. I did not expect to find it already written down, in almost that exact shape, by a man dead a hundred and fifty years before I was born.

Burleigh is arguing with a specific person the whole way through this book — the Reverend George Cheever, whose defense of the gallows was the best one available in 1845 — and there's something clarifying about watching two people actually disagree instead of talking past each other. Cheever says death is the only penalty terrible enough to work. Burleigh asks him, reasonably, whether he'd also endorse torture, since torture is more terrible still, and watches Cheever refuse to go anywhere near that — then points out that Cheever has just given up his own argument by refusing. That's not a preacher being pious about mercy. That's someone who read his opponent's book more carefully than his opponent expected anyone to.

I don't agree with all of Burleigh's theology. His reading of Genesis 9:6 is more confident, in a couple of places, than I'd let myself be. It doesn't matter much. What I recognize, and what seems worth naming here, is the discipline underneath it: he doesn't let himself feel good about being right before he's actually done the work of showing it. Chapter after chapter, he builds the case out of court records and jury testimony and statistics from a dozen countries before he ever gets to what he believes about God and mercy. That is not how most people write about this subject, then or now. Most of us lead with the feeling and back into the argument. Burleigh made himself do it the other way around, and the book is harder to dismiss because of it.

He died in 1878, hit by a train. I don't know what he'd make of a nitrogen gas chamber, or a firing squad in South Carolina, or the fact that we're still having this argument in 2026 with better data and the same walls up. I know what he'd make of the argument itself, because he already made it. I'm just the one passing it along.

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

EDITOR'S NOTE

THE AUTHOR

Charles Calistus Burleigh (1810–1878) was born in Plainfield, Connecticut, and had begun reading law when, in 1833, an essay he wrote defending Prudence Crandall — who had been persecuted for opening a school for Black girls in Canterbury, Connecticut — drew him permanently into the abolitionist movement instead. He became an agent and lecturer for the anti-slavery cause, edited *The Unionist* and later *The Pennsylvania Freeman*, wrote regularly for Garrison's *Liberator*, and served for years as secretary of the American Anti-Slavery Society. He was present at the burning of Pennsylvania Hall in 1838, and was arrested in 1847 for selling abolitionist literature on a Sunday. He wore his hair and beard uncut, by his own vow, until slavery was abolished — an eccentricity that made him instantly recognizable at antislavery gatherings across the Northeast for thirty years.

Burleigh was never a member of the Society of Friends, but he was shaped by it — by the Quaker moral philosopher Jonathan Dymond, whom he read closely, and by his wife, Gertrude Kimber Burleigh, a Quaker, with whom he later co-founded the Free Congregational Society of Florence, Massachusetts, a congregation built on free thought and free speech rather than creed. *Thoughts on the Death Penalty*, published in 1845, was his most substantial single piece of writing. He died in 1878, struck by a train near his home in Florence, Massachusetts.

THE PAMPHLET

Thoughts on the Death Penalty was published in Philadelphia by Merrihew and Thompson in 1845, in a "second edition, revised," which is the edition this

book follows. Burleigh wrote it as a direct answer to the Reverend George B. Cheever's *Punishment by Death: Its Authority and Expediency* (1842), the era's leading clerical defense of capital punishment, and he leaned heavily on two predecessors in this series — the writing of John L. O'Sullivan and Charles Spear — along with the moral philosophy of the English Quaker writer Jonathan Dymond.

The pamphlet's structure is unusually thorough for its length and era. Burleigh addresses, in turn, whether the death penalty serves the recognized purposes of punishment — reform, reparation, and prevention of crime; whether the state has any right to inflict death as a matter of pure retributive justice, independent of its usefulness; and whether Scripture commands what neither reason nor justice can support. Each section proceeds by evidence rather than assertion — court records, parliamentary testimony, and comparative statistics from a dozen countries — in a style closer to a legal brief than a sermon.

THE MODERNIZATION

This edition presents Burleigh's pamphlet in modernized and condensed form. The original runs to roughly forty-five thousand words, dense with the rhetorical conventions of 1840s American reform writing: very long sentences, extensive block quotation, and argument built through cumulative repetition rather than compression. The present edition simplifies the sentence structures, shortens the argument to its working core, and reorganizes long strings of quoted testimony into direct paraphrase with attribution, while preserving Burleigh's own three-part structure, his named sources, and his case examples.

Two or three of Burleigh's statistical tables, where the surviving text was legible enough to trust, appear here as tables; elsewhere, the argument the numbers were making has been kept in prose rather than risking invented precision from a damaged scan. Period language describing race has been updated where it appeared in the original; the underlying historical facts and testimony have not been altered. Every case, statistic, and citation in this edition originates in Burleigh's own text.

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. Burleigh's pamphlet belongs in this series alongside the two writers he leaned on most heavily to write it — O'Sullivan and Spear — as one of the fullest American statements of the case against capital punishment made before the Civil War, and as a document whose author paid for his convictions with more than ink.

*"If he is unfit to live, he is certainly unfit to die — since death
forecloses forever any chance of the fitness he presently lacks."*

— CHARLES C. BURLEIGH
Thoughts on the Death Penalty, 1845

THE PAMPHLET

THOUGHTS ON THE DEATH PENALTY

By Charles C. Burleigh

Philadelphia, 1845. Second edition, revised. Merrihew and Thompson,
printers. Modernized and condensed for this edition.

AUTHOR'S PREFACE

I aimed at usefulness here, not originality. I have drawn freely on the work of others wherever it served my purpose — condensing some arguments, expanding others, rearranging a few — because my goal was to give the case against the gallows in a form shorter than the full-length volumes already written on this question, yet fuller than the handful of cheap pamphlets available to a general reader. Many who would never sit down with O'Sullivan's report to the New York legislature, admirable as it is, or with Charles Spear's essays, will read a pamphlet like this one, if only to see what can be said against the law of blood for blood — and some of them, I hope, will find enough here to want to look further.

I owe the largest debt to O'Sullivan and to Spear, and to the shorter essays of Dr. H. S. Patterson and of a writer known only as "Presbuteros," understood to be a Presbyterian clergyman in New York. I have also drawn on several British publications rich in statistics that deserve to be better known on this side of the Atlantic. And I owe something, too, to the two works the Reverend George B. Cheever has written in defense of the gallows — able books, in service of a cause I believe to be indefensible — as the reader will notice more than once in what follows.

I

EXPEDIENCY

The design of punishment is to prevent the commission of crimes and to repair the injury that hath been done thereby to society or the individual, and it hath been found by experience that these objects are better obtained by moderate but certain penalties than by severe and excessive punishment; and it is the duty of every government to endeavor to reform rather than exterminate offenders, and the punishment of death ought never to be inflicted where it is not absolutely necessary to the public safety.

— Laws of Pennsylvania, Statute of 1794

PRELIMINARY REMARKS

Society is beginning, slowly but unmistakably, to reckon with its duty toward the people who break its laws. The old certainty is fraying: that a criminal has forfeited his claim to be treated as a brother. It is a hard lesson, unevenly learned in any age, that it is better to save a life than to end one — that the highest kind of triumph belongs to whoever turns a sinner back from ruin rather than the one who simply disposes of him.

A growing number of people now believe that Christian charity forbids, and that the character of Christ condemns, any punishment aimed at nothing but payback — that justice and the divine law can be honored, and the public welfare served, without bloody penalties. They do not see, in a penal code built around vengeance, however dressed up as justice, anything of the spirit that let Christ pray for the men insulting him as he died, or that let the martyr Stephen

ask forgiveness for the crowd stoning him. Which brings the real question into view, the one this book exists to answer:

Ought crime to be punished by human hands with death?

That question deserves a real answer — not scorn dressed as authority, not accusations of "sickly sentimentalism" thrown at anyone who raises it, not pious horror at the idea that a settled teaching might be wrong, and not an appeal to the vengeful feeling that, even in a self-described Christian country, still holds more sway over the public mind than anyone likes to admit. It deserves calm argument, built on solid principle and confirmed by fact. If it can be answered that way, let it be. If it cannot, no amount of authority will finally silence it, and it shouldn't.

WHERE THE BURDEN OF PROOF RESTS

Defenders of capital punishment usually frame the debate so that the burden of proof falls on its opponents — as though the question were whether an existing practice should be abolished, rather than whether a new one should be adopted. But look at what's actually being claimed. The country's founding document holds that the right to life is among the inalienable rights each person is endowed with. That's a general rule, and I'll grant it isn't absolute — there may be exceptions, cases where it is right for one person to take another's life. But whoever claims an exception to a general rule has to prove it. Simple denial is enough to put the burden back on him. If someone tells me water sometimes runs uphill, I don't have to disprove it — he has to show me. The same logic applies here: the presumption belongs to the inviolability of human life, and the burden of proving an exception belongs to the people who want to kill.

THE PROOF REQUIRED IS STRONG

And the evidence needs to match what's at stake. This is not an abstract question. It is a brother's life — bound up with everything that makes a life worth having, and with everything a person stands to lose. What would have to be shown, to justify wresting that gift away by the deliberate decision of a court, is not a small thing. It would mean placing the most sacred fact of a human existence at the mercy of a fallible legal system; asserting the right, even the duty, to cut a person off in the middle of his days and, for all anyone knows, deliver

him unprepared into an eternity most of the death penalty's own defenders believe is a great deal worse than nonexistence. If that is what we are being asked to accept, the proof offered had better be extraordinary. So — where is it?

NOT FOUND IN THE RIGHT OF SELF-DEFENSE

It isn't found in the right of self-defense, whatever we think of that right in the abstract. Self-defense, on any reasonable account of it, applies only when danger is immediate and cannot be averted any other way. That is not the situation of a convicted prisoner. He is already disarmed, walled in, and watched. Killing him now might be vengeance. It is not defense. Picture a man who attacks you, and whom you manage to disarm and bind before he can do you harm. Once he is tied and helpless, can you still plunge his own knife into his heart and call it self-defense? Everyone would call that murder — because the danger that justified the first blow is gone. A convicted prisoner is more completely in the state's power than that bound attacker is in yours.

THE ENDS OF PUNISHMENT

So what is the state's obligation once the danger has passed? Punishment does real work beyond fending off an immediate threat — but that work has to be defined, and then we have to ask honestly whether death is the *best* way to do it, not merely *a* way. A surgeon does not amputate a limb that careful treatment could save. Justice and humanity both forbid inflicting suffering we don't need to inflict, and sound policy agrees: a penal code should secure its legitimate aims at the lowest possible cost in life and human flourishing. If those aims can be secured without a penalty of blood, then it is neither wise, nor humane, nor just to keep that penalty on the books.

