

ESSAYS ON THE PUNISHMENT OF DEATH

CHARLES SPEAR

Edited and Modernized by

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T H E A B O L I T I O N C L A S S I C S

The texts that built the case against the death penalty



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Text newly set and modernized from the fifth edition as digitized by Google Books.

This edition is meant to be an informative resource. Please see the original 1844 edition when quoting Spear for scholarly or academic purposes. A brief list of Further Reading is at the end of the book for those who wish to situate the work in its historical context.

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FOREWORD

There is a smell to a death chamber. Nobody tells you this before the first time. You learn it the way you learn most things in this work — by standing inside what you could not have imagined, with your body doing the knowing before your mind catches up. It is antiseptic and close, and underneath the chemical cleanliness there is something else, something older, that no amount of institutional scrubbing has ever removed.

I have stood in eleven of these rooms. I know the smell. I know what it means when a man's eyes go still. I know the sound a body makes when the state is finished with it. And I know — with a certainty that has only deepened with every year and every execution — that what happens in those rooms is wrong. Not complicated. Not a matter of competing values requiring careful balancing. Wrong. Absolutely, theologically, irremediably wrong.

Charles Spear knew it, too. He knew it in 1844, before the language we now use for these things existed, before there was a movement to belong to or a coalition to join. He knew it as a minister of God standing before a congregation that needed to hear something true, and he said it. He said it across sixteen essays, two appendices (not included here), and enough footnotes to bury the objections of every comfortable theologian who had ever justified the scaffold. He put it into the world and he trusted that the world would eventually catch up.

The world has not caught up. This is why you are reading this book. And this is why I will say what American history has been too slow to say plainly: Charles Spear is the father of modern abolitionism. The title belongs to him not as an honor or prize, but as a fact. Before Spear, the opposition to capital

punishment was a series of gestures: a pamphlet here, a legislative report there, a sermon that circulated among the already-convinced. With Spear, it became an argument. Complete. Systematic. Unanswerable. He built it and he handed it to us and we have been living in the shadow of our failure to receive it ever since.

I want to say something about prophets, because that is what Charles Spear was, and because we have so domesticated the word that it no longer carries the weight it should. A prophet is someone who sees what is true when the rest of the world has agreed to look away, and who cannot stop saying so, and who suffers for it, and who says it anyway. A prophet stands at the intersection of the holy and the political and refuses to let either side off the hook. A prophet speaks from inside the wound. By that definition — the only definition that matters — Charles Spear is among the greatest prophets this country has produced. He saw that the state had no right to take what God had given. He saw it completely, without flinching, before it was safe or fashionable or even particularly legal to say so.

I am a priest. I am a theologian. I am a witness. I have stood in eleven execution chambers and held the hands of dying men and prayed over bodies that the state was finished with, and I called them sacred because God made them and God does not make what is disposable. That is my vocation, my calling, and the whole of what I bring to this book. I come to Spear's work as a priest comes to scripture: not to extract arguments but to be steadied, to be reminded that someone long before me had seen what I was seeing and had refused to go quiet about it. What he offers is a theology so complete and honest that I have returned to it again and again in the years of this work not because it tells me anything I did not already believe, but because it confirms, in the language of

1844, that the belief is true and the witness is necessary and the work will continue until the scaffold passes into oblivion.

The church broke my heart before the state did. I came to this work as a Christian minister, which means I came to it with a prior wound. The church in America has been, with a few luminous exceptions, a chaplain to the execution. It has blessed the machinery of death, provided spiritual comfort to the families of victims in language that too often slides from comfort into vengeance, and it has left the men on the gurney to strangers. I became a stranger because the church would not go. I went because someone had to, and because I believed — still believe — that the one who dies on the gurney is as much the image of God as the one who pressed the needle, as the one who signed the warrant, and as you, reading this now.

Spear believed this, too. His word for it was “brother”: “the criminal, however degraded, is still a man and a brother.” I have read that sentence in a lot of rooms. I have read it to men who were hours from dying and who needed to hear that someone in the tradition they had been handed — the tradition that had so often failed them — was willing to say it plainly. The criminal is a man and a brother. There is a whole theology in those eight words, an entire politics. There is a reason why those eight words were as dangerous in 1844 as they are now.

They are dangerous because they close the distance. The whole machinery of execution depends on distance — physical, moral, linguistic. We do not say, “We kill people.” We say, “The state administers capital punishment.” We do not say, “A man who was someone’s child died in a room that smelled of antiseptic and something older.” We say, “The sentence was carried out.” Distance is how a society convinces itself that what it is doing is not what it is doing. Spear collapsed that distance. He named it. He looked directly at what

the law called a condemned person and said: “brother.” Not in spite of what that person had done. Because of who that person was.

I have been asked why I do this work. I have been asked in television studios and in prison hallways and in the dark hours before an execution when the question stops being rhetorical. I do this work because I believe that the moment a society decides that some lives are forfeit, something essential goes out of it — something sacred, something that cannot be recovered by subsequent good behavior or enlightened policy. I believe this because of what I have seen in the chambers. I believe it because of what I see in the faces of the men I accompany. And I believe it because of what I read, in this book, in the voice of a Universalist minister who lived and died a hundred and sixty years before I stood in my first chamber and encountered the smell.

Spear was not the first to oppose the death penalty. Benjamin Rush was writing against public execution in the 1790s, and Rush's voice — “The power over human life is the sole prerogative of Him who gave it” — is the first voice you hear when you open the essays themselves. But Spear was the one who assembled everything. The whole argument, in both its forms: the argument from human reason and the argument from the Word of God. He did not trust one without the other. He would not let the reader hide in one and ignore the other. If you were going to argue from reason, he had the evidence. If you were going to argue from scripture, he had been there too, and he was waiting, and he had read more carefully than the people using the text to justify the scaffold.

His reading of Genesis is still the most honest I have encountered. When Cain killed Abel — the first murder, in the first human family — God did not execute him. God marked him and sent him into the world. The first act of divine justice after the first human death was protection, not punishment. It was the insistence, from the very beginning of the story, that even the man with

blood on his hands was not forfeit — that something in him remained sacred and worth preserving. This is not a minor textual point. This is the whole argument.

There is something the abolition movement has not wanted to say plainly, and I am going to say it here because Spear would have said it and because the failure to say it has cost us. We have turned abolition into a politics. We have made it a platform and a coalition position and a thing you declare in your biography. And in doing so we have bled it of the one thing it has to have to be true: the willingness to stand in the chamber. Not metaphorically. Not in solidarity vigils outside the prison gate, though those matter, too. I mean the willingness to go into the room where a human being is about to be killed by the government and to stand there, to be present, to refuse to let the state do it alone. That willingness is not a political position. It is a spiritual discipline. Spear understood the discipline even if he never had occasion to practice it in the form that I have. The whole of this book is a refusal to let the state do it alone.

I have held the hands of men in those last hours. I have listened to them talk about their mothers, their children, the specific meals they were thinking about, the way the light looked that morning through the narrow window of the death watch cell. None of them were abstractions. None of them were the worst thing they had ever done, though some of them had done very terrible things. They were men. They were, as Spear insists and as I have seen with my own eyes, capable of being reached. The chord was there. It could be made to vibrate. And the state came in with its machinery and silenced it, called it justice, and sent me back out into a world that had not changed.

What Spear gave the abolitionist tradition is the complete refusal to accept any of the arguments the other side advances. He does not concede that execution

deters crime, because it does not, and he says so with evidence. He does not concede that some crimes place a person beyond the reach of human sympathy, because they do not, and he says so from scripture. He does not concede that the state has the right to do what God has not authorized, because it does not, and he says so from theology and from the history of every nation that has tried it. This completeness is what makes the book prophetic rather than polemical. A polemic picks its ground and defends it. A prophecy surveys the whole of reality and names what is true.

The silence of the church in the face of state killing is a theological emergency. I say this as a pastoral statement, from the altar of the execution chamber. When a person is brought to a death chamber, the church is implicated in what happens there, whether the church acknowledges it or not. Every bishop who has never spoken, every pastor who has preached from Romans 13 as though Paul's words were a blank check for the state to do anything it pleased, every congregation that has prayed for the families of victims and never once prayed for the person strapped to the gurney — they are part of what makes the room possible. Spear knew this. He addressed it directly and at length. He had no patience for the theological scaffolding that held up the physical scaffold. Neither do I.

Read this book slowly. Read it as a spiritual discipline, not as an academic assignment. The difference matters. Read it as someone who is deciding, not someone who has already decided. Read it as someone who understands that the question it is asking — whether any human institution has the right to take what only God can give — is not a settled question. It has never been settled. It is argued, right now, in every state that still has a death row, and in every conversation about crime and punishment and what we owe each other as children of God.

Read it and then go somewhere uncomfortable. Read it and then sit with someone the law has decided is finished. Read it and then ask yourself, honestly, whether you believe what Charles Spear believed — that there is a chord in every soul that can be made to vibrate. If you believe it, then the only question left is whether you are willing to say so, and to keep saying so, for as long as it takes.

The scaffold has not yet passed into oblivion. It is still with us, cleaner and more clinical, producing the same smell. We are still needed. The argument is still true. This book is still alive.

Spear closed his preface with a modest hope: that the scaffold would one day pass into oblivion. He did not live to see it. He died in 1863, the year the war that had been building all through his ministry finally consumed the country. The men he had written about — the men in the Virginia table, the men whose punishments were calibrated so precisely by the color of their skin — were still dying at the hands of the law and at the hands of those who believed the law could not reach them. Abolition, in his lifetime, failed. The argument was complete. The argument was right. The argument failed. I say this not to discourage but to consecrate. The prophets were not successful by any ordinary measure. They were faithful. They said the true thing in the true way and they handed it to the future and they trusted that the future would have the courage to receive it. This is what Spear did. This is what we are called to do. We are not guaranteed to win. We are called to be faithful, and to keep saying what is true, and to refuse — as Spear refused, as Rush refused, as every abolitionist who came before us refused — to let the state do it alone.

Come. Let us abolish the death penalty.

The Rev. Dr. Jeff Hood
North Little Rock, Arkansas
May 27, 2026

EDITORS' INTRODUCTION

Charles Spear's *Essays on the Punishment of Death*, first published in Boston in 1844, is one of the most sustained American arguments against capital punishment written in the antebellum period. Spear (1801–1863), a Universalist minister in Boston, addressed his book to a moment of unusual ferment. In the decade before its publication, Pennsylvania had moved its executions out of public view (1834), Michigan had abolished the death penalty for all crimes except treason (1846 — two years after this book), and similar bills were debated in Massachusetts, New Hampshire, Vermont, Maine, New York, and Wisconsin. The reform Spear championed was widely discussed but, in Massachusetts, never enacted. Spear and his contemporaries laid the groundwork for the long, unfinished American argument that continues to this day.

Spear was a member of a recognizable mid-century reform network. He cites Robert Rantoul, Jr., the Democratic legislator whose 1836 report to the Massachusetts House made him the most cited death-penalty abolitionist of the period; John L. O'Sullivan, the editor of the *United States Magazine and Democratic Review*, who produced an influential 1841 report for the New York Assembly; and Thomas C. Upham, his correspondent and the dedicatee of the book, a professor at Bowdoin College whose *Manual of Peace* (1836) was a touchstone for the era's pacifist and reform thought. Beneath these direct citations lies the older Enlightenment argument — Beccaria's *Dei delitti e delle pene* (1764), Bentham, and the French criminologist Charles Lucas — which Spear quotes from translations of his own.

The book's structure is straightforward and rhetorical. Part I ("History and Observation") assembles ten arguments from secular reasoning: that human life is sacred (Essay I); that the death penalty appeals to revenge (II); that it makes juries reluctant to convict (III); that it brutalizes prisoners, spectators, and households (IV–VI); that abolition has been tried with success elsewhere (VII); that the penalty is a tool of political tyranny (VIII); that it terminates the soul's probation (IX); and that it is irreversible upon error (X). Part II ("Sacred Scriptures") answers the religious case for the penalty by examining the story of Cain (I), the covenant with Noah (II), the Mosaic code (III), the teachings of Christ (IV), common objections (V), and reasons for encouragement (VI).

Spear writes for an educated lay reader rather than a specialist. He marshals testimony from English jurists (Blackstone, Mackintosh, Romilly), American reformers (Rantoul, O'Sullivan, Livingston, Upham), French theorists (Lucas, the writer he calls "M. Urtis" — likely a Spear misprint or unidentified figure), and missionary accounts from Tahiti, Abyssinia, and the Pacific. The argument is by accumulation: each anecdote, each precedent, each scriptural reading is added to the pile. The book is most powerful where it documents specific cases — the "Condemned Forger," the Tahitian chiefs' debate on the death penalty, the William Ladd anecdote that closes Appendix II — and most dated where it relies on phrenological or characterological reasoning, then a mainstream science.

What gives the book continuing interest is not Spear's metaphysics but his case-based method and his moral steadiness. He insists, repeatedly, that "the criminal, however degraded, is still a man and a brother" — a phrase whose echo of the British antislavery slogan "Am I not a man and a brother?" places him firmly in the broader humanitarian movement of his age.

Spear's original prose is rooted in the cadences of 1844 — long compound sentences held together by semicolons, a persistent editorial “we,” verb forms such as *bath* and *doth*, and constructions like *wherefore*, *howbeit*, and *hitherto* that have largely disappeared from common use. This edition undertakes a full and deep modernization of that prose. Archaic verb forms are replaced with their current equivalents; Spear's editorial plural is converted throughout to the authorial first-person singular; very long sentences are broken at natural clause boundaries; passive constructions are shifted to active voice where the meaning is unaffected. The goal in every case is to produce a text that reads as though written now, without touching the substance of the argument. Spear's logic, evidence, examples, and moral positions remain exactly as he set them down. Quotations from Rush, Rantoul, Blackstone, O'Sullivan, and every other author Spear cites are preserved verbatim — only Spear's own prose is modernized.

Spear used footnotes extensively throughout the original edition. Some supply source citations; others add extended commentary, additional evidence, or lengthy quotations from other writers. In this edition, relevant footnote content has been moved into the body of the text. Citations appear as parenthetical references in the sentence they support. Explanatory notes and supplementary quotations are woven into the surrounding paragraphs as additional sentences. This choice rests on a simple conviction: everything Spear wrote is part of his argument, and readers benefit most from encountering it in the natural flow of the prose rather than at the bottom of a page in reduced type.

The text is set from the fifth edition (Boston, 1844), digitized by Google Books from the copy in the Andover-Harvard Theological Library. The digital transcription introduces several kinds of noise common to optical character

recognition of nineteenth-century printing: running page-headers embedded mid-paragraph, typesetter's signature marks, end-of-line hyphenations carried across line breaks, and occasional characters misread by the scanner. All of these have been corrected.

The two appendices that appear in the 1844 edition have been omitted from this edition. Appendix I, "Capital Offences in the Code of the Union and the Several States," is a state-by-state survey of capital statutes as they stood in 1844. It was useful as a reference work in its time but has no practical application to the contemporary abolition argument: the codes have changed, many of the states have changed, and the racial double standard the appendix documents — most starkly in Virginia's three-column table distinguishing punishments for enslaved Black people from punishments for white persons — is addressed directly in this edition's foreword and editorial notes. Appendix II, "Illustrations of Kindness," collects short narratives showing the reforming power of humane treatment of prisoners. Both appendices can be read in full in the original 1844 edition, which is freely available through Google Books and other public digital archives. What is essential to Spear's argument is in the essays themselves.

Several terms that were standard in 1844 carry different weight today. Spear's use of "negro" and "negroes" in his commentary on Virginia's criminal code has been replaced throughout with "enslaved Black people" and "enslaved Black person," reflecting the humanity of those the law treated as property. The word "savage," which Spear applies to pre-state and indigenous societies, has been replaced with "indigenous populations" or "indigenous," since Spear's argument in these passages is consistently sympathetic to those societies and the word itself carries no useful meaning that a neutral alternative cannot carry. "Heathen" has been replaced with "non-Christian peoples," and

“Indians” with “Native peoples.” The language of slavery — “slave,” “slaves,” “slavery” — has been retained throughout because these are the legally and historically precise terms for the institution Spear is describing, and softening them would obscure the brutality of the system his appendix documents. Where Spear quotes directly from statutes, court records, or other authors, the original language is preserved exactly.

The Death Penalty Abolition Classics series exists to put the essential texts of the abolitionist tradition into the hands of the people who need them most — students, organizers, clergy, and anyone willing to think seriously about why the state should not kill. Charles Spear built the complete argument in 1844. The editors have made it readable in 2026. It is a privilege to publish this modernization, and a reminder that the argument has never been more necessary or more alive.

ESSAYS ON THE
PUNISHMENT OF
DEATH

CHARLES SPEAR

P R E F A C E

Theodoric the Great, who ruled the Gothic kingdom in Italy, is said to have governed by an excellent maxim: “It is the duty of a benign prince to be disposed to prevent, rather than to punish offences.” If every ruler had been guided by that principle, no book on the punishment of death would ever have been necessary. Crime would have withered away, and the scaffold would have passed into oblivion long ago. But few rulers have grasped the principle, and fewer still have put it into practice.

Because that is the state of things, I have felt compelled, out of a sense of duty, to write a book devoted entirely to the death penalty. I have thought about it deeply for years. A few months ago, at the urging of several trusted friends, I took the subject up again. At first the work looked manageable. But the closer I examined it, the larger it grew, until I saw that it reaches down to the very foundation of society—that it is, in fact, the starting point of every moral reform. For how can any community expect to flourish until it first accepts that human life is sacred? My aim throughout has been to establish one great truth: that the criminal, however degraded, is still a man and a brother, and as such deserves human sympathy. I have tried to prove it by argument and by a range of real cases, all of them showing that there is a chord in every soul that can be made to vibrate.

The book has two parts. The first gathers facts and arguments from history and observation; the second rests on Scripture.

I had meant to take up several other subjects closely related to the death penalty. I even announced as much in a prospectus printed in the fifteenth edition of my book on the Titles of Jesus: moral insanity, the treatment of

prisoners, and the degeneracy of the press in its reporting of crime. All of these, and other related questions, had a claim on my attention. But I found it impossible to do any of them justice within so limited a plan—least of all moral insanity, a subject that involves a great many facts and leads into long chains of metaphysical reasoning and into the study of all sorts of mental phenomena. Several friends advised me to put my whole effort, first, into abolishing the death penalty, and to leave the related subjects for some later work.

Along the way I have been encouraged and sustained by a few good friends to whom I owe a great deal. First among them is Robert Rantoul. When he learned that I meant to write on this subject, he generously offered his help and sent me many valuable English publications. Anyone who knows the history of legislation in Massachusetts knows how much the public owes him for his invaluable reports.

I have also drawn freely on the work of J. O’Sullivan of New York, who produced one of the most valuable reports ever issued by any legislative body.

I cannot speak warmly enough of another friend, for the encouragement he gave me on this subject and on a related one—the question of war. On two trips to Maine I had the pleasure of meeting Professor Upham, that true friend of humanity in every form, whether humanity debased by crime, trodden down by slavery, or crushed by war. Honestly, I doubt I would have brought this book out now without his encouragement. Throughout the work I have leaned often on his thinking, which is beautifully set down in his *Manual of Peace*—a book whose style I have never seen surpassed.

While writing the essay called “Dangerous to Liberty,” I had the good fortune to come across a stirring speech by O’Connell, the “great agitator,” delivered before the London Society for the Diffusion of Information on the Subject of

Capital Punishment. His voice reached me in solemn tones from across the Atlantic—and by a strange coincidence, at the very moment I was drawing on that speech, he himself stood arraigned on charges of treason, charges that took seventy hours simply to read aloud. Treason is a capital offense in every government on earth. Politicians regard it as the most heinous and aggravating crime of all; it holds roughly the same rank among them that heresy holds among the religious. No crime is more vaguely defined, and for none has more blood been spilled. Lafayette captures this grim truth perfectly in the motto on my title page, written with the French Revolution in mind. The death penalty has fallen hardest on the hero, the martyr, and the scholar. How many of them have died beneath the bloody axe—men whose minds reached far beyond their age, misunderstood and unappreciated, cut down. What a melancholy chapter could be written on the fate of those who pushed humanity forward—and what a brilliant chapter, too, every line of it sparkling with the facts of human progress.

In working through the Scriptures, I spent a great deal of time counting the offenses in the Code of Moses. For all the ground critics have covered, I could find no one who had collected and arranged those offenses by number. Some readers may think I have gone too far. One objection in particular may be raised: that the phrase “cut off” does not mean death in the formal, capital sense. A single passage about the Sabbath, in Exodus 31:14, will confirm the reading I have adopted.

To make the book complete, I also spent considerable labor establishing the number of capital offenses in the federal code and in the codes of the several states. An attorney here in the city kindly helped me with this, and I have named him with gratitude in the notes to the various codes in the first appendix. I have never seen such a tabulation in any other work. It will be of

real service to the reader, letting him see at a glance what counts as a capital offense under federal law or in any of the twenty-six states of our republic. Setting the law before the public in this simple form may even help prevent crime.

I have done what I could, given the state of my health, my limited opportunities, and the narrow plan I was obliged to set for myself so that the book would stay within reach of ordinary readers. The work has informed my own mind and deepened my heart's investment in the broader cause of human kindness. My fervent prayer is that it will be a blessing to others—that it will, at the very least, bring one wanderer back from crime and degradation to the path of righteousness and truth. I keep always in mind that “joy shall be in heaven over one sinner that repenteth more than over ninety and nine just persons that need no repentance.”

Charles Spear

Boston, Massachusetts

January 1, 1844

PART I

History and Observation

ESSAY I

Sacredness of Human Life



“The power over human life is the sole prerogative of Him who gave it. Human laws, therefore, are in rebellion against this prerogative when they transfer it to human hands.”

—Dr. [Benjamin] Rush

Our first question concerns the authority for capital punishment. I won’t dwell on this part of the subject for long, since there are other considerations the general reader will find more compelling.

Keep one thing in mind throughout: my central aim is to show that capital punishment is unjust. What ought to be done with a prisoner instead belongs to a different book. First, abolish this cruel, bloodthirsty law; then, let mercy and justice do their work.

I want to establish, plainly, that life is sacred, inalienable, a gift from heaven—a truth our own Declaration of Rights acknowledges. Settle this question once and for all, and society will finally begin to improve: human beings will be respected, and the criminal will be regarded with compassion, as a man and a brother.

It is often said that society is a compact, and that each of us must surrender some portion of our rights to the government we live under. Rantoul argues that there is no such compact: "It belongs to those," he says, "who claim for society the rightful power of life and death over its members, as a consequence of the social compact, to show in that compact the express provisions which convey that power. But it cannot be pretended that there are, or ever were, such provisions. It is argued, as boldly as strangely, that *this right is to be implied from the nature of the compact*. It may seem unnecessary to reply to such an assumption. But it has often been advanced, and for that reason deserves our notice. In point of fact, there is no social compact actually entered into by the members of society. It is a convenient fiction—a mere creature of the imagination—a form of expression often used to avoid long and difficult explanations of the real nature of the relation between the body politic and its individual members. This relation is not, strictly speaking, that of a compact. It is not by our voluntary consent that we become, each one of us, parties to it. The mere accident of birth first introduced us, and made us subject to its arrangements, before we were, in any sense, free agents. After we had grown to the age of freemen (Editors' note: come of voting age), and had a right to a voice in the common concerns, what alternatives had we then left? Simply these. Resistance to the social compact, as it is called, under the prospect of producing ruin, confusion, anarchy, slaughter almost without bounds, and finally ending in a new form of the social compact, much more objectionable than that which had been destroyed, if the resistance should prove successful: should it fail of success, incurring the penalty of treason, a cruel death, to such as have not been fortunate enough to fall in the field of battle. Flight from the social compact, that is to say, flight not only from one's home, friends, kindred, language and country, but from among civilized men, perhaps, one might say, from the fellowship of the human race. Or, lastly, submission to the social

compact, as we find it, taking the chance of our feeble endeavors to amend it, or improve the practice under it. To this result, almost every man feels compelled by the circumstances in which he finds himself. Circumstances so strong as to force from an inspired apostle the declaration, though he wrote under the tyrant Nero, a monster of depravity, ‘the powers that be are ordained of God; whosoever therefore resisteth the power, resisteth the ordinance of God; and they that resist shall receive unto themselves damnation.’”

But even granting everything the staunchest defenders of the social compact claim, the question still returns. Can an individual hand society a right his Creator never gave him in the first place? Does anyone have the right to take his own life? “Every Christian,” says Rantoul, “must answer, no. A man holds his life as a tenant at will—not indeed of society, who did not and cannot give it, or renew it, and have, therefore, no right to take it away—but of that Almighty Being whose gift life is, who sustains and continues it, to whom it belongs, and who alone has the right to reclaim his gift whenever it shall seem good in his sight. A man may not surrender up his life until he is called for. May he then make a contract with his neighbor, that in such or such a case his neighbor shall kill him? Such a contract, if executed, would involve the one party in the guilt of suicide, and the other in the guilt of murder. If a man may not say to his next neighbor, ‘When I have burned your house in the night time, or wrested your purse from you on the highway, or broken into your house in the night, with an iron crow, to take a morsel of meat for my starving child, do you seize me, shut me up a few weeks, and then bring me out and strangle me. And in like case, if your turn comes first, I will serve you in the same way’—would such an agreement between ten neighbors be any more valid or justifiable? No. Nor if the number were a hundred, instead of ten, who should form this infernal compact, nor if there should be six hundred thousand or seven hundred thousand, or even fourteen millions, who should so agree, would this increase

of the number of partners vary one hair's breadth the moral character of the transaction. If this execution of the contract be not still murder on the one side, and suicide on the other, what precise number of persons must engage in it, in order that what was criminal before may become innocent, not to say virtuous. And upon what until now unheard of principles of morality is an act of murder in an individual, or a small corporation, converted into an act of justice whenever another subscriber has joined the association for mutual sacrifice? It is a familiar fact, in the history of humanity, that great corporations will do, and glory in, what the very individuals composing them would shrink from or blush at. But how does the division of the responsibility transform vice into virtue, or diminish the amount of any given crime? The command, 'Thou shalt not kill,' applies to individual men as members of an association, quite as peremptorily as in their private capacity."

Some writers, ancient and modern, have defended suicide. One French author, arguing the case, offers this: "I do not," says he, "regard as a very serious objection that pretended prohibition of suicide, whence it has been argued that we cannot dispose of human life. After Rousseau's admirable letters on suicide, he must be a bold man who would venture an off-hand opinion on such a serious question.

"When my coat straightens me, I throw it off. If my house does not suit me, I quit it. Why should I not abandon life?

"It is true, the indigenous may starve, or freeze, rather than kill himself. But yet he kills his venerable father, with his own hand, to save him from suffering under a decaying constitution, and the pangs of a lingering death.

"Besides, to start from a questionable point to establish the point in question, is only to settle one doubt by another.

“The objection is a relic of the middle age, when the law punished suicide as a crime. Those punishments have been erased from our statutes. We cannot, therefore, admit that a principle which has been excluded from our criminal legislation, should continue to constitute one of its elements.”

This reasoning will strike an American lawmaker as very strange. The author clearly felt the weight of the objection—that a man who has no right to take his own life cannot hand that right to anyone else—and to get around it he adopts this bizarre position. He goes even further, trying to show not only that suicide is justifiable, but that every religious idea has to be driven out of the mind before anyone can defend capital punishment consistently. “It has been objected, that there is atheism in thus cutting off the probationary state of a soul. I should answer this sufficiently, if I should only quote this fundamental maxim of our legislation; ‘The law out to be atheistical.’ This astounding proposition M. Urtis thus explains in a note: ‘Not that I would HERE preach atheism. I only contend, that as the law recognizes religious freedom, it cannot assume as a fundamental principle the doctrines of any particular faith. It must regard only the general good of society. No one can tell where such a course will end, if the necessities of society are to be subjected to all the requisitions of theology.’”

I am not saying that those who defend capital punishment are atheists. I am saying that, to be consistent, they have to concede that suicide is justifiable—because they generally insist on the absolute authority of human government, and on the idea that in becoming members of a government we surrender a portion of our rights.

“When we surrendered to society the smallest possible portion of our liberty, to enable us the better to retain the aggregate of rights which we did not surrender, did we concede our title to that life with which our Creator has

endowed us? Is it to be conceived that we have consented to hold the tenure of our earthly existence at the discretion or the caprice of a majority, whose erratic legislation no man can calculate beforehand? While our object was to preserve, as little impaired as might be possible, all our rights, which are all of them comprehended in the right to enjoy life, can we have agreed to forfeit that right to live while God shall spare our lives, which is the essential precedent condition of all our other rights? Property may be diminished, and afterwards increased. Liberty may be taken away for a time, and subsequently restored. The wound which is inflicted may be healed, and the wrong we have suffered may be atoned for. But there is no Promethean heat that can rekindle the lamp of life, if once extinguished. Can it be, then, that while property, liberty, and personal security are guarded and hedged in on every side, by the strict provisions of our fundamental constitution, that life is unconditionally thrown into the common stock, not to be forfeited in a specific case, agreed upon beforehand at the organization of our society, but in all such cases as the popular voice may single out and make capital by law? Have we entered into any such compact?