The 1794 Pennsylvania statute quoted at the head of this chapter names three proper aims of punishment: to prevent crime, to repair the injury done to society, and to reform the offender. I will take each in turn, because a policy that fails at all three — or actively works against them — has nothing left to stand on.

REFORMATION OF OFFENDERS

Start with reform, which a long line of moral philosophers has actually treated as the *first* aim, not an afterthought. Seneca held that the purpose of correction is either to improve the wrongdoer or to deter others by example — and, by naming improvement first, treated it as primary. The Quaker moral philosopher Jonathan Dymond, whose work shaped my own thinking on this question more than any other, put it even more plainly: punishment exists for the offender's own advantage as much as for society's, and *primarily* for his. We should regard someone in the grip of a moral sickness the way we regard someone in the grip of a physical one — with the aim of curing the disease, even when the necessary treatment is severe. The end, Dymond insists, should never be lost from view, and a just estimate of our obligations puts that end above every other one.

THE DEATH PENALTY DISREGARDS THIS END

Here is the objection that should trouble every defender of capital punishment: it does not merely fail to serve reform. It actively defeats it. It isn't built to help the condemned person become better, and it doesn't wait to see whether other influences might do so. It cuts him down on the appointed day whether he is penitent or hardened.

Yes, we no longer execute within forty-eight hours of sentencing, as earlier law once did. But notice what that concession actually proves. The space given for repentance isn't provided *by* the death penalty — it exists only because we have, in practice, backed away from the death penalty's own logic, conceding ground to the very argument we're supposedly refusing to accept. And how do we know that whatever time is granted will be enough, or well used? If the moment of true repentance is still building when the appointed day arrives, must we snuff it out just as the flame catches? If we don't — if we grant more time — that is simply another retreat from the penalty's own premise. Worse, delaying execution until someone appears sufficiently reformed offers a perverse incentive: a prisoner has no reason to hurry toward genuine change if his life depends on not yet appearing changed. Either way, the death penalty works against the very reformation its defenders claim to want. As Wilberforce put it: whoever shortens a human life puts a human soul in jeopardy. The reasons for taking on that responsibility had better be very strong indeed.

"NOT FIT TO LIVE"

One reply, offered even by clergymen, is that the murderer "is not fit to live." Set aside whether that's even true — it wouldn't follow that killing him is the answer. If he is unfit to *live*, he is certainly unfit to *die*, since death forecloses forever any chance of the fitness he presently lacks. Letting him go on living unfit does not itself do him harm; killing him because he is unfit does. It is not a kindness to remove someone from a place he is unfit for — it is worse to destroy him for being there. And the claim of unfitness rests on a strange premise in the first place. We're told that the whole purpose of life is to prepare for death and eternity — and no one needs that preparation more urgently than the person who has just committed murder. We would not call a child unfit for school because he cannot yet read; we would not call a sick man unfit for a hospital.

"INCORRIGIBLE"

The fallback claim is that the murderer, whatever we say about fitness, is simply beyond reform — that his crime proves a depravity too deep to reach. That is a bold thing to say about another human being. Who has been given the authority to read a brother's soul and pronounce, with such confidence, on what he can or cannot become? Scripture itself resists the claim: there is mercy and abundant redemption even for "the chief of sinners," a promise extended explicitly to the shedder of blood who turns from his sin (Ezekiel 18:21–22). To insist that a murderer cannot be reformed is to accuse divine grace of a limit it never claims for itself.

Nor does experience support the claim. Other kinds of criminals are regularly reformed by patient treatment; there's no reason the same influences would fail uniquely with murder. Human hearts don't come in two separate categories, murderers and everyone else. The line between one degree of sin and the next is not so sharp, and murder itself is not always the product of deeper depravity than plenty of lesser crimes — sometimes the opposite.

WHAT THE EVIDENCE SHOWS

History, sacred and secular alike, backs this up. Consider one of the most aggravated murders on record: a king, favored with every spiritual advantage,

murders a loyal soldier under his own command specifically to cover up an earlier sin, exploiting the man's loyalty to arrange his death and then moving, almost without a pause, to take what the murder had cleared the way for. If any crime should prove incurable depravity, surely this one does. And yet David's repentance over exactly this crime produced Psalm 51 — words so purely and completely repentant that they have given voice to contrite hearts in every generation since.

Or take the young man who stood by, approving, while the first Christian martyr was stoned to death — who went on to hunt down and imprison believers, casting his vote for their execution, "breathing out threatenings and slaughter" — and who became the Apostle Paul, writing near the end of his life that he had fought the good fight and kept the faith. Is that the voice of someone incorrigibly depraved? If murder proves a soul beyond reach, then no — Paul was a hopeless case. But no one believes that. So who can say with certainty, of *any* person, however guilty, that the raw material of a David or a Paul isn't there?

Nor is this confined to scripture. A man once known as "Black Jacob" — enslaved for part of his life, then free, and by the age of fifty-six settled into every vice a hard life could teach him — was hired to commit a brutal murder for money. He was convicted, but his sentence was commuted to life imprisonment after he testified against his co-conspirators. In Auburn prison, under humane discipline, he became by every account a genuinely transformed man: devout, trusted, and — after his eventual pardon — the manager of an entire household for the better part of a decade, respected in his church and community until his death. "Not a few in this village," his biographer wrote, "owe their conversion, under God, to his faithfulness."

And the wardens of the New Hampshire state prison, asked directly about the men in their custody convicted of murder, reported that these prisoners were, on average, among the *most* manageable and best-behaved in the whole institution — not the worst. Their crimes, one warden explained, most often grew out of a single moment of drunkenness or provocation rather than a settled criminal character, and once removed from alcohol, "their better nature regained the ascendancy."

THE DEATH PENALTY IS NOT REFORMATORY

A gentler-sounding defense concedes all this and tries a different tack: that facing a fixed execution date actually *concentrates* the mind toward genuine repentance better than an open-ended life sentence would. Cheever argues exactly this — that a death sentence might be the very means of a man's salvation, where an indefinite reprieve might be the means of his never repenting at all.

If that were true, why stop at murderers? Every unrepentant sinner would benefit from a fixed, near-term execution date, on the same logic. No one actually believes that, which should tell us something about the argument. And the facts don't support it in the first place. The English writer E. G. Wakefield, after years observing condemned prisoners at Newgate, estimated that roughly one in four showed no genuine religious impression at all, going through the motions with open indifference while still hoping for a reprieve to the very last moment — and that chaplains were routinely subjected to open insults from the condemned on hanging days. Another experienced observer put the rate of true repentance even lower: perhaps one case in twenty. Most condemned prisoners, by this testimony, spend their remaining weeks nursing hope of pardon rather than preparing to die, and collapse only at the very end into a stupor from which no real spiritual work is possible — or else are seized by a kind of frenzied embrace of death that looks more like despair than faith. Even the chaplain of Newgate for over a decade admitted he could not recall a single case of what he considered sincere conversion — *except* among prisoners who were executed, which sounds like confirmation of the theory only until you notice the trap in the reasoning: every profession of repentance that was ever actually *tested* by survival turned out to be hollow. That is not evidence that death produces sincerity. It is evidence that terror produces performance, and that we should be deeply skeptical of any repentance we never get the chance to verify.

AN UNPHILOSOPHICAL CLAIM

The claim is also inconsistent with what these same clergymen teach in every other context. When they urge ordinary sinners toward timely repentance, their standard argument runs the opposite direction: don't wait until illness or old age brings death suddenly close, they say, because the terror of an imminent, certain end will paralyze rather than prepare you — the work that seems manageable while death feels distant becomes nearly impossible once it doesn't.

If that reasoning is sound for ordinary sinners, it applies with even more force to someone whose hands are stained with blood. Why would we set exactly that paralyzing terror before a murderer's face if we genuinely wanted his repentance?

DIVINE PRECEDENT

Cheever also appeals to divine example, quoting the principle that because judgment against evil is not carried out swiftly, people's hearts grow bold in wrongdoing (Ecclesiastes 8:11). But notice what actually characterizes divine patience in scripture: the *timing* of judgment is never fixed and announced in advance. God does not warn a sinner that he will die on a specific date within a set number of weeks. Scripture describes God as slow to anger, abundant in mercy, patient, "not willing that any should perish, but that all should come to repentance" (2 Peter 3:9). A fixed execution date is not an imitation of that pattern. It's the opposite of it.

THE POWER OF THE GOSPEL

There's something else troubling in this argument, coming as it does from ministers of the gospel: it quietly concedes that the cross isn't sufficient — that Christ's love, held up on its own, cannot reliably melt a hardened heart, and needs the gallows to do what preaching alone cannot. That is not what the New Testament claims for itself. Paul says the love of Christ compels; he does not say the noose does. If the gospel has genuinely lost the power to reach "fornicators, idolaters, adulterers, thieves, drunkards, revilers" and transform them, as Paul says the Corinthian church itself had been transformed, then that is a much larger crisis of faith than anything at stake in this debate. If it hasn't lost that power, then the gallows is a strange thing to lean on instead.

THE ALTERNATIVE

Follow the death penalty's own logic to its conclusion and it produces a genuine dilemma. Suppose the execution really does prompt sincere, godly repentance, as its defenders sometimes claim. Then the moment the offender becomes, in their own words, "fit to live" — a redeemed soul, a blessing to those around him — is exactly the moment we choose to kill him. Are the truly re-

formed so plentiful that the world can spare one? And if his repentance is genuine, we are executing someone Christ has promised eternal life — tearing down, as Paul might put it, a temple of the Holy Spirit. There is no way out of this dilemma on the death penalty's own terms: either it kills someone unprepared and sends him into eternity that way, or it kills someone truly redeemed, whose transformation we ourselves are holding up as proof the system worked — right when that transformation has finally made his life worth something to everyone around him.

REPARATION FOR THE INJURY

Set reform aside for a moment and consider the second purpose named in that 1794 statute: repairing the injury a crime has done to society. In the case of murder, nothing can restore what was actually lost — the murdered person is not brought back by any punishment we can devise. But *society's* loss can be partially offset, if the offender is given the chance to become useful rather than simply destroyed. The death penalty forecloses that possibility completely, cutting the offender off before he has had time, or often even the inclination, to make any amends at all. What repair is possible instead? The same one already demonstrated: a "Black Jacob" transformed into what his biographer called "a monument of grace"; a persecutor of the church transformed into its greatest missionary. Who can measure the value of even one such conversion — the hope it might kindle in some other despairing, hardened heart that there is still a path back?

ON UNCERTAINTY

Of course, we cannot know in advance which offenders will actually reform. True. But neither can we know which ones won't — and there is at least some chance, given time, that they will. Nobody knew, when Black Jacob's sentence was commuted, that eleven years in Auburn prison would produce a genuinely devout man who would spend his remaining years as a blessing to everyone around him. Nobody knew, when Saul of Tarsus was still breathing out threats against the young church, what he would become — Ananias of Damascus himself could barely believe it when told. Of no sinner, in the whole history of repentance since Eden, was it certain in advance that he would repent. That uncertainty is not unique to murderers; it is simply the ordinary condition of

hoping for anyone's improvement. And though we cannot know it will happen in any given case, we can be reasonably confident it will happen in *some* — and that the more seriously the reform of offenders becomes a real aim of policy, the more often it will succeed. The death penalty forecloses that possibility completely, in every single case, guaranteed.

THE DANGER OF DECEPTION

But suppose reparation requires eventually releasing a reformed offender — isn't that dangerous, given how easily we might be fooled by a convincing performance of repentance? Two answers. First, even granting the risk in full, this argues only against *releasing* him — not against keeping him alive. A prisoner can remain confined for the rest of his natural life, at genuine peace with his conscience and his God, doing what good is possible even within prison walls — much as a bedridden invalid, as confined by illness as any convict is by stone and iron, can still exert real influence for good. That is a far better outcome than cutting him down while his heart is still hardened, and it costs us nothing in safety.

Second, the risk itself is smaller than it looks. With patient observation over a genuinely long probation, deliberate deception becomes very difficult to sustain. And in any case, the risk here is no greater than risks society already accepts as a matter of course. A vicious, cunning man against whom the evidence of murder is strong but not conclusive walks free every day on the strength of "reasonable doubt" — genuinely dangerous, by everyone's admission, and free to act on it. Meanwhile someone who committed a crime years ago and has shown every outward sign of transformation since is, by the same logic that governs the first case, treated as though his past guarantees a repeat performance forever. That is not consistency. It is fear dressed up as principle.

PREVENTION OF CRIME

We've now seen that the death penalty works against two of the three legitimate aims of punishment — it neither reforms the offender nor repairs the harm he's done. That leaves the third: does it prevent crime better than any alternative would? If it doesn't, there is nothing left to justify it.

"THE MOST TERRIBLE PENALTY NECESSARY"

That it stops the *same* offender from killing again is obvious and beside the point — any sufficiently severe punishment would do that. The real question is whether it is needed to restrain *others*. Cheever's answer is that murder specifically requires "the most terrible of all penalties," because nothing less can hold in check a depravity willing to plot against a human life, and that anything short of the most extreme punishment amounts to abandoning the weak to the mercy of the violent.

THIS PROVES TOO MUCH

Follow that logic and it runs somewhere its own defenders would never actually go. If the standard is simply "the most terrible penalty available," then ordinary hanging doesn't clear the bar — genuine torture is more terrible still. Slow strangulation over hours, breaking on the wheel, burning alive: if severity alone is the measure, these would restrain more effectively than a quick death, and Cheever's own argument would require adopting them. It gets worse. If a punishment that damns the soul as well as the body is more terrible than one that only ends the body's life, then on this logic we ought to time the execution — as Hamlet plots against his uncle — for a moment when the condemned man is "about some act that has no relish of salvation in't," so as to maximize the terror on both fronts.

No serious advocate of capital punishment actually wants this. And in recoiling from it, they concede the flaw in their own reasoning: they aren't really defending "the most terrible penalty" at all, but *a particular degree* of severity that feels right to them — which means the death penalty's proponents have already accepted that severity has to be bounded by something other than pure deterrent terror. Once you accept that principle, the argument for stopping specifically at *death*, rather than at life imprisonment, needs a different justification than "as terrible as possible" — because by that standard, we already know it isn't.

It's worth remembering, too, that judicial torture itself was once defended in exactly this register — as an act of mercy, even, meant to spare the innocent from being convicted on weak testimony. We have entirely abandoned that reasoning as barbaric. It seems worth asking whether the gallows will look the same way to our descendants.

DEATH IS NOT ALWAYS THE THING MOST FEARED

Set the "most terrible penalty" framing aside and ask a plainer question: is death actually the deterrent proponents assume it to be? The record says no. Religious martyrs across every tradition have chosen death over apostasy by the tens of thousands. Soldiers, sailors, and duelists have risked or embraced it for causes ranging from patriotism to a wounded sense of honor to nothing more than a soldier's meager wage. People have stayed in plague-stricken cities rather than abandon modest property. Parents have died in their children's place without a second thought. None of this suggests that fear of death reliably overrides other motives — quite the opposite. As Lord Bacon observed, there is scarcely a passion in the human mind too weak to master the fear of death, under the right circumstances.

WHERE RESTRAINT IS MOST NEEDED

This matters most for exactly the population capital punishment is supposed to restrain. The people most likely to commit murder generally have, by any honest accounting, the least to live for and the most to escape — Cheever's own description of them, in fact, calls them "outcasts from society," people for whom even a jail cell, with its food and shelter, would come as something close to relief. Is death really "the most terrible of all penalties" to someone in that position, when it is so often held in something close to contempt by the comfortable and the hopeful, who have far more to lose by dying?

If the objection is that it isn't death itself but the *disgrace* of a public hanging that makes it terrible, consider what that implies. If shame is truly unbearable across the short interval between conviction and execution, how is it bearable across an entire lifetime lived under it? And if it's the fear of judgment *after* death that supplies the real terror, that argument cuts against itself too: the person hardened enough to plan a murder in the first place is, by the same token, the person whose conscience is least likely to feel that fear vividly in the moment temptation strikes.

FACTS IN ILLUSTRATION

The historical record bears this out with uncomfortable specificity. Of ten New York murder cases between 1839 and 1841, most involved no attempt at con-

cealment or escape whatsoever. One man committed his crime in broad daylight on a public street and openly declared, on the spot, that he knew the penalty and was ready to face it. Another chose hanging outright over a lighter prison sentence when offered the choice. A third attempted suicide the instant he'd struck the fatal blow. One of the most disturbing cases involved a church member in good standing who attended religious services before setting out to commit the murder, knelt and prayed on his victim's doorstep that the dispute might yet be settled peaceably — and then, having killed the man anyway, walked toward the authorities to turn himself in. Several of these men had previously been described by neighbors as sober, industrious, and peaceable. None of this reads like people restrained, in the moment of decision, by calculation about consequences.

"BUT THESE ARE EXCEPTIONS"

The natural reply is that these are outliers — that most people, even most people predisposed toward crime, would never treat death so lightly. Cheever puts it plainly: no passion, he argues, is stronger than the love of life, and the prospect of certain death would restrain "the angriest, most passionate malignity."

THE OBJECTOR ANSWERS HIMSELF

But look closely at how Cheever himself explains why people take life-threatening risks for far smaller rewards, and the argument collapses under its own logic. He grants that "no delusion is more powerful than that which makes men count on long years of life in store" — that the same overwhelming love of life which supposedly restrains us also produces an almost universal, irrational confidence that *this time*, danger will pass us by. That is precisely the psychology of the person contemplating murder: not someone weighing a certain death against a certain reward, but someone who — like nearly everyone else who takes a life-threatening risk — expects, on some level, to get away with it. A distant, uncertain penalty exerts far less real force on the mind at the exact moment restraint is needed than the theory assumes.

AN IMPORTANT TESTIMONY

E. G. Wakefield's testimony, drawn from years of direct observation among condemned prisoners at Newgate, makes the same point from the other direction. Virtually every person, he found, is prone to believe in his own exceptional good fortune — even the mortally ill rarely expect to die of their illness. He estimated that not one in a hundred capital convicts, even *after* sentencing, genuinely expected to be executed, and probably fewer than one in a thousand believed it before arrest. "I entered Newgate," he wrote, "with no doubt of the efficacy of public executions as deterring from crime. By degrees I came firmly to believe just the contrary." Newgate, he concluded, was the best possible place to form a sound opinion on the question — and it convinced him the gallows does not work the way its defenders assume.

CERTAINTY BEATS SEVERITY

Here is a principle nobody seriously disputes: certainty of punishment deters far more effectively than its severity. No human system achieves perfect certainty, but milder penalties come far closer to it than extreme ones — because the more severe the threatened punishment, the harder it becomes, in practice, to actually carry the threat out. Push severity too far and you don't strengthen a law's deterrent power; you undermine it, by making everyone involved in enforcing it — witnesses, juries, judges — reluctant to see the process through to its harshest possible end.

THE DEATH PENALTY IS UNCERTAIN

That is exactly what happens with capital punishment. It is, almost proverbially, uncertain in its actual application. Witnesses grow reluctant to testify and juries reluctant to convict once a life hangs on the verdict — setting free, again and again, people who would otherwise have been caught, held accountable through a lesser penalty, and possibly reformed, but who instead return to whatever circumstances made them dangerous in the first place, now considerably more practiced at evading consequences.

TESTIMONY OF LAWYERS AND LEGISLATORS

This isn't speculation; it's on the record from the people who watched it happen. The French jurist Charles Lucas noted that hardly any jury list of his era lacked men with a nearly unshakeable conscientious objection to sending a fellow human being to the scaffold. John L. O'Sullivan, writing to the New York legislature, called the pattern a truism among criminal lawyers of any real experience: juries, swayed by the same horror of bloodshed that makes murder abhorrent in the first place, will "violate their oaths under a thousand pleas of technical deficiency" rather than convict, even in the clearest cases. British parliamentary petitions from the 1830s tell the same story from the inside — a petition signed by the foremen of seven of eight Old Bailey grand juries and over a thousand working jurors described "extreme reluctance to convict" wherever the penalty was death, producing, in their words, "a most unnecessary and painful struggle" between conscience and oath. A separate petition from more than a thousand bankers reported plainly that the mere *possibility* of a capital sentence was enough to prevent prosecutions they otherwise would have pursued.