“The *burthen of proof* is wholly upon those who affirm that we have so agreed. Let it be shown that mankind in general, or the inhabitants of this Commonwealth in particular, have agreed to hold their lives as a conditional grant from the state. Let it be shown that any one individual, understanding the bargain, and being free to dissent from it, ever voluntarily placed himself in such a miserable vassalage. Let there, at least, be shown some reason for supposing that any sane man has, of his own accord, bartered away his original right in his own existence, that his government may tyrannize more heavily over him and his fellows, when all the purposes of good government may be amply secured at so much cheaper a purchase. In no instance can this preposterous sacrifice be implied. It must be shown by positive proof that it

has been made, and until this is undeniably established, the right of life remains among those reserved rights which we have not yielded up to society.”

Judging by the following figures on suicide in France, the people there were not slow to put M. Urtis’s reasoning into practice:

“INCREASE OF SUICIDES IN FRANCE. It appears, from official documents contained in recent Paris papers, that the number of suicides in France increases each year. In the year 1839, they amounted to one thousand seven hundred and forty-seven, being one hundred and seventy-one more than in 1838, three hundred and four more than in 1837, and four hundred and seven more than in 1836. The department of the Seine figures for four hundred and eighty-six, nearly one fifth of the entire. Six hundred and eighty-eight females are returned among the suicides. Each period of life, from infancy to old age, has paid its tribute to this malady. There are two children of from eight to nine years of age, two of eleven, one of twelve, two of thirteen, three of fourteen, nine of fifteen, one hundred and forty-seven of sixteen to twenty-one, three hundred and thirty-five of sixty, one hundred and eighty-nine of seventy, and forty-one of eighty. The means most frequently used to destroy life are submersion and strangulation. Nine hundred and fifty-eight individuals drowned themselves, eight hundred and sixteen hung themselves, one hundred and eighty-nine suffocated themselves with the fumes of charcoal, which appears to be the principal mode resorted to by the Parisians.”

Beccaria has some good remarks on this subject. “What right, I ask, have men to cut the throats of their fellow-creatures? Certainly not that on which the sovereignty and laws are founded. The laws, as I have said before, are only the sum of the smallest portions of the private liberty of each individual, and represent the general will, which is the aggregate of that of each individual. Did anyone ever give to others the right of taking away his life? Is it possible that in

the smallest portions of the liberty of each, sacrificed to the good of the public, can be contained the greatest of all goods, life? If it were so, how shall it be reconciled to the maxim which tells us, that a man has no right to kill himself? which he certainly must have, if he could give it away to another.”

“The case of a civil ruler and his subject,” says the author of the essays of Philanthropos, “is much like that of a father and his minor son. If the son behave himself unseemly, the father may correct him. If, after all due admonition and corrections, the son shall prove to be incorrigible, the father may expel him from his family; and he may disinherit him; but he must not kill him. All civil governments originated in families. The father of the family had a natural right of jurisdiction over his descendants, and an acquired right on account of the support and protection afforded them during their infancy and childhood. And, by the alliance or union of many families, it became national. But the stream cannot rise higher than the fountain. If no father have the right to inflict the punishment of death on his minor son for any crime, then a million of fathers would have no right, by themselves or their representatives, to do it. In such case, numbers, power, and substitution, considered either severally or jointly, cannot create or increase a right. And I humbly conceive that the rightful jurisdiction of the civil magistrate over any member of the community never can rise higher than that of a father over his son during his minority.”

“We maintain,” says Professor Upham, “that the state, in inflicting Capital Punishments, exercises a power which was never granted it. And for this simple reason, that individuals, who are the source of all the authority lodged in the state, have no power to grant it. No man can grant to another what he does not possess himself. And as no man has the right to take away his own life, (a principle, upon which writers on moral philosophy, and mankind generally,

are more universally agreed than upon almost any other,) it follows that no man has the right to authorize another to take away his life. So that the infliction of Capital Punishments, examining the subject in this direction, is undoubtedly to be regarded as usurpation and tyranny.”

So much for one side of the question. Here now is a writer (from *Christian Spectator*, September 1830, p. 509) who takes the opposite ground—that society does have the right to take life:

“It is said,” he observes, “by some writers on this subject, that no man has yielded to others, or to the government under which he lives, the right to take away his life; that it is a measure of legal violence, and not the act of his own consent or free will; that it usurps the prerogative of Heaven. Stretch the principle a little farther, and allow us to ask in return, whether any villain ever gave up of his own free will the right to imprison him, or to confiscate his property. And the argument, thus carried to its full extent, annihilates every species of punishment. But the laws, the government, do not ask his consent. Their only query is, Does the safety of the public call for a capital sentence? If it does, they pronounce it; if it does not, his life is spared.”

By this reasoning, it seems, we are to be governed entirely by expediency—one of the most dangerous principles ever admitted into moral philosophy. “When the advocates of sanguinary examples are driven from every position of morality, reason, and religion, they entrench themselves behind that of *expediency*. But *expediency* was the doctrine of Pilate, who, on that principle, which is so much in acceptance among modern statesmen, put one, in whom he ‘found no fault’ to death, in preference to the murderer Barabbas. There is no crime in statesmanship, no vice in legislation, no error in the administration of justice, that ‘expediency’ cannot sanction! It is the doctrine invented by knaves to impose upon fools. When men abandon the immutable principles

that distinguish right from wrong, and tell us that it is *expedient* to do a thing which it is not *right* to do, we think very contemptuously of such men's understandings, or very unfavorably of their hearts: for either folly or dishonesty is the source of their actions.

"The question then returns, where does society get its right of putting men to death? And the answer is, *Nowhere*. This pernicious system is to be regarded as one of the thousand usurpations, that have been introduced by mistake or by cruelty, and which are rendered venerable and sacred by lapse of time. Like the use of the rack, the trial by ordeal, the enslavement or destruction of prisoners taken in war, the poisoning of wells and fountains, and other pernicious and unlawful practices, which were once authorized, and perhaps considered essential to the existence of society, the time is coming, when it will be condemned by the good judgment and the humane feelings of mankind, and wholly renounced as both inexpedient and wrong."

I sincerely believe that the only principle that will ever secure to humanity its just rights is the inviolability of human life. We have to begin here. Once this is truly felt and understood, we can expect an end to tyranny and oppression across the world. Life is sacred. It belongs to the One who gave it; it remains in the hands of its Author. The voice of God has issued its perpetual, universal command: "Thou shalt not kill." That voice speaks from the very depths of our nature—"Thou shalt not kill!" The strange union of spirit and body that makes up the fearful, unfathomable mystery of our humanity is not to be severed, neither by the hand of a government nor by the hand of an individual, "for in the image of God made He man." That image must not be defaced. It must be respected and treated tenderly, even in the murderer's own person, though he be drenched in blood. "Ah!" exclaims M. Lucas, "the best means of recalling to the guilty culprit the sense of the sacred character of the duty he has

violated, is it not to respect it in his own person? ... When he shall behold the society abstaining from putting him to death-him, the murderer-he will then comprehend that man is indeed forbidden to attack the life of his fellow-man, and then alone will he conceive the thought of all the sanctity of the duty he has violated, all the enormity of the crime he has committed.”

“Let the idea of crime, horrible crime,” says Rantoul, in his report to the Massachusetts Legislature, in February 1836, “be indissolubly and universally associated with the voluntary and deliberate destruction of life under whatever pretext. Whoever strengthens this association in the public mind, does more to prevent murders than any punishment, with whatever aggravation of torture, can effect through fear. The denomination of Friends have always been educated in this idea, and among them murders are unknown. The strongest safeguard of life is its sanctity; and this sentiment every execution diminishes.”

I am glad to find that we are not alone in this. A remarkable company is rising up across the civilized world—people whose gifts and character will do honor to this great principle and hasten its acceptance everywhere on earth.

From *Essays, Literary, Moral and Philosophical* by Benjamin Rush, M. D., p. 162, Philadelphia, 1798: “For the honor of humanity it can be said, that in every age and country, there have been found persons in whom uncorrupted nature has triumphed over custom and law. Else why do we hear of houses being abandoned near to places of public execution? Why do we see doors and windows shut, the days and hours of criminal executions? Why do we hear of aid being secretly afforded to criminals to mitigate or elude the severity of their punishments? Why is the public executioner of the law a subject of such general detestation? These things are latent struggles of reason, or rather the secret voice of God himself, speaking in the human heart, against the folly and cruelty of public punishments.”

So let those who love humanity take heart and press forward in the great and blessed work of improving the condition of the criminal—doing away with these terrible punishments, which have only brutalized and hardened the human heart. It is a great work, and for our encouragement we have the words of the Great Teacher: “Inasmuch as ye have done it unto one of the least of these, my brethren, ye have done it unto me” (Matt. xxv. 40).

ESSAY II

Revengeful



“Government has not been slow to punish crime, nor has society suffered for want of dungeons and gibbets. But the prevention of crime, and the reformation of the offender, have nowhere taken rank among the first objects of legislation.”

—Channing

Dr. Franklin tells the story of a horse thief who, when the judge asked whether he had anything to say before sentence of death was passed, replied “that it was hard to hang a man for *only* stealing a horse.” “Man,” replied the judge, “you are not to be hanged *only* for stealing a horse, but that horses may not be stolen.” The anecdote lays bare the true nature of capital punishment: the good of the offender never enters into it. One of the great purposes of any penalty is simply ignored.

You could say of our penal code in general that it looks backward rather than forward. The future good of the criminal never enters the calculation. Channing makes the point well in the epigraph above. Our prisons ought to be

places of repair—not grim cells but hospitals for the moral disorders of the soul. Until they are, we can expect no real good to come from locking a person up.

From “Reports on the Abolition of Capital Punishment” by Rantoul, reprinted by order of the House of Representatives from the documents of 1835 and 1836 (Editors’ note: Spear continues to quote from this document throughout this essay): “When we hear of the perpetration of a crime, we are too apt to think only of punishment. What suffering can be too great for such a wretch! is the exclamation which bursts from almost every lip. The sentiment is worthy of the unlovely doctrines which produce and cherish it. A more benevolent system would excite a different feeling. What can be done to reclaim the unhappy offender? What means can be taken to enlighten his mind, and meliorate his heart? What discipline is best adapted to his mental and moral disorder? What will lead him back to virtue and to happiness most speedily, and with the least pain? Such is the feeling of the mind enlightened by the generous doctrine we have endeavored to establish. Could it but enter the heart of every legislator. Did it but guide the hand that constructs the cell of the poor captive. Did it apportion his pallet of straw and his scanty meal. Did it determine the completeness and the duration of his exclusion from the light of day and the pure breeze of heaven. Did it apply his manacles, (if, disdaining to treat a human being with more indignity than is practiced towards the most savage brutes, it did not dash his chains to the earth,) what a different aspect would these miserable mansions soon assume! What different inhabitants would they contain! Prisons would not then be the hot-beds of vice, in which the youthful offender grows into the hardened criminal, and the want of shame succeeds the abolition of principle, but hospitals of the mind, in which its moral disorder is removed by the application of effectual remedies.”

That capital punishment does no moral good even as an example, I will show in the essay on the influence of public executions.

A very able writer offers these definitions of punishment and revenge. By his reasoning, both fit the same description: "The infliction of pain in consequence of the violation or neglect of duty." The question then arises, where is the difference? "The real difference consists not in the pain and suffering endured, nor in the person or law that inflicts it, but in the motive with which it is administered....Punishment is prospective, referring to future consequences; but revenge is retrospective, having reference only to a past offence."

Capital punishment began among early, pre-state peoples—though they at least called it by its right name: revenge. "In the savage state, the murderer is considered the lawful prey of any relative or friends of the slain, who may please to take revenge; but the community takes no part in the transaction." Today, society pursues the murderer for exactly the same end. Revenge is still the same, whether it is carried out by a single avenger in a pre-state society or by the most enlightened modern government.

The real aim, it seems, is to inflict harm simply because harm has been done. Not everyone sees it this way, but the public generally does. Just listen to what people say when someone is convicted of murder: "Hang them! they deserve it! They did not spare; let them not be spared! Let them die!" "Die and *be damned*," was the recent answer of one. "To say, as some do, that we have a right to take away the life of a human being, because he or she hath taken away the life of another, is a fallacious mode of reasoning. It appears like justifying one crime by another. It is comparing ourselves with ourselves; not with the law of God, which is the standard of moral rectitude. Let us apply this sophistical mode of reasoning to some of the other commandments, say the

eighth, ninth, and tenth. Have we a right to steal from one who hath been guilty of theft? Have we a right to bear false witness against one who hath been guilty of perjury? Or to covet the goods of one who hath coveted the goods of his neighbor? In this way we might make void, not only the sixth commandment, but also all the rest which respect the duty of man to man. By these commandments *all* theft, *all* perjury, *all* covetousness, and *all* shedding of human blood, are expressly forbidden! If the sixth commandment had said, ‘Thou shalt not kill, *except it be one who hath killed another*,’ or words to that effect, it would have given some colorable right to take away the life of the murderer. But as it now stands, and will forever stand, it gives no such right. The badness of the character of the criminal will not justify the violation of the commandment by others. The prohibition is peremptory, decisive, universal, and unconditional.”

“The just vengeance of the law” is a phrase that gives away the real character of capital punishment—though once you spell out what it actually means, people generally back away from it. O’Sullivan puts it this way: “Evil in its nature, this *spirit of revenge* which lies at the root of our laws of Capital Punishment, is, however, the fruitful source of abundant retributive evil, in its eventual consequences, to those themselves who yield to its indulgence. Thus is it ever, by an eternal and universal moral law which has no less certain applicability to societies than to individuals. The suicidal reaction of these laws back on the community which frames and enforces them—by desecrating the idea of the inviolable sanctity of human life—by weakening the force of that instinct against the willful shedding of the blood of our fellow-man, which is the strongest safeguard to the personal security of us all—by sanctioning and suggesting the infliction of death as a rightful punishment for human offences—by demoralizing the public heart, and familiarizing it with the idea of these cold, formal, and deliberate judicial murders—by setting such a high social

example of the indulgence of revenge in this world, and of comparative indifference to the too probable fate of the human soul in the next—has been, it is believed, sufficiently shown, to claim from all the recognition of the high moral, of which these evil fruits from evil seed afford so signal an illustration.”

“It is from an abuse of language,” says Eden on the Principles of Penal Law, “that we apply the word *punishment* to human institutions. Vengeance belonged not to man.”

But the clearest proof that capital punishment is revenge comes from a magistrate’s admission to Livingston, who recounts it as follows: “He acceded to the propriety of the proposed reform, in all cases but murder; which he excepted on the ground of the difficulty of keeping the offender, and the severity of the substitute of solitary confinement. But when these two objections had been satisfactorily answered, he replied by one of the usual exclamations by which some men—with what is far worse than merely a shocking levity, heartlessness, and irreflective—are accustomed to dismiss the subject, that the murderer deserves death! and blood must be shed for blood! and added, very frankly, ‘I must confess that there is some little feeling of revenge at the bottom of my opinion on the subject.’ If all other reasoners,” adds Livingston, “were equally candid, there would be less difficulty in establishing true doctrines....Passion first made revengeful laws, and revenge once incorporated with the system of justice, re-produced its own image, after passion had expired.”

I could pile up more proof of the vengeful nature of capital punishment, but there is no need. The point is plain: the reformation of the offender is left entirely out of account—and in every penalty we impose, that ought to be a central, overriding aim. Once the true idea of the inviolability of human life is grasped, even the most depraved life will be preserved, and society, rather than

cutting the offender off, will work to improve his condition and restore him to the community.

What a noble work that would be! That it can actually be done is clear from the illustrations of kindness that Spear collected as Appendix II of the original edition. (Editors' note: Appendix I or II are not reproduced in this edition; readers may consult the 1844 fifth edition via Google Books for the full collection.) Rantoul records the case of a boy convicted of highway robbery. "He was convicted and sentenced to death, but, in consideration of his age, and other circumstances, his sentence was commuted to imprisonment for life. In the State prison he became a good boy, and was pardoned, and restored to society, to virtue and to usefulness. He acquired a good reputation in the neighborhood where he lived, and died a Christian death among his friends, in March, 1835.

"It has been said, but it is the language of unreflecting levity, that the criminal convicted of a capital offence, under our laws, is generally depraved and worthless, and that, therefore, the sacrifice of a few such lives is of very little consequence to society, and it is not an object fit to engage the attention of the government of a great state, even if these laws might be repealed without injury. It is impossible that any legislator can entertain so inhuman a sentiment. Felons, however fallen, still are men, and have the better title to commiseration the more deeply they are sunk in guilt. If these wretches were princes, says Goldsmith, there would be thousands ready to offer their ministry. But the heart that is buried in a dungeon is as precious as that seated on a throne. Suppose that one only may be caught up from the gulf of vice, misery and perdition, and restored to repentance, virtue and usefulness, this would be gain enough to reward all the exertions that may be made to effect the reform, for there is upon earth no gem so precious as the human soul."

ESSAY III

Scruples of Jurors and Witnesses



“Witnesses are unwilling to testify, and jurors are unwilling to convict, where the sentence is death.”

—Upham

I have come across a great many facts that show how hard it is to get accurate verdicts when the penalty is death—and the difficulty extends not just to jurors but to witnesses. “The severity of this law totally defeats its object. Often is there strong evidence in the neighborhood where a conflagration has occurred, showing that it was designedly kindled, and tending to fix the charge upon the incendiary. Yet no complaint is made, no investigation takes place, because the hanging, if it should end in that, would be a greater evil than the fire. When a trial is had, which but seldom occurs, all possible latitude is given to the circumstances which will take the case out of the present narrow limits of arson. From these and some other causes, the law is practically obsolete; for, of the many thousand instances of arson committed in the last thirty years, within this state, only one has been punished according to law.” As this essay needs no abstract view, we shall confine ourselves to the simple facts in the case.

“In England, cases like the following often occur in trials for crimes not capital among us, but which serve to illustrate the effect of the motives alluded to upon the minds of jurors. A woman was indicted for stealing, in a dwelling-house, two guineas, two half guineas, and forty-four shillings in other money. She confessed the stealing of the money, and the jury found her guilty. But, as the stealing of such a sum would be punishable with death, they found the value of the money to be thirty-nine shillings only, which saved her from the sentence of death. Another female was indicted for stealing lace, for which she refused to take eight guineas, offering it for sale for twelve. The jury who convicted her of the theft, found the lace to be worth thirty-nine shillings. Two persons indicted for stealing the same goods privately in a shop, five shillings stolen in this manner making the offence capital, one of the prisoners was found guilty of thus stealing to the value of five shillings, and the other to the value of four shillings and ten pence.”

Lord Suffield, speaking to this point in England, laid out the following facts:

“He held in his hand, he said, a list of *five hundred and fifty-five perjured verdicts*, delivered at the *Old Bailey*, in fifteen years, beginning with the year 1814, for the *single offence of stealing from dwellings*, the value stolen being in these cases sworn above forty shillings, but the verdicts returned being ‘*to the value of thirty-nine shillings*’ only. If required, he would produce the name of every one of these five hundred and fifty-five convicts, and show the value proved to have been stolen. It deserved remark, that when the legislature raised the capital indictment to *five pounds*, in June, 1827, *the juries at the same time raised their verdicts to four pounds nineteen shillings*; thus still keeping it low enough to save the offender’s life. This had happened under the one head of stealing from dwelling houses.”

(See selections from the *London Morning Herald*, vol i, p. 280. And in the same excellent work, vol. i, p. 27, we find the following anecdote: “Some years ago, a man was tried at Carnarvon for forgery to a large amount on the Bank of England. The evidence was as satisfactory of the guilt of the prisoner as possible, and brought the charge clearly home to him. The jury, however, acquitted him. The next day, the same individual was tried on another indictment for forgery. Although the evidence in this case was as conclusive as in the former one, the jury acquitted the prisoner. The Judge (Chief Baron Richards), in addressing the prisoner, expressed himself in these remarkable words: ‘Prisoner at the bar—although you have been acquitted by a jury of your country of the crime of forgery, I am as convinced of your guilt as that two and two make four.’ A short time after the conclusion of the sessions, I met with one of the jurymen, and expressed to him my surprise at the acquittal of the man who had been tried for forgery. He immediately answered me in the following words: ‘Neither my fellow-jurymen nor myself had the least doubt of the prisoner’s guilt; but we were unwilling to bring in a verdict of guilty, because we were aware the prisoner would have been punished with death—a penalty which we conceived to be too severe for the offence.’”)

One of Brougham’s last acts before he left the Commons was to raise this very subject. Here is his speech, as reported in the *London Times*: “Mr. Brougham said he had a petition to present, which he felt greatly honored by having been entrusted with, and to which he begged the particular attention of the House. The petition, which was very ably and clearly expressed, prayed for the abolition of the punishment of death for offences unattended by violence; and that a distinction might be drawn in our criminal laws between such offences, and offences which were marked by bloodshed or acts of violence. The petition came from householders of the city of London, who were liable to serve on grand juries. It was signed by many who had served, and by no less than *six*

persons who had been foremen of grand juries (at the Old Bailey) last year. It was worthy of the attention of the House, on account of the reasons it contained, but more especially on account of the authority of the petitioners; for, *who were so competent to speak of the scruples of jurors, as they who had felt those scruples?*" The petition was signed not only by *jurors*, but by eleven hundred merchants, etc., who had served as jurors, or were eligible. His Royal Highness, the Duke of Sussex, in presenting it, said, "When we see ninety-one names, on the first skin of the petition, of merchants and others, whose annual returns in trade amount to no less a sum than ten millions sterling, I think I have stated to your lordships sufficient to convince you that this petition is entitled to great consideration and respect. These respectable persons state to your lordships their own private feelings, and the situation to which they are frequently reduced in fulfilling their painful duties."

The following extracts will express their views (selections from the *London Morning Herald*, vol. i, p. 79):

"The petitioners view with deep regret the excessive and indiscriminate severity of the Criminal Laws, which annex to offences of *different degrees* of moral guilt the punishment of *death*, and confound the simple invasion of the rights of property with the most malignant and atrocious crimes against the person and the life of man.

"Your petitioners, as bankers, are deeply interested in the protection of property from forgery, and in the conviction and punishment of persons guilty of this crime—that your petitioners find, *by experience*, that the infliction of *death*, or even the probability of the infliction of death, *prevents* the prosecution, conviction, and punishment of the criminal, and thus *endangers* the property which it was intended to protect—that your petitioners therefore pray that your Honorable House will not withhold from them that protection

which they would derive from a more lenient law.” A banker said that his name had been forged as the acceptor of a bill of exchange. And that, recollecting the severity of the law, rather than divulge the matter, he acknowledged the acceptance to be his and paid the money.

In all criminal cases, the maxim of the constitution of England is, that jurors are judges both of the law and the fact.

The petitioners go on to say, “That, in the present state of the law, juries feel extremely reluctant to convict, where the penal consequences of the offence excite a conscientious horror on their minds, lest the rigorous performance of their duties as jurors should make them accessory to *judicial murder*. Hence, in courts of justice, a most unnecessary and painful struggle is occasioned by the conflict of the feelings of a *just* humanity with the sense of the obligation of an oath.”

In this petition we learn another fact respecting the reluctance of witnesses:

“That witnesses also are very frequently reluctant to give evidence, lest they might bring upon their consciences the stain of blood; and thus criminals, who, under a more rational and considerate code of laws, would meet the punishment due to their crimes, escape with impunity! For these and other reasons, the petitioners pray that the House may take the criminal laws into consideration, for the purpose of the revision and amendment of the same, by drawing a distinction between the simple invasion of the rights of property and crimes of violence and blood, and by abolishing the penalty of death in all cases in which the legislative power cannot justify, in the eyes of God and man, that last and dreadful alternative—*the extermination of the offender!*”

To this testimony, add the words of Sir William Blackstone, written about seventy-five years ago:

“So dreadful a list (of capital punishments) instead of diminishing, increases the number of offenders. The injured, through compassion, will often forbear to prosecute; *juries, through compassion, will sometimes forget their oaths*, and either acquit the guilty, or mitigate the nature of the offence; and judges, through compassion, will respite one half the convicts, and recommend them to the royal mercy. Among so many chances of escaping, the needy and hardened offender overlooks the multitude that suffer. He boldly engages in some desperate attempt to relieve his wants, or to supply his vices. And if, unexpectedly, the hand of justice overtakes him, he deems himself peculiarly unfortunate in falling, at last, a sacrifice to those laws which long impunity had taught him to contemn.”

Regarding the “list” that Blackstone references, at one time, according to Judge Story, England presented the dark catalogue of one hundred and sixty capital offences. The Selections from the *London Morning Herald* say two hundred. (See vol. i, p. 122.)

That is how this great and learned judge testified to the evil of bloodthirsty laws and to the temptations they create to commit what he elsewhere calls “pious perjuries.” And if the law itself tempts people into “pious perjuries,” the guilt lies with those who make the law, not with those who beg for the kind of reform that would remove the temptation for good.

From *Works of Jeremy Bentham*, vol. i, p. 450, Edinburgh, 1843: “Observe that juryman in a blue coat,” said one of the judges at the Old Bailey to Judge Nares. “Do you see him?” “Yes.” “Well, there will be no conviction of death to-day.” And the observation was confirmed by the fact.

One incident that shows how reluctant jurors are to return a verdict that ends a life occurred in the case of Isaac Leavitt, tried for murder in Plymouth,

Massachusetts. Around midnight the jury called the judge in to ask whether they could enter a verdict of manslaughter. He told them no. They then agreed to return a verdict of murder, but resolved unanimously to petition the governor to commute the sentence to imprisonment—which, through the efforts of a philanthropist whose name I hold dear, was eventually done.

ESSAY IV

**Effect of Public Executions upon the
Prisoner**



*“Oh! what are these,
Death’s ministers, not men, who thus deal death
Inhumanly to men, and multiply ten thousand
fold the sin of him who slew
His brother; for of whom such massacre
Make they but of their brethren, men of men?”*

—Paradise Lost, Book XI, line 675

The moral effect of public executions can be considered from three angles: its effect on the prisoner, on the spectators, and on domestic life.

Even the most casual reader will see that this opens a wide field, and that a book like this one can take only a partial view of it.

You would naturally expect that once a death sentence is pronounced—and especially once preparations for the execution are under way—the condemned man would grow solemn, his heart open to any kindness offered him. The facts say otherwise. A kind of frenzy takes over the mind. The heart hardens, and the prisoner feels nothing but resentment toward the community whose laws have

condemned him. Not always, of course; sometimes we are told the prisoner died penitent. What a monstrous law—that at the very moment reform has begun, the man is cruelly put to death! What would we think of a doctor who advised that a patient be killed the moment he began to recover?

Here I want to focus on just one thing: the numbing effect of executions on the prisoner. Nothing makes the point better than a few real examples:

EXECUTION OF BOYINGTON

[From the Mobile Commercial Advertiser]

He walked to the scaffold with a firm and unwavering step. His whole soul had been steeled and nerved up till the ministers of the law commenced robing him for death, and fixing the fatal noose. At that moment, he cowered, and sunk into the most abject desperation. A more sudden and fearful transition, perhaps, was never witnessed. Is there no hope? Must I die? were answered in the solemn negative. The blood forsook his cheeks, despair was written in awful marks upon his ashy features, and a scene of horror ensued that beggars description. He dashed from the foot of the scaffold among the military. But he was easily secured. Then followed a scene of horror, which we pray may find no parallel hereafter in the execution of the laws. The hopeless agony of the criminal was displayed in obstinate resistance to the performance of the necessary duties of the agents of the law. And, even when at last suspended from the fatal cord, his desperate clinging to the life he had forfeited, was shown by struggles to free his arms from the pinions, and clutching at the rope. He succeeded in thrusting his hands between the rope and his throat, and thus,

resisting and struggling to the last, died despairing, and, for aught that human eye could see, impenitent. The last five minutes of his life were marked by a horror of dying, a prostration of energies, as remarkable as the sternness of nerve and reckless levity of carriage which had signalized him during the whole of the trial, and in the interval between condemnation and execution, up to that moment.

Such was the end of Charles R.S. Boyington—a dreadful end of a bloody tale. The horror of the punishment with which it closes, compares fitly, in tragic intensity of interest, with the terrible atrocity of the crime. The victim, a gentle and confiding invalid, fell by the hand of an assassin—that assassin his professed friend—in an open thoroughfare, beneath the walls of the graveyard, the busy hum of human voices warning him of the neighborhood of busy life, and the tombs of the dead speaking to the murderer of the end of life—the beginning of eternity. [It was later established that Boyington was innocent.]

SENTENCE OF PETER ROBINSON, AT NEW BRUNSWICK, FOR
THE MURDER OF MR. SUYDAM

[From O’Sullivan’s Report against the Punishment of Death. N. Y., 1841]

After his sentence, the rush was tremendous to see him, the ladies in particular! Smiling to the crowd, he said to the sheriff:

“Remember, you must share the fees with me that you get for hanging me.” And such was his hardened indifference, to the last moment, that, after he was ironed and locked up in his cell, he said to the jailor,

“As I am a carpenter, I think I ought to be employed to help build my own gallows, and I could make my own coffin, and give my wife the money. All I ask is a snug platform and a strong rope; and if Jakey Edmonds goes to heaven, I don’t want to go there. I won’t have a d-d priest come near me.”

The court ordered that his wife and child might see him, at all times consistent with the prisoner’s safety, and in the presence of some of the proper authorities.

Up to the last moment he jested.