FACTS AND STATISTICS FROM OFFICIAL SOURCES

The British parliamentary record backs all of this up with hard numbers. Comparing capital and non-capital versions of similar offenses in the same years shows the pattern clearly: of persons committed on the capital charge of forgery over a nine-year period, nearly half were acquitted outright — against a non-capital acquittal rate of about one in ten for comparable offenses. When the death penalty for burglary and housebreaking was gradually withdrawn across the 1820s and early 1830s, conviction rates rose steadily in step, exactly as the penalty eased. Sometimes the pattern is almost comic in its transparency: London juries, faced with the mandatory death sentence for stealing goods valued over a set threshold, would simply undervalue the stolen property in their verdict to keep it under the capital line — a woman who stole a ten-pound note convicted of stealing "under forty shillings"; a man who stole eighty pounds in notes convicted of stealing "thirty-nine shillings." When Parliament raised the capital threshold, juries obligingly raised their undervaluations to match, keeping just barely under the line every time. Lord Suffield, presenting these figures to Parliament in 1834, calculated that offenses which had recently

ceased to be capital saw conviction rates around 72 percent, against just 47 percent for offenses still carrying death — a full 25-point gap explained by nothing but the jury's reluctance to hang someone.

THE AMERICAN EXPERIENCE

America tells the same story. William Bradford, a former Attorney General of Pennsylvania, testified that the pattern held here too: when horse theft was made capital in New Jersey, the unwillingness of witnesses to prosecute and juries to convict actually *increased* the frequency of the crime by creating an expectation of impunity. Philadelphia's own court records, covering murder and other serious crimes from 1795 to 1845, show the pattern in stark relief: of 111 people charged with murder, a capital offense, only ten were ever capitally convicted — a conviction rate of about 9 percent — while the non-capital charges tried in the same court over the same period were convicted roughly 69 percent of the time. Juries were not applying a different standard of evidence. They were applying a different standard of conscience.

Cases where the public's own belief in guilt was strong and the jury acquitted anyway were common enough to have names attached — the Avery and Tirrell cases in Massachusetts, the Robinson case in New York, the Mercer case in New Jersey. And when a widely-believed-guilty man named Peace was acquitted of murder in West Chester, Pennsylvania, in 1845, a second murder followed within days, reportedly committed by a man who had sat through the trial and concluded, correctly or not, that a jury simply would not convict of a capital crime. If true, it's a vivid illustration of exactly the danger this whole line of evidence points to: not that the death penalty fails to deter, but that its very severity actively *creates* openings for crime to go unpunished.

UNCERTAINTY NOT REMOVED BY CONVICTION

Even a conviction doesn't guarantee an execution. Pardons and commutations follow capital sentences far more often than they follow any other kind, for reasons that are easy enough to understand: sympathy for the condemned runs deeper when the stakes are total; the fear of consigning a soul to eternity unprepared weighs on judges and governors the same way it weighs on juries; and the fear of an irreversible mistake looms largest exactly where reversal is impossible. A parliamentary petition from 1830 found that England executed

only one in fourteen people actually convicted of capital crimes in the preceding seven years. Philadelphia's own fifty-year record shows the same pattern sharpening over time: in the years after 1825, the city saw seventy-seven murder charges, eight capital convictions, and only three executions — roughly one execution for every twenty-six people charged. Put plainly: a person charged with murder in that period had about twenty-five chances of escaping the gallows to one of reaching it, and that gap kept widening as the decades went on.

THE DEATH PENALTY CANNOT BE MADE CERTAIN

The natural response is to blame the jurors, witnesses, and judges who let this happen, and to demand they simply do their sworn duty. But that response misunderstands what's actually going on. The same horror of bloodshed that makes murder feel like the worst of crimes is exactly what makes ordinary, honest people recoil from being the instrument of a killing themselves — and the more heinous a crime seems, the *more* that instinct fights against inflicting the one punishment that mirrors it. This isn't a failure of individual character that better sermons could fix. It's a structural feature of asking fallible, conscientious people to administer an irreversible penalty, and no amount of moral exhortation is going to make it disappear.

TEMPTS TO PERJURY, SWAYS TO ERROR

The practical cost of this is real. Where the stakes are total, the temptation toward what's sometimes called "pious perjury" — bending a verdict to avoid a hanging — becomes almost a mark of virtue in the public's eyes rather than a violation of an oath, which does lasting damage to respect for law generally. And most of this happens without anyone consciously lying at all. A juror who knows his verdict may cost a man his life will, without ever intending to violate his oath, lean toward every possible doubt, weigh ambiguous evidence more generously than he otherwise would, and arrive — sincerely, if wrongly — at "insufficient evidence" in a case that would have been perfectly clear under a lighter penalty.

MAKES PUNISHMENT CAPRICIOUS

The result swings unpredictably between two failure modes. Long stretches of quiet leniency, in which crime after crime goes essentially unpunished, periodically give way to a public mood of sudden, vindictive severity after some especially shocking case — a mood in which suspicion passes for proof and the person unlucky enough to be caught in it, often someone without the connections or resources to attract sympathy, receives a punishment out of all proportion even to genuine guilt. Neither extreme serves justice. Both are symptoms of the same underlying instability.

SHUTS TENDER CONSCIENCES OUT OF THE JURY BOX

There's a further cost that rarely gets named directly: many of the very people best suited by temperament and conscience to serve on a jury — thoughtful, humane, unwilling ever to render a false verdict — refuse point-blank to sit on a capital case at all, precisely because they're unwilling to risk being party to a wrongful killing. In one New York case, ten of the first twelve prospective jurors were dismissed on exactly this ground before a jury could be seated. In Dover, New Hampshire, roughly seven hundred people had to be examined before a capital jury could be filled. In Providence, Rhode Island, it was reported that not a single man in the city could be found willing to serve on one particular murder trial. This isn't a minor inconvenience. It systematically removes the most conscientious citizens from exactly the cases where their judgment matters most, leaving capital verdicts more, not less, exposed to error and bias.

WORSE THAN USELESS

Put all of this together and the death penalty doesn't just fail to prevent crime — it actively works against the deepest safeguard against violence that any society has: a shared, cultivated horror of bloodshed. A dread of *consequences* restrains only as long as consequences feel real and immediate, which — as the evidence above shows — capital punishment consistently fails to guarantee. An *abhorrence of the act itself* restrains regardless of whether anyone is watching. "It is not by the fear of death," as the English judge Sir William Grant put it, "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 Society of Friends offers living proof of this. Quakers are raised from childhood to regard human life as too sacred to take even in personal or national self-defense — and murder committed by a Quaker is, to this day, essentially unheard of in this country. That community is a small fraction of the wider population and cannot fully insulate itself from the values around it, yet its members are dramatically less likely to commit violence than the population at large. If that same reverence for life were cultivated as carefully in the general public as it already is among Friends, there is every reason to expect the same result, at scale.

DEMORALIZING

The death penalty doesn't just fail to build that reverence for life. It actively erodes it. Every execution teaches, by the government's own solemn example, that a human life becomes forfeit once someone has been judged to deserve losing it — and that lesson doesn't stay contained to the specific circumstances lawmakers intended. People draw their own conclusions and apply the principle where they see fit. As O'Sullivan put it, "the executioner is the indirect cause of more murders and more deaths than he ever punishes or avenges." Once the state has taught, by repeated example, that a sufficiently grave wrong makes killing the wrongdoer not just permissible but *righteous*, it has no real control over which wrongs an individual citizen decides meet that bar.

THE NATURAL RESULTS OF ITS TEACHING

This shows up in practice. Because the law punishes murder with death while leaving comparably devastating harms — seduction, betrayal, character assassination — largely unaddressed, people sometimes conclude, following the state's own logic rather than defying it, that they are entitled to supply the missing penalty themselves. "If it is wrong to let the murderer live," the reasoning goes, "how much more wrong to let live the man whose crime is worse than murder" — and since the law provides no remedy, some take it upon themselves to provide one.

FACTS THAT CONFIRM THE ARGUMENT

The case record bears this out with unsettling directness. Men who killed unfaithful wives, or the men involved with them, frequently didn't deny the killing at all — they *justified* it, using precisely the state's own vocabulary of desert. "He had a right to do it," one said. "He had done it for ample cause." Another, convicted of the same kind of crime, declared he "should go to the gallows in as good a cause as ever man went." A man known locally as kind, sober, and peaceable had been heard, before his crime, to say of his eventual victim that he "had done things bad enough to be shot." One case that shook Kentucky involved a young woman, seduced and abandoned by a man of standing, who agreed to marry her new suitor only if he first avenged her honor with her betrayer's blood — which he did, then made sure the dying man knew exactly why, understanding the act not as private revenge but as a private administration of the same retributive justice the state itself claims for its own scaffold.

THE INFLUENCE OF EXECUTIONS

The pattern shows up at the level of raw statistics too, and with striking consistency. Executions are followed, again and again, by new crimes in the immediate vicinity and immediate aftermath — sometimes within hours. Pickpockets famously worked the crowds gathered to watch a hanging; at one English execution for the crime of picking pockets, forty new arrests for picking pockets were made in the crowd that had gathered to watch it. Contemporary accounts describe execution-day crowds marked by drunkenness, brawling, and "everything licentious and filthy," in one witness's words, unfolding directly beneath the gallows.

The year 1845 alone, in America, supplied a grim run of examples. Thomas Barret was hanged in Worcester, Massachusetts, on January 3 for rape and murder; a second murder occurred within a few rods of the same gallows eleven days later, followed shortly by a rape in the same county. Samuel Zephon was executed in Philadelphia on April 18; a murder followed the very next day in the same district, and an infant was killed within the week — the district, in a local paper's words, "converted into a pandemonium" for days afterward rather than sobered by the example. James Eager was hanged in New York on May 9; a murder followed across the river in Hoboken within forty-eight hours, and another in New Jersey within days. H. W. McCurry's execu-

tion in Baltimore drew a crowd estimated at fifteen to twenty thousand people, described by a witness as "a mournful exhibition of the depravity of the human heart," with fights and jeering breaking out even as the man died. None of these cases proves a direct causal chain by itself. Taken together, across different states and different years, they are very hard to write off as coincidence — and they run in exactly the opposite direction from what deterrence theory predicts.

PRACTICAL LEGISLATIVE TESTIMONY

By the time Burleigh wrote this, nine American state legislatures — including his own Pennsylvania — had already moved executions from public spectacle to private hangings inside prison walls, witnessed only by a small number of officials. That decision is itself a kind of confession: lawmakers plainly recognized the demoralizing effect a public hanging had on the crowds who came to watch. But it's only half a remedy. The people who most needed the supposed warning — those actually inclined toward violence — were never the ones selected as official witnesses in the first place; that role went to respectable adults presumed *least* susceptible to the spectacle's corrupting influence. And the deeper problem was never really about who was standing in the room. Whether the killing happens in public or behind prison walls, the state's example — that a human life becomes disposable once judged to deserve it — reaches the public mind regardless, through newspapers and rumor and imagination, which fill in every detail a private hanging tries to hide.

THE CHARACTER OF EXECUTIONERS

One more piece of evidence deserves attention: the character almost universally attached, across every era and culture, to the office of executioner. No occupation has carried a deeper social stigma. In Spain, it's been recorded that executions were sometimes delayed for months because no one would take on the disgrace of performing one; occasionally only a condemned prisoner could be persuaded to do it, in exchange for his own life, and even then no one would approach him afterward to pay his fee — it had to be thrown to him from a distance. In parts of this country, executioners traditionally wear a mask so as not to be recognized. When it was seriously proposed to the Massachusetts legislature that clergy should serve as official executioners, since they, of all people,

presumably believed most strongly that the punishment was righteous, the backlash was immediate and total — an insult, everyone insisted, to a respectable and pious profession. That instinctive recoil is itself telling. If the office is honorable and necessary, why does even its strongest supporters refuse to associate it with the people they most respect? The uniform social verdict on this occupation, across centuries and continents, suggests the work itself does something to the character of whoever performs it — and that a policy requiring society to maintain that office at all is already conceding something troubling about what it demands.

DEATH PENALTY NOT NEEDED

The last line of defense is a direct empirical claim: whatever its other costs, the death penalty is still *necessary* — that without it, especially desperate offenders would kill more, not less. Cheever states this as flatly as anyone: men "so steeled in wickedness that they would murder even with the fear of death before them" will surely murder more freely once that fear is removed. That's an assertion, not evidence, and there's a great deal of evidence on the other side of it.

THE EFFECTS OF ABOLITION

Start in England itself. Lord Holland, reviewing seventy years of penalty reductions across a range of crimes, reported to Parliament that not one single instance showed increased frequency of a crime after its death penalty was lifted — if anything, the laws were "invigorated by such wholesome relaxation." Parliamentary returns comparing highway robbery prosecutions before and after the penalty eased show the same pattern: twelve executions accompanied 776 committals in one two-year window; zero executions accompanied only 719 committals in the next. Forgery prosecutions fell by nearly half between a five-year period with 94 executions and the following five-year period with far fewer. And across a broad set of English offenses tracked over a full thirty-five years, the pattern held with remarkable consistency: as executions declined toward almost nothing, the crimes once punished by death declined right alongside them, while offenses that *remained* capital throughout the same period kept rising.

Pennsylvania supplies its own confirmation closer to home. As early as 1776, the state's constitutional convention — with Benjamin Franklin presiding — called explicitly for penal law to be made "less sanguinary" and better proportioned to actual offenses. That reform culminated in the landmark 1794 statute, quoted at the head of this chapter, which abolished the death penalty for every crime except first-degree murder. Judge Bouvier of Philadelphia's Court of Criminal Sessions, who examined the city's own official records specifically to answer this question, found that the offenses stripped of their death penalty in 1794 became *less* frequent afterward, not more.

"BUT MURDER IS DIFFERENT"

The fallback argument concedes all of this for lesser crimes and draws a hard line at murder specifically: everyone agrees murder is uniquely serious, the reasoning goes, so juries *will* convict, and the deterrent effect *will* hold, even where it demonstrably fails elsewhere.

But we've already seen that jury reluctance to convict runs *at least* as strong in murder cases as anywhere else — Philadelphia's own numbers, again, show a 9 percent conviction rate on capital murder charges against roughly 69 percent for everything else. And history offers a much harsher test of the "severity alone will do it" theory. England, at various points, executed thieves by the tens of thousands — the historian Hume records 72,000 executions for theft under one monarch's reign alone, 19,000 under another's — with, by contemporary accounts, no discernible effect on the crime it was meant to stop; people "persevered in their felonious sleights and devices" even as the gallows worked, in the words of one chronicler, at a scale that should have ended theft outright if severity alone were the answer. If overwhelming severity, applied without mercy or hesitation, couldn't suppress theft, there's no reason to expect it uniquely succeeds against murder.

ROME, DELHI, PARAGUAY

And there is direct evidence on murder specifically. For roughly two and a half centuries, no Roman citizen could lawfully be executed for any crime — a period during which, in Montesquieu's assessment, "the Republic was not the worse regulated, and no injury was done to the police." Charles Metcalfe, the British official administering the Delhi district in the early nineteenth century,

reported plainly that the death penalty was "in no degree necessary" there and simply wasn't used. And in Paraguay, a small number of Jesuit missionaries governed a population of several hundred thousand Indigenous people for generations with no capital punishment at all — order maintained through admonition, minor public correction, and the moral authority of a small number of respected magistrates the community itself had chosen.

FRANCE, PRUSSIA, ENGLAND AND WALES

The comparative statistics across Europe point the same direction. French executions for murder fell from 352 to 131 across two consecutive five-year periods — while accusations for the underlying crime *fell slightly* over the same stretch, from 1,182 to 1,172, rather than rising as deterrence theory would predict. Prussia, where murder was the only crime still punished by death, saw executions fall from an average of eleven a year to just two across three successive periods between 1820 and 1834 — and murder convictions fell right alongside them, from about fourteen a year to under eight.

Yearly average, 1820–1834	Prussia	England
Executions	7	about 13
Convictions of murder	almost 11	almost 16

Prussia, executing roughly half as often as England relative to population, saw *fewer* murder convictions per capita over the same years, not more.

NOT "THE HORSE BEHIND THE CART"

Cheever's counter to all of this is that the causal arrow runs backward: fewer murders caused fewer executions, he argues, not the other way around — what he calls, memorably, "not exactly the cart before the horse, but the horse behind the cart." It's a clever objection, and it happens to be checkable against the numbers themselves, which don't cooperate with it. In Prussia, murder convictions fell by roughly a third across the period in question — but executions fell by more than 80 percent over the same stretch, with a steadily *growing* share of convicted murderers spared each period rather than executed. If falling murders were driving falling executions, the two figures should have moved to-

gether. They didn't; executions collapsed far faster than the underlying crime did, which only makes sense if something else — a growing reluctance to actually carry out the sentence — was doing most of the work. A separate English parliamentary comparison makes the same point even more sharply: years in which every convicted murderer was executed were followed by roughly 13 percent *more* murders in the years directly after, while years in which most convicted murderers had their sentences commuted were followed by roughly 17 percent *fewer*. That is the opposite of what Cheever's causal story predicts, and it's hard to explain except by concluding that leniency, if anything, tracks with less violence rather than more.

DENMARK, HOLLAND, BOMBAY

Denmark's adoption of a milder penalty for infanticide, according to the prison reformer John Howard, "greatly diminished the frequency of the crime." Amsterdam had reduced its executions to almost none by the early 1800s, substituting imprisonment and hard labor, with what a member of Parliament in 1812 called "most beneficial consequences." And Bombay offers perhaps the single most demanding test case in the entire record: Sir James Mackintosh, serving as the territory's chief judicial officer, suspended the death penalty entirely for seven years beginning in 1804 — in a crowded, ethnically mixed, rapidly shifting port population, exactly the setting where abolition would be expected to fail if it were ever going to. Instead, both capital crime and murder specifically fell to roughly a third of their rate in the comparable period before his tenure. "Two hundred thousand men," Mackintosh told the grand jury on his departure, "have been governed for seven years without a capital punishment, and without an increase of crime."

RUSSIA

Russia offers the longest-running and best-documented case of all. The Empress Elizabeth abolished capital punishment as part of ordinary law more than a century before Burleigh wrote, and her successor, Catherine the Great, kept the reform and explained why in her own legal code, after twenty years of watching it work: "The twenty years' reign of the Empress Elizabeth gave the fathers of the nation a more excellent pattern than that of all the poms of war, victory and devastation." Catherine's own reasoning is preserved in the in-

structions accompanying her 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." In the century since, the penalty had been used only twice in Russia, both times for outright rebellion against the government — and Finland, brought under Russian administration, had the reform extended to it as well.

Cheever, unable to dispute the reform's existence, tried a different angle — suggesting the abolition was real but disused, or that it reflected distrust of corrupt regional nobles rather than genuine conviction. Neither claim survives contact with the actual testimony available. George M. Dallas, the American Minister to Russia during part of this period, reported from direct observation and conversation with Russian jurists and statesmen that the reform was genuine, that its results were consistently favorable, and that "none with whom he conversed ever dreamed of going back to the old system." And Catherine's own stated reasoning, quoted above in her own words, makes no mention whatsoever of distrust toward the nobility — only of twenty years' evidence that the harsher penalty simply didn't work.

BELGIUM

Belgium provides the most detailed statistical record of all, and it's worth walking through carefully, because Cheever leaned on this case harder than any other to argue capital punishment actually works — and the details don't hold up.

Belgium's death sentences, and the fraction of them actually carried out, fell together across the early nineteenth century as clemency became the settled practice:

Years	Death sentences	Of which for murder
1826–1830 (5 yrs, executions ongoing)	67 total	—
1831–1834 (4 yrs, after clemency policy began)	53 total	only 3 in 1831

Cheever pointed to a jump in Belgian death sentences in 1834 specifically — from 7 the year before to 28 — as proof that leniency had backfired. But a clos-

er look at that single year's numbers tells a very different story. Four of the twenty-eight were military sentences that shouldn't be counted against a civil clemency policy at all. Of the remaining twenty-four, only two were for murder committed *that year*; fifteen were the delayed reckoning for a single long-sought robbery gang, finally broken up in 1834 after years of evading capture, for crimes committed well before the reform took effect. A single year's backlog of old cases catching up with a slow justice system is not evidence that a policy failed the year it happened to be processed.

Broader figures back this up. Belgian government statistics show prosecutions for capital crimes falling from 846 in the five years before executions effectively stopped to 626 in the five years after — and prosecutions specifically for murder, homicide, and poisoning falling from 213 to 186 over the same comparison. And this reform, it's worth remembering, was tested under about the worst possible conditions: Belgium had just come through a war of separation from the Netherlands, with fighting still ongoing during part of the period in question — exactly the kind of social disruption that criminology has always associated with rising violence. That the numbers still moved in a favorable direction, under those circumstances, is a stronger point in the reform's favor than a peacetime result would have been.