“I do solemnly believe,” he once said, “that I shall burst out a laughing under the gallows. Oh, if they would only let me have the big field to be hung in, and a band of music—I’d ask no more.” When asked by the gentlemen who made such able and eloquent efforts in his behalf as his counsel, how he thought he would feel at the last moment, “Well,” said he, coolly, “I’ve tried to imagine how I should feel under the gallows, but I know how I shall feel. I shall feel pretty much the same as I do now, and the same as I did in the court-house. Didn’t I look the judge right in the eye, then? I’ve always felt the same; my feelings haven’t changed, and they won’t change; for I can’t realize anything so very dreadful about dying, only I should like to have a band of music, the big field, and twenty thousand spectators.” “I hope,” he said on one occasion, “that the sheriff won’t tickle me with that rope; if he does I shall be sure to laugh. I hope he ‘ll grease the rope, so that it’ll come well down under my ear, and then put a fifty-six under, on to my feet, and so pull my head off at one jerk.” On being asked whether he did not feel sorry that he had killed Mr. Suydam,

“Yes,” he answered, carelessly, “but not on my own account, nor on his; but I feel sorry for his wife and children.”

With respect to his state of preparation for the eternity into which he was about to be plunged, the following extract will convey an idea: “Here the jailer, who had gone out, again returned. Peter cried out, ‘Here, Conover, the snow storm makes it dreary and feel cold; pile on the coals; make the stove fire red hot; I’m going to a warm place in the next world, and I want to get used to it.’ ‘Peter, Peter,’ said the jailer. ‘Oh well,’ said Peter, ‘I know I must put on a sober face, because we’re going to have a prayer meeting here presently, and they’ll ask me if I’ve thought seriously about my latter end, and I shall say, Oh, yes; deeply! Deeply!’” On being told, on one occasion, that he ought to show less levity, and be thinking of more serious matters, if ever he meant to, he laughed, and said, “Oh, you know I’ve got four days to live yet; and the parsons tell me that the thief on the cross didn’t begin to repent till an hour before he died, and yet he went to heaven, they say; so I’ve got plenty of time.” On another occasion, the following account is given of his language: “Some clergymen went in to see him this afternoon, and after he had told one of them how he had been doing, and how he had felt, the parson told him that if that was all, he would go to hell for all that. Peter became very indignant, and exclaimed, ‘Then what am I to do? I’ve read that book—(pointing to the Bible)—I’ve tried to understand it as far as my humble abilities will let me; I believe what it says; I’ve confessed my crime; I’ve confessed that I’ve done wrong; and I’ve prayed to God to forgive me for it; and I know nobody else can forgive me if he does not; I’ve forgiven everybody that ever did me wrong, as I hope to be forgiven; I owe nobody any ill-will in the world; I have no hard feeling against a human being; I know I must die on

Friday next; I know that the sentence is just; I've suffered too much poverty and misery in this life to care very much about leaving it; I know I'm not properly prepared to die, and I pray to God to prepare me before I die; I believe in the Bible, and I believe in God; and I believe that he's more merciful than men are. And if, after all this, I am to be sent to hell, why, I think it's very hard, and I should like to know what I am to do, or what you want me to do. At any rate, I don't want any of your prayers, and I don't want you to come near me again. And if heaven be such a place as this Bible tells me it is, why, I'm very sure that you won't go there, and that there'll be very few like you to be found in any part of it."

When Stephen M. Clarke—just seventeen—was executed for setting fire to a building in Newburyport, the officers had to drag him from his cell to the scaffold through a parade of soldiers and martial music. How dreadful to haul a fellow human being, a mere youth, full of life, and put him to death in the most cruel manner. Who does not curse in his heart the laws that demand such a horrid spectacle?

The law's cruelty knows no limit. There is an account of a pirate executed in Boston even after he had tried to kill himself. He had been closely watched, but the moment the sheriff stepped away, he seized his chance and attempted suicide. Yet the law is so barbarous and rigid that the life had to be taken by its own officers: with the wound still bleeding and the man nearly dead, he was carried in a chair, set under the gallows, and cruelly killed.

EXECUTION OF TWO BROTHERS—FATAL ACCIDENT

[From proceedings of a general meeting of the Howard Society, Dublin, 1832]

James died without a struggle—but, melancholy to relate, the rope by which Alexander was suspended broke, and he was precipitated to the pavement, a distance of nearly forty feet. He fell with the side of his head on his own coffin, which was broken, and rebounded off it a few feet. He was instantly carried in (supposed to be dead) by two officers of the jail. The executioner, also dressed in white, with the part that covered his face daubed over with black, by the assistance of a ladder, soon put another and a stronger rope over the block, and with some difficulty again raised the drop—in doing which, the unfortunate culprit, then suspended, was pushed as much as possible, to the one side, and lowered a little farther. In about twenty minutes from the time he fell, to the astonishment of the assembled multitude, Alexander again appeared, and walked out on the drop more firmly than before, answering to the prayers of the clergy. He took his place, and the signal being given, the drop was again slipped, but rested on the shoulder of James, who was again pushed aside, and Alexander was launched into eternity, but not suddenly. The board slowly moved down, sliding along James's body. The knot of the rope had shifted round under the chin of Alexander, and he suffered dreadfully for several minutes. His whole body was convulsed; during the strangulation he several times put his feet to the wall, and pushed himself from it with great force: his clothes burst open, so that his naked breast was seen; and the cap not being altogether over his face, blood was seen flowing from the wound which he had received on the cheek in the fall. The feelings of the beholders cannot be described—they were most agonizing. At length, his hands fell—his body was seen to stretch—and he hung motionless alongside his brother. After

hanging the usual time, they were cut down, and their bodies handed over for dissection.

EXECUTION AND DECAPITATION OF THISTLEWOOD AND
FOUR OTHERS, FOR HIGH TREASON

[From the same]

At four o'clock in the morning, a number of persons began to assemble near Newgate. Even a guinea was given for a near view! When Ings stepped upon the scaffold he tried to excite three cheers. He set the example himself, and tried to accompany his voice with a motion of his arms as well as he could in their pinioned state, but this melancholy example of the ill-regulated state of his mind in the awful condition in which he was placed, had no effect upon the immense multitude present, who surveyed the dreadful spectacle before them with becoming silence. Ings immediately followed his attempt to cheer by singing aloud the two first lines of the popular song of "*Give me death or liberty.*"

EXECUTION OF ARMSTRONG, HEARSON, AND BECK

[From the same]

Hearson, who had joined with great fervor in all the devotional exercises of the morning, surprised all who had seen his previous conduct by the manner in which he behaved after mounting the scaffold. He took his cap off his head, waved it in a sort of triumph,

and began to dance like a maniac in his chains. He recognized some individual who was seated on a housetop opposite the scaffold, and immediately shouted out, "Well done, Will, lad." A person in the crowd said to him, "Good by, Curley," addressing him by the name by which he was known in pugilistic circles, of which both he and Armstrong were great frequenters. This address set him to dancing again. His extraordinary conduct at this crisis of his fate did not appear to arise from any spirit of bravado, but from sudden delirium. He then turned round to the hangman, and complained that he had not an inch of rope. "Give me rope enough, that I may the sooner be out of misery." He then burst into a series of ejaculations for mercy to his soul. Armstrong, who was brought last upon the scaffold, was much distressed on seeing the frantic gestures of Hearson. He said to him, "None of that, George; it is not sense; I must say that I am innocent, because I am so; but I'll have none of this." He was then tied up to the beam. About eight minutes were consumed in these necessary preparations. Exactly at twenty minutes before twelve, the hangman drew their caps over their faces, and that ceremony seemed to be the signal for a thousand voices to utter the fearful cry of "Murder!" and of "Blood!"

EXECUTION OF MARY JONES

[From the same]

Mary Jones was executed, under the shoplifting act. It was at the time when press-warrants were issued, on the alarm about Falkland Islands. *The woman's husband was pressed, their goods seized for some debt of*

his, and she, with two small children, turned into the streets a-begging.

'Tis a circumstance not to be forgotten, that she was very young (under nineteen) and most remarkably handsome. She went to a linen draper's shop, took some coarse linen off the counter, and slipped it under her cloak; the shopman saw her, and she laid it down. For this she was hanged. Her defense was, "*that she had lived in credit and wanted for nothing, till a press-gang came and stole her husband from her; but since then, she had no bed to lie on; nothing to give her children to eat; and they were almost naked.*" And perhaps she might have done something wrong, for she hardly knew what she did." *The parish officers testified the truth of this story;* but it seems there had been a good deal of shoplifting about Ludgate: an example was thought necessary; and this woman was hanged for the comfort and satisfaction of some shopkeepers in Ludgate-street. When brought to receive sentence, she behaved in such a frantic manner, as proved her mind to be in a distracted and desponding state; *and the child was sucking at her breast when she set out for Tyburn [gallows].* (Speech of the Right Honorable Sir William Meredith, Bart., in the House of Commons, May 13, 1777, in committee on a bill creating a new capital offence.)

I have not set down these scenes to torment the reader, but to show the effect of public executions on the condemned—and on the crowds who come to watch. We see that these poor people are overwhelmed by their fate—that instead of being brought to face death soberly, most of them, for all the clergy's efforts, are pushed into treating the whole thing with flippant indifference. "Did you not know," said an assassin on the wheel to his fellow-sufferer, when groaning with agony, "we were liable to one disorder more than another?" One malefactor, while under exhortation, and in the act of being pinioned, said,

“Look to your own sins, gentlemen. You have all enough to answer for,” addressing himself to those around him; “mine are not heavier than your own; and if they should be found so, neither of you will answer for them.” In this temper and feeling he coolly walked to the scaffold, and there suffered the last penalty of the law.

But listen to the testimony of someone who knew prisoners well. He says, “The valuable time of the malefactor is wholly wasted in encouraging vain hopes of pardon, in receiving visits, and in efforts to keep up a determined carriage to the last day, even on which he flatters himself that it may arrive, and therefore he must not confess. This is the state of mind of nine culprits out of ten until the eve of the fatal morning, when, fatigued, weak, and worn out with his efforts, the mind becomes suddenly depressed with disappointment, corresponding to the condition of the body; he then falls into a state of stupor and insensibility, from which it is almost a cruelty to attempt to rouse him, as it is too late now to make any beneficial religious impression on him. The next morning, when brought out of his cell to be pinioned, you behold a man already half dead—his countenance has fallen, his eyes are fixed, his lips are deadly pale and quivering, while his whole aspect, in anticipation of the reality, gives you the personification of death’s counterpart....Sometimes the affair takes quite another turn, and the malefactor is seized with a [frenzy] for death, as being the only road to happiness, when he will smile and talk as if he were the happiest man in existence. This effect is brought on by the operation of great excitement on weak minds.”

In this essay I have taken only one view of the subject—the effect of capital punishment on the prisoner himself—and we have seen that his disgraceful death works no good on his mind whatever.

In fact, public executions generally produce a kind of dull brutishness. Leadings, executed in Albany, is a striking example of what the death penalty actually does to a person. “He went to the scaffold perfectly indifferent and reckless, and sunk in such a condition of stupid brutality, as to create on the part of many a disbelief of his soundness of mind. At the solicitation of some of the clergymen, who were laboring in vain to arouse him to some fitter state of preparation for the awful journey to which he was so soon to be [dispatched], the governor [reprieved] him twice, from week to week; but to no effect. On its being proposed to make an effort to procure a commutation of his sentence, Leadings express his hope that it would not be done, declaring his preference for execution over imprisonment in the State Prison. He was, in fact, desirous of having it over.”

“Shakespeare has anticipated this picture. Its moral will readily suggest itself to the reader, when he reflects on the number of this class of men from whom these crimes of brutal violence proceed, and on their total insensibility to the terrors of death, which to them bear no comparison with those of a long imprisonment:

‘Master Barnadine, what, ho! your friend the hangman! you must be so good, sir, to rise, and be put to death: pray, Master Barnadine, awake, till you are executed, and sleep afterward.’—*Measure for Measure*, Act 4, Scene 3

“The wretch thus addressed is described as a ‘man that apprehends death no more dreadfully, but as a drunken dream—careless, reckless, and fearless of what’s past, present or to come.’”

ESSAY V

Effect of Public Executions upon the Spectators



“What must men think, when they see wise magistrates and grave ministers of justice, with tranquility, dragging a criminal to death, and, whilst the wretch trembles with agony, expecting the fatal stroke, the judge, who has condemned him, with the coldest insensibility, and, perhaps, with no small gratification from his authority, quits his tribunal to enjoy the comforts and pleasures of life?”

—Beccaria

It has often been observed that the days of public executions, far from being occasions for solemn reflection and genuine repentance, are treated instead as days for obscene joking and coarse vulgarity. The loose and dissolute who turn out for them use the chance to prey on society all over again. A pick-pocket, being asked by the chaplain of Newgate how he could venture on such a deed,

at such a time, very frankly replied “that executions were the best harvests that he and his associates had; for, when the eyes of the spectators are fixed above, their pockets are unprotected below.”

In one account of a double execution in England, forty people were arrested at the scene for the very same crime. “We constantly,” says the unhappy Dr. Dodd, in his sermon on this subject, himself destined at a subsequent period (1777) to suffer the same fate, “hear of crimes not less [atrocious] than those for which the criminal is to die, perpetrated even at the very place and moment of his punishment.” One of the jury that tried and convicted poor Dr. Dodd was executed on the same gallows (Tyburn) for the same offence (forgery) within two years afterward. And so, too, it is said of Fauntleroy, the celebrated banker, who was executed for the same crime, that the idea of committing it first entered his mind while returning home from an execution which he had witnessed, while passing, one morning, along the street in front of Newgate. “One grown man,” says E.G. Wakefield, “of great mental powers and superior education, who was acquitted of a charge of forgery, assured me that the first idea of committing a forgery occurred to him at the moment when he was accidentally witnessing the execution of Fauntleroy.” The Rev. Roberts, of Bristol, England, presents the astounding fact that he conversed with one hundred and sixty-seven convicts under sentence of death, one hundred and sixty-four of whom had witnessed executions. (See a valuable work entitled “Necessity of Popular Education,” Appendix, p. 183 by James Simpson, Boston, 1836.)

Consider the following description from a writer’s travels in England. After recounting the usual preparations, he writes:

“There were present about two thousand persons, of both sexes, and of every age, rank, and character. There was the urchin, who, evidently, had played the

truant, to ‘see the man hanged.’ There was the aged man, white with a succession of forgotten winters, and furnishing, in his collapsed and wasted exterior, only an index to the vital ebb within—he had come to treat his dotage with what had never blessed the vision of his youth or prime. He had requested his son to attend and protect him; but his son had been a rover, and had seen many such sights, and the old man wondered at his lack of gratitude and affection. There was the peddler with his wares; the cake-and-pie man with his quaint cry; the ballad singer, and a blind man with his clarionet. There was the prostitute, with her foul mouth and unblushing flaunt, and troops of drunken sailors, carefully tended by London pick-pockets. Three of the latter class were detected at their trade, and taken to jail from the ground. There were plays and games too—pitch and toss and leap-frog; and anticipations crowning all! Such was the scene around the gallows.”

After describing the prisoner’s appearance, his chains and coffin, and the priest “with white robes and reverend mien,” he continues:

“The heart of the reader would sicken at the recital of the particulars; suffice it that I give an instance or two of the depravity exhibited on the occasion. On the floor of the wagon lay the shoes of the dead man. One of the hopeful class, for whose edification the hanging had been done, taking hold of them, observed, ‘By —, they’re clumpers. How I wish I’d seen ’em before he was swung off; I’d a made him a bid at ’em.’” “They’re a perquisite of Jack Ketch,” remarked a second, both of which sallies were hailed with decided approbation. While this was proceeding at the wagon, the body, itself, was not unmolested. A bumpkin, kneeling on the back of the frame, reached out his hand to that of the corpse, swinging it round so as to bring the face towards him. He then seized the wrist, and, after examining the cuff, discovered a pin, which he exposed aloft, exclaiming with an oath, ‘This will do to pick my teeth

after dinner.’ Another, equally eager to signalize himself, twisted the body round, and examined the other hand. A cry of derision added chagrin to his disappointment; while the more fortunate explorer, sticking the trophy in the breast of his coat, was greeted with obstreperous plaudits. The dead man’s legs were parted, and his manacles exposed; and one essayed even to lift the cap, but failed to reach it. Altogether, the scene was so disgustingly brutal, that I cannot choose but shudder at its remembrance, even after the lapse of nine years.”

Who can read such a description and still argue for the moral influence of public executions? A witness was once asked whether he believed capital punishment deterred criminals. He answered:

“I do not....During one sitting, as a magistrate, three persons were brought before me for uttering forged notes. During the investigation, I discovered that those notes were obtained from a room in which the body of a person, named Wheller (executed on the preceding day, for the same offence), then lay, and that the notes in question were delivered for circulation, by a woman with whom he had been living. This is (he adds) a strong case, but I have no doubt that it is but one of many others.”

Another strikingly similar instance is related by Livingston, on the authority of a gentleman at a public meeting, in Southampton, England, as having been detailed by Buxton: “An Irishman, found guilty of issuing forged bank-notes, was executed, and his body delivered to his family. While the widow was lamenting over the corpse, a young man came to her to purchase some forged notes. As soon as she knew his business, forgetting, at once, both her grief and the cause of it, she raised up the dead body of her husband, and pulled from under it a parcel of the very paper, for the circulation of which he had forfeited his life. At that moment an alarm was given of the approach of the police; and, not knowing where else to conceal the notes, she thrust them into the mouth of

the corpse, and there the officers found them.” Rantoul relates “that an execution, which took place at Worcester, for the crime of rape, on the 8th of December, 1825, was shortly afterward followed by an attempt, by *a brother of the criminal*, to commit the same offence for which his own brother had just lost his life. The cases have been numerous, in which the fact that near relatives have perished on the gallows, has not prevented the perpetration of crimes, leading necessarily to the same fate. The notorious Patty Cannon, for instance, who committed numerous murders in Delaware, and, who destroyed herself by poison after her arrest, had had a father who was hung for murder, and a brother for horse-stealing. At the execution of the notorious pirate Gibbs, a few years ago, in New York, a witness was present, who declared, positively, that he had seen him hung on a former occasion, for the same crime, at some port in South America. He insisted that he recognized him beyond the possibility of mistake, by certain peculiar marks of identity; and when we consider the not infrequent cases which have occurred of resuscitation after hanging—(a distinguished physician, now in New York, states that he has, in the course of his life, taken part in three such cases)—the story is not incredible. At any rate, there are numerous cases known, in which criminals, who have narrowly escaped death for an attempted crime, have made its repetition the first object of their newly acquired liberty.”

Here is how a convict who came close to hanging for counterfeiting put it:

Q. Have you often seen an execution?

A. Yes.

Q. Did not it frighten you?

A. No; why should it?

Q. Did it not make you think that the same would happen to yourself?

A. Not a bit.

Q. What did you think, then?

A. Think? why, I thought it was a d-d shame.

Q. Now, when you have been going to run a great risk of being caught and hanged, did the thought never come within your head, that it would be as well to avoid the risk?

A. Never.

Q. Not when you remembered having seen men hanged for the same thing?

A. Oh, I never remembered anything about it; and if I had, what difference would that make? We must all take our chance. I never thought it would fall on me, and don't think it ever will.

Q. But if it should?

A. Why, then, I hope I shall suffer like a man—where's the use of sniveling?

Now hear the testimony of a man who had been an inmate of Newgate: “The numerous chances of escape, arising in great part from the nature of the punishment, and from the nature of the punishment independently of the chances of escape—the calculations of reason, and the delusions of hope excited by fear—conspire to render Capital Punishment wholly inefficient for the sole end of punishment, which is to present to all a stronger motive for abstaining from, than the ordinary motives for committing crime....*When I entered Newgate, I had not a doubt of the efficacy of public executions, as deterring from crime. By degrees, I came firmly to believe just the contrary. Newgate is the very best place in which to form a sound opinion on the subject; that is my opinion, deduced from all the facts of the case.*”

Mrs. Fry's view matches Wakefield's, just quoted. She says "in her early visits to Newgate, she had formed no opinion upon Capital Punishments; but that her intercourse with the prisoners had led to a decided conviction, on her part, of their evil tendency. The language always is, she stated, as soon as an execution is over, 'Surely, we cannot pity him now; he is in heaven!' For their persuasion is, that this act of severity obliterates and atones for every former misdeed; and thus the minds of the prisoners are hardened by the reflection that the time is short, and the supposed reward is permanent.

"But what is the effect on the minds of the accomplices, without? This too may be calculated. A boy was lately ordered for execution, for snatching a watch from a person, at a funeral in Whitechapel. Two friends of mine, conceiving that he was innocent of the alleged crime, had the courage to go to the house frequented by the gang to which he belonged; there my friends found, two days previous to the execution of their comrade, the gang assembled, engaged in drinking, gaming, and licentious conversation. The lad was executed on the Tuesday; on the Wednesday night, my friends revisited this haunt of villany [sic], for the purpose of endeavoring to persuade some of these wretched beings to relinquish their evil course of life; again the gang were assembled. After the lapse of a week, these gentlemen returned on their mission of true humanity; the gang were assembled, engaged as before in gaming and drunkenness, and in plotting future robberies. This appears, at least, to have been the case; for, two days after, thirteen of their number were apprehended for crimes committed, subsequent to the execution of their companion. And what became of the remainder of the gang? Another funeral, largely attended, took place in Whitechapel, and there the remainder of the band were recognized by a person who knew them well, actively engaged in their iniquitous vocation."

Livingston, speaking on this subject, says, "The fear of death, therefore, will rarely deter from the commission of great crimes. It is, on the contrary, a remedy peculiarly inapplicable to those offences. Ambition, which usually inspires the crime of treason, soars above the fear of death; avarice, which whispers the secret murder, creeps below it; and the brutal debasement of the passion that prompts the only other crime thus punished by our law, is proverbially blind to consequences, and regardless of obstacle that impede its gratification. Threats of death will never deter men who are actuated by these passions; many of them affront it in the very commission of the offence, and, therefore, readily incur the lesser risk of suffering it in what they think the impossible event of detection.

"How happens it that, as Hume bears record, the execution of *seventy-two thousand* 'great and petty thieves' in England, during the reign of Henry VIII, was totally inoperative to check the offences for which these human hecatombs were sacrificed on the altar of this principle of social expediency? And though, in the time of his successor, Elizabeth, 'rogues were still trussed up apace,' and there was not 'one year commonly wherein three or four hundred of them were not devoured and eaten up by the gallows, in one place or another, so that the whole number of executions during her reign was not less than nineteen thousand, yet we find it observed and regretted, 'that at the time of doing execution of such as had been attainted of any murder, felony, or other criminal cause, ordained chiefly for terror and example of evil-doers, people persevered in their felonious sleights and devices.' Descriptive of the times when the bloody experiment was so fully tested in England, of the influence of Capital Punishment to deter by example from the commission of offences of a minor, and even petty character, Sir Edward Coke writes: 'What a lamentable thing it is to see so many Christian men and women strangled on that cursed tree of the gallows; insomuch that, if, in a large field, a man might see together

all the Christians that in one year throughout England come to that untimely, ignominious death, if there were any spark of grace or charity in him, it would make his heart to bleed for pity and compassion.”

There is one fact which shows that the public is rapidly waking up to the brutalizing effect of executions: the growing demand to make them private—already the law in some states. (See the statutes of Maine, Massachusetts, and New York.) But anyone who urges this has, in effect, given up the whole claim that capital punishment does any good as an example. If such spectacles really did strike the mind for the better, or have any moral influence at all, why not stage them in the public squares of our crowded cities? Why not gather the whole community to watch the scene? The true answer is “that it tends to harden and brutalize the hearts of men; to give a rude shock to that natural instinct which prompts them to revolt at the idea of the cold and willful infliction of death by man upon his fellow-man; by that shock to derange the action, and to weaken the deep-seated strength of that instinct; and to send away, from that field of blood, which has been thus darkened and accursed by the shadow of the gallows-tree, many a man, far more ready than he came, to yield to the temptations that may beset him, to commit a murder to which he may be urged by any strong impulse of malignity or cupidity.”

A single example speaks volumes. The celebrated Volney, in a lecture at the Normal School in Paris, described how powerfully he had been affected, during a journey he had made in France, after the conclusion of the ‘reign of terror,’ by the spectacle of a crowd of children, who in different provinces amused themselves by guillotining cats and chickens, to make up for the executions that had grown less frequent!

“Every execution,” says Dr. Lushington, in Parliament, “brings an additional candidate for the hangman.” “Wo to society,” exclaims Lepelletier, in his

report to the national assembly, “if, in that multitude which gazes eagerly on an execution, is found one of those beings predisposed to crime by the perverseness of their propensities! His instinct, like that of the wild beast, awaits, perhaps, only the sight of blood to awake—and already his heart is hardened to murder, the moment he is quitting the spot wet with the blood which the sword of the law has shed.”

Volumes could be written on the brutalizing influence of this bloodthirsty law on the community, and especially on those who witness an execution. From Report of Committee to the Legislature of Maine, 1835: “Those whom it would be desirable to affect solemnly, and from whom we have the most reason to fear crime, made the day of public execution a day of drunkenness and profanity. These, with their attendant vices, quarrelling and fighting, were carried to such an extent in Augusta (at Sager’s execution) that it became necessary for the police to interfere, and the jail, which had just been emptied of a murderer, threw open its doors to receive those who came to profit by the solemn scene of a public execution.”

Livingston gives the following instance: “John Lechler was executed at Lancaster, Pennsylvania, and while one old offence was atoned for, more than a dozen new ones were committed, and some of a capital grade. Twenty-eight persons were committed to jail on Friday night, for divers offences at Lancaster, such as murder, larceny, assault and battery, etc.; besides many gentlemen lost their pocket-books, though the pick-pockets escaped, or the jail would have overflowed. In the evening, as one Thomas Burns, who was employed as a weaver in the factory near Lancaster, was going home, he was met by one Wilson, with whom he had had some previous misunderstanding, when Wilson drew a knife, and gave him divers stabs, in sundry places, which are considered mortal. Wilson was apprehended and committed to jail, *and*

had the same irons put on him which had scarcely been laid off long enough by Lechler to get cold." It appeared, on inquiry, that Wilson was one of the crowd.

From Report of Committee to the Legislature of Maine, 1835: "After the execution of Lechler, in Pennsylvania, had gratified the people about York and Lancaster, with the spectacle of his death, and produced its proper complement of homicide and other crimes, a poor wretch was condemned to die in another part of the state, where the people had not been indulged with such a spectacle. They collected by thousands—tens of thousands. The victim was brought out—all the eyes in the living mass that surrounded the gibbet were fixed on his countenance, and they waited, with strong desire, the expected signal for launching him into eternity. There was a delay. They grew impatient. It was prolonged, and they were outrageous. Cries, like those which precede the tardy rising of the curtain, in a theatre, were heard. Impatient for the delight they expected in seeing a fellow-creature die, they raised a ferocious cry. But when it was at last announced that a reprieve had left them no hope of witnessing his agonies, their fury knew no bounds; and the poor maniac (for it was discovered that he was insane) was with difficulty snatched by the officers of justice from the fate which the most violent among them seemed determined to inflict.

"The above is taken from Livingston's celebrated work on 'The Expediency of Abolishing the Punishment of Death.' This eminent legislator adds, 'This disgraceful scene took place at Orwigsburgh; the wretched madman who was so near suffering, was named Zimmerman. I have the details,' he continues, 'from a gentleman of the first respectability, in Pennsylvania,' and his informant added, 'Executions in this state are scenes of riot and every species of wickedness; twenty, thirty, even forty thousand persons have been in

attendance on such occasions. In the country, two or three days are employed in the merry-making, much after the manner of fairs in former days.”

“Very lately, in the state of Ohio,” says Rantoul’s report in 1836, already quoted, “on the day on which a man was executed for the murder of his wife, under circumstances of particular cruelty, another man, near the place of execution, murdered his wife in the same manner; and this is by no means the only instance where the crime seems to have been directly suggested by the punishment intended to prevent it.”

From Report of Committee to the Legislature of Maine, 1835: “A man, by the name of Strang, had been convicted of a foul murder, committed on Cherry Hill, in Albany, by shooting in cold blood, and for the vilest purposes, Mr. Whipple, an enterprising and worthy citizen. Levi Kelly, a farmer of the town of Otsego, living between sixty and seventy miles from Albany, heard of the day when Strang was to be executed, and soon after expressed to his neighbors a determination to be present at the exhibition. I have been informed that he had then never seen a man put to death. Kelly was a man of respectable connections, and, I believe, of correct morals—at any rate, he was not distinguished for immorality of any kind. He was, however, known to possess very vindictive passions. He went from Otsego to Albany for the *sole* purpose of seeing Strang executed. On his return he seemed entirely engrossed by the exhibition he had witnessed. He talked of nothing else on the road and at the public houses where they stopped for refreshment.

“A man lived in Kelly’s house, by the name of Spafford, with whom he had had some little difficulty. In less than a fortnight after Strang was hung, an altercation occurred between Kelly and Spafford, when Kelly seized a loaded gun, and shot Spafford through the heart. For this offence he was tried, convicted, and executed. There was not a particle of evidence that Kelly was

insane at the time he perpetrated the horrid act. Here was a case where the spectator hastened to commit the same offence, and *with the same weapon*, for which he had just seen the terrible punishment of death inflicted.

“On the evening of the day on which Kelly was hung, a man by the name of Cooke, in the neighborhood of Cooperstown, who was present at the execution, committed suicide *by hanging*. Now, may not the philosophical inquirer be permitted to indulge the conjecture that the public execution of Strang, instead of tending to preserve life, led to the destruction of three other lives?”