TUSCANY

The clearest and most celebrated case, though, is Tuscany — the first modern state to abolish capital punishment outright, under Grand Duke Leopold in 1765. Contemporary accounts are strikingly consistent. Edward Livingston, drawing on the testimony of a resident of Pisa, reported only five murders across the entire Grand Duchy in the twenty years following abolition. The Marquis of Pastoret, vice president of the French Chamber of Peers, wrote that the reform's benefits were so obviously accepted by the Tuscan public in his own time that he "could not think of seeking means of proving what no one thought of disputing." A former Tuscan minister to Paris and a professor of criminal law at the University of Pisa both testified separately to the same effect: crime of every kind grew markedly rarer under the milder code than either before it or after Napoleon's forces restored capital punishment by conquest decades later.

That restoration is itself instructive, and Cheever's use of it is misleading. It wasn't a response to rising Tuscan crime — a Tuscan law professor testified it was imposed "through the power of the absolute will of Bonaparte... in opposition to the wishes of all the magistrates... and to all the evidence which their recent experience had afforded." Napoleon's own words to his brother, installed as the puppet king of Tuscany, make his actual priorities plain: "The interest of France is the point to which everything must tend; codes, taxes and conscriptions — everything in your kingdom must be to the profit of mine." That is a naked policy of imperial control, not a considered judgment about crime.

The comparison to contemporary America is worth sitting with. Massachusetts and New Hampshire combined had roughly two-thirds of Tuscany's population — yet in the five months following a single 1845 execution in Worcester, those two states saw more murders than Tuscany recorded across twenty full years under abolition. New York City alone matched that twenty-year Tuscan total within two months of a single execution there. Philadelphia, with roughly Tuscany's own population, matched it within seven weeks of one execution. However one accounts for the difference, it is not a difference the death penalty appears to have been suppressing.

CHEEVER'S HISTORICAL ARGUMENT

Cheever's strongest remaining card is a historical one: for roughly fifteen hundred years, he argues, ancient Israel's Mosaic law provided a real-world experiment, and murder was reliably rarer whenever that law's death penalty was actually enforced, and commoner whenever it wasn't.

This argument runs into two serious problems. First, if it proves anything, it proves too much: the very same logic would justify death for the thirty or forty *other* capital offenses under Mosaic law — sabbath-breaking, for instance — which Cheever himself has no interest in reviving. He wants the historical argument's force without its full scope, and he doesn't get to have it both ways.

Second, and more fundamentally, the claim that Israel enjoyed unusual internal peace under strict enforcement simply isn't supported by the text Cheever is citing. Scripture's own record of ancient Israel is, by wide agreement, a chronicle of recurring violence: Gideon's brutal reprisals against Succoth and Penueh; Jephthah's slaughter of forty-two thousand Ephraimites over a quarrel

of pride; the massacre following the outrage at Gibeah; Abimelech's murder of his seventy brothers. Joab murdered two rival commanders in cold blood and, far from facing judgment, remained powerful and untouched through the whole of David's reign — punished only after backing the losing side in a later succession dispute. Amnon's crime against his sister went unaddressed by the crown for two full years. Absalom, having murdered his own brother, was restored to royal favor after only a brief exile. And David himself — described in scripture as a man after God's own heart — committed adultery and orchestrated a murder to cover it, and was not executed but forgiven. This is not the record of a nation kept unusually peaceable by faithful capital enforcement. It's a record the prophets themselves repeatedly condemn in the harshest terms available to them, calling the nation "stiff-necked," its "hands full of blood," its "feet swift to shed innocent blood." Cheever offers no actual textual evidence that periods of strict Mosaic enforcement were measurably more peaceful than periods without it — because the text doesn't support that claim. If this is his strongest historical argument, as he presents it, then his historical argument does not hold.

II

JUSTICE

Fit retribution, by the moral code determined, lies beyond the state's embrace.

— Wordsworth

"UTILITY IS NOT THE GROUND OF PUNISHMENT"

Set expediency aside entirely, proponents say, and the case for death still stands on a different foundation: pure desert. "Punishment," Cheever writes, "is sometimes called for, apart from the question whether it be useful or not" — retributive justice exists independent of any question of security or deterrence. Theodore Frelinghuysen puts the same claim more bluntly: "The culprit is doomed to suffer, because he deserves to suffer." On this view, if the murderer deserves death, the state simply has the right, and the duty, to give it to him.

DESERT DOESN'T PROVE A RIGHT TO KILL

I won't dispute whether a murderer deserves death in some abstract sense. I dispute the conclusion. Even granting the premise fully, it doesn't follow that we are obligated, or even entitled, to give anyone their full desert. No serious defender of capital punishment actually believes courts should award every offender everything he deserves, in every case, regardless of circumstance — mercy is recognized as legitimate by everyone, at least sometimes. But if mercy can ever be right, then desert alone, without any further showing that acting on it serves some genuine good, can never by itself be sufficient grounds for

killing someone. Both have to be shown — desert *and* benefit — and desert alone is not enough.

There's a harder question lurking underneath the abstract one, too: who exactly is qualified to demand strict retribution from someone else? Anyone who has ever prayed the Lord's Prayer has asked to be forgiven *as* they forgive others — which means a person demanding maximum retribution against a fellow sinner is, in the same breath, asking God to treat *them* with maximum severity in turn. "Judge not, that ye be not judged." Vengeance, scripture says plainly, belongs to God, not to us (Romans 12:19). Whatever we make of retribution as an abstract principle, a disciple of Christ has reason to leave it in hands better suited to wield it than ours.

And if desert alone really were sufficient grounds for punishment, the principle wouldn't stop at murder. Every sin against the divine law, not just crimes against other people, would fall within its scope — turning courts of law into courts of conscience and putting the state in the business of legislating diet, habit, and private morality generally, a scope no one, including the strongest defenders of capital punishment, actually wants government to claim. If the full logic of "pure desert" is too dangerous to apply consistently, that's a sign the logic itself needs qualifying — not that it should be applied selectively, only in the one case where it happens to justify what we already wanted to do.

SOCIETY TRAINS PEOPLE TOWARD CRIME

There's a further problem with pure retribution as a standard, and it cuts closer to home than most of its defenders would like: society itself shares real responsibility for producing the very criminals it later condemns. Has it surrounded every child's upbringing with the moral and material resources that make a decent life possible? Has it addressed the poverty and neglect that push some people toward desperation, and the excess and license that corrupt others through indulgence? Has it kept its own hands clean of institutions — state-licensed vice, gambling houses patronized by respectable society, a culture that glorifies military violence over honest labor — that actively cultivate the very dispositions it later punishes? Mostly, it has not. A father who taught his son to steal has no standing to demand the boy's punishment purely as payback, and society's relationship to the people it fails and later condemns is not so differ-

ent. Before society claims a pure right to retribution, it might first attend to its own considerable share of the debt.

THE DANGER OF IRRETRIEVABLE ERROR

Set aside every other objection, and one remains that should be decisive on its own: human courts are fallible, and every other punishment leaves room to correct a mistake once discovered. Execution leaves none.

The record of wrongful convictions is not small. O'Sullivan counted over a hundred documented cases in English criminal history alone. A parliamentary return found that, over many years, roughly one executed person every three years in England was later shown, conclusively and publicly, to have been innocent. Daniel O'Connell described five such cases from his own legal career, including three brothers he had personally defended and watched hanged, all later established to have been innocent. An English soldier's deathbed confession, reported in 1845, cleared a man named Chalker who had been executed nine years earlier for the same crime.

American cases follow the same grim pattern. Dr. Hamilton of Kentucky was executed on circumstantial evidence for the murder of a colleague; within three months, two other men confessed to the crime on their own gallows. A German immigrant in New York was convicted and executed after a woman falsely accused him of the murder she herself had committed — a crime she confessed to only on her own deathbed, years later. A young man named Boynton was hanged in Louisiana on circumstantial evidence, protesting his innocence to the very end; the tavern keeper where the murder occurred later confessed on his own deathbed to having framed him. In Michigan, Ebenezer Miller had already served three years for a murder committed by the state's own chief witness against him — a fact discovered only because the governor had, on his own judgment, commuted what would otherwise have been an already-carried-out death sentence. Even confessions themselves aren't fully reliable: a Vermont man named Bourne confessed to a murder and was saved from hanging only when the supposed victim turned up alive.

Every one of these cases represents a wrong that, once discovered, could still be partially undone in every kind of punishment except this one. As the Marquis de Lafayette put it: "Till the infallibility of human judgments shall have been proved to me, I shall demand the abolition of the penalty of death."

CHEEVER'S REPLY

Cheever's response is that the death penalty saves far more innocent lives than it costs — a hundred protected for every ten lost to error, in his own estimate. That figure rests on the deterrence claim already dismantled in the previous chapter, so it can't be used to answer this objection without simply repeating a claim already shown to be unsupported. And it misses the deeper point regardless: every *other* punishment carries the same basic risk of error that capital punishment does, but every other punishment can be at least partially reversed once an error surfaces. This isn't an argument that proves capital punishment is worse than other punishments in exposure to risk. It's an argument that capital punishment is uniquely unable to do anything about the risk everyone concedes it carries.

THE DIFFICULTY OF MEASURING GUILT AND PUNISHMENT

Even setting wrongful convictions aside, there's a deeper problem with treating execution as a precisely calibrated instrument of justice. True guilt depends on a person's history, upbringing, provocations, and state of mind — factors only fully known to God, and only ever partially reconstructed by any court. A penalty that doesn't distinguish between degrees of culpability can't actually deliver proportionate justice, whatever its defenders claim for it. And death itself doesn't fall equally on everyone it's inflicted on: some people, hardened past feeling, meet it with something close to indifference; others suffer the full weight of anticipated horror for weeks in advance. Some go to the gallows in genuine religious peace that makes death no real punishment at all; others go in despair. A single, maximal, non-negotiable penalty applied uniformly across all of that variation isn't proportionate justice. It's the opposite of it.

INJUSTICE TO THE MANY

There's a final justice claim, distinct from what's owed to the offender: what's owed to everyone else. The public has real rights too — to safety, and to a moral environment not degraded by the state's own example. Chapter I has already shown, at length, that capital punishment demoralizes rather than protects, weakens rather than strengthens the deepest safeguard against violence, and increases rather than decreases the odds of impunity. That isn't merely bad

policy. It's an injustice to the many, inflicted in the name of settling accounts with the few.