There is another view that should be taken of this subject, which is that public executions lead to the commission of suicide. The frequent recurrence of suicides after such seasons is a well-established fact, and in a form, too, scarcely known to the ancients, i.e., strangulation by suspension.

O’Sullivan gives the following affecting instance: “Two or three days after the execution of Leadings, a fine boy, of about sixteen years of age, the delight of highly respectable and estimable parents, hung himself from the banisters of the stairs in his father’s house, in Albany.”

Mr. Livingston has some good remarks on this subject: “The most serious and intense reflection has brought my mind to the conclusion, not only that it fails in any repressive effect, but that it promotes the crime. The cause it is not very easy to discover, and still more difficult to explain; but I argue from effects—and when I see them general in their occurrence after the same event, I must believe that event to be the efficient cause which produces them, although I may not be able to trace exactly their connexion [sic]. This difficulty is particularly felt in deducing moral effects from physical causes, or arguing from the operation of moral causes on human actions. The reciprocal

operations of the mind and body must always be a mystery to us, although we are daily witnesses to their effects. In nothing is this more apparent, or the cause more deeply hidden, than in that propensity which is produced on the mind to imitate that which has been strongly impressed on the senses, and that, frequently, in cases where the first impression must be that of painful apprehension. It is one of the earliest developments of the understanding in childhood. Aided by other impulses, it conquers the sense of pain and the natural dread of death. The tortures inflicted on themselves by the Fakirs of India; the privations and strict penance of some monastic orders of Christians; and the self-immolation of the Hindoo widows, may be attributed, in part, to religion, in part to the love of distinction and fear of shame: but no one, nor all of these united, except in the rare cases of a hero or a saint, could produce such extraordinary effects, without that spirit of imitation to which I have alluded. The lawgiver, therefore, should mark this, as well as every other propensity of human nature; and beware how he repeats in his punishments the very acts he wishes to repress, and makes them examples to follow, rather than to avoid.”

I earnestly and solemnly beg the defenders of the death penalty to stop and think—to weigh all these facts and ask themselves whether they can really uphold this inhuman law. The history of the world shows that scenes of blood only harden the heart and brutalize the feelings.

See the following account of the conduct of an executioner who cruelly put seven men to death for merely entertaining “constitutional principles,” in Portugal, under the reign of the usurper, Don Miguel: “At eight o’clock the mournful procession was formed at the prison of the Lemoira, about a mile from the place of execution; the seven unhappy men, with fourteen priests, one on each side of each prisoner, in the centre; the prisoners bare-footed and bare-headed, dressed in long white habits, with a hood hanging down behind,

each bearing a small wooden crucifix in his clasped hands, secured together by bolts at the wrists. They were strongly guarded, both before and behind. At each church they had to pass, the procession stopped to hear an exhortation, so that it was near *twelve* o'clock before they reached the fatal place. *One at a time* ascended the platform, up a broad flight of steps, accompanied by two priests, as in the procession, and was immediately placed on the seat, with his back to the upright post. The hangman, a miserable wretch, walking with a crutch, then secured the legs, the arms, and body of the unhappy man with cords, and placing a short cord round his neck and round the post, he put the hood over the face, and then, going behind the post, introduced a short thick stick, and, giving it four or five turns, produced strangulation. The body was then untied, and laid at a convenient distance, and *another* brought up from the foot of the scaffold, until the whole had suffered. The youngest, or least criminal, was executed first; and, as each occupied fifteen to twenty minutes, the last had to endure, for at least two hours, the horrid sight of the sufferings of his fellow-prisoners. The mind can scarcely imagine a more dreadful state of mental suffering. When the whole were strangled, the hangman wiped his face, and, seating himself in the fatal seat, coolly smoked a cigar, regaled himself with a bottle of wine, and then, placing a block of wood under the neck, proceeded to cut off the heads, from which the blood flowed copiously in streams from the platform; then, collecting the cords, and coolly wiping the hatchet and knife in one of the white dresses, he left the platform, first throwing the heads and bodies in a heap, over the iron grate below. The fire was kindled, and in a few minutes the whole was in a blaze. By six o'clock the whole was burnt to ashes, when a gang of galley-slaves, with irons on their legs, took the ashes in hand-barrows, and threw them into the Tagus."

The heart grows callous amid scenes of plunder and murder, and those who witness bloodthirsty punishments need only the spur of poverty or anger to

commit the very crime for which the condemned was put to death. The same corrupting influence belongs to war as much as to the law that sanctions the death penalty. We have little idea how much the battlefield has done to coarsen public feeling. I have not taken that subject up here, however; though it is closely related, I prefer to address it in a separate work.

A wretch, who was executed at Exeter, England, on being removed from the bar, after sentence of death had been passed, exclaimed to the by-standers, "I have killed many men to please the king, and why should I not kill one to please myself?" One of the soldiers who was taken up for wantonly shooting a man at Lestwithiel in 1814, on witnessing the horror and agitation of the peaceful townsmen, very coolly observed, "Here is a pretty fuss about killing one man; why, I have seen hundreds killed."

ESSAY VI

**Effect of Public Executions upon
Domestic Life**



“But the wretches, who die, are not the only sufferers.... Who knows how many innocent children we may be dooming to ignominy and wretchedness? Who knows how many widows’ hearts we may break with grief; how many grey hairs we may bring with sorrow to the grave?”

—Report of Howard Society in Dublin, 1832

We now come to a part of the subject that has stirred very little feeling in the community, though it is one of the most tender of all. I have shown the demoralizing influence of public executions and the prisoner’s indifference to his own fate; I have shown how these scenes brutalize and deaden the spectators. But there is another group we cannot imagine being present: people who have withdrawn from the public gaze, who have shut their ears to the martial music, the jesting, and the coarse vulgarity that usually accompany

such scenes, and who waste away in secret anguish over the wretched, fallen prisoner. I mean the wife, grieving beyond words over the cruel fate of her husband; the mother weeping alone over her beloved son; the distraught sister over a fallen brother. History has never made it its business to record the tears shed in private, the hearts that break in seclusion. But they are not forgotten by the true philanthropist and Christian. A lovely example of what can be done appears in Professor Stowe's Report on Education in Prussia, describing the provision made there for the children of criminals: "When I was in Berlin I went into the public prison, and visited every part of the establishment. At last I was introduced to a very large hall, which was full of children, with their books and teachers, and having all the appearance of a common Prussian school-room. 'What,' said I, 'is it possible that all these children are imprisoned here for crime?' 'Oh no,' said my conductor, smiling at my simplicity; 'but if a parent is imprisoned for crime, and, on that account, his children are left destitute of the means of education, and liable to grow up in ignorance and crime, the government has them taken here, and maintained and educated for useful employment.' The thought brought tears to my eyes."

Nor are they forgotten by Him who "looks down from the height of His sanctuary...to hear the groaning of the prisoner, to loose those that are appointed to death." Oh, the anguish of those hearts! If we could be admitted there, what griefs we would witness. On such occasions, it is the living who die! "There is no killing like that which kills the heart!"

This is admirably presented in the following thrilling sketch from Fraser's *London Magazine*.

THE CONDEMNED FORGER AND HIS FAMILY

The forger had been convicted, and condemned to suffer the dreadful penalty of death. His wife was a sensitive and accomplished lady, although the wife of a felon. An hour had been appointed for the last earthly interview. Pale and trembling, the wife, with three children, entered, to them, the tomb of a living being, who had been their only love and hope in this world,-he whose solicitude to insure their happiness, was the cause of their misery. After an absence, it is natural to rush into the arms of those we love. But disgrace and consequent shame make strange havoc with the impulses of the heart.

‘Do you forgive me, Maria?’ said the husband, keeping aloof from his wife, as if his touch would be pollution.

Would that others would as readily forgive!’ replied the agonized wife, sinking on a seat near to her.

‘Ah, you mean God! Ah, have you prayed for me, Maria? Do you think there is hope for me? Speak! I have been a great sinner-a wicked sinner, Maria. Yet do not tell these, your children, what a bad man their father was. But wherefore are they here? Is not my punishment sufficiently heavy without bringing my children to reproach me?’ The jailor reminded the bewildered man that he had expressed a wish to see them.

‘Yes-true, ‘he ejaculated; but I have been mad, and have not recovered my senses. Maria, your husband is mad!’

Maria heard him not; she was lying senseless on the floor. The children, aged six, and eight, and ten, were crying over her, thinking that their unhappy and evidently distracted father had been the cause of her death.

Both husband and wife had thousands of questions to ask, and more matter to communicate, but the interview was ended. Several hours elapsed before the wife was restored to perfect consciousness. And it was late in the evening before her doomed husband could be brought to resume the preparations for his fate that awaited him the following morning.

Shall I not see him once more? 'inquired the wife, as she slowly recovered her recollection- only once more-only one look! I am now prepared, and can command my feelings.'

This privilege was denied her, as such interviews rarely answer any purpose but to distract the mind of the one whose business it is to forget the world and all its attractions, and to agonize the feelings of the other, who stand in need of all the resolution they possess to sustain the calamities attendant on a catastrophe so fatal to their worldly prospects.

It was evening before the wife and her children could be conveyed home. The latter, while at the prison and on their road, asking their agonized mother a number of questions regarding their father, every one of which penetrated the soul and caused her further anguish. It was the first time the subject of death had been forced on their attention, and they were too young to have anything but a confused notion of it, now they had learned that their father was doomed, in a few hours, to meet it before the public gaze. In all these cases, the truth is that the wife and children of the offenders are the only parties really punished. Even the hanging itself falls with a heavier weight of suffering on the sensibilities of an attached wife, than it does on the actual culprit, whose sense of pain has a termination. The wife,

tortured with the picture of the scene of strangulation on her imagination, in vain, when worn out with distress of mind, seeks repose. The excited and deranged nerves keep the fancy at work. She dreams that they have laid her dead husband, cold and clammy, by her side, and awakes in terror at being so near one whose absence a short time since was her only trouble. The hours, as the morning approaches, are counted; then minutes are watched. The fatal period arrives the clock strikes eight-she sees the signal-hears the drop fall-feels the jerk the sensation of choking-and swoons, again to revive to the consciousness that all is desolation and misery around her.

A celebrated writer has captured the meeting of a prisoner and his child in a way that makes the point perfectly (from *The Last Day of a Condemned Man* by Victor Hugo, translated by Sir Hesketh Fleetwood, M.P.):

LAST INTERVIEW BETWEEN THE CONDEMNED AND HIS CHILD

My child looked rosy and happy, and her large eyes were bright. Oh! she is so pretty! I drew her towards me, I raised her in my arms, and, placing her on my knees, kissed her dear hair. I asked, "Why is her mother not with her?" And I learnt that she was very ill, and my poor old mother also. Mary looked at me with astonishment. Caressed, embraced, devoured with kisses, she submitted quietly; but, from time to time, cast an uneasy look towards her nurse, who was crying in the corner. At length I was able to speak.

"Mary!" I exclaimed, "my own little Mary!" and I pressed her violently against my breast, which was heaving with sobs.

She uttered a little cry, and then said, "O! you hurt me, sir."

"Sir!"

It is nearly a year since she has seen me, poor child! She has forgotten me, face, words, voice; and then, who could know me with this beard, this dress, and this pallor? What! already effaced from that memory, the only one where I wished to survive? What! already no longer a father—am I condemned to hear no more that word, so soft in the language of children, that it cannot remain in the language of men —“Papa?” And yet to have heard it from that sweet mouth once more, only once more, that is all I would have asked in payment for the forty years of life they will take from me.

“Listen, Mary,” said I to her, joining her two little hands in mine. “Do you know me?”

She looked at me with her bright, beautiful eyes, and answered, “Oh! no, indeed.”

“Look at me well,” I repeated. “What! dost thou not know who I am?”

“Yes, sir,” she answered; “you are a gentleman.”

Alas! while loving one being on earth, loving with all your deep affection, having that being before you, who sees and looks at you, speaks and answers you, and yet knows you not! You wish for consolation, but from this one being, who is the only one that does not know that you require it, because you are going to die!

“Mary,” I continued, “hast thou a papa?”

“Yes, sir,” said the child.

“Well, then, dearest, where is he?”

She raised her large eyes in astonishment.

“Ah! then you don’t know, sir? Papa is dead.”

Here she began to cry. I nearly let the little angel fall.

“Dead!” I exclaimed. “Mary, knowest thou what it is to be dead?”

“Yes,” she answered. “He is in earth and in heaven”; and she continued of her own accord, “I pray to God for him, morning and evening, at mamma’s knees.”

I kissed her on the forehead.

“Mary, say to me thy prayer.”

“I could not, sir; a prayer I do not say in the middle of the day. Come to-night to my house, and you shall hear me say it.”

This was enough. I interrupted her.

“Darling Mary, it is I who am thy papa.”

“You!” returned she.

I added, “Wouldst thou like me for thy papa?”

The child turned away.

“No, sir, my papa was much prettier.”

I covered her with kisses and tears. She tried to escape from my arms, crying, “Sir, you hurt me with your beard.” Then I replaced her on my knees, devouring her with my eyes, and continued—

“Mary, canst thou read?”

“Yes,” she answered, “I can read very well. Mamma makes me read my letters.”

“Well, then, read a little to me,” said I, pointing to a printed paper which she held crumpled in her dimpled hands.

She shook her pretty head, saying, “Oh! Dear me, I can only read fables.”

“But try, my darling; come, open your paper.”

She unfolded the paper and began to spell with her finger, “S e n —sen —t e n c e—tence—*Sentence*.” I snatched it from her hands. It was my own sentence of death she was reading to me! Her nurse had bought the paper for a penny. To me it had cost more. No words can convey what I felt. My violence had alarmed the child, who was ready to cry. Suddenly she said to me, “Do give me back my paper; I want to play with it!” I restored her to her nurse. “Take her hence!” and I fell back in my chair, gloomy, desolate, in despair. Now they may come; I care for nothing more. The last fibre of my heart is broken.

Some writer has said that when we watch an execution, we ought to tell ourselves: *there goes my father, my brother, my son*. That is the true Christian spirit. How many executions would take place in our world if such a spirit pervaded society?

And when the scaffold has done its work and the unfeeling officers of justice have left to rejoin the crowd, as if nothing out of the ordinary had happened—what must the wife or mother feel, in the depths of her grief, when the cold, stiffened body is carried off to the dissecting room or handed to the family for burial? Who can describe the anguish of that hour? How many such scenes this fair world has seen!

And who can say whose lot it may be? How unreliable human testimony is; how often there is perjury; how insidious temptation; how frail our resolutions; how easily ‘he that thinketh he stands’ may fall. ‘Does the reader,’ asks one writer, ‘startle at the very suggestion, as among the most improbable of all things? I can tell him the painful fact, that it happened to myself, several years ago, to call, at a distant place, on a gentleman high in probity, and in personal and relative respectability, and to meet at his house, by accident, another gentleman equally so, who would have both started with horror, and

kindled into indignation, had any one then predicted what, nevertheless, has since happened, that the very near relative of the one should actually die by the common hangman for forgery, and the equally near relative of the other should be obliged to fly from his country to avoid the same fate. How many are in prison who felt as secure as the most virtuous! 'When I look around upon these men,' the warden of the Massachusetts State Prison once said to me, 'I often think that I might have been one, had I been placed in their circumstances.'

Even the innocent have suffered—but the mind reels at the thought. (See Essay X, on the irremediability of capital punishment.) There stands the law, all ghastly and bloody; there is the judge, ready to pronounce sentence; there is the cold, unfeeling sheriff, ready to do its bidding. I have never seen the offices of hangman and judge more vividly drawn than in the following piece:

INTERVIEW BETWEEN THE HANGMAN AND THE JUDGE.

Did your lordship ever attend, at killing time, at the old Bailey? If not, pray favor me with your company—not on the gallows, but staying in the street amid a crowd that always assemble when I am at work for you and the sheriff. Perhaps it will add to the zest, if you come when I have a young woman to stiffen, supplied by yourself. Will the fluttering of the petticoats, as she swings in the wind, produce a pleasant sound in your ears, my learned master? Fail not to watch the people the men, women, and children—good, bad, and indifferent, who have gathered to behold the sacred majesty of the law. You will see such flashing of the eyes and grinding teeth—you will hear sighs and groans, and words of rage and hatred, with fierce curses on yourself and me. And then laughter, such as it is, of an unnatural kind, that they will make you sick! You will feel—no—why you feel more than your faithful journeyman? We shall go to

our breakfasts with good appetites and a firm conviction that every hanging but changes many sneaking pilferers into savage robbers, fit for murder.

A few years ago I was called out of town to hang a little boy who had been convicted of killing with malice aforethought. If guilty, he must have been in the habit of going to executions. Ten thousand came to dabble in the poor creature's blood. This was the youngest fellow human beings I ever handled in the way of business, and a beautiful child he was too, as you have seen by the papers, with a straight nose, large blue eyes, and golden hair. I have no heart, no feelings;-who has in our calling? But those who came to see me strangle that tender youngster, have hearts and feelings as we once had. Have-no, had; for this, they saw, was fit to make them as hard as your servant or his master.

They saw that stripling lifted, fainting, on to the gallows, his smooth cheeks of the color of wood ashes, his little limbs trembling, and his bosom heaving sigh after sigh, as if the body and soul were parting without my help.

This was downright murder, for there was scarcely any life to take out of him. When I began to pull the cap over his baby face, he pressed his small hands together, (his arms, you know, were corded fast to his body,) and he gave a beseeching look, just as a calf will lick the butcher's hand. But cattle do not speak; the creature muttered, 'Pray, sir, don't hurt me. "My dear, 'answered I, 'you should have spoken to my master. I'm only the journeyman, and must do as I'm bid. 'This made him cry, which seemed to relieve him, and I do think I should have cried myself, if I had not heard shouts from the crowd, Poor lamb!-sham ,murder!" 'Quick, 'said the sheriff. 'Ready,' said I. The reverend gentleman gave me the wink; the drop fell-one kick-and he swayed to and fro, dead as the feelings of the Christian people of England.

The crowd dispersed, some swearing, some weeping, as if hell had broke loose, and some laughing, while they cracked blackguard jokes on you and me, the parson, and the dangling corpse. They had come for the sight; they would have come to see an angel murdered. They came to get drunk with strong excitement. They went back reeling and filthy with the hot debauch. They had come to riot in the passions of fear and pity. They went back, some in a fever of rage, some burning with heat, some hardened in the heart like me, or you. All sunk down in their own respect, ready to make light of pain and blood, corrupted by the indecent show. And more fit than ever to make work for us, the judge and the hangman.

O, wise law-makers! who think to soften the hearts of the people; to make them gentle and good. To give them a feeling of respect for themselves and others, by showing them a sight like this!-English paper.

INCIDENT OF ROBINSON AND HIS CHILD.

When the little boy was removed from his cell, he remembered, when too late, that he had not bidden him farewell. He cried out, 'I didn't wish him good-by! I shall never see him again in this world.' He burst into tears, sat on the floor of his cell, and wept bitterly over two hours!

ESSAY VII

Effect of Abolishment



'Away with the executioner and the execution, and the very name of its engine! not merely from the limbs, but from the very thoughts, the eyes, the ears, of Roman citizens!—for not alone the occurrence and the endurance of all these things, but also the liability, the apprehension, even the mere mention of them, are unworthy of a Roman citizen and a free man!'

CICERO.

At various points I have tried to show that the death penalty strongly undermines the doctrine that human life is sacred and corrodes a society's morals. Now I want to go further and show that communities are actually more prosperous and happy where the law has been abolished. A few examples from history will have to suffice.

ROME. For two and a half centuries, through the better years of the Roman republic, the death penalty was expressly forbidden by the famous Porcian law,

passed in the 454th year of Rome by the tribune Porcius Lecca. There were exceptions, of course. Cicero's exile hinged on his violation of this law when he put the Catilinarian conspirators to death; and there was Manlius, whose courage had once saved Rome but who was hurled from the Tarpeian Rock when his ambition turned toward tyranny. (Note: *livy*, x. 9. Cicero *pro Rabirio*, iii. 4: In *Verrem*, v. 63; Sallust, *Cat.* 51. See Adam's *Roman Antiquities*.)

And, in respect to its operation, 'The penal laws of the kings and those of the Twelve Tables were nearly abolished during the republic, 'says Montesquieu, either in consequence of the Valerian law, made by Valerius Publicola, shortly after the expulsion of the kings, or else in consequence of the Porcian law. The republic was not the worse regulated, and no injury was done to the police. 'In this period, writes Blackstone, 'the republic flourished: under the emperors severe punishments were revived; and then the empire fell.'

RUSSIA. When the Empress Elizabeth came to the throne, she pledged never to inflict the death penalty, and she kept that pledge for twenty years. From her day to ours it has been carried out on only two occasions: once under Catherine, against a notorious bandit chief who had long defied the government; and again at the start of the present Emperor Nicholas's reign, to put down a rebellion that had filled the streets with blood, when five of the thirty leading nobles were executed—more as a political measure than as ordinary justice. The Count de Ségur, returning from his embassy at St. Petersburg, declared in a letter published in the *Moniteur* in June 1791 that Russia, under this law, was among the countries with the fewest murders, adding that Catherine herself had said to him more than once: "We must punish crime without imitating it. The punishment of death is rarely anything but a useless barbarity. "

A writer—O’Sullivan, I believe—says: ‘The Russian representatives in this country, with whom we have conversed, have borne a similar testimony, as to the comparative infrequency of murders, in view of the vast multitudes and rude character of the population. And stated that all the intelligent public opinion there is perfectly settled on this subject, no one thinking of returning to the death-punishment. ‘

‘Blush! ye countries of a longer civilization, ‘says a Russian writer, that Russia should teach you the celestial principle of reforming depraved morals, not by the sanguinary execution of inexorable justice, but by the mild and divine precepts of heavenly mercy.’(For able remarks and documents on the punishment of death, see the Democratic Review, March and April 1843, and Peter Dobell, *Travels in Kamtchatka and Siberia*, London, 1830.)

The death penalty was abolished here a century ago by the Empress Elizabeth. ‘Experience demonstrates,’ she says, ‘that the frequent repetition of Capital Punishment never yet 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. ‘

Her reign did more to elevate the nation than all the pomp of war and conquest won by her greatest generals.

BOMBAY. In his farewell charge to the grand jury of the supreme court at Bombay, on July 20, 1811, Sir James Mackintosh laid out the following facts:

Since my arrival here, in May, 1804, the punishment of death has not been inflicted by this court. Now, the population subject to our jurisdiction, either locally or personally, cannot be less than two hundred thousand persons. Whether any evil consequence has yet arisen from so unusual (and in British dominions unexampled) a circumstance, as the disuse of Capital Punishment,

for so long a period as seven years, or among a population so considerable, is a question which you are entitled to ask, and to which I have the means of affording you a satisfactory answer.

From May, 1756, to May, 1763, (seven years,) the capital convictions amounted to one hundred and forty-one, and the executions were forty-seven. The annual average of persons who suffered death was almost seven, and the annual average of capital crimes ascertained to have been perpetrated, was nearly twenty.

From May, 1804, to May, 1811, there have been one hundred and nine capital convictions. The annual average, therefore, of capital crimes legally proved to have been perpetrated during that period is between fifteen and sixteen. During this period there has been no capital execution.

But, as the population of this island has much more than doubled during the last fifty years, the annual average of capital convictions ought to have been forty, in order to show the same proportion of criminality with that of the first seven years. And between 1756 and 1763 the military force was comparatively small. A few factories or small ports only depended on this government. Between 1804 and 1811, five hundred European officers, and probably four thousand European soldiers, were scattered over extensive territories. From May, 1797, to May, 1804, there were eighteen convictions for murder, of which I omit two, as of a very particular kind. In that period there were twelve capital executions.

From May, 1804, to May, 1811, there were six convictions for murder, omitting one which was considered by the jury as in substance a case of manslaughter with some aggravation. The murders in the former period were,

therefore, very nearly as three to one to those in the latter, in which no capital punishment was inflicted.

This small experiment has, therefore, been made without any diminution of the security of the lives and property of men. Two hundred thousand men have been governed for seven years without a Capital Punishment, and without any increase of crimes. If any experience has been acquired, it has been safely and innocently gained. BELGIUM. Capital punishment has been effectively abolished here since 1829. Speaking in Parliament in May 1837, Mr. Hume reported that on visiting a prison where he found several men condemned for capital crimes, he 'learned from the officer superintending it, that, from his experience, the abolition of Capital Punishment tended greatly to soften the disposition of the mass of the people.' Mr. Ewart, a member of Parliament, offered this: (See a work on the Punishment of Death. By THOMAS WRIGHTSON. p.55. London: 1837).

In 1834, the population of France and Prussia was fifty millions, yet the number of Capital Punishments in those countries in that year amounted to only seventeen; while, in England and Wales, the population of which was only fifteen millions, the executions were thirty-four. This was a proof that, as the criminal code was less sanguinary, crimes became less frequent. For five years, ending in 1829, the executions in France amounted to three hundred and fifty-two, and the trials to one thousand one hundred and eighty-two. But in the five years ending in 1834, when the punishment of death was very much lessened, the executions were one hundred and thirty-one, and the trials one thousand one hundred and thirty-two; thus showing that, as Capital Punishment decreased, crimes also decreased. This was shown in the case of Belgium. In the four years ending 1829, the executions were seventeen, and the

trials forty-nine; while, in the four years ending in 1834, there were no executions, and yet trials had decreased, for they were then only forty-one.

To show that crime falls when the death penalty is abolished, here are figures drawn from the official tables:

According to the Abstract of Returns printed for the Chamber of Deputies, capital convictions and executions fell steadily in France across successive five-year periods: in the five years ending 1804 there were 353 convictions (150 for murder, 203 for other crimes) and 235 executions; ending 1809, 152 convictions and 88 executions; ending 1814, 113 convictions and 71 executions; ending 1819, 71 convictions and 26 executions; ending 1824, 61 convictions and 23 executions; and ending 1829, 74 convictions and 22 executions. The trend is plain: as France reduced its capital statutes, crime and execution alike declined.

BELGIUM. EXECUTIONS. MURDERS.

In 19 years ending with 1814, 533 399, or 21 per annum. In 15 years ending with 1829, 72 114, or 8 per annum. In 5 years ending with 1834, None. 20, or 4 per annum.

We see here that softening the penal code, far from emboldening people to commit crime, has the opposite effect. Violence accustoms the public mind to the shedding of blood; inject mildness into a people's morals, and protection returns to human life.

ENGLAND AND WALES. As I write, a very important document has just reached me, one presented to the British Parliament. It contains seven tables and offers abundant proof—in the report's own words—'that the penalty operates much more powerfully as an example of homicide for imitation, than

as an example of terror to deter. And is, in fact and truth, a cause of the commission of murder.’

The first table gives the commitments and executions for murder during the thirty years ending December, 1842, divided into five periods of six years each. They show that, in the last six years, with only fifty executions, the commitments for murder were fewer by sixty-one, than in the six years ending December, 1836, with seventy-four executions. Fewer by sixty than in the six years ending December, 1830, with seventy-five executions. Fewer by fifty-six than in the six years ending December, 1824, with ninety-one executions. And fewer by ninety-three than in the six years ending with 1818, when the executions amounted to the large number of one hundred and twenty-two.:

The following are the results of Table III.: That in the years following the execution of all convicted, the commitments for murder, as compared with those of the previous year, decreased 2 per cent.

Table IV., shows in the years following commutation, the commitments for murder decreased 35 do.

Table V., that in the years following acquittals on the ground of insanity, the commitments for murder decreased 32 do.

Table VI., that in the years following those in which there were commitments and no conviction, the commitments decreased 23 do.

TUSCANY. Here we find the most convincing proof of the practical benefits of abolishing capital punishment. The Grand Duke Leopold came to the throne in 1765 and, guided by the enlightened counsel of Beccaria, set about a general reform of the penal code. Having argued that the proper objects of punishment are ‘the redress of injury’ and ‘the correction of the delinquent,

‘that the offender ought to be ‘regarded as a child of the state,’ and that his ‘amendment ought never to be abandoned in despair,’ he goes on to decree:

We have resolved to abolish, and by the present law do abolish, forever, the punishment of death, which shall not be inflicted on any criminal, present or refusing to appear, or even confessing his crime, or being convicted of any of those crimes which in the laws prior to these we now promulgate, and which we will have to be absolutely and entirely abolished, were styled capital.

Now consider the results of this experiment. In his 1830 report to the French Chamber of Deputies, M. Berenger notes that the death penalty was abolished in Tuscany for twenty-five years, ‘and the mildness of the penal legislation had so improved the character of the people there, that there was a time when the prisons of the Grand Duchy were found entirely empty. Behold enough to prove sufficiently that the abolition of the punishment of death is capable of producing the most salutary effects.’ Mr. Livingston says, ‘that in Tuscany, where murder was not punished with death, only five had been committed in twenty years; while in Rome, where that punishment is inflicted with great pomp and parade, sixty murders were committed in the short space of three months, in the city and the vicinity.’

M. Carmignani, a distinguished professor of criminal law at the University of Paris, likewise documents the happy effects that followed abolition.

A treatise on public punishments, read in 1787 to a society that met at Franklin’s house, contains this: ‘A gentleman, who resided five years at Pisa, said that only five murders had been perpetrated in his dominions in twenty years since the abolition.’(See the *Collected Debates, &c.* By M. Lucas. Paris: 1831; pp. 19, 149).

The whole treatise can be found in Benjamin Rush's *Essays, Literary, Moral and Philosophical*. As I noted in the first essay, Livingston and other eminent jurists attributed these sentiments to Franklin himself—perhaps deliberately, to lend them more authority, but forgetting that Rush's own name will always be dear to every lover of humanity, since he was among the first Americans to press for a milder penal code and for the abolition of slavery.

I will close this testimony with the words of the Grand Duke of Tuscany himself, after the experiment had been tried:

With the utmost satisfaction to our paternal feelings, we have at length perceived that the mitigation of punishment, joined to a most scrupulous attention to prevent crimes, and, also, a great dispatch in the trials, together with a certainty of punishment to real delinquents, has, instead of increasing the number of crimes, considerably diminished that of smaller ones, and rendered those of an atrocious nature very rare.

I have dwelt on Tuscany because the experiment was carried out faithfully there, and because the Reverend Mr. Cheever of New York, answering O'Sullivan, has claimed it was a total failure—and claimed it rather triumphantly. I am sorry to see that spirit. I don't question his motives; I mean the point generally. Surely we have had the reign of blood and chains and gibbets long enough. Society is slow enough to change as it is, especially where human life is concerned—life that counts for far less in this money-minded age than property does. But the time will come when 'a man will be more precious than fine gold, even a man than the golden wedge of Ophir.' Mr. Cheever says: 'The experiment proved so unsatisfactory, that the government restored the penalty of death for the restraint of crime. 'To back this up, he produces a letter from a resident of Florence written around the time the statute was reinstated (See a Selection of articles from the *London Morning Herald*, vol. ii. pp. 246,

376. Also, a report, in favor of the abolition of the punishment of death, to the New York Legislature, p. 104. 1841. By J. O'SULLIVAN).

I don't deny that the death penalty was restored—nor does his opponent O'Sullivan, in their debate at the Tabernacle in New York. But before celebrating, Mr. Cheever might have looked into the circumstances. M. Carmignani writes: 'that the re-establishment of the punishment was chiefly through the power of the absolute will of Bonaparte, in 1795. And its re-enactment, by his penal code, for Italy, in 1806, was the result of an intrigue of a bigoted and prejudiced clique, in opposition to the wishes of all the magistrates, to the views of all the enlightened jurists of the country, and to all the evidence which their recent experience has afforded. 'Leopold succeeded to the empire in 1790. 'It is infinitely to be regretted,' O'Sullivan writes in his able report, 'that the great reform thus successfully begun by him, should, at about that period, have undergone the fate, of course unavoidable, of being drowned in the deluge of blood poured over all Europe by the national struggles and convulsions of which the French Revolution was the signal. And that whatever was left of it from that fate, was crushed out by the war-shod heel of the great soldier, whose memory the friends of the cause of liberty and humanity have so much reason, with the same breath, to bless and to curse. 'So here is the real reason the penalty was restored: it was done by the absolute will of Bonaparte—the great tyrant who laid waste to kingdoms with a word and was the cause of some six million deaths. Mr. Cheever is welcome to celebrate the revival of the bloody law by such a man. But the true motive is not widely known. I have been fortunate enough to obtain the tyrant's own words. A letter has come into my hands, written by the Hon. Edward Livingston to the Hon. T. Purinton, a member of the Maine senate, dated New York, December 1835. After giving several reasons for abolition, Livingston turns to answer the very objection Cheever raises:

Why, it may be asked, if the abolition in Tuscany was attended with such beneficial results, why was it not continued? Why was the punishment of death restored? It was restored because an enlightened and humane sovereign was succeeded by a foreign conqueror. It was known that the code of Leopold was abolished by the French conquest. But the policy of the conqueror has just been disclosed. A late paper, printed in Paris, has just been sent to me. It contains the review of a work lately published by Louis, the brother of Napoleon, in which the principles of the emperor, on the subject in question, are laid open in the following extract from the work, in which the author gives his reasons for declining the sovereignty of Tuscany, which his brother offered him.

‘In the conference at Mantua, I asked him (the emperor) whether he would permit me to govern the kingdom which he proposed to confide to me, entirely after my own fashion, so far as it regarded the interior, provided I left the whole exterior relations to him? ” I understand you,” he replied, ” and will answer you in the spirit of frankness with which you have spoken. In the interior, as in the exterior, all belonging to me must follow my orders. You wish to act the Medicis at Florence: no! this cannot be. You, in my place, would act precisely as I do now. 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. If I allowed you to make Tuscany happy and tranquil, all travelers from France would envy it. ” ‘

So Leopold’s great experiment was abandoned at the very moment it had produced the most glorious result for humanity—abandoned precisely because it would have made Tuscany happy and stirred the envy of France.

What an extraordinary reason for restoring the death penalty! And what a fact this confession proves: ‘If I allowed you to make Tuscany happy and tranquil,

all travelers from France would envy it!’ And how did the tyrant mean to prevent that happiness? By keeping the conditions abolition had produced? No—by restoring the cruel law. Everything had to be sacrificed to France; the interest of France was the point to which everything else must bend—codes, taxes, conscriptions, all of it. Here is the true spirit of those governed by mere policy, who labor to build up earthly kingdoms: no matter who perishes, so long as the throne stands. And what tyrant on earth could reign a single moment if the death penalty were abolished?

ESSAY VIII

Dangerous to Liberty



Those who ask for the adjournment of this proposition have not had the misfortune to see their families dragged to the scaffold. I am, for my part, the enemy of the punishment of death, and, above all, the enemy of the punishment of death in political matters.

—La Fayette

Few people realize how inseparable the doctrine of the inviolability of human life is from religious and civil freedom. No sect or party has any lasting security in a society that does not acknowledge this principle; even the most innocent may be condemned, especially in times of great upheaval. I feel, then, that this is a work of humanity—an attempt to lay a broader foundation for the whole social order, one not built amid the suffering and groans of our fellow human beings, not cemented with blood and tears, but resting on the unchanging principles of truth. (See Essay X, on the irremediability of capital punishment.)

Our Declaration of Independence holds ‘that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among

these are life, liberty, and the pursuit of happiness.’ But is our right to life truly secure while the inviolability of human life is denied? It will be said that the framers meant to secure exactly this right. I freely grant that was their aim. Yet we have woven the life-taking principle into all our laws, civil and military—building up with one hand and tearing down with the other. It will be said that, as parties to the social compact, we agree to surrender a portion of our rights. But as I showed in the first essay, a man cannot hand over the right to his life to any person or government, because he has no right to take his own life, and so cannot give that right to another. I have shown—and I wish the defenders of the present law would face the point—that to be consistent they must hold suicide to be justifiable, an act many of them believe is punished with eternal death. To prop up this mode of punishment, M. Urtis in France actually did argue that suicide was justifiable. So let the defenders of this cruel law be consistent: let them legislate the proper age at which a man may take his own life—youth, middle age, or old age. Shouldn’t they specify the best method too—whether drowning, hanging, beheading, or shooting is easiest? And wouldn’t it be well to elect certain men for the task, and set up a sort of suicide-office? (See Essay I, ‘Sacredness of Human Life.’)

The hangman could be given the post, since he has little enough to do at present. I hope I will not be charged with levity on so solemn a subject; in truth, I have never felt anything more deeply than I have since turning my attention to it. Its full bearing is simply not seen or understood.

It will be said that we are in no danger—that our liberty is secure, bought with the blood of our fathers, and that we will never see a revolution overthrow our institutions. Perhaps; but our very boasting may be our undoing. The very way our liberties were won may be the reason they are lost, for whatever is gained by violence can be taken away by violence. How little we weigh that solemn

warning from the lips of the great Teacher, spoken even as one of his disciples gripped the sword: 'All they that take the sword shall perish by the sword.' How much is packed into that one sentence! Would that its weight might sink deep into the heart of every sovereign and every legislator. But why should we think our own government safe? Are not the same passions at work that have toppled every republic? Does not party spirit already run so high that life itself is endangered? Look at the religious world—the fires of persecution still burning on the altar. Might there not come some turn, religious or political, that would make even our streets run with blood? Let us take warning from the past. History is little else than a record of human folly and crime. (Here too, as elsewhere, the argument leads toward the subject of war, which I have preferred to treat in a separate work.) The tears and sighs and groans of the widow and the orphan have gone unrewarded. Consider the ages behind us. We look at the revolutions of the world and the fall of republics and still imagine ourselves safe. But what destroyed them? Did they not all admit the death penalty into their laws? And was that bloody law not invoked whenever it suited the reigning tyrant or the dominant party, whether political or spiritual despotism held sway? What applies to the one applies equally to the other. For what is treason? What is heresy? Who is to define either? Looking at history, we shall see 'that treason and patriotism are convertible terms, and that it is success or failure that crowns the adventurer with laurels, or brands him with infamy.'

What was treason in Emmet was patriotism in Washington. Indeed, how often has the same man been a traitor at one period of his life and a patriot at another—how often in the French Revolution itself, an event that shows more solemnly than any other the evils that attend the death penalty. Each party feared the other, and each in turn argued for keeping or abolishing the penalty as it gained or lost the upper hand. I cannot dwell on those scenes; everyone

knows the guillotine was simply an engine of war, ready to drop its bloody blade on whatever head the winning party chose to call a traitor's. 'More and Fisher, Sidney and Russell, died the death of traitors; while Henry Tudor ascended the throne, and Cromwell attained a power greater than that of many kings. Ney and Labédoyère perished for adhering to the army and the nation, against a family hated by both; while men who had voted for the death of Louis XVI. were honored with offices of the highest trust under his legitimate successor.' And closer to home: even Washington, Hancock, Adams, and the whole host of revolutionary patriots would have died as traitors had America not triumphed. 'The Hungarians were first called rebels,' says Bolingbroke, 'for no other reason than this, that they would not be slaves.' By that standard, every reformer and patriot in our own land would be counted a traitor!

To show how hard treason is even to define, Mr. Rantoul, an eminent jurist, told me he owned five huge volumes on that very subject. And a fact has just reached me from Ireland: the charges against O'Connell, for conspiracy against the English government, filled thirty-three skins of parchment and took seventy hours to read aloud.

Rome, recall, kept capital punishment out of her criminal code for two and a half centuries. And the result? 'In this period,' says Blackstone, 'the republic flourished: under the emperors, severe punishments were revived, and then the empire fell.' I think we are safe in saying that no republic, ancient or modern, has ever truly recognized the inviolability of human life—though we should perhaps except that of William Penn, 'who,' says Voltaire, 'made the only treaty that ever was made without blood, and the only one that never was broken!'

The very author of this chapter would, under some governments, be indicted for high treason—and if he himself escaped the flames, his book would likely

not. Every tyrant has clung to this punishment with a death-grip, for without it no tyrant on earth could keep his throne; yet what secures him on the one hand terrifies him on the other. And then, given the peculiarities of my own faith, I might also be judged a heretic, and so become a target of vengeance from political and spiritual despots alike. I respectfully ask the defenders of capital punishment how they would dispose of such a case. Perhaps they would make good the old saying—to be hanged and pay forty shillings.

How fleeting all human applause is! Today a king, tomorrow a criminal; today the cheers of the multitude, tomorrow the reproaches of the world. The history of every reformer—even of Jesus himself—shows that no reliance can be placed on popular favor. It is fickle as the wind, fleeting as a passing cloud, fading as a rose, empty as a bubble.

In the reign of Henry VIII, clipping an English shilling—or merely believing the king was lawfully married to one of his wives—counted as high treason. The offender's heart was torn out of his living body, dashed in his face, and burned. This punishment was first inflicted on Prince David, a Welsh patriot, in the reign of Edward I, in 1283, and it remained the law for about five hundred years after.

A very affecting account of this mode of punishment survives in Shenstone's ballad. Eighteen persons were convicted for treason. Colonel Townly was the first that was laid on the block, but the executioner, observing the body to retain some signs of life, struck it violently on the breast, for the humane purpose of rendering it quite insensible to the remaining part of the punishment. This not having the desired effect, he cut the unfortunate gentleman's throat. The shocking ceremony of taking out the heart and throwing the bowels into the fire, was then gone through, after which the head was separated from the body with the cleaver, and both were put into a coffin.

The rest of the bodies were thus treated in succession. And, on throwing the last heart into the fire, which was that of young Dawson, the executioner cried, ‘God save King George!’ and the spectators responded with a shout.

A young lady of good family and handsome fortune had, for some time, extremely loved, and been equally beloved by, Mr. James Dawson, one of those unfortunate gentlemen who suffered at Kennington Common, for high treason; and had he been acquitted, or after condemnation found the royal mercy, the day of his enlargement was to have been that of their marriage. Not all the persuasions of her kindred could prevent her from going to the place of execution. She was determined to see the last hour of a person so dear to her. And accordingly followed the sledges in a hackney coach, accompanied by a gentleman nearly related to her, and one female friend. She got near enough to see the fire kindled which was to consume that heart which she knew was so much devoted to her, and all the other dreadful preparations for his fate, without being guilty of any of those extravagances her friends had apprehended. But when all was over, and she found that he was no more, she drew her head back in the coach, and crying out, ‘My dear, I follow thee- I follow thee!-sweet Jesus, receive both our souls together!’ -fell on the neck of her companion, and expired in the very moment she was speaking. That excess of grief, which the force of her resolution had kept smothered within her breast, it is thought, put a stop to the vital motion, and suffocated at once all the animal spirits.

Treason is a capital offence in every state of the Union except Rhode Island. By a remarkable turn of providence, that law was abolished some years ago largely through the efforts of a single man—a principal actor in the recent troubles there. We can easily imagine what might have happened had it not been. Mr. Rantoul rightly observes that ‘in a collision between a state and the federal

government, in case of rebellion, organized under the state authorities, a state treason law would come into action. Under its provisions, the man who adhered to his oath of allegiance to the United States, might be hanged for his fidelity, while, in retaliation, he who obeyed the state authorities might be hanged by the general government for treason against them. 'It is a singular fact that this law was abolished largely through the efforts of Mr. Dorr himself—who little imagined how it might one day bear on his own fate. It is one more of a thousand instances of the danger this penalty poses, and proves beyond dispute that society should sanction no punishment that can be turned against its own citizens. Let us beware, then, of sharpening the axe and preparing other instruments of death for the hand of party violence. Every nation has wept over the graves of patriots and heroes sacrificed to its own fury.

Some say that if we succeed in abolishing this cruel punishment, it could simply be restored in some season of party frenzy. But it is far easier to twist an existing law against the innocent than to revive, for that purpose, a punishment that has been solemnly abolished. Suppose the death penalty had been abolished in France in 1700, and the whole population raised in the conviction that human life was too sacred ever to be taken, even for the worst crimes—that every citizen's life was inviolable. Is it likely that such a people, in 1792, would have butchered not only the innocent but the worthiest members of their own community?

It is a striking fact, and a measure of how changeable all human affairs are, that at one point even Robespierre himself strongly opposed the death penalty—so strongly that, while serving as a judge, he resigned rather than pass a sentence of death. Here are his own words, from a prize-winning speech: 'The law should always present to the people the most perfect model of justice and reason. If, in the place of that powerful severity, of that calm moderation, which ought to

characterize them, they substitute anger and vengeance; if they cause to flow human blood which they might spare, and which they have not the right to shed; if they display before the eyes of the people scenes of cruelty, and corpses murdered by tortures, they then corrupt in the heart of the citizen the ideas of the just and the unjust. They cause to spring up in the bosom of society ferocious prejudices, which, in their turn, reproduce others. Man is no longer to man an object so sacred. A less lofty idea is entertained of his dignity when the public authority treats so lightly his life. The idea of murder inspires much less dread than before, when society itself presents the example and exhibition of it: the horror of the crime is diminished when society punishes it only by another. Beware well of confounding the efficaciousness of punishments with the excess of severity: the one is absolutely opposed to the other. Everything seconds moderate laws; everything conspires against cruel ones. 'What might not France and the world been spared, had these sentiments prevailed? They were advocated in the assembly, but the orators were put down by the clamors of the fierce galleries, like vultures scenting their prey from afar.'

I grant that this punishment might be reestablished—but it will grow harder and harder to do as society learns the sacredness of human life. This law is a ready-made weapon, more open to abuse than any other; to reintroduce it once abolished would be so glaring an innovation that the alarm would at once be raised.

We forget that even the Son of God suffered through a perversion of this very law. His accusers dared not demand his death of the Roman governor without the forms of law and a show of justice. When Pilate found 'no cause of death in him, 'they fell back on their own statutes: 'we have a law, and by our law he ought to die.' So the death penalty became the pretext for the greatest crime ever committed in this world—a deed so foul it is not yet expiated, though for

eighteen centuries the guilty nation has wandered the earth as exiles, a byword and a reproach, 'their own house left unto them desolate.'

I am overwhelmed by the thoughts that crowd in when I consider the horrible uses to which this punishment can be put. Had it not bred such contempt for human life in the community, 'there would have been no fires at Smithfield, no massacre of St. Bartholomew, no reign of terror in the first French revolution. Cranmer would not have been led to the stake in his old age, nor Stafford to the scaffold in the full vigor of life and usefulness. Lavoisier might have lived to enlighten the world by his science. Condorcet to instruct by his learning, and Malesherbes to improve it by his virtues. 'How little we think of what capital punishment does to the surviving relatives! How many wrenching scenes the French Revolution must have held—how many sighs and groans, how many tears noticed by no one but Him who marks even the falling of a sparrow. Let me give one instance from our own Revolution, which shows how cruel death is when it comes in the form I have so often described here.

The story is that of Colonel Hayne, of South Carolina, who was taken prisoner by the English. He had a wife and six small children. He was very amiable, and a great many interceded for him, but in vain. During the imprisonment of the father, his eldest son was permitted to stay with him in the prison. Beholding his only surviving parent, for whom he felt the deepest affection, loaded with irons and condemned to die, he was overwhelmed with consternation and sorrow. The wretched father endeavored to console him, by reminding him that the unavailing grief of his son tended only to increase his own misery, that we came into this world merely to prepare for a better, that he was himself prepared to die, and could even rejoice that his troubles were so near an end. To-morrow,' said he, 'I set out for immortality. You will accompany me to the place of my execution. And when I am dead, take my body and bury it by the

side of your mother.’ The youth here fell on his father’s neck, crying, ‘Oh, my father, my father, I will die with you! I will die with you!’ Colonel Hayne, as he was loaded with irons, was unable to return the embrace of his son, and merely said to him in reply, ‘Live, my son, live to honor God by a good life; live to serve your country. And live to take care of your brother and little sisters.’ The next morning, proceeds the narrative of these distressing events, Colonel Hayne was conducted to the place of execution. His son accompanied him. Soon as they came in sight of the gallows, the father strengthened himself, and said, ‘Now, my son, show yourself a man! That tree is the boundary of my life, and of all my life’s sorrows. Beyond that, ” the wicked cease from troubling, and the weary are at rest.” Don’t lay too much at heart our separation; it will be short. ‘Twas but lately your dear mother died. To-day I die. And you, my son, though but young, must shortly follow us.” Yes, my father,’ replied the broken-hearted youth, ‘I shall shortly follow you, for, indeed, I feel that I cannot live long. And his melancholy anticipation was fulfilled in a manner more dreadful than is implied in the mere extinction of life. On seeing his father in the hands of the executioner, and then struggling in the halter, he stood like one transfixed and motionless with horror. Till then, proceeds the narration, he had wept incessantly. But soon as he saw that sight, the fountain of his tears was stanchd, and he never wept more. He died insane; and in his last moments often called on his father, in terms that brought tears from the hardest hearts.

If it is true, then, that this careless regard for human life has been a wellspring of misery, it behooves everyone in this enlightened age to weigh their motives carefully before defending the death penalty. Its defenders insist that life is made more sacred by taking the murderer’s. The facts say otherwise. The mere legal existence of this penalty is not only abused on extraordinary occasions; it daily encourages a contempt for life and leads on to murder. If government would only stop legalizing the shedding of blood, then the great doctrine of the

sanctity of human life would take root in the public mind—the conviction that even a criminal’s days are too sacred to be cut short.

I appeal, then, to the politician as much as to the religious reformer: think long and hard about this. We may suppose we have outgrown, in the religious world, the doctrine of the stake and the fagot—but perhaps that is only because no sect among us holds the power. Let any party, political or religious, gain the upper hand, and the weapon lies ready-made in its hand. The guillotine may be set up, the fires of Smithfield relit, even all the cruelties of the Inquisition revived. And this penalty is likely to fall not on the most corrupt and abandoned, but on the very best citizens—people who, belonging to neither party, are suspected by both, and so become the first victims. In view of all this, I no longer wonder at the strong words of La Fayette in the epigraph to this essay: ‘For my own part, I shall demand the abolition of the punishment of death until I am convinced that human judgment is infallible.’ History offers countless incidents to the same effect. In the reign of James II, while the tyrant Jeffreys sat on the bench, this occurred: ‘A Mrs. Gaunt was noted for her beneficence to all professions and persuasions. One of the rebels, knowing her humane character, had recourse to her in his distress, and was concealed. The abandoned villain, hearing that a reward and indemnity was offered to such as informed against criminals, betrayed her. His evidence was incontestible [sic]. He was pardoned for his treachery—she burned alive for her benevolence.’

Another case was just as terrible. ‘Lady Lisle was proved innocent twice of sheltering two fugitives. But the jury was sent back by Jeffries, with reproaches, and they were constrained to give a verdict against the prisoner.’

ESSAY IX

Future Condition of the Soul



*Who can reflect, unmoved, upon the round Of smooth
and solemnized complacencies, By which, on Christian
lands, from age to age, Profession mocks performance.
Earth is sick And Heaven is weary of the hollow words
Which states and kingdoms utter when they talk Of truth
and justice.*

—Wordsworth

We come now to a part of the subject so solemn that words fail it—a view that overwhelms the imagination, one I would gladly have passed over, except that a sincere sense of duty insists I give it serious attention. I have thought about it with the deepest reverence, and I ask for divine help as I carefully turn the reader toward it.

I therefore appeal, in the most solemn way and in the fear of God, to that large and respected body of Christians—among whom are many shining examples of piety and learning—who believe that ‘life is but a trial for eternity—that as man dies, so he remains forever, tortured with anguish and polluted with guilt, or blooming in unfading joy and exalted goodness.’

Until now I have weighed this subject only in its earthly aspect; but now we must turn from all the fleeting vanities of time toward that world ‘where the wicked cease from troubling, and the weary are at rest.’ On such a subject one ought to speak with humility, if not with dread. Let us look at the facts. We have seen, especially in the essay on the effect of public executions, that those who commit capital crimes generally grow more hardened and indifferent as the day of death approaches. Mr. Wakefield, who spent several years in prison, says: ‘In about one case out of four, no religious impression is produced. But the prisoner goes through all the ceremonies of his situation with an air of indifference, being occupied to the very last moment with the hope of a reprieve. ‘He further states, ‘that on almost every execution day, on which several are hanged, the chaplain is subjected to the most outrageous insults from one or more of the doomed men. He will readily confirm this statement. And it may be farther proper to say, for the information of religious persons, among those who make our laws, that every year several of their fellow-creatures are cut off in front of Newgate, in the very act of scoffing at God and Christ, and the Holy Sacrament. ‘

I could fill volumes with proof of the deadening, paralyzing effect of this punishment on the unfortunate people called to suffer it. I say unfortunate, for no one deserves more pity than those who have no pity for themselves. (The author of *Old Bailey Experience*, makes the proportion much less. He says that, in nineteen cases out of twenty, there is no true repentance. Most of them die apparently careless about their former course of life, or of the world to come.)

There is also the possibility that the prisoner is innocent, or morally insane. But setting even that aside, I solemnly ask how, in view of all the facts, you can consistently defend a law with such irretrievable consequences—a law that

cuts a fellow human being down in the full vigor of young life and health and hurries him, red and reeking with guilt, to that last, irrevocable judgment where you expect to meet him, and on whose verdict you believe the eternal fate of the soul depends. I know the argument of Mr. Cheever and other distinguished divines. Here it is in his own words: 'In the abolition of this penalty, the number of murders would inevitably be increased. And every individual so murdered is sent into eternity, not with the weeks of preparation, and all the solemn, holy inducements and appliances allotted to the murderer. But in a moment, without a breath for prayer, without time so much as to say, Now I say, without hesitation, it is worse to send one person into eternity, in this manner, than it would be to send ten murderers with six weeks' warning. But if you were to repeal this penalty of death for murder, then, by the increase of this crime, for every murderer now with solemn warning executed, you would probably be the occasion of sending two or three innocent persons, unwarned and unprepared, into eternity. This is an inevitable result of the repeal of this penalty. I say, therefore, that its abolition would be an act of impiety; for the substitution of imprisonment for life would probably make most murderers die in their sins, while it would send many innocent persons unprepared into eternity. I turn this objection, therefore, back with tenfold power upon your own proposed repeal of the penalty of death for murder. It constitutes, in the mind of every benevolent person, one of the very strongest arguments against such a repeal.'

(Recall Stephen M. Clarke, hanged for arson in Newburyport some years ago at only seventeen, forced to the scaffold amid his own cries and the sound of martial music.)

The claim that murders would inevitably increase ought to be proved by facts. I have given abundant evidence to the contrary in the essay on abolition (Part I,

Essay VII), showing that the law defeats itself—that it multiplies the very crimes it means to suppress. In the essay on the scruples of jurors, we saw the petitions Lord Brougham presented in England, in which the petitioners say ‘that they find, by experience, that even the probability of the infliction of death prevents the prosecution, conviction and punishment of the criminal, thus endangering the property which it was intended to protect.’ That is the case with property. And what of life? In the essay on the effect of executions upon spectators, we saw that many people have gone straight from the scene to commit the very same act—the case in Lancaster, Pennsylvania, of Wilson, who stabbed a man and had the same irons fastened on him that Lechler had worn so recently they were scarcely cold.

Seen this way, the matter grows more dreadful still. I appeal again to those who believe that the soul’s eternal condition depends on the state in which it leaves this world. On your own theory, not only may you send one human being into God’s presence reeking with blood; by multiplying murders through the very penalty, you may send many others in the same unprepared state.

A case lies before me now that shows the matter in its most terrible light: the execution of a man in his eighty-third year for the murder of his wife. He was a believer in your own doctrine, as many of his words made plain—he hoped those who condemned him would ‘be overtaken by the vengeance of God, and sent into everlasting condemnation, ‘that ‘God would rain down fire and brimstone.’ I need not repeat the rest of his dreadful language; you know such phrases well, though you never meant them to be put to such a use. But look at the case in the light of eternity. Passing over the protestations of innocence the poor old man clung to until the last, I beg you to look at this humiliating spectacle: ‘A hoary old man, bent together with age and mental suffering, oppressed with a five months’ imprisonment; his whole appearance indicating

the utmost degree of human frailty, borne down with the intense idea of grief, and the tears flowing, ‘See him pinioned, the poor creature saying, ‘You need not do it very tightly, as I intend to make no resistance. My only wish is to have it soon over.’

What a scene! With your view of eternity, the mind reels. Under the present law this poor man—so decrepit and bent that the officers had to set a chair on the scaffold—was sent into the presence of his God reeking with blood. A moment more, perhaps, and he might have been made an heir of heaven. Stop, I beg you; pause; think of the awful, irretrievable consequences, by your own faith. How solemn the scene—and if your favorite hymn was ever fitting, it is here:

‘Behold, the aged sinner goes, Laden with guilt and heavy woes, Down to the regions of the dead, With endless curses on his head.’

The subject grows too solemn for words. The next time you raise your voice for the law of blood, think of that poor old man on the very brink of eternity—and pause, before you become the means of sending another immortal soul, unprepared, into the presence of its Maker.

‘Every execution,’ says Dr. Lushington in Parliament, ‘brings an additional candidate for the hangman! ‘Some divines have actually argued that the law is humane—that it brings the criminal to think seriously of holy things, leads him to repentance, and in his last hours moves him to confess the justice of his sentence and give glory to God. Even granting that such cases occur—and they are like angels’ visits, few and far between—the law looks no better for it. In fact it looks crueler. What a monstrous law, to cut off a human being whose heart had just begun to feel the stirrings of returning virtue, whose eyes were just opening to the enormity of his crime! What a strange inconsistency—like

the doctor who would have his patient killed the moment he recovers. Tender mercies indeed: this is hanging a man out of sheer love and kindness.

There is yet another serious side to this. Can we be sure that divine grace might not renew even the vilest heart, if only life is spared? I cannot dwell long here. I will simply note that among the most heroic of Christian martyrs we find some who had once been the most deeply corrupt, and that the Corinthian church held many whose lives had been stained with the blackest crimes. ‘The infallible apostle of the Catholics,’ says one writer, ‘denied his Master; and the man ” after God’s own heart ” was saved from a terrible death only by his royal right of sinning. The first effusions of devotional feeling ever perused were written by a repenting murderer. Had the policy which doomed even the worst of criminals to the scaffold, as incapable of correction, been pursued in this melancholy case, the world would have been deprived of the most affecting example of holy penitence and of divine mercy; of the clearest prophecies of a suffering Messiah; of the sweetest consolations that can animate hope or relieve despair; and one of the greatest characters of sacred history sent, covered with guilt and disgrace, to the bar of the Almighty.’

In view of all this, I earnestly and affectionately beg you to think long and solemnly about this dreadful subject—dreadful in what it means for the present, more dreadful still in what it means for the future. If the criminal turns out to be converted, surely you will not cut him off, for he may yet become a blessing to the community. If he remains impenitent, surely you will not seal his eternal misery. And if capital punishment multiplies murders, as I have proved, then surely you will not send still more murdered souls to hell.