ANTIQUITY PROVES NOTHING

Finally, proponents sometimes appeal to how ancient and nearly universal capital punishment has been, as though long practice were itself a kind of proof. It isn't. Idolatry, slavery, trial by ordeal, and the subjugation of women have all been ancient and nearly universal too, and none of that history made any of them right. If the world's default arrangements were self-justifying, there would be no such thing as reform, ever — every advance in justice has required setting aside some genuinely old and genuinely widespread practice because it no longer survived scrutiny. Age is not a verdict. It's just a length of time something has gone unexamined.

We asked, at the start of this book, whether human hands ought to punish crime with death. Both of the questions this chapter and the last one raised — is it useful, and is it just — answer no. The next question is whether scripture commands what neither reason nor justice can.

III

SACRED SCRIPTURE

Before the world had pass'd her time of youth, while polity and discipline were weak, the precept, eye for eye and tooth for tooth, came forth — a light, though but as of day break, strong as could then be borne. A master meek proscribed the spirit fostered by that rule, patient his law, long suffering his school, and love the end, which all through peace must seek.

— Wordsworth

"NOT LEFT TO OUR DISCRETION"

To everything argued so far, one reply remains: that scripture removes the question from human discretion altogether — that God has commanded the death of the murderer, and our task is obedience, not deliberation. If that could be shown clearly, the argument would be over. But scripture and any one reader's understanding of scripture are two different things, and readers who cite it as settling this question ought to remember how often confident readings of scripture have been wrong.

PAST ERRORS SHOULD TEACH CAUTION

Scripture has been invoked, across history, against nearly every reform that eventually proved itself right — against Galileo, against Columbus, in defense of the divine right of kings, in defense of slavery. None of that makes scripture untrustworthy. It means confident appeals to scripture, in defense of a practice

a society is already committed to, deserve real scrutiny rather than automatic deference — especially when a life is what's at stake in getting the reading wrong. Even the reading of specific verses tends to bend toward whatever a society already practices: the commentator Matthew Henry, writing where English law punished certain offenses by branding rather than burning, read the "burnt" of Genesis 38:24 as meaning "branded" rather than literally burned — an interpretation that happens to match the practice of his own country rather than the plain sense of the word. What a society already does has a way of shaping what a society reads a text to mean. That should make us more careful, not less, before we let a single disputed verse authorize taking a life.

THE PRESUMPTIVE CASE AGAINST IT

There's a further reason for caution before we even get to the specific text usually cited. Scripture, remarkably, nowhere lays out a general system of *civil* punishment for Christians to follow — the only detailed penal code in the Bible is the Mosaic law, which bound Israel alone and which even its own defenders agree no longer binds anyone. If God had, in fact, mandated one specific civil punishment as eternally and universally binding on all people everywhere, that would be a striking, singular exception to God's ordinary pattern of leaving human governance to human judgment — and a claim that unusual needs more than a handful of disputed verses to support it. And there's a second problem: justice and genuine expediency are not separate from divine will. They are as much a part of God's law, written into the moral structure of creation, as any single verse of text — which means a reading of scripture that requires us to act *against* justice and expediency, both of which the first two chapters of this book have shown the death penalty to violate, should be treated as more likely to be a misreading than as a genuine exception to what God has revealed everywhere else about how life is to be valued.

"THE SCRIPTURE ARGUMENT IS LIMITED"

It's worth noting that even Cheever concedes his scriptural case is "somewhat limited" — resting almost entirely on a single verse, Genesis 9:6, that he calls "the citadel" of the whole argument. It's worth sitting with what that means: the entire biblical case for a mandatory, universal death penalty rests less on anything Christ said than on one verse from Noah's covenant, delivered before

Abraham, before Moses, before the law, before the gospel. Reaching that far back past everything Christ himself taught, to found an absolute rule for a Christian age, is a strange thing to have to do — and it says something about how thin the rest of the case actually is.

TESTIMONY IN DOUBT

Genesis 9:6, in the familiar English rendering, reads: "Whoso sheddeth man's blood, by man shall his blood be shed." That sounds, in English, like a command. But a close look at how the verse has actually been rendered across languages and centuries shows the confidence is misplaced. The Septuagint's ancient Greek and the Latin Vulgate both render the final clause closer to "his blood will be shed" without ever specifying an agent — leaving entirely open whether human courts are meant, or simply the natural, tragic consequence of a violent life. The French Bible most commonly used by Bible societies of Burleigh's own era reads it as "his blood will be poured out" *in* man — that is, within humanity generally — rather than *by* a specific human executioner. Swedenborg's translation follows the same reading. The philologist Fabre d'Olivet, among the most respected Hebrew scholars of the age, argued that the Hebrew preposition rendered "by" in English actually carries a broader sense closer to "in" or "among," and that the standard English rendering is, in his words, a forced construction. John Calvin himself said as much.

Roughly a dozen serious scholars and translations, in other words, diverge from the familiar King James phrasing in ways that range from softening it to reversing its apparent meaning entirely — several reading it not as a command to execute murderers, but as a solemn statement that violence brings its own consequences, or that all human blood is bound together, so that spilling another's is, in some sense, spilling your own. If honest, careful scholars can't agree the verse is even a command in the first place, it cannot bear the weight Cheever wants to place on it.

"SHALL" IS NOT ALWAYS A COMMAND

Even granting the familiar English translation exactly as it stands, the entire argument depends on reading "shall" as an imperative — a command — rather than as the simple future tense, which is how the word is used constantly throughout the King James Bible. "Bloody and deceitful men shall not live out

half their days," says the Psalmist — obviously not a command for such men to kill themselves early. "The wicked shall do wickedly," Daniel says — obviously not a license for wickedness. In this very same chapter of Genesis, the word "shall" appears more than a dozen times, and in nearly every other instance it plainly carries the simple future sense rather than a command — including, a few verses earlier, "every living thing that moveth shall be meat for you," which no one reads as an *order* to eat every creature indiscriminately. If "shall" doesn't function as a command almost everywhere else it appears in this very passage, there's no principled reason to insist it suddenly must in this one specific verse — except that the reading is convenient for an argument that needs it.

WHAT THE MANDATORY READING WOULD REQUIRE

Take the mandatory reading seriously for a moment, and see where it leads. If Genesis 9:6 really is a permanent, universal, binding command, it forbids *any* pardon of a murderer, ever, under any circumstance — yet no serious defender of capital punishment actually believes that. Ask any of them directly whether David should have been executed for Uriah's murder, or Paul for his role in Stephen's death, and even Cheever would presumably balk. But if it was right to spare them, the command isn't actually absolute — which means the choice to spare or punish has, by the objector's own admission, already been left to human discretion after all, exactly where this whole argument insists it cannot be.

The text's wording, taken literally and without qualification, would also require executing a person who killed by pure accident or in self-defense, since the verse draws no such distinction — it simply says whoever sheds blood. And by its own logic, the executioner himself, having shed blood, would then be subject to execution in turn, and his executioner after him, in an infinite regress that ends only in universal slaughter. No one, of course, actually applies the verse this way — which means everyone already reads it with qualifications and exceptions the bare text doesn't supply, and the only real dispute is where exactly those qualifications belong. That's not a text settling the question outside of human discretion. That's a text everyone already interprets *with* human discretion, arguing only about where to draw a line the verse itself doesn't draw.

OTHER READINGS

Once "command" is set aside as the only possible reading, several coherent alternatives open up, none of which require executing anyone. The verse may simply be a proverb about the natural consequence of violence — in the same register as "whoso diggeth a pit shall fall therein," true as a general pattern of how violence tends to circle back on itself, without being a universal guarantee or a legal instruction. It may be teaching, more directly, the shared sacredness of all human life: since every person is made in the same divine image, the one who sheds another's blood has, in some deep sense, also profaned his own — less a sentencing formula than a statement about what murder actually *does* to the whole fabric of human kinship. Some scholars, including the German Hebraist Michaelis, have read the verse as extending even to animals — echoing an old practice, found in Athens and in early English common law alike, of formally "trying" an animal that had killed a person, not because the animal bore guilt, but as a symbolic way of teaching a community the sacredness of human life. And Fabre d'Olivet connects the passage to the surrounding verses about diet, reading the whole unit as a warning against cannibalism specifically, following directly on the permission just given, a few lines earlier, to eat animal flesh.

None of these readings requires a single execution to make textual sense of the passage. That alone should be enough to keep anyone from resting a policy of taking human life on this one contested verse.

A HIGHER AUTHORITY: THE CASE OF CAIN

But set the textual disputes aside entirely, because scripture supplies a far more direct answer, and it comes from God's own recorded conduct rather than from any translator's judgment call. If Genesis 9:6 really were, as Cheever insists, "permanent and universal... co-eval and co-essential with the race" — binding for as long as there have been people made in God's image — then it should have applied from the very beginning, since Adam and Eve were made in that image too. And yet the first murder in human history, Cain's killing of Abel, is met not with execution but with mercy: God spares Cain's life and places a protective mark on him specifically to prevent anyone else from killing him in revenge (Genesis 4:15). Lamech, too, goes unexecuted after his own act of violence. Cheever himself concedes that capital punishment for murder

wasn't practiced before the flood — which means, by his own account, the "eternal and universal" law he describes was somehow absent for over sixteen centuries of human history, under God's own direct governance, without God ever treating that absence as a problem needing correction.

And the pattern continues well past Noah. When Simeon and Levi slaughtered an entire town over a single man's offense (Genesis 34), neither their father Jacob nor God demanded their execution. Moses killed an Egyptian overseer and was not only spared but became the very lawgiver through whom the Mosaic code was later given. David, after arranging Uriah's death, was told directly by the prophet Nathan, "The Lord hath put away thy sin; thou shalt not die" (2 Samuel 12:13). Saul of Tarsus, complicit in Stephen's stoning and the persecution of the early church, was never made to answer for it with his own life. If Genesis 9:6 were the fixed, unchanging mandate its defenders claim, it is very hard to explain why God, again and again, across the whole span of scripture's own narrative, chose not to enforce it — including, more than once, on people scripture itself treats as guilty of murder.

NOT NOW A LAW, IF IT EVER WAS

Even granting, for argument's sake, that this text once functioned as an actual enactment — rather than the varied readings just discussed — there is a real difference between an eternal moral principle and a positive, time-bound law suited to a particular set of circumstances. The Mosaic ceremonial and civil codes have plainly lost their binding force, by universal agreement, even among those who cite this earlier text; the same reasoning would apply here with equal force. Whatever era Genesis 9:6 addressed — the period between Noah and Moses, when there were no courts, no prisons, no cities of refuge, and a family's vengeance for a killing, guilty or not, was the only mechanism society had — that world no longer exists. Our own age has courts, prisons, professional judges, and instruments of restraint and reform its earliest hearers never had access to. A rule suited to a world with no alternative to a family's private vengeance is not automatically suited to a world that has built better alternatives since.

REPLY TO CHEEVER'S ANSWER

Cheever's response — that a society capable of raising a structure like the Tower of Babel was hardly too primitive to build a jail — misses the real point. Architectural sophistication is not the same thing as moral or judicial sophistication. The Aztec empire built extraordinary cities and towering monuments and also practiced mass human sacrifice on a scale that would horrify any modern observer; the ability to erect a tower proves nothing about a society's capacity for humane justice. The real gap between that ancient world and ours isn't a matter of stonework. It's centuries of accumulated legal and moral development — trial procedure, the presumption against private vengeance, institutions built specifically to separate a dangerous person from society without also destroying him — none of which existed when this text was first heard, and all of which changes what a just and workable penalty actually looks like now.

CHRIST FORBIDS RETALIATION

There is, however, a text that speaks directly and unambiguously to this question, and it comes from Christ himself. Quoting the Mosaic principle of "an eye for an eye, and a tooth for a tooth," Jesus responds: "But I say unto you, that ye resist not evil" — that you do not meet harm with matching harm (Matthew 5:38–39). If this only forbade literal eye-for-eye retaliation while leaving the underlying *principle* — that a punishment must exactly mirror the injury — untouched for every other case, Jesus would be saying something close to nonsense: that taking an eye for an eye is wrong, but taking a life for a life, hand for hand, wound for wound, is fine. That isn't a coherent reading. Jesus is condemning the principle itself, not just its two most literal applications, and a principle condemned in general applies to every specific law built on it — including this one.

Cheever argues that Jesus meant to correct only the *abuse* of the old law — private, personal revenge — not the law's civil application. But when Jesus actually means that distinction, he says so explicitly. Rebuking the Pharisees elsewhere for corrupting the commandment about honoring one's parents, he draws a clear line between God's actual command and the human tradition that had twisted it (Matthew 15:3–6). He draws no such line here. He simply quotes the old teaching and overturns it, without qualification. The distinction

Cheever needs is one Jesus knew how to make and chose not to make in this passage.

THE SWORD OF THE MAGISTRATE

Cheever also leans on Paul's statement in Romans 13 that civil rulers do not "bear the sword in vain," but act as God's servants to punish wrongdoing. This establishes that legitimate government has real authority to maintain order and use force where genuinely necessary. It does not specify *which* punishments a ruler must use, or require lethal force specifically against an offender who is already captured, disarmed, and poses no ongoing threat. "The sword," here, is a symbol of governing authority generally — the same way we might speak of "the crown" or "the gavel" — not literal instructions for how every category of crime must be punished. A ruler who judges that milder penalties serve justice and public safety better is not, by this text, forbidden from choosing them.

PAUL'S EXAMPLE

Cheever also cites Paul's own words before Festus: "If I be an offender, or have committed any thing worthy of death, I refuse not to die" (Acts 25:11), reading this as Paul personally endorsing capital punishment. Read in context, it's simpler than that — Paul is confidently asserting his *innocence*, staking his case on the fact that Roman law, honestly applied, cannot convict him. It isn't an endorsement of the full Roman penal code, which included capital punishment for a great many things no one today, Cheever included, would want to defend. And even granting Paul some general acknowledgment that death is sometimes a rightful penalty under Roman law, that would show only that it was *permissible* in principle — not that it is *required* in every case where it might apply. Paul himself draws exactly that distinction elsewhere: "All things are lawful for me, but all things are not expedient" (1 Corinthians 6:12). The same logic applies to rulers. They may, on rare occasion, have the standing to inflict death. That is a very different claim from being obligated to.

THE SUM OF NEW TESTAMENT EVIDENCE

Add it up, and the entire New Testament case for a mandatory death penalty amounts to one verse in Romans establishing general civil authority, and one

verse in Acts recording Paul's confident claim to his own innocence. Set against that thin foundation is the New Testament's entire tenor: love of enemies, forgiveness offered freely, the criminal treated throughout as a brother capable of transformation rather than a case to be closed. Early Christian practice reflected exactly this reading — the historian Milman records that the emperor Julian, no friend to the church, specifically barred Christians from serving as magistrates because their own principles forbade them from handing down capital sentences. The earliest Christians, in other words, read their own scripture as forbidding what Cheever insists it commands.

THE MOSAIC LAW

Finally, some point to the Mosaic law itself as settling the question, since it explicitly prescribes death for murder. But everyone, Cheever included, already agrees the Mosaic law does not bind Christians — which is precisely why no one proposes reviving its roughly forty *other* capital offenses, several of which (stoning a person to death for gathering firewood on the Sabbath, among them) no serious person today would defend. A code can't be selectively binding, in force for the one provision that's convenient and silently retired for the other thirty-nine. And it's worth remembering what was genuinely humane and forward-looking about that code in its own time: its institution of cities of refuge, protecting people who killed by accident or under provocation from a relative's unchecked revenge, was a real advance over the surrounding custom of unregulated blood vengeance. Read in that light, Mosaic law wasn't establishing an eternal ideal for every future society to imitate literally. It was working to *limit* indiscriminate bloodshed relative to what came before it — which is exactly the same project this book is arguing for now, carried one step further than ancient Israel, under Moses, was yet able to take it.

CONCLUSION

We began with a single question: ought human hands to punish crime with death? Expediency answers no — the death penalty fails at every legitimate aim of punishment, and actively undermines the deepest safeguard against the violence it claims to prevent. Justice answers no — desert alone cannot justify an irreversible penalty a fallible system will sometimes, provably, get wrong. And scripture, read honestly rather than defensively, answers no as well — commanding forgiveness and reform far more clearly than it commands the gallows, on the strength of one disputed verse from the earliest and least developed stage of revelation, contradicted repeatedly by God's own recorded conduct toward murderers throughout the rest of the book.

I leave the question, as I must, in the hands of the people and legislators who will finally decide it — trusting that their judgment will be shaped by the love, and guided by the wisdom, of the one who takes no pleasure in the death of the wicked, but would rather the wicked turn from their way, and live.

DEFINITIONS AND TERMS

Charles C. Burleigh (1810–1878): American abolitionist, journalist, and lecturer associated with the Garrisonian wing of the American Anti-Slavery Society. Editor of *The Pennsylvania Freeman* and longtime secretary of the American Anti-Slavery Society. *Thoughts on the Death Penalty* (1845) was his most substantial single work.

George B. Cheever (1807–1890): American clergyman and author of *Punishment by Death: Its Authority and Expediency* (1842), the era's most formidable clerical defense of capital punishment. Burleigh's pamphlet is structured as a direct, section-by-section reply to Cheever's arguments from Scripture, deterrence, and historical precedent.

John L. O'Sullivan (1813–1895): New York journalist and legislator whose 1841 *Report in Favor of the Abolition of the Punishment of Death by Law* is one of the two sources Burleigh drew on most heavily. O'Sullivan's report appears as V. 12 of this series.

Charles Spear (1801–1863): American minister and reformer whose *Essays on the Punishment of Death* (1844) Burleigh cites repeatedly, particularly for case examples of wrongful and near-wrongful executions. Spear's work appears as V. 10 of this series.

Jonathan Dymond (1796–1828): English Quaker moral philosopher whose writing on the principles of morality shaped Burleigh's thinking more than any other single source. Dymond argued that the reform of the offender, not retribution, is the primary legitimate purpose of punishment — the position Burleigh opens his own argument with.

The Noahic Covenant (Genesis 9:6): "Whoso sheddeth man's blood, by man shall his blood be shed" — the single verse on which Cheever's scriptural

case for capital punishment primarily rests. Burleigh devotes a substantial portion of Chapter III to disputing both its translation and its status as a binding command.

E. G. Wakefield: English writer whose years of direct observation among condemned prisoners at Newgate Prison provided Burleigh with much of his evidence that fear of execution fails, in practice, to function as the deterrent its defenders claim.

Catherine the Great (1729–1796): Empress of Russia, who continued her predecessor Elizabeth's abolition of capital punishment and explained her reasoning in the legal code she issued for the empire — testimony Burleigh quotes directly as evidence that a major nation had already run the experiment he was proposing.

The Society of Friends: The Quakers, whom Burleigh cites as living evidence that a community raised to revere human life produces markedly less violence than the surrounding population — proof, in his argument, that a cultivated abhorrence of bloodshed restrains crime more reliably than fear of punishment does.

Prudence Crandall (1803–1890): Connecticut educator whose 1833 school for Black girls in Canterbury, Connecticut, was closed by mob harassment and a hastily passed state law. The persecution of Crandall's school was the event that drew Burleigh into the abolitionist movement.

FURTHER READING

ON BURLEIGH AND THE 1845 PAMPHLET

Burleigh, Charles C. *Thoughts on the Death Penalty*. Philadelphia: Merrihew and Thompson, 1845. Second edition, revised. The original text.

"Charles C. Burleigh." *The Burleigh Family of Plainfield, Connecticut: An Anti-Racist Abolitionist Legacy*. San José State University Digital Exhibits. A detailed biographical and archival account of Burleigh's life and family.

RELATED VOLUMES IN THE ABOLITION CLASSICS

Rush, Benjamin. *Considerations on the Injustice and Impolicy of Punishing Murder by Death*. V. 4. 1792. Edited and modernized by Jeff Hood. Complicit Press, 2026. The founding document of American abolitionism, written fifty years before Burleigh's pamphlet and a direct ancestor of it.

Beccaria, Cesare. *An Essay on Crimes and Punishments*. V. 5. 1764. Edited and modernized by Jeff Hood. Complicit Press, 2026. The foundational Enlightenment argument against the death penalty, part of the broader intellectual tradition Burleigh inherited.

Livingston, Edward. *Argument Against Capital Punishment*. V. 6. 1833. Edited and modernized by Jeff Hood. Complicit Press, 2026. Cited directly by Burleigh on the psychology of deterrence and the disgrace of public execution.

Spear, Charles. *Essays on the Punishment of Death*. V. 10. 1844. Edited and modernized by Jeff Hood and Kat Bodrie. Complicit Press, 2026. One of the two sources Burleigh drew on most heavily, published one year before his own pamphlet.

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 other of Burleigh's two primary sources, and the most comprehensive American legislative argument against capital punishment before the Civil War.

COMPLICIT PRESS

THE ABOLITION CLASSICS

The texts that built the case against the death penalty