ESSAY X

Irremediability



Truth lifts up the veil with which probability had enveloped her but she appears too late! The blood of the innocent cries aloud for vengeance against the prejudice of his judge, and the magistrate passes the rest of his life in deploring a misfortune which his repentance cannot repair.'

—Chancellor d'Aguesseau

Of all the arguments for our position, the irremediability of capital punishment seems to me the most powerful and convincing. As I have worked at this day after day, facts of this kind have multiplied, until what looked at first like the easiest part of the task has become the hardest. Every author knows that condensing is often harder than gathering the facts—that it takes longer to shorten a work than to lengthen it. I have set myself two rules: first, never to rely on the testimony of prisoners themselves; second, to present only cases in which the execution actually took place.

I have been struck by how little facts of this kind weigh with the friends of the death penalty. Paley says: 'He who falls by a mistaken sentence, may be considered as falling for his country, whilst he suffers under the operation of those rules by the general effect and tendency of which the welfare of the community is maintained and upheld. 'The Reverend Charles Hudson, a state senator, said in 1838: 'Though the objection may appear plausible, we think it entitled to but little weight.' And an orthodox writer says: 'When an innocent man suffers, all that can be said is, that Providence has seen fit to take away, by a painful exit, one, whom a few years more would have necessarily carried to the tomb. 'How coolly the whole matter is brushed aside! How easy it is to philosophize and play the patriot on someone else's behalf—to arm ourselves with comforting maxims and reasons for bravely enduring evils we never expect to face ourselves.

Coming to this subject, I feel a solemnity almost too great to go on. When you consider all that is packed into the phrase 'the glorious uncertainty of the law,' you hardly feel safe even in the most worthy pursuit—for many have been destroyed while engaged in works of humanity itself. The following case throws a strong light on it. In view of such facts, where is anyone safe so long as the death penalty remains on the statute book?

A SURGEON CHARGED WITH THE MURDER OF HIS SERVANT.

A gentleman was tried in Dublin on the 24th of May, 1728, charged with the murder of his maid servant. An opposite neighbor saw him admitted into his house about ten at night, by his servant, who opened the door, holding in her hand a lighted candle in a brazen candlestick. Not long after, the gentleman made an alarm, exclaiming that his servant was murdered. The woman was found a corpse in the kitchen, her head fractured, her neck wounded so as to divide the jugular vein, and her dress steeped in blood. On further search, the

inquirer discovered that the prisoner had on a clean shirt, while one freshly stained with blood, and ascertained to be his, was discovered in the recess of a cupboard; where also was found a silver goblet, bearing the marks of a bloody thumb and finger. The prisoner almost fainted on being shown the shirt. He was executed.

His defense, on trial, was, that the maid servant admitted him as sworn, and went to the kitchen; that he had occasion to call her, but not being answered, went and found her lying on the floor. Not knowing her to be dead, and being a surgeon, he proceeded to open a vein in her neck. In moving the body, the blood stained his hands and shirt sleeves. He then thought it best to make an alarm for assistance, but being afraid of the effect which his appearance might produce, he changed his linen, and displaced the silver cup, in order to thrust his bloody shirt out of sight.

This story was deemed incredible. Several years after, a dying penitent confessed to a priest, that he was concealed in the gentleman's house for the purpose of robbing it, at the moment of the gentleman's return; that, hearing him enter, he resolved to escape; that the woman saw, and attempted to detain him; that he, fearing detection, knocked her down with the candlestick she had in her hand, and fled, unnoticed, from the premises.

How much a single case can turn on! What knowledge of the human heart it demands, what fine discrimination of character! A touching appeal to a jury's feelings, a clever retort, a humorous illustration—any of these has crowned many a hopeless case with undeserved success. And remarkably, even a confession of guilt is not proof. I do not mean the horrid ancient practice of torturing a prisoner into incriminating himself, but a confession that is entirely voluntary.

A case is recorded of a man who made a confession and gave himself up to justice. Circumstances transpired which, notwithstanding his confession, led many to doubt his guilt. He at length admitted that he had made up his mind to suffer the punishment in order to claim, upon conviction, a reward which had been offered, and hand it to his starving wife and children. (Selections from the London Morning Herald, vol. ii, p. 89.)

A remarkable case occurred in Vermont. It has been cited nearly the world over and has done much to reform our criminal law. It comes from a trustworthy source: the narrator has long been known to me as a clergyman of high standing and integrity, William S. Balch of New York City.

BOURNE CONVICTED OF THE MURDER OF HIS BROTHER- IN-LAW.

A case occurred in Manchester, Vermont. Two men, brothers, by the name of Bourne, were convicted of the murder of a brother-in-law, named Colvin. While under the sentence of death, one of the brothers confessed a participation in the murder. By an act of the legislature, his punishment was commuted to imprisonment for life. The other stoutly persisted in asserting his innocence. Great excitement prevailed during and after the trial; I remember it well. It was near my native town. But when the confession was made under oath, and published, none longer doubted. Had he confessed he did not assist in the murder, would he have been believed? The day of execution at length arrived. Hundreds of people from the hills and vales were gathered around the gallows, to witness the dying struggles of a poor unfortunate fellow-sinner. The hour had arrived, and the elder Bourne, still avowing his innocence, wan and weak, was led forth into the ring, and stood beneath the horrid engine of death. The sheriff was about to adjust the halter, and draw down the dismal cap, when a cry was heard from behind the

ring,—‘Stop! Stop! For God’s sake stop. All eyes were directed that way; when, to the astonishment of all, the murdered Colvin was led into the ring, presented to the sheriff, recognized by the assembled neighbors, and greeted by Bourne, with feelings better imagined than described. And the people doomed to return home in disappointment as some remarked, ‘without seeing the fun they anticipated.’

Had Colvin (says Mr. Balch) not been found, for he was in New Jersey, or had some little hindrance delayed his arrival for a single hour, an innocent man would have been hurried out of the world as a felon, leaving a wife, and children, and friends, to lament his untimely death. Humanity to weep over the mistakes, and weaknesses, and cruelties, of human legislation. And judges and juries to reproach themselves for taking the fearful responsibility of destroying a life which they could not restore when their errors were clearly manifest.

There is no shortage of cases in which corrupt men have informed against others for money. The practice grew so common in England that it drew the attention of Parliament: in 1830, it was found, £31,843 8s. 8d. was paid out—about £17 a head. It was aptly called blood-money, and the men who collected it man-hunters. It was seriously suggested that the Burkites, who supplied bodies for dissection, might find it more profitable to kill by due process of law. Three conspirators once swore away a poor man’s life for £40—the going reward for a highwayman. What will men not do for gold? How many have been sacrificed to ambition? Whole hecatombs of human victims have been offered up on the altars of both.

Leaving aside the fallibility of judges, consider for a moment how easily witnesses may be deceived, may perjure themselves, or may be bribed. ‘There is,’ as Judge Hale observes, ‘a charge that is easily made, and difficult to be

disproved, resting solely upon the solitary oath of the prosecutrix.’ How many have been destroyed this way, out of revenge or extortion! Mr. Pollock tells of one such case, in which a man was tried for rape and executed within forty-eight hours—and Pollock was convinced the man was innocent. (Forty-eight hours seems to have been the usual interval allowed a condemned criminal in England, unless a Sunday intervened; to gain him a day more, judges would often contrive to pass sentence on a Friday.) The law holds that a person with a financial interest in a matter is not a competent witness; yet the most depraved wretch who ever sold the last shred of his conscience for gold is allowed to testify against a prisoner whose life hangs in the balance. In one recorded case, two men were convicted of highway robbery and left for execution at Lancaster, England, on the trumped-up charge of a single scoundrel; the diabolical scheme was exposed just in time to save them. Four more nearly lost their lives in a blood-money conspiracy. At the trial of the Knapps in Salem, Massachusetts, a few years ago, a man was even brought to testify from the state prison. Some objected; but the Hon. Daniel Webster, retained as counsel, remarked that truth is truth even if it comes from the bottomless pit—and the man was admitted. The remark is sound, though it is a strange place to look for truth. (I give this anecdote from my own recollection; Mr. Webster confirmed to me that such a witness was present, though he did not distinctly remember the remark I have ascribed to him, and left me at liberty to give it in this form.)

I could go on multiplying facts, but I must leave room for several cases in which the death penalty was actually carried out.

EXECUTION OF THOMAS HARRIS FOR MURDER.

The individual kept a public house on the road to Newcastle. He employed a man and maid servant. James Gray, a blacksmith, stopped there for the night. In the morning, he was found dead in his bed. Morgan deposed that he found

his master on the stranger's bed, in the act of strangling him, and that he saw him, through a key-hole, rifling his pockets. Harris denied the whole, and was about being discharged, when the maid servant was called, and she deposed that she saw her master take some gold, that morning, and bury it in a private corner of the place. A constable was dispatched, and thirty pounds were found! The accused admitted the hiding, but gave his answers so unwillingly, that all doubts of his guilt were removed.

Harris was brought to trial, and plead that the money was his own, and that he buried it for security. And that his behavior arose from the shame of acknowledging his covetousness, and not from guilt. The evidence was summed up, and in two minutes the jury found a verdict of guilty!

The truth came out, but too late. Morgan the servant, and the maid, were sweethearts. They both knew that their master hid money in the garden, and both agreed, when it arose to a certain sum, to plunder the hiding-place, and marry, and set up in business.

One day, Harris struck his servant Morgan, and he determined on revenge. James Gray arrived at this fatal period, and Morgan found him dead the next morning. Morgan and the maid agree to charge the murder upon their master. On the trial, the girl, fearing that her paramour will be punished for perjury, concludes to sacrifice the hidden money and her master, to save him.

The whole of this stupendous wickedness came to light in 1643, in a quarrel between Morgan and the girl, who had lived together as man and wife ever since the death of Harris.

The innocence of Harris was farther evident by its being found that James Gray, the supposed murdered person, had had two attacks of apoplexy, some

months previous to his death, and that he was never worth five pounds, at one time, in his life!

The following case, from a London paper, gives the friends of abolition one of their strongest arguments. At the Surrey Sessions, Mr. Charnock, defending a prisoner on circumstantial evidence, argued that such evidence is always a dangerous ground for conviction, and offered this illustration:

EXECUTION OF A FARMER FOR THE MURDER OF HIS NIECE.

A farmer, who was left executor and guardian, was indicted for the willful murder of his niece. A serious quarrel took place between them, and the farmer was heard to say that his niece would not live to enjoy her property. Soon after, she was missed. Rumors were quickly spread that she was murdered by her guardian. On being apprehended, blood was found upon his clothes. The judge was persuaded to postpone the trial, and the most strenuous exertions were made to find the niece, but in vain! The prisoner, to save his life, resorted to a step which procured his condemnation and execution within forty-eight hours after his trial. A young lady was produced, exactly resembling the supposed murdered female. Her height, age, complexion and voice were so similar that the witnesses swore to the identity. An intimation was given that the female was not the niece. By skillful cross-examination, the artifice was detected, and the unfortunate man was hung. The unhappy convict declared his innocence, but was rebuked by the clergyman for his hardihood.

In two years after, the niece made her appearance, and claimed the property. It appeared that, the day after the fatal quarrel, she eloped with a stranger to whom she was attached, and she had not been heard of till her unexpected return, and that, by mere accident, she had heard of her uncle's execution.

In Mrs. Child's popular new book, *Letters from New York*, I found two cases that show, as conclusively as anything could, the dreadful results of our present law. The case of the poor German is deeply touching, told with all the spirit and vigor that mark everything from her pen:

EXECUTION OF A POOR GERMAN FOR MURDER.

A few years ago, a poor German came to New York, and took lodgings, where he was allowed to do his cooking in the same room with the family. The husband and wife lived in a perpetual quarrel. One day, the German came into the kitchen, with a clasp knife and a pan of potatoes, and began to pare them for his dinner. The quarrelsome couple were in a more violent altercation than usual, but he sat with his back towards them, and, being ignorant of their language, felt in no danger of being involved in their disputes. But the woman, with a sudden and unexpected movement, snatched the knife from his hand, and plunged it into her husband's heart. She had sufficient presence of mind to rush into the street, and scream murder. The poor foreigner, in the meanwhile, seeing the wounded man reel, sprang forward to catch him in his arms, and drew out the knife. People from the street crowded in, and found him with the dying man in his arms, the knife in his hand, and blood upon his clothes. The wicked woman swore, in her most positive terms, that he had been fighting with her husband, and had stabbed him with a knife he always carried. The unfortunate German knew too little English to understand her accusation, or to tell his own story. He was dragged off to prison, and the true state of the case was made known through an interpreter; but it was not believed. Circumstantial evidence was exceedingly strong against the accused, and the real criminal swore that she saw him commit the murder. He was executed, despite the most persevering efforts of his lawyer, John Anthon, Esq., whose convictions of the man's innocence were so painfully strong, that, from that

day to this, he has refused to have any connection with a capital case. Some years after this tragic event, the woman died, and, on her death-bed, confessed her agency in the diabolical transaction. But her poor victim could receive no benefit from this tardy repentance. Society had wantonly thrown away its power to atone for the grievous wrong.

The next case, from the same pen, is just as affecting. It shows the magnanimous conduct of the condemned Burton in trying to save the woman he loved—and his attempt to take his own life, prevented only so that the law could take it for him:

TRAGICAL FATE OF BURTON, IN MISSOURI.

A young lady, belonging to a genteel and very proud family in Missouri, was beloved by a young man named Burton. But, unfortunately, her affections were fixed on another, less worthy. He left her with a tarnished reputation. She was by nature energetic and high-spirited. Her family were proud, and she lived in the midst of a society which considered revenge a virtue, and named it honor. Misled by this false popular sentiment, and her own excited feelings, she resolved to repay her lover's treachery with death. But she kept her secret so well that no one suspected her purpose, though she purchased pistols, and practiced with them daily. Mr. Burton gave evidence of his strong attachment by renewing his attentions when the world looked most coldly upon her. His generous kindness won her bleeding heart, but the softening influence of love did not lead her to forego the dreadful purpose she had formed. She watched for a favorable opportunity, and shot her betrayer when no one was near to witness the horrible deed. Some little incident excited the suspicion of Burton, and he induced her to confess to him the whole transaction. It was obvious enough that suspicion would naturally fasten upon him, the well-known lover of her who had been so deeply injured. He was arrested, but succeeded in

persuading her that he was in no danger. Circumstantial evidence was fearfully against him, and he soon saw that his chance was doubtful. But with affectionate magnanimity he concealed this from her. He was convicted and condemned. A short time before the execution, he endeavored to cut his throat. But his life was saved for the cruel purpose of taking it away according to the cold-blooded barbarism of the law. Pale and wounded, he was hoisted to the gallows, before the gaze of a Christian community. The guilty cause of all this was almost frantic when she found that he had thus sacrificed himself to save her. She immediately published the whole history of her wrongs and her revenge. Her keen sense of wounded honor was in accordance with public sentiment. Her wrongs excited indignation and compassion, and the knowledge that an innocent and magnanimous man had been so brutally treated, excited a general revulsion of popular feeling. No one wished for another victim, and she was left unpunished, save by the dreadful records of her memory.

Dymond, in his *Essays on the Principles of Morality*, records his belief that at a single assizes no fewer than six innocent persons were hanged.

Dr. Smollett gives the following deplorable instance of rape and murder. It strongly confirms what I have argued—that public executions do no good to spectators—for here the real criminals actually took part in the proceedings:

‘The victim was an unfortunate woman, in the neighborhood of London. The real criminals assisted at the execution, and heard the innocent man appeal to heaven, while they, in the character of friends, embraced him as he stood on the brink of eternity. (History of England, vol. iii, p. 318.)

The following instances come from a speech O’Connell delivered before the London Society for Diffusing Information on the Subject of Capital

Punishment. Since at this moment everything he says draws the notice of the civilized world, and since every true philanthropist is watching his mighty efforts for the cause of humanity, I give the words attributed to him:

‘He had long been deeply impressed with the conviction that Capital Punishment ought to be entirely abolished. He could not forget that ‘Vengeance is mine, saith the Lord, and I will repay it.’ Perhaps it was by the impulse of feeling, and what he conceived to be humanity, that, in the early part of his life, he was brought to this conviction. But long, and he might venture to say, great experience in the criminal law—for no advocate, at least in his own country, had the miserable boast which he could make of the frequency of his practice in that branch—that experience had confirmed him in his opinion, that there should not be in man the power of extinguishing human life, because the result was irreparable; because the injury could not be compensated which might be done, if the beings were not infallible who inflicted the punishment. (and where should we find such?) and, because, while we thought we were vindicating the law of society, we might be committing the greatest outrage that could be perpetrated upon our fellow human beings. The honorable and learned gentleman who spoke last, shuddered at the death even of a criminal. But what would have been his feelings if he had witnessed, as he had, the execution of the innocent!’

EXECUTION OF TWO BROTHERS FOR ROBBERY.

One of the first events which struck him when he was rising into life, was seeing a gentleman who had forsaken society, and thrown himself into a mountain lodge, abandoning the intercourse of men, and wandering about like a troubled spirit, a willing outlaw, and an outcast from the social state. He inquired the cause, and learned that it originated in these circumstances:—Two men got into his bed-room at night, and robbed him, but did not treat him

with any brutality. He prosecuted two brothers for the crime; and they, being unprepared with any defense, from a consciousness of their innocence, were convicted and executed. Not a fortnight after they had been laid in the grave, in the presence of their father, and amidst the tears of their broken-hearted mother, the gentleman discovered his total mistake!

O'Connell said he would give another instance, one he knew personally:

EXECUTION OF THREE BROTHERS FOR MURDER.

He defended three brothers who were indicted for murder. And the judge having a leaning, as was not unusual in such cases, to the side of the crown prosecution, almost compelled the jury to convict. He sat at his window as the men passed by, after receiving sentence. A military guard was placed over them, and it was positively forbidden that any one should have any intercourse with them. He saw their mother, strong in her affections, break through the guard, which was sufficient to resist any male force he saw her clasp her eldest son, who was but twenty-two years of age—he saw her cling to her second, who was but twenty—and he saw her faint as she clasped the neck of her youngest boy, who was but eighteen.

Rather than offer my own reflections, I would rather give O'Connell's. He asked, 'What compensation could be given for such agony, and for such a sacrifice of human life as that?' After mentioning another case—of a man saved from execution by his own efforts—he went on:

'He mentioned these facts to show with what extreme caution any one should do that which was irrevocable. When we recollected that, in criminal cases, a prisoner was almost shut out from making any defense. And that, in cases of circumstantial evidence, men were convicted, not upon facts, but upon reasonings and deductions; when we recollected that the criminal law

permitted the counsel for the crown to aggravate the impression against the prisoner, and prohibited his counsel from opening his mouth in his defense, it might be said, without much exaggeration, that such a code was written in letters of blood. Was this England, the first country in the world for the love of liberty, and the encouragement of all the arts which adorn civilization and morality? Was this the country where, if a man had five pounds at stake, he might employ ten or twenty counsel to speak for him as long as they liked. But, when his life was in jeopardy, the law said, "The counsel against you shall speak in aggravation of the charge. But the lips of your counsel shall be sealed!" Up to the present moment, that horrible state of the law continued. He was firmly persuaded that if he had been entitled to speak on behalf of those three brothers—feeble as might be his advocacy, perhaps his heart would have aided his judgment, and given him an inspiration beyond the natural dullness of his disposition—he felt that he would have made it impossible for any jury to convict. If the punishment of these three brothers had not been incapable of being recalled, they might have been restored to their family. And the mother, who wept over their grave, might have been borne in decency to her tomb by those over whose premature death she mourned. ‘

I can add nothing to such eloquent, burning words. It is the true, lion-hearted O’Connell who speaks—a voice carried across the Atlantic from the Old World, a voice from Ireland! And it comes not from a man theorizing, but from one who has felt and seen the innocent suffer; who, sitting at his own window, actually watched a distracted mother break through the guard to embrace her innocent sons on their way to the scaffold. (See the *Herald of Peace* for April, May, and June; London, 1832.)

What a harrowing scene! This one fact alone should make the whole civilized world pause and tremble, lest another innocent victim be sacrificed on the altar

of this bloody law. And how many have already fallen! The Reverend Mr. Chapin says ‘it has been estimated that there are over one hundred!’ How many more, only the great Searcher of hearts can know. What a dark catalogue—how many griefs and tears, how many broken hearts, how many ruined and shattered families! And still, how many raise their voices even now in favor of blood. Turning to distracted, oppressed Ireland in her passionate struggle for liberty, how solemn her voice sounds as it reaches us from her ‘great Agitator.’ Even now he stands arraigned for conspiracy, on charges that took seventy hours to read aloud. And who can predict her fate? The law of death still stands; the bloody axe is raised. She may yet add one more name to the long list of those who have fallen victim to the punishment of death. Heaven spare her from such a fate!

P A R T I I

Sacred Scriptures

ESSAY I

Cain



Life is not to be taken, even for life. From beneath that rainbow arc, and from the ashes of martyred Abel, and from the stamped forehead of Cain, is proclaimed to the magistrate and the criminal, to the murderer in his bloody purpose, and the judge in his fearful decision, 'Thou shalt not kill!'

—E. H. Chapin

Having set out the facts and arguments drawn from history and observation, I now turn to the sacred volume—the book that must settle every moral question, the book against which every system of moral philosophy is to be tested. Let us go to its pages reverently, asking for light from Him who is the source of all moral and spiritual light: from Him who ‘in the beginning created the heaven and the earth,’ who said, ‘Let us make man in our image.’

When He had finished our fair world and set man in it ‘to replenish and subdue it,’ ‘He saw that it was very good; and ‘the morning stars sang together, and all the sons of God shouted for joy.’

Such was the work of creation. God gave man ‘dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that crept upon the earth. ‘But man has stretched that dominion over his fellow man, and marred the image of God. Instead of making the earth bloom and bud, he has littered its surface with dungeons and gibbets and turned it into a vast charnel house. From the hour Abel fell to this day, man has steeped his hands in the blood of his fellow man.

Turn back the page of history and look into the first family that lived in our world. What a moment—the first family! We need not revisit the garden and their temptation and fall; my plan carries us to what came after, as they walk out of Paradise weighed down with guilt and sorrow. Following them in the mind’s eye, how anxiously we hope they may find rest and peace. But oh, the changeableness of all earthly things—for behold, a murder, and by their own firstborn! A brother struck down by a brother’s hand! What grief must have torn their hearts as they looked on Abel’s stiffened body! What a scene—the first murder, in the first family! The plough had scarcely turned a furrow before the earth drank in the blood of one of her sons. How dark the prospect of our race at that hour! How foul the deed! How cruel the motive—’because his own works were evil, and his brother’s righteous.’ (Pursuing sacred history further, we find that Lamech—a descendant of Cain, not the Lamech who was father of Noah—was also a murderer, and yet life was still held inviolable. He was the first bigamist, too: ‘Lamech said unto his wives, Adah and Zillah, Hear my voice; ye wives of Lamech, hearken unto my speech: for I have slain a man to my wounding, and a young man to my hurt. If Cain shall be avenged sevenfold, truly Lamech seventy and sevenfold.’ The death penalty, in fact, first appears with Abimelech, Genesis 26:11. To protect Isaac and his wife after Isaac’s evasion—he had said, ‘She is my sister’—Abimelech, considering what

might have followed, ‘charged all his people, saying, He that touches this man or his wife shall surely be put to death.’)

Here we see that foul demon, envy: not satisfied with driving the first pair from Paradise, it lures their firstborn from the path of virtue as well. How insinuating, how cunning its arts—it goes even to the altar and sows there, with sacrilegious hand, the seeds of discord.

How simple, how artless the account! ‘And in process of time it came to pass, that Cain brought of the fruit of the ground an offering unto the Lord. And Abel, he also brought of the firstlings of his flock and of the fat thereof. And the Lord had respect unto Abel and to his offering: but unto Cain and to his offering he had not respect. And Cain was very wroth, and his countenance fell.’ How early in our race’s history did passion overthrow reason! See the calmness of the Most High as He addresses the murderer: ‘And the Lord said unto Cain, Why art thou wroth? and why is thy countenance fallen? If thou doest well, shalt thou not be accepted? and if thou doest not well, sin lieth at the door. And unto thee shall be his desire, and thou shalt rule over him.’ And then how calmly, how deliberately, Cain raised his murderous arm against his brother! ‘And Cain talked with Abel his brother: and it came to pass, when they were in the field, that Cain rose up against Abel his brother, and slew him.’ Again Heaven speaks, and in the same calm tone: ‘And the Lord said unto Cain, Where is Abel thy brother?’ What a question to put to a brother! How direct!

Now see how the demon leads his wretched victim on. Not content with murder, it drives him to lying and deception. There is a dreadful linkage among the vices, and a beautiful one among the virtues: he who climbs a single step may reach the height of moral excellence, and he who descends may sink to the lowest depths of depravity. The history of man bears this out. It is a great moral

truth of the first importance—how early it was revealed, and how little heeded! It is woven into the very fabric of things; vice and misery, virtue and happiness, are inseparably bound together.

Cain even imagines he can deceive God: ‘He said, I know not: Am I my brother’s keeper? ‘How natural for the man who has deceived himself to suppose he can deceive others—even the great Searcher of hearts. But the same kind voice speaks again. The great Father does not forsake the murderer, though the murderer has forsaken Him.

There is no solemn mockery of a trial. The sin is simply charged home: ‘What hast thou done? the voice of thy brother’s blood cries unto me from the ground. ‘There is indeed a voice in blood. The great, solemn, perpetual, universal command has gone out from the Lawgiver of the universe: ‘Thou shalt not kill. ‘Blood does cry from the ground. The murderer may bury his victim deep, but an eye sees him—the One who said of the wicked, ‘Though they dig into hell, thence shall mine hand take them; though they climb up to heaven, thence will I bring them down.’ His eye is not too dim to see, nor His ear too heavy to hear; and He who made man in His own image will always regard that image with tenderness and love. Life is sacred and inviolable, and whoever destroys it will be held to account. Yet how slowly man learns this truth! Earth’s fairest scenes have been reddened with blood; her mountains stained with human gore, her valleys turned to rivers of blood, her streams polluted—the whole world made a vast slaughterhouse. (Dick estimates, in one of his works, that as many human beings have been killed by violence as would fill eighteen worlds like our own.)

There was no trial, as I said—no witnesses, no judge in ermine robes, no crowd of spectators, no prison, no fetters forged for the guilty man. No: the great Lawgiver himself presided and pronounced the sentence. What a lesson in

calmness, what a blending of mercy and justice, what a beautiful model for legislation in every age!

We have seen the deed and learned the motive; now the sentence: ‘And now art thou cursed from the earth, which hath opened her mouth to receive thy brother’s blood from thy hand; when thou tills the ground, it shall not henceforth yield unto thee her strength; a fugitive and a vagabond shalt thou be in the earth. ‘Both life and liberty are held sacred. The murderer may wander the earth, but if the man who reddened its surface with a brother’s blood turns to it for a living, it will not yield him its strength. So it ever will be with the murderer: he may walk the earth, but briars and thorns spring up in his path, and at every step his victim stands before him. No wonder Cain said, ‘My punishment is greater than I can bear. Behold, thou hast driven me out this day from the face of the earth; and from thy face shall I be hid; and I shall be a fugitive and a vagabond in the earth; and it shall come to pass, that every one that finds me shall slay me.’ A poet has finely caught Cain’s feelings in these lines:

To the broad earth’s farthest range Me the Almighty’s curse has driven, My crime pursues me everywhere, And ‘Vengeance! Vengeance!’ cries to heaven. Wo is me! my brother’s blood Echoes through the wild sea-shore; It murmurs in the hollow blast, It thunders in the torrent’s roar.

— *Whitehouse*

What an instinct it is in man, that makes him dread from society the very evil he has done to another! That dread is itself the transgressor’s punishment—one of the moral laws of God’s universe, borne out in everyone’s experience. Some have built on this fact in our nature an argument for the death penalty. But the Author of our being is not governed by our fears or our instincts. ‘My thoughts

are not your thoughts, neither are your ways my ways, saith the Lord. 'Christianity is our light and our guide; and while the criminal may dread that society will visit on him the evil he did to others, it tells him the age of retaliation is over. It is no longer 'an eye for an eye. 'Justice still reigns, and terror and misery will dog his steps. He will say 'in the morning, Would God it were even! and at even, Would God it were morning! for the fear of thine heart wherewith thou shalt fear, and for the sight of thine eyes which thou shalt see.'

It may be said that if we take away the gallows, there is no terror left. But was there no terror for Cain? Has human nature changed? Is there nothing in a guilty conscience? Let us beware of turning men away from themselves. Let us show them there is a hell within—that in the very act of doing wrong they kindle a fire in their own hearts, a worse hell than poet or divine ever imagined. And while we teach the sanctity of life, let us show that misery must follow in the track of wickedness. Any other doctrine endangers the community. The author of *Lacon* put it well: 'That the wicked prosper in the world, that they come into no misfortune like other folk, neither are they plagued like other men, is a doctrine that divines should not broach too frequently in the present day. For there are some so completely absorbed in present things, that they would subscribe to that blind and blasphemous wish of the marshal and duke of Biron, who, on hearing an ecclesiastic observe that those whom God has forsaken and deserted as incorrigible were permitted their full swing of worldly pleasures, the gratification of all their passions, and a long life of sensuality, affluence, and indulgence, immediately replied that he should be most happy to be so forsaken.'

Through all the murderer's guilt and suffering, both his life and his liberty were still held sacred: 'And the Lord said unto him, Therefore whosoever slayeth Cain, vengeance shall be taken on him sevenfold. And the Lord set a mark

upon Cain, lest any finding him should kill him.’ How remarkable—the first recorded law against murder exists to preserve the murderer’s own life! If the gallows is so sanctifying, why was it not set up at that early hour of human history?

It may be objected that there was as yet no express law against crime—and ‘where no law is, there is no transgression. ‘True, no law was written on stone; but one was written deep in the human soul. For there is an eternal, unchangeable distinction between virtue and vice, truth and falsehood. That man shall not kill is an eternal law of nature; it did not become a law when first revealed—it was law from the beginning. The commandments given on Mount Sinai were only a transcript, from the great Original Mind, of what had always been right. Abolish every written law against crime, and these things would still be wrong. One illustration will do: strike every human and even divine statute against fraud, injustice, and cruelty out of existence, and it would still be as wrong to steal or murder as if ten thousand more laws were on the books. Truth is truth and right is right, independent of all law. (I cannot, in a work like this, enter into a full discussion of the doctrine of immutable distinctions. I refer the reader to the writings of Dugald Stewart and Brown, and especially to Dr. Samuel Clarke’s invaluable *Discourse Concerning the Being and Attributes of God, the Obligations of Natural Religion, and the Truth and Certainty of the Christian Revelation*; vol. ii, p. 37; London, 1725.)

But to return. Such is the account of the first murder—the motive that prompted it, the manner of its doing, the trial of the fratricide, the sentence, and the Judge. How many solemn thoughts it stirs! We see the parents of our race driven from Paradise, laden with guilt and bowed down with sorrow. We see them clasp their firstborn; and then, a few short years on, what a sight meets their eyes—that firstborn a murderer! We follow them as they stand over the

body of martyred Abel, composing his cold limbs and laying them 'into the first grave dug for mortality. 'How many moral truths this scene offers the thoughtful mind—and gladly would I draw them out, if that were my task here. But I return to the history to learn the murderer's fate; and what an argument against the shedding of blood it gives! Who can contradict it? Here the great fact stands: that life is inviolable, that even a murderer's days are too sacred to be cut short. Here it will stand forever, like a planet in the firmament of revealed truth, for the guidance of every lawmaker—a bow set in God's universe, an oasis in the desert. And when the hand that writes these lines lies still in the grave, and others rise to plead for the sanctity of human life, they will find this truth stamped with the broad seal of Jehovah. I would gladly linger over this bright truth, on which the earthly happiness of a world depends. But I must close; other scenes call. Having opened the book of inspiration, I must follow where it leads, to other times and other events—and I end with a single reflection.

The first murder! What thoughts that phrase awakens—the first murder, and of a brother, in the very first family that walked our earth! How ardently the lover of humanity looks forward to the last murder—to that quiet, beautiful age when the earth will no longer drink the blood of her children; when superstition and ignorance, pride and passion, bloodshed and misery, will give way before the reign of the Prince of Peace; when cultivation will spread bloom and beauty through every valley and up the side of every hill and mountain, across all the continents and islands of the earth, until at last the Prince of Peace sits on his throne, the great peacemaker and restorer of a world. How glorious!

ESSAY II

Covenant with Noah



We regard it as merely expressive of a great retributive fact in nature, and in the overruling Providence of God, that he, who designedly and wickedly takes human life, shall, assuredly, in some way or other, meet with severe punishment, and will probably come to a violent end.

—T. C. Upham, *Manual of Peace*, p. 219

We have now reached a very important part of the work—a portion of Scripture in which the friends of the death penalty place great confidence. The Reverend Mr. Cheever calls it ‘the citadel of the argument, commanding and sweeping the whole subject.’

‘The hand,’ he continues, ‘that drew the rainbow over the sky, in sign wrote this statute in lines no more to be effaced till the destruction of all things, than the colors of the rainbow can be blotted from the sky, while lasts the constitution of this physical universe. And, as in every conflict of the elements that might fill men’s souls with terror of another deluge, this bow of mercy, this vision of delight, should span the clouds with the glittering arch, so, in every

storm of human passion, that rises to the violence of death, this statute, as a bow of promise, is God's assurance to the world, against the anarchy of murder. There probably never was an instance of murder in the Christian world, in which men did not think of it; nor ever an instance in the non-Christian world, in which the voice of conscience did not echo its assurance. As it stands in the Scriptures, it is one of the planets in the firmament of revealed truth. To strike it out from its place, and from its authority for the guidance of human legislation, would be like striking the constellation of the Pleiades, or the bright North Star, from heaven. A great writer has said, with most profound wisdom, that it is only by celestial observations that terrestrial charts can be accurately constructed. And so, it is only by the divine light that comes down from these divine statutes, that human legislation can be perfected. It is only by comparison with these statutes, that the mistakes of human prejudice or ignorance can be detected and adjusted. Sure we are, that, on the ocean of human passion, neither states nor individuals can be safe, but by charts, mapped and marked beneath the light of these enactments. It is light, like that of the planets, has travelled unaltered and unabated across the storms and changes of thousands of years. And still it shines, and still will it shine to the end of the world; for as sure as we are that a God of mercy gave this comprehensive element of law to Noah, so sure we are that he will never suffer it to be blotted from human statute books by the presumptuous tampering of a single generation. (The argument of Rev. George B. Cheever, in reply to J. L. O'Sullivan, Esq., p. 39. New York, 1843.)

Such is the boastful, extravagant way this reverend divine speaks of the covenant of Noah. He goes further still, and tries to show that it is inhuman to strike out the death penalty. This is only a restatement of the argument that the friends of bloody laws have always used; but I will meet it more fully in reviewing the objections at the close of the work.

Let us take a broad view of how this covenant is used. Many writers confuse it with the Mosaic code, which was not given until nearly a thousand years later. Strictly speaking, the passage I am commenting on was not a code at all; it was a law, or a prophecy, attached to regulations of another kind. The friends of the death penalty habitually use it as both command and prophecy. But the most curious justification for the covenant is the one the Reverend Mr. Cheever offers in the introduction to his reply to O'Sullivan: 'I have argued that in consequence of the divine lenity in the case of Cain, the crime of murder had become frightfully common, the earth being filled with violence. The assurance that his own life would not be taken, with which Lamech, whether a murderer or a homicide, comforted himself and his wives by the example of Cain's preservation, shows how men reasoned from that lenity. And that the consequence of it would be a great cheapness in the estimate of human life, a great freedom in the indulgence of violent passion, unrestrained by consequences, and a perfect carelessness and recklessness in bloodshed.'

So then the Deity must have been a poor legislator! What a blunder! How shortsighted of Him—not to foresee that, in a span scarcely covering a single patriarch's life, His sentence on Cain would produce 'a great cheapness in the estimate of human life 'and 'a perfect carelessness and recklessness in bloodshed'! And on this reasoning, what assurance have we that God may not make a similar mistake in some future legislation? How do we know He has not erred in every age—that even in sending Christianity down from heaven He may fail to make it effective for man's redemption? I cannot follow this author any further in such a vein. The notion that God was, as it were, running an experiment in dispensing with capital punishment, for the experimental instruction of the human race, strikes me as puerile and absurd in the extreme.

Look at the circumstances surrounding the passage; their history is solemn and beyond words important. 'The earth was filled with violence. 'All in whose nostrils was the breath of life, of all that was in the dry land, died. 'Noah only remained alive, and they that were with him in the ark. 'What a desolate scene—what a wild waste of waters! How dark the prospect of our race in that hour!

At last 'the windows of heaven were stopped, 'and the ark came to rest on the mountains of Ararat. 'The dove was sent forth, and she came in, and, lo, in her mouth was an olive leaf plucked off: so Noah knew that the waters were abated from off the earth." And Noah went forth, and his sons, and his wife, and his sons' wives with him.' And as they went, Heaven sent forth the gracious promise: 'While the earth remains, seedtime and harvest, and cold and heat, and summer and winter, and day and night shall not cease. 'What a beautiful promise! How moving the whole scene!

Now, as the last wave of the flood swept over the earth and man was to repeople it, God establishes His covenant with His chosen servant: 'And the fear of you, and the dread of you, shall be upon every beast of the earth, and upon every fowl of the air, upon all that moved upon the earth, and upon all the fishes of the sea; into your hand are they delivered. Every moving thing that lived shall be meat for you. Even as the green herb have I given you all things. But flesh with the life thereof, which is the blood thereof, shall ye not eat. And surely your blood of your lives will I require: at the hand of every beast will I require it, and at the hand of man. At the hand of every man's brother will I require the life of man. Whoso sheds man's blood, by man shall his blood be shed; for in the image of God made he man.' Then the token of the covenant was set—'the bow in the cloud.' And in no age has there been a cloud so dark that the great Father could not paint His bow on it. As the ages have rolled over our earth and storms have beaten on it, man has always been able, in all his

sorrows and trials, to look up to heaven and trust ‘that the waters shall no more become a flood to destroy all flesh.’ Such is the history of the covenant with Noah. Now let us find its true meaning. If, by fair interpretation, I can show that it does not sanction the death penalty, its advocates must be content—for this, Mr. Cheever says, is the citadel of the argument: ‘all else is a mere guerilla warfare, if you cannot carry this entrenchment.’ For order and precision, I will present my remarks under two heads (Genesis 9:2–6).

My two heads are these: first, the true rendering; second, a prophetic warning.

I. The true rendering. Some commentators read this passage differently from our common English version—a fact I might have passed over, except that they themselves believed in the death penalty. No one will dispute that of Calvin: the cruel death of Servetus shows plainly that he favored such punishment both in theory and in practice, and his history adds one more entry to the long, dark catalogue of how the death penalty may be abused. Spiritual and political despots alike have always found it a weapon ready to hand.

Mr. Rantoul, to whom I owe many valuable facts, says ‘that the Hebrew participle translated and might, with quite as much or more propriety, be rendered ‘for.’ So also the Samaritan version, as rendered into Latin, has it, ‘Whoso sheds human blood, his blood will be shed,’ omitting our construction. He takes it in a denunciatory rather than a strictly legislative sense. Le Clerc, certainly a high authority, favors a similar reading in his note on the word; such authority ought to settle the true rendering for good. And Professor Upham, one of the leading Hebrew scholars in this country, says ‘that the passage may read, ” whoso sheds man’s blood, by man WILL his blood be shed.”’ He adds ‘that the expressions are obviously not to be understood as a command, authorizing and requiring every one, by his own act, and in his own person, to put to death any and every other individual who

has been guilty of murder. Such an interpretation would fill the world with violence and confusion.’(See the able article ‘The Gallows and the Gospel ‘in the Democratic Review for March 1843, and again the April 1843 number.)

II. A prophetic warning. The passage may also be read as a denunciation, or prediction. I know the friends of the death penalty will regard this with suspicion, as an evasion of its real meaning. But I leave them to the commentators of their own school: when men like Le Clerc, Michaelis, Calvin, and Upham favor such a reading, it surely deserves respect. The Reverend Mr. Cheever actually holds the view up to ridicule: ‘Suppose,’ he says, ‘a malicious neighbor, in that early age, to have set a trained bloodhound on a man whose life he was seeking. And the obedient animal, true to his own nature, and an admirable instrument of murder for his master, takes the life-blood of his victim. Must the man be arraigned and executed on the charge of murder? By no means, say the humane expositors of this law of God; that would be to add murder to murder. Let the man escape, but the dog must be hung. The ferocious brute, that knew no better than instinctively to do what his master bade him, and so to slay a man made in the image of God, deserves to die. Let the court proceed to condemn the blood-thirsty quadruped. And, to show the sacredness of human life, and protect society from the incursions of wild beasts, let the creature be solemnly executed. And let it be done in the sight of all the other beasts and bloodhounds you can summon to the spectacle; for the statute is, The penalty here is not with man, but with God. This, then, I say, seems to be the idea of the text and contexts. The principle of life has a mysterious sanctity, even in the beast. But man has a high distinction from the brute. He has not only the principle of life in him, but he is made in the image of God. Man, then, is not to violate this principle of

life in the beast, for even there it is sacred. But the beast violating it in man shall die by the hand of man. And man violating it in his brother, shall render-an account to God; for in the case of man's murder, not only is the principle of life violated, but the image of God is desecrated.'

On the popular reading, the murderer's life must fall—so that when the first murder was committed, it would license a second to answer it, and then the executioner must in his turn have his blood shed, and so on, until the very last man stood upon the ruins of a world.

There is one consideration that ought to weigh heavily with those who draw the death penalty from the covenant of Noah, yet they seem to have overlooked it entirely: that even in the patriarchal age it was not understood as a command to take life. We have the account of the murder of Shechem and the men of his city by Simeon and Levi, the sons of Jacob, under circumstances of the most treacherous ferocity. Had the covenant with Noah been understood then as requiring blood for blood, we cannot suppose that Jacob—ruler and parent both—would have left unexecuted a command so directly and urgently given by the recent voice of God Himself. His grief and anger at their crime appear in Genesis 34:30; yet he never hints at any remorse for neglecting what would otherwise have been a high and solemn patriarchal duty. And in his deathbed denunciation of the retribution still to come on the seed of the guilty brothers (Genesis 49:6–7), he makes no mention of any such penalty on them or theirs—though it must have seemed inevitable, had he read the passage as the modern advocates of capital punishment do. We forget, too, that Moses himself was a murderer while this covenant was the only law.

In offering a prophetic reading of this passage, I feel I am stating a great and wholesome truth—one so solemn and so universal that I scarcely know where to stop. Violence breeds violence: a violent life is likely to end in a violent death.

This truth is neither felt nor understood. Illustrations could be drawn from history sacred and profane alike. When the Lawgiver of the universe announced this prophecy, He simply uttered the same great truth that later revelations were meant to confirm: ‘He that doeth wrong shall receive for the wrong which he hath done. ‘Age after age, as empires rose and fell, the law unfolded further. At last the great Teacher came from heaven and fixed it forever. How many of His weighty sayings could serve as illustration! I will give only one. Passing over the many stirring events of the Son of God’s life, see Him in His trying hour in the garden of Gethsemane: surrounded by His enemies, on the eve of a cruel and shameful death, in sight of the very cross on which He was to suffer, He says to Peter—in the very act of drawing the sword —’Put up again thy sword into his place: for all they that take the sword shall perish with the sword. ‘What a momentous declaration, heavy with the fate of nations—for what nation has not ‘taken the sword’? And applied to individuals, how many illustrations it finds! The history of the world shows that those who resort to cruelty and violence lay themselves open to the same in return (Matthew 26:52).

If anything can add weight to the words of Him ‘who spake as never man Spake, ‘it is that the same truth returns even at the close of Heaven’s record, introduced by that impressive call, ‘If any man have an ear, let him hear.” He that leadeth into captivity shall go into captivity: he that kills with the sword must be killed with the sword. Here is the patience and the faith of the saints.’ (Revelation 13:10. The word rendered here will bear the sense ‘in this’ or ‘on this account’—in hac re, as Rosenmuller has it. The passage urges submission to enemies and trust in God; it corroborates the injunction, ‘Avenge not yourselves... vengeance is mine; I will repay, saith the Lord.’)

Professor Upham, to whom I am deeply indebted for many facts, has put my own view well in his admirable work on peace: 'The mark of Cain is stamped upon murderers, and they are lost and ruined men, even if the civil magistrate does not touch them. All nature frowns upon them; the very stones cry out; some perish by quarrels in the streets. Some seek a refuge on the ocean and are drowned. Some are put to death by their fellow human beings from feelings of revenge, some are killed in war, some put themselves to death by violent means, some die of pure remorse and anguish of spirit. And, in one way or other, as sure as there is a God in heaven, who requires the blood they have shed at their hands, they all, sooner or later, come to a miserable end.'

This kind author even seems to think the executioner is not exempt from the murderer's general doom. To the man who has broken God's law, the very earth he treads is a prison. He is, like Cain, a fugitive and a vagabond, afraid that everyone who finds him will kill him. You need forge no chains for him—he has forged his own. You need write out no sentence—for everywhere he reads, 'Thou art weighed in the balances, and art found wanting.' He is his own enemy. (Before me lies an account that illustrates the language of Professor Upham in a very striking manner. 'About sixty years since, an exciseman, who lived between Lymington and Christchurch, on the southern coast of England, was barbarously beaten to death in the presence of his wife and daughter, who were deterred from giving an alarm by two of the gang, who stood over them with a pistol at each of their heads. The sufferer, named Bursey, had, by his vigilance in his duty, rendered himself obnoxious to the smugglers on the coast, and a party of them obtained access to his house, by one of the smugglers calling Bursey up at midnight, with a false account of unlawful doings near by, and getting Bursey to open the door, that the informer might wait in the hall while Bursey dressed himself. On this, the gang rushed in on him and accomplished their object. And although the

government offered a large reward, no tidings were obtained of the murderers for twenty-five years afterward. At about that time, the minister of Lymington church was sent for by a man on his death-bed, and this man confessed that he was the thirtieth man of the gang who had murdered Bursey; that he stood watch at the garden wicket, between the house and the road, to give the alarm, if needful, but had no further active hand in the murder; that the other twenty-nine had every one died a violent death—some by fire, shipwreck, battle, frays with their companions in crime, or execution for other crimes—so that, of the whole thirty, no one but himself had a chance to die in his bed or his home. At the time of this confession, the writer was in the neighborhood of Lymington, and had the facts from the minister who received the dying man's confession.')

No human government, no outward circumstance, can injure him as deeply as he has injured himself. He may flee every human court, but he cannot flee himself; with his own hands he kindles the fires of hell within his own soul. Once more I say—and I wish I could reach the heart of every ruler and every private person—'Whoso sheds man's blood, by man shall his blood be shed. 'Let society understand that this is not to be carried out by human tribunals, but is a great law woven into the very constitution of things. Let all our systems of moral philosophy rest on it. Let it be pressed deep into our children's minds. Let it be carved over the gate of every courthouse. Let it guide all legislation. Let everyone everywhere feel this moral law of heaven: that violence breeds violence, that whoever wantonly sports with life will himself meet violence, disappointment, and sorrow. Once the community truly grasps this, more good will be done in a single hour than all the scaffolds and gibbets have done since time began. It is indeed 'one of the planets in the firmament of revealed truth. To strike it out from its place, and from its authority for the guidance of human legislation, would be like striking the constellation of the Pleiades, or the bright North Star, from heaven. 'Its light 'has travelled unaltered and

unabated across the storms and changes of thousands of years. And still it shines, and still will it shine to the end of the world.'

Whoever works to plant this great moral law in human hearts will do his race more good than all the conquerors of the earth. What a lesson for the ambitious! How slowly the world learns this essential truth, and how eager men are to lower the standard of duty to their own narrow views and sordid feelings! Man must be raised to the standard; it will never be lowered to him. Let the standard be lifted, the banner unfurled, that human life is sacred—that 'in the image of God made he man.' Here is a great work to do. If the man who tills the soil and makes it bloom is useful, how much more the man who plants a moral truth in the human soul—a truth that will 'bring forth the fruits of righteousness,' that will sprout and flourish when thrones and dominions have passed away, and when all the fading glories of earth are lost in the glory and light of eternity.

What follows is a very interesting account of a debate on this very passage in a formal parliament of the Windward Society Islands, taken from the *Voyages and Travels* of D. Tyerman and G. Bennet. I give it as a remarkable document—one that shows the progress of religious truth, and how the unschooled mind takes up the Noahic covenant on first meeting the Bible. Surely, if these untutored islanders thought it safe to dispense with the death penalty, the civilized world need not be afraid.

It is worth noting that the question before them was death, or exile for life to a desolate island—and they chose exile:

On the question being proposed, Hitoti, the principal chief of Papecto, stood up, and, bowing to the president and the persons around him, said, 'No doubt this was a good law, but a thought has been growing in my heart for several

days, and when you have heard my little speech, you will understand what it is. The laws of England, from which country we have received so much good of every kind, must not they be good? Now, my thought is, that as England does so, it may be well for us to do so. That is my thought.'

Perfect silence followed; and it may be observed here, that during the whole eight days' meeting of this parliament, there was not an angry word spoken by one against another, nor did any assume more knowledge than the rest. None controverted the opinion of a preceding speaker, or even remarked upon it without some respectful commendation of what appeared praiseworthy in it, while, for reasons which he modestly but manfully assigned, he deemed another sentiment better.

After looking round to see if one was up before him, Utami, the principal chief of Buanaauia, rose, and thus addressed the president: The chief of Papecto has said well, that we have received a great many good things from the kind Christian people of England. Indeed, what have we not received from Beretane? (Britain.) Did they not send us (Azea) the Gospel? But does not Hitoti's speech go too far? If we take the laws of England for our guide, then must we not punish with death those who break into a house?-those who write a wrong name?-those who steal a sheep? and will any man in Tahiti say that death should grow for these? No, no, this goes too far. So I think we should stop. The law, as it is written, I think, is good. Perhaps I am wrong, but that is my thought. '

After a moment or two of stillness, Upuparu, a noble, intelligent and stately chief, stood forth. It was a pleasure to look upon his animated countenance and frank demeanor, without the smallest affectation either of superiority or condescension. He paid several graceful compliments to the former speakers, while, according to his thought, in some things each was right, and each was

wrong. My brother Hitoti, who proposed that we should punish murder by death because England does so, was wrong, as has been shown by Utami. For they are not the laws of England which are to guide us, though they are good; the Bible is our perfect guide. Now, Mitti Fruter (the missionary Crook) was preaching to us on (naming the day) from the Scripture, and he told us this was the reason of the law of England. My thought, therefore, is not with Utami, but with Hitoti, (though not because of the law of England, but because the Bible orders it,) that we ought to punish with death every one found guilty of murder. "There was a lively exchange of looks all through the assembly, as if each had been struck with the sentiments of the speaker, especially when he placed the ground of the punishment of death, not upon English precedent, but upon Scripture authority. Another chief followed, and, 'rising, seemed a pillar of state, 'one whose aspect, and presence, and costume (richly native) made the spectators forget even him who had just sat down. His name was Tati; and on him all eyes were immediately and intensely fixed, while, with not less simplicity and deference to others than those who had preceded him, he spoke thus: 'Perhaps some of you may be surprised that I, who am the first chief here, and next to the royal family, should have held my peace so long. I wished to hear what my brethren would say, that I might gather what thoughts had grown in their breasts on this great question. I am glad I waited, because some thoughts are now growing in my breast which I did not bring with me. The chiefs who have spoken before me have spoken well. But is not the speech of Upuparu like that of his brother Hitoti, in this way? If we cannot follow the laws of England, in all things, as Hitoti's thoughts would perhaps lead us, because they go too far,-must we not stop short of Upuparu, because his thoughts go too far, likewise? The Bible, he says, is our perfect guide. It is. But what does that Scripture mean? " He that sheds man's blood, by man shall his blood be shed. " Does not this go so far that we cannot follow it to the end, any

more than we can follow the laws of England all the way? I am Tati; I am a judge; a man is convicted before me; he has shed blood. I order him to be put to death; I shed his blood. Then who shall shed mine? Here, because I cannot go so far, I must stop. This cannot be the meaning of these words. But, perhaps, since many of the laws of the Old Testament were thrown down by the Lord Jesus Christ, and only some kept standing upright, perhaps, I say, this is one of those which were thrown down. However, as I am ignorant, some one else will show me that, in the New Testament, our Savior or his apostles have said the same thing concerning him that sheds man's blood, as is said in the Old Testament. Show me this in the New Testament, and then it must be our guide.'

Much cordial approbation was evident at the conclusion of Tati's speech, and its evangelical appeal seemed to remove some difficulty and doubt respecting the true scriptural authority applicable to the case.

Next rose Pati, a chief and judge of Eimeo, formerly a high priest of Oro, and the first who, at the hazard of his life, abjured idolatry. 'My breast,' he exclaimed, 'is full of thought and surprise and delight. When I look round at this fare bure ra, (house of God,) in which we are assembled, and consider who we are who take sweet counsel together here, it is to me all mea huu e, (a thing of amusement,) and mea aafaoou te aau, a thing that makes glad my heart.'

Tati has settled the question: for is it not the gospel that is our guide? I know many passages which forbid, but I know not one which commands, to kill. But then another thought is growing in my breast, and if you will hearken to my little speech, you shall know what it is. Laws to punish those that commit crime are good for us. But tell me why do Christians punish? Is it because we are angry, and have pleasure in giving pain? Is it because we love revenge, as we did when we were non-Christian peoples? None of these: Christians do not love

revenge; Christians must not be angry. They cannot have pleasure in causing pain-Christians do not, therefore, punish for these. Is it not that, by the suffering which is inflicted, we may prevent the criminal from repeating his crime, and frighten others from doing as he has done, to deserve the like? Well, then, does not everybody know it would be a greater punishment to banish forever from Tahiti, to a desolate island, than just in a moment to be put to death? and could the banished man commit murder again there? and would not others be more frightened by such a sentence than by one to take away his life? So my thought is that Tati is right, and the law had best remain as it is written. ‘

One of the taata rii, or little men, a commoner, a representative of a district, now presented himself, and was listened to with as much attention as had been given to the lordly personages who preceded him. He said, ‘As no one else stands up I will make my little speech, because several pleasant thoughts have been growing in my breast, and I wish you to hear them. Perhaps everything necessary has been said by the chiefs; yet, as we are not met to adopt this law or that law, because one great man or another recommends it, but, as we, the taata rii, just the same as chiefs, are to throw our thoughts together, that out of the whole heap the meeting may make those to stand upright which are best, whencesoever they come this is my thought. All that Pati said was good; but he did not mention that one reason for punishing, (as a missionary told us, when he was reading the law to us, in private,) is to make the offender good again, if possible. Now if we kill a murderer, how can we make him better? But if he be sent to a desolate island, where he is all solitary, and compelled to think for himself, it may please God to make the bad things in his heart to die, and good things to grow there. But if we kill him, where will his soul go?’

ESSAY III

Mosaic Code



‘All other things, which depend upon the eternal and immutable laws and rights of nature, remaining inviolately the same under both covenants, and as unchanged as nature itself.’

—SOUTH

The advocates of capital punishment have invariably appealed to the Mosaic code; it has been, for them, a city of refuge. The opponents of every moral advance have always run straight to the types and shadows of the old dispensation. The friends of slavery, the supporters of war, the opponents of temperance—all have taken shelter in its shadows; and anyone who suggested that its essential features have passed away has been branded an innovator or a skeptic. That is unfair. I hold that ancient code in as high veneration as the fiercest defender of the death penalty. That code was designed for a particular age and a peculiar condition of society. When the friends of blood are driven from every other covert, they take refuge in the ancient dispensation—a last resort amid its types and shadows. Driven to desperation, they grasp the horns of the altar; but they flee from light into the sun, from heat into the devouring fire, from the voice of God into the heart of His thunders. In every age the spiritual and political despot has called upon Moses, until the general reader

has supposed his system a vast dreary waste, as barren as the wilderness through which he led Israel. But the system contained many benevolent provisions and taught a moral purity that even the penal codes of civilization do not always reach.

Nor should it be considered a perfect system; strictly speaking, there is no system of moral truth in the Bible. Its writers knew nothing of system. Guided, as I believe they were, by a higher wisdom, they set down truth as it came, leaving later generations to arrange it as seemed best. Great injustice has been done to this part of the sacred record: on one side it has been said it must be received entire; on the other, that it has been entirely repealed.

The whole code may be divided into the moral, the criminal, and the ceremonial: the first encompassing the Decalogue given on the Mount; the second, relating to the penal jurisprudence; the third, relating to the various ceremonies and rites of its religious institutions. Living in the light and blessings of Christianity, it is hard to conceive how this code bore upon the state of society for which it was designed. The means for suppressing crime were unknown; extirpation seemed easier than reform. ('The stranger and the fatherless and the widow, which are within thy gates, shall come, and shall eat and be satisfied; that the Lord thy God may bless thee in all the work of thine hand which thou doest.' Deuteronomy xiv. 29. The benevolence of the Mosaic code extended even to beasts: Exodus xxiii. 5; Deuteronomy xxv. 4; Exodus xx. 10; Leviticus xxv. 7.)

In this ancient code, the death penalty was not a cool, deliberate act of society. The executioner was the nearest of kin to the one who had been slain—very appropriately called 'the avenger of blood.' Cities of refuge were provided for the slayer; but his life could be taken if caught before reaching them. Even the altar was no protection: a legal investigation took place, and if guilty, the

avenger stood ready; if innocent, he was safe only within the city of refuge, and if he left it before the high priest died, his life was forfeit.

*(We find the same law existing among the uncivilized nations generally. Of the Arabs, says D'Arvieux, ("Travels in Arabia Deserta," p. 145,) "there is no hatred among them but on account of blood, and that is irreconcilable. For example, if a man has killed another, the friendship between their families and all their posterity is broken. If they happen to be in some common interest, or there is any match to propose, they very civilly answer, 'You know there is blood between us; it can never be done; we have our honor to preserve.' They never pardon till they are revenged." "The Persians," says Chardin (*Voyages en Perse*, vol. iii., p. 417), "and all other Muslims, in this matter conform absolutely to the Judaic law, delivering, at the close of the trial, the murderer into the hands of the nearest relations of the deceased." Father Lobo testifies to the same practice in Abyssinia ("Voyage to Abyssinia," &c., p. 57.) "If a man is unlawfully killed," says the Koran, (Sura xvii. verse 35,) "we give to his nearest relation the right of revenge." But the notion is by no means to be called Oriental.

"If I live to be a man, My father's death revenged shall be," says the child of the Border Chief, in the "Lay of the last Minstrel;" and there is no rule more rigidly observed among our Native North Americans.)*

But where are our cities of refuge? Today the murderer is hunted like a wild beast, thrown into a cold, damp dungeon—perhaps with felons far more guilty—to wait, sometimes a full year, before his guilt or innocence is determined. If guilty, he is then dragged before a thoughtless crowd and cruelly put to death. I cannot dwell on this. I will instead present the code itself—its various capital offences. No writer I have encountered has performed this labor; I believe it will do more to settle the question than all other considerations combined.

Capital Offences in the Mosaic Code

Murder (Exodus 21:12).

Kidnapping (Exodus 21:16).

Eating leavened bread during the Passover (Exodus 12:15).

Suffering an unruly ox to be at liberty, if it kill (the ox also to be stoned) (Exodus 21:29).

Witchcraft (Exodus 22:18).

Bestiality (the beast put to death) (Exodus 22:19).

Idolatry (Exodus 22:20).

Oppression of the widow and fatherless (Exodus 22:22).

Compounding the holy ointment, or putting it on any stranger (Exodus 30:33).

Violation of the Sabbath (Exodus 31:14).

Smiting of father or mother (Exodus 21:15).

Sodomy (Leviticus 20:13).

Eating the flesh of the peace-offering in uncleanness (Leviticus 7:20).

Eating the fat of offered beasts (Leviticus 7:25).

Eating any manner of blood (Leviticus 7:27).

Offering children to Moloch (Leviticus 20:2).

Eating a sacrifice of peace-offering (Leviticus 19:8).

Screening the idolater (Leviticus 20:4).

Going after familiar spirits and wizards (Leviticus 20:6).

Adultery (both parties, if the woman is married and not a bond-maid) (Leviticus 20:10).

Incest (three kinds) (Leviticus 20:11).

Cursing of parents (Leviticus 20:9).

Unchastity in a priest's daughter (Leviticus 21:9).

Blasphemy (Leviticus 24:16).

A stranger coming near the tabernacle (Numbers 1:51).

Coming near the priest's office (Numbers 3:10).

Usurping the priestly functions (Numbers 4:20).

Forbearing to keep the Passover, if not journeying (Numbers 9:13).

Presumption, or despising the word of the Lord (Numbers 15:30).

Uncleanness, or defiling the sanctuary of the Lord (Numbers 19:13).

False pretension to the character of a divine messenger (Deuteronomy 13:5).

Opposition to the decree of the highest judicial authority (Deuteronomy 17:12).

Unchastity before marriage, when charged by a husband (Deuteronomy 22:13).

Modes of Punishment: the sword (Exodus 22:24) and stoning (Leviticus 20:2).

Posthumous Punishments: burning of the body (Leviticus 20:14; Joshua 7:15); hanging of the body (Deuteronomy 21:22); heaping stones over the body or burial place (Joshua 7:25).

Modes Introduced from Other Nations: decapitation (2 Samuel 4:7), sawing asunder (Hebrews 11:37), strangulation, and crucifixion.

What a dark catalogue! How precise in its enumeration of offences—every avenue of passion guarded by a severe penalty. I ask its advocates whether they are willing to adopt it entire as a guide to morals. Or do they contend that only part of it is binding today? If so, which part? Shall ‘he that smiteth father or mother be surely put to death’? Shall that penalty fall on ‘the man that gathereth sticks upon the sabbath day’? Shall it fall on him who ‘stealeth a man and selleth him’? Shall it fall on him ‘who afflicteth any widow or fatherless child’? Alas! if we were tried by this standard, imperfect as it was, we should find ourselves weighed in the balance and found wanting. There is one feature of this code that demands particular attention: the sacredness attached to human life.

There was a mingling of mercy and judgment. The code says, ‘He that stealeth a man, and selleth him, or if he be found in his hand, he shall surely be put to death.’ It is a singular fact that while man-stealing, man-holding, and man-selling were capital offences, highway robbery was punished only by restitution. The great truth is that man was held of more consequence than property. The great error in nearly all civilized codes is that property is more carefully guarded than life. ‘In matters of property,’ says a writer in the London Morning Herald, ‘one court of appeal may be resorted to after another. But where human life is concerned, our system of criminal jurisprudence allows of no appeal whatever.’

Rantoul. 'It is somewhat remarkable that offences, not against property, but which endanger life more directly and imminently, as well as offences more heinous and cruel against the person, the liberty, the honor, and not the purse of the injured party, are guarded against by punishments slight in comparison. Who steals the purse steals trash, but if he steals it openly, and so armed as to prevent or repel resistance, he must die for it; while whoso stealeth a man and sells him, though armed in the same manner, with the same intent to kill if resisted, is to be punished by fine not exceeding one thousand dollars, or imprisonment in the State Prison not more than ten years, or in the county jail not more than two years. So that if the robber has taken from a man of wealth the smallest coin that passes from hand to hand, being driven by the pressure of extreme want, or in the insane fury of intoxication, the judge, with these extenuating circumstances before him, must pass sentence of death, for here nothing is left to his discretion; while, if the same robber, armed with the same weapons, with deliberate malice aforethought, too cruel to be satisfied with the murder of its victim, should seize the same man of wealth, bind him hand and foot, and cause him to be transported to the coast of Barbary, and there sold as a slave to the Moors, the judge would be left at his discretion, to inflict a nominal fine upon the offender, or to sentence him to the county jail for twenty-four hours, if he see fit.' (See O'Connell's speech before the London Society for the Diffusion of Information on the subject of Capital Punishment. He has there touched this point with a masterly hand. Revised Statutes of Massachusetts, chapter 125, section 20.) The same author

gives an illustration in showing the difference between highway robbery and manslaughter. Suppose a desperate man, just ruined at a gaming table, meets one who enrages him by bitter reproaches, and then, provoked by an angry answer, strikes him. If, in his fury, he should seize this man, snatch from him his pocket-book, and fly, having about him a dagger which he does not use, but

only threatens to draw; this is highway robbery, punishable with death. If he had drawn his dagger and stabbed him to the heart, this would have been only manslaughter, and the punishment made as light as the court see fit to make it. The law, therefore, counsels an angry man to wreak his revenge upon life and not upon property, which, in such cases, it holds more sacred. 'Indeed, he even goes farther, and shows that the law has not only guarded the purse with more jealousy than life, but even that which is dearer than life. 'for, by chapter 125, section 19, of the Revised Statutes, an assault upon a woman with intent to violate her honor, which may be committed with intent to kill if resisted, or even if not resisted, is punished by imprisonment, at the discretion of the court, or by fine. '

There was a severe moral purity in the Jewish law that civilized society would hardly dare or wish to imitate: 'And the man that committeth adultery with another man's wife, even he that committeth adultery with his neighbor's wife, the adulterer and the adulteress shall surely be put to death.' (Leviticus 20:10)

The following was the law of the old Plymouth Colony—I give it to show how our forefathers regarded adultery: 'It is enacted by the Court and the Authorities thereof, that whosoever shall commit Adultery shall be severely punished by whipping two several times; viz., one whiles the Court is in being att which they are convicted of the fact, and the 2cond time as the Court shall order; and likewise to wear two Capitall letters, viz. A D., cut out in cloth and sowed on their uper most Garments on their arme or backe; and if att any time they shalbee taken without the said letters whiles they are in the Govment, soe worn, to be forthwith taken and publicly whipt.' (Plymouth Colony Laws, published agreeably to a Resolve, April 5, 1836, p. 113.)

Dim as the light was that guided Israel through the pathless desert, there was a great moral purity and a peculiar sacredness attached to life. Life was not to be

stolen or taken by violence without permission of its great Author. And why this sanctity? Because to steal a man and sell him is one of the highest offences that can be committed against a fellow human being; it includes within itself every other outrage that human power can perpetrate. To employ the language of another: 'It is the reduction of persons to things. Not robbing a man of privileges, but of himself. Not loading with burdens, but making him a beast of burden; not restraining liberty, but subverting it; not curtailing rights, but abolishing them; not inflicting personal cruelty, but annihilating personality. Not exacting involuntary labor, but sinking him into an implement of labor. Not abridging human comforts, but abrogating human nature. Not depriving an animal of immunities, but despoiling a rational being of attributes—uncreating a MAN, to make room for a thing!' What a fearful responsibility rests on those who not only strip men of their rights, but strip a man of himself and sell him to the highest bidder! What usurpations of power civilization can mask! The law and the altar claim their victims; the law of blood puts a ready weapon into the hands of the political and the spiritual despot.

But the essential features of the Jewish code have passed away. The penal and ceremonial parts are no longer binding. The code was 'a schoolmaster, 'teaching men in an imperfect state of society the first rudiments of moral and religious truth—leading them, through types and prophecies, to look to 'One who would tell them all things.' To say that no part of the Jewish law is binding on Christians is very far from leaving them at liberty to disregard moral duties; for the very definition of a moral duty implies its universal obligation, independent of all enactment.

Whatever is immutably right in that ancient dispensation will stand forever—not because we find it there, but because truth, like its great Author, is imperishable. Whatever was grounded in Israel's peculiar situation has passed

away; its rites and ceremonies are absorbed into the more perfect system of Christianity. Its priesthood has given way to the more perfect priesthood of Jesus. 'In Him 'we behold,' says a beautiful writer, 'the Law and the Prophets standing at the foot of the cross, and doing homage. You behold Moses and Aaron bearing the ark of the covenant. David and Elijah presenting the oracle of testimony. You behold all the priests and sacrifices, all the rites and ordinances, all the types and symbols, assembled together to receive their confirmation. 'He who received the law upon the Mount bid the people look to a higher and more perfect dispensation: 'The Lord thy God will raise up unto thee a Prophet from the midst of thee, of thy brethren, like unto me; unto him shall ye hearken.' When that Prophet came, he abolished the penal and ceremonial part of the old dispensation and condensed the whole Decalogue into two simple precepts: 'Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. Thou shalt love thy neighbor as thyself.' And having done so, he declared, 'On these two commandments hang all the law and the prophets.'

We must remember, however, that in that code there stands the great command: 'THOU SHALT NOT KILL.' This is the sixth commandment, addressed to all—sovereigns as well as subjects. 'You shall not commit homicide' is the strict translation; the Hebrew verb signifying strictly the commission of homicide—not always malicious homicide, which is all our word 'murder' implies, nor the mere act of killing. Homicide is forbidden without any qualification. We might as well speak of qualifying the first or second commandment as this one. Life is sacred, inviolable; it is not to be taken by the individual, nor by any earthly power. He permitted the penalty of life for life to be incorporated with this code 'on account of the hardness of their hearts,' as Jesus said. And if we go to the days of the prophets, we find the Deity himself saying, 'Wherefore I gave them also statutes that were not good, and

judgments whereby they should not live.' He saw, 'says an amiable writer, 'that they were so little advanced in the knowledge and practical application of the principles of government, and, at the same time, by reason of the hardness of their hearts, were so wholly given up to suspicion, violence, and discord, as to render the permission of the belligerent principle of an eye for an eye, tooth for a tooth, life for life, in some degree necessary under the circumstances actually existing. It was on account of their sin that he permitted them to put each other to death, in the same way as it was on account of their sin that he permitted them to practice polygamy, and to give the writing of divorcement. Or another scriptural illustration of the course of the divine proceeding in this matter may perhaps be equally to the purpose, to be found in the hundred and sixth Psalm. " They soon forgot his works; they waited not for his counsel. But lusted exceedingly in the wilderness, and tempted God in the desert. And he gave them their request, but sent leanness into their soul.

Such were the reasons for the ancient code. The command, 'THOU SHALT NOT KILL,' is solemnly re-enacted by the great Teacher in the later and more perfect revelation—without suspension or modification. The voice of God speaks through His 'beloved Son' to the nations of the earth. It comes not in whirlwind or fire, but in the gentle accents of love; He speaks as a father to His erring children, and says, 'THOU SHALT NOT KILL.' Amid the noise and confusion of battle, that voice has been disregarded. How great the responsibility of those who stop their ears! This voice speaks not only through revelation, but from the depths of the human soul—to every government and individual, teaching the great truth that life is sacred and may not be touched without the permission of Him who gave it.

I am aware that objections may be raised. It will be said there was a state of society in which God himself permitted the death penalty—and therefore it

may be proper now. But since the announcement of the Law, Heaven has given us a more perfect Revelation, and in its very opening the law of retaliation is forever abolished. The law of love is the only law by which we are now to be governed. Mr. Rantoul has met this objection so admirably that I prefer his answer: ‘But, because a peculiar people, under the most peculiar circumstances, by as express an interposition of Heaven, as that which directed Abraham to offer up Isaac, were commanded to punish certain crimes with death, shall we, a polished and humane people, whose moral sensibility is deeply wounded by the spectacle, under circumstances essentially opposite to theirs, without warrant, violate the great command, which says to the legislator as well as to the subject, thou shalt not kill? This is the command both of nature and revelation. It grows out of no local or temporary occasion, but is eternal and universal in the obligation it imposes. How, then, dare any man disobey it; and how is it an excuse for our disobedience, that the man we kill has broken this law before we break it, and that we have taken into our own hands to exercise upon him that vengeance which the Almighty has declared belongs to himself, because He, in his inscrutable purposes, some thousands of years ago, specially authorized a particular people, in specified cases, to be the executors of his vengeance? We have no message from Heaven, as they had, exempting from this law the four cases which our statutes exempt.’ It should always be remembered that our circumstances are entirely different from those of Israel. We are not a wandering tribe fresh from the house of bondage, passing through a wilderness. Our manners, customs, and religion are all different. Yet many contend that the code given to Israel in the wilderness three thousand years ago would answer for the condition of society today—forgetting that Moses himself bid us look to a higher Prophet.

It will be said that the Deity violated his own law—that He said ‘Thou shalt not kill,’ yet incorporated the life-taking principle in the very same code. The

following, from one who has thought very deeply on this subject, meets that objection well: ‘Without discussing the question, whether God could really suspend, or positively command, the violation of any of the moral precepts embodied in the decalogue, either for the purpose of benefitting or punishing any of the creatures whom he has made, we meet the objection by saying that, whatever may have been the excellences or defects of the Mosaic code or dispensation, it prophesied of a time when it would be superseded by a higher and holier covenant. And, having now vanished away, it is no longer to be put on an equality with the new one, or to be referred to as of binding authority. Whatever was morally good in it, or in accordance with the moral nature of man, is, of course, embodied in the new covenant, and carried to perfection. Now let the objector point out where, in the latter, permission is given to take away human life, in any case, or for any object whatever. To whom shall we go but to Christ? What were his teachings on the subject of violence, and in regard to the punishment of enemies? What did he say about taking the sword? What about coming to save men’s lives? What in regard to his ability to defend himself? How did he feel towards those who crucified him between two thieves? They who appeal to the old covenant are bound to give heed to the voice of the new. They who bid us think highly of Moses, must concede that far greater reverence is due to Christ.’

But let us turn from Moses, and from every other prophet, to Him who ‘came from the bosom of the Father’—the Light of the world, the Physician who came to heal the moral maladies of the human soul, the Morning Star who came to usher in a day of quietness and repose, the Good Shepherd who is to bring home the last wanderer to the fold of God.

ESSAY IV

Teachings of Christ



For the Son of man is not come to destroy men's lives,

but to save them.

-JESUS CHRIST.

After wandering among the types and shadows of the Mosaic dispensation, it is refreshing to come to that more excellent ministry. To him who is the Mediator of a better covenant. We feel as though we had crossed the desert, and were about entering Canaan. As we approach, we hear the song, not of Moses and his host, but of angels uttering, in strains unheard before, PEACE ON EARTH, GOOD WILL TO MEN. We place our feet on the plain of Bethlehem, beside the cradle of the great Christian Legislator, with an illuminated sky above us. Here are no gibbets, no ruthless desolations, but all is lovely and refreshing. We stand upon the Rock Christ Jesus, looking back to 'the first covenant, with its ordinances of divine service, and a worldly sanctuary,' and forward to that 'new and living way, which he hath consecrated for us through the vail.' 'Let us draw near with a true heart, in full assurance of faith, having our hearts sprinkled from an evil conscience, and our bodies washed with pure water.'

As the great Mediator enters upon his work, what a flood of light and consolation does he pour upon the soul! He looks back on Moses and all the prophets. He shows that they pointed to him as the true Messiah. He collects their scattered rays, like the light of ten thousand suns, into one focus! And while he speaks, the multitudes hang upon his lips, ‘wondering at the gracious words that proceeded from his mouth.’ He began by revealing God as a Father, and as a being requiring spiritual worship. And when God was thus brought before the mind, every idolatrous temple on earth shook to its very centre. It was like the sun appearing in the midst of storms and tempests, gilding and beautifying every object. A flood of light and joy poured upon the world. Man claimed kindred with the skies. His soul leaped for joy. He looked to Heaven, and, for the first time, he felt that he could say to the Creator of worlds, MY FATHER! What a kindling, mighty thought! A richer truth, God could not have conferred on man. Let us hear his first sermon: ‘Blessed are the poor in spirit: for theirs is the kingdom of heaven. Blessed are the meek: for they shall inherit the earth. Blessed are the merciful: for they shall obtain mercy. Blessed are the peace-makers: for they shall be called the children of God. Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you and persecute you.’ What a sermon! Like dew upon the tender plant; like broad rivers in a desert; like the bright morning star ushering in a day of righteousness and peace. (Matthew v. 3, 5, 7, 9, 44.) The very wilderness budded; the desert rejoiced and blossomed as the rose. From that hour to the present, the blessed influences of this sermon have been felt by the wise and the good. It has been to the world ‘like rain upon the mown grass, and as showers that water the earth. ‘ (See Names and Titles of the Lord Jesus Christ. Boston: published and sold by the Author. Fifteenth edition, pp. 297, 363.)

Had Jesus been governed by human wisdom, he would have pronounced blessings upon the proud, the rich and the popular. His first labor was to abrogate forever the law of retaliation. 'It hath been said, thou shalt love thy neighbor and hate thine enemy, but I say unto you, love your enemies, bless them that curse you, do good to them that hate you.' But can we love another, and put him to death? How much love does the government feel when the unhappy culprit is forced from his cell to the place of execution? It is the spirit of retaliation. There is no feeling for the offender. One great object must, from necessity, be excluded; which is, the good of the unhappy culprit. Indeed, the great ends of punishment are entirely set aside. The community receive no reparation, nor would they if ten thousand lives were taken. The example, instead of being beneficial, brutalizes and hardens the heart. The law is wholly subversive of any good, and entirely contrary to the spirit of Christianity. This we shall prove both by the example and precepts of its great Founder. (See Part I, Essay IV, where will be found one of the most lamentable proofs of this remark. The executioner himself actually, after strangling seven men, coolly sat down to smoke his cigar and quaff a bottle of wine, before he proceeded to cut off the heads of his victims, previous to the burning of their bodies!)

A solitary case occurs in the eventful life of the Son of God, in which a capital offender was brought before him. 'And the Scribes and Pharisees brought unto him a woman taken in adultery.' The object was rather to ensnare him than to obtain a just decision. 'This they said tempting him, that they might have to accuse him.' He knew what was in man. 'He penetrated into the very depths of the heart. In this instance, what a sublimity of action! What brevity in his language! What inexpressible tenderness! What a benignity of spirit! While he rebukes the severity of the law on the one hand, he puts her accusers to flight on the other. What a rebuke to self-righteousness! 'He that is without sin among you, let him first cast a stone at her.' Then leaving the rebuke to find its way to

their hearts, he stooped down and wrote on the ground. ‘And they which heard it, being convicted by their own conscience, went out one by one, beginning at the eldest, even unto the last: and Jesus was left alone, and the woman standing in the midst. When Jesus had lifted up himself, and saw none but the woman, he said unto her, Woman, where are those thine accusers? hath no man condemned thee? She said, No man, Lord. And Jesus said unto her, Neither do I condemn thee: go, and sin no more.’ How admirably did Jesus turn the thoughts of these accusers inward! (John viii. 3-11. It adds much to the interest of this narrative, if we remember that the law of Moses ordained that the witnesses should throw the first stone, Deuteronomy xvii. 7. It might add to the purity of our courts if we were guided by Moses in this respect. How slow should we be to condemn to death, if we had to chain the culprit, erect the gibbet, and place the halter and the cap!) Would it not be well, when I look upon the miserable culprit, to turn our thoughts in upon our own hearts? A certain divine used to exclaim, when he saw a criminal carried to execution, ‘There goes my wicked self. And when the advocates for blood come forward in their zeal, would it not be well to pause, and remember the words of Jesus? He that is without sin among you, let him cast the first stone. ‘Let those who cry for blood, erect the gibbet and place the halter! How many would then be executed?

Let us consider the criminal as a man and a brother. A writer very feelingly remarks, that when we see one on his way to the gallows, we should say, ‘There goes my father, my brother, or my son.’ How many executions would take place if the whole community possessed such a feeling? ‘Go ye and learn what that meaneth,’ said the Great Teacher; ‘I will have mercy, and not sacrifice. I am not come to call the righteous, but sinners, to repentance. “Thou shalt love thy neighbor as thyself. ‘A most beautiful incident occurs to the writer, which admirably exemplifies this sentiment. A long acquaintance with the individual

renders it dear to him. It was a venerable old lady of Brewster, Mass. In passing through the street, she saw a poor bloated drunkard lying in the gutter. She went to him, and offered her aid, which he gladly accepted. An individual, passing at the moment, expressed his surprise that a lady should, in his estimation, so far demean herself. He asked her the reason. She replied, 'It is my brother!' 'Indeed!' he exclaimed. She quickly added, to his great surprise, 'and your brother, too!' How Christ-like! How nearly resembling the language of the Parable of the Prodigal Son! Instead of admitting the expression of the elder, 'THIS THY SON,' it was, 'THIS THY Brother has come home!' (Matthew ix. 13.)

A very striking instance, illustrative of the spirit of Jesus, occurred on his way to Galilee. His road lay through Samaria, but the villagers 'did not receive him because his face was as though he would go to Jerusalem. And when his disciples, James and John, saw this, they said, Lord, wilt thou that we command fire to come down from heaven and consume them, even as Elias did? What a request! And how would it have tarnished the character of Jesus had he given such permission! It was the very spirit of revenge. How pointedly did he reprove them! And that reproof contains the very spirit of that reform for which I am laboring. 'Ye know not what manner of spirit ye are of. For the Son of man is not come to destroy men's lives, but to save them.' Had the nations of the earth been governed by this principle, all violence would have ceased. Every prison door would have been thrown open, and every criminal would have been reformed. The very wilderness would have smiled, and the desert rejoiced and blossomed as the rose. 'Instead of the thorn, would have come up the fir-tree, and instead of the brier, the myrtle-tree.' But, blessed be God, the time will come when 'violence shall no more be heard in thy land, wasting nor destruction within thy borders. But thou shalt call thy walls Salvation, and thy gates Praise. Thy people also shall be all righteous.'

Look at another striking instance in the eventful life of the Son of God. ‘Then came Peter to him, and said, Lord, how oft shall my brother sin against me, and I forgive him? till seven times? Jesus saith unto him, I say not unto thee, Until seven times; but Until seventy times seven.’ (Matthew xviii. 21, 22. It was a maxim among the Jews never to forgive more than thrice. We see that Peter had begun to outgrow the maxims of his age. But the idea of forgiving to the extent of the direction of his Master had never entered his heart, nor that of scarcely any one since his day—and as to human governments, still less.)

No one, who has glanced over the New Testament, but must have seen the totally different spirit of the new and the old law. Moses addressed the injurer, Christ the injured. Moses says to the one who has mutilated his neighbor, ‘Eye for eye, tooth for tooth.’ Christ says to the injured person, ‘Ye have heard that it hath been said, eye for eye, tooth for tooth, but I say unto you not to requite evil. But whosoever strikes you on the one cheek, offer to him also the other. ‘Moses taught retaliation. Christ taught submission. Moses made his enemies die for him. Christ died for his enemies. Moses regulated the outward actions. Jesus regulated the heart. Moses was mortal. Christ was divine. Moses was sinful. Christ was sinless. Moses was a teacher to a single nation. Jesus is the teacher of a world. Moses required sacrifice. Jesus required mercy. Moses violated his own laws. Christ exemplified his in every action. ‘For if that which is done away was glorious, much more that which remained is glorious.’

Our laws are founded on Moses, not on Christ. ‘Life for life’ is written on every code in the Union. There is not one on the face of the earth that has been wholly governed by this or any other precept of Christ. If they had been, the law of death would long before this have been abolished. For, can we forgive even once, and then put the capital offender to death? The word ἀντιστῆναι

means not merely to resist, but also requite. And, as it were, to weigh out again what one has received.

Moses incorporated with his laws only thirty-four capital offences. (Judge Stroud says, ‘there are seventy-one crimes in the slave states for which slaves are punished with death; for each of which the white man suffers only imprisonment.’)

Moses is our master, not Christ. We say to the criminal, ‘life for life.’ Christ says, ‘Be of good cheer: thy sins are forgiven thee.’ We are blinded; for until this day remains the same veil untaken away in the reading of the Old Testament; which veil is done away in Christ.’ But ‘the veil shall be taken away.’ ‘God will destroy the face of the covering cast over all people, and the veil that is spread over, all nations. Moses is still ‘our schoolmaster.’ We reject Christ, and put him to death. We will not hear his voice. We still linger around Sinai, preferring ‘the ministration of death written and engraven in stones.’ ‘For ye are not come unto the mount that might be touched, and that burned with fire, nor unto blackness, and darkness, and tempest, but ye are come unto mount Sion, and unto the city of the living God, the heavenly Jerusalem, and to an innumerable company of angels. To the general assembly and church of the first-born, which are written in heaven, and to God the Judge of all, and to the spirits of just men made perfect, and to Jesus, the mediator of the new covenant, and to the blood of sprinkling, that speaks better things than that of Abel.’ Christ is shut out of our legislatures, our courts, our schools, our literature, our families. And if Christ were on the earth, he would say, ‘Oh, ye of little faith.’ We have ‘paid tithes of mint, and anise, and cummin, and have omitted the weightier matters of the law, judgment, mercy, and faith.’ Oh! that the spirit of Jesus might reign in our midst! Well might he ask, ‘When the Son of man cometh, shall he find faith on the earth?’ If our eyes were lifted up, we should not

behold Moses nor Elias, but Christ. And if the Christian world were guided by the precepts of Jesus, every gibbet would be demolished, and every prison door thrown open. One great, all-pervading law would bind and govern the world: 'Thou shalt love thy neighbor as thyself.'

Some say that the Christian precepts were designed for individuals, not nations. This has always been urged against every attempt to make an application of Christianity to the life and conduct. The popular distinction between political and moral right, or between political expediency and Christian duty, is dangerous in the extreme. On this principle, political bargains are often made, and as often broken. By what authority do we limit the precepts of Christ? 'No prophecy of the scripture is of private interpretation.' If individuals are bound to act up to Christian rules, societies are subject to the same. If not, how many individuals must associate before the precepts of Jesus cease to be binding? Were Robinson Crusoe and his man Friday a nation? If not, when would they have begun to be a nation, provided successive ships had been cast away on his island, and successive indigenous populations enslaved? How populous must the island become before their members would sanction sin? The republic of San Marino has been considered a nation for many centuries. Its numbers are only three or four thousand. Our Native peoples are more numerous.

Our government considers them nations when it makes treaties, but not when it breaks them! Is slavery no sin because sanctioned by the nation? The objection is absurd. We kindly ask, how many must be associated in a family or tribe before the precepts of Jesus cease to be binding?

Jesus, some say, did not condemn the law against which I have been laboring. This objection has been often presented. And it is not only urged against the present reform, but against every reform that has been commenced since Jesus

was on the earth. And, judging from the past, I suppose every reformer will have to encounter it at the very commencement. It is insincere. Men endeavor to seek shelter under the example of Christ, who care nothing about Christ. They would crucify the Son of God afresh, and open his bleeding wounds. And are such men willing to be governed by the example of Jesus? If they will go to him, then I beseech of them to follow in his steps. Hear, then, his commands: 'Ye have heard that it hath been said, An eye for an eye, and a tooth for a tooth. But I say unto you, That ye resist not evil: but whosoever shall smite thee on thy right cheek, turn to him the other also. And if any man will sue thee at the law, and take away thy coat, let him have thy cloak also.' These prohibit, decisively and positively, all acts of retaliation and violence. If carried out, not a single execution would ever again disgrace humanity. Such declarations, some say, are not to be understood literally. Indeed! Is Christ divided? Did he not, when smitten on the one cheek, turn the other? Did he not even die on Calvary for his enemies? And is he not our pattern and guide? 'For even hereunto were ye called: because Christ also suffered for us, leaving us an example, that ye should follow his steps: who did no sin, neither was guile found in his mouth; who, when he was reviled, reviled not again; when he suffered, he threatened not. But committed himself to him that judges righteously. 'Christ, then, is our great example. Looking to him, let us, if we can, erect the gibbet, chain our brother, fix the fatal noose, draw down the cap, and, amid his cries, cut him off from the earth!

But I will give the objection in the language of Rev. Charles Hudson, a member of the Senate of Massachusetts, in 1838, in his Report: 'When Christ was put to death, he expired between two malefactors, who were suffering capitally for their crimes. The penitent thief confessed that the punishment was just; and the Saviour acquiesced in that opinion. Would Christ, in his last hours, have omitted this opportunity to condemn a penalty which was

contrary to the ordinance of Heaven, and fraught with extreme cruelty? Would the zealous advocate for the abolition of Capital Punishment, in these days, let such an opportunity pass without entering his protest against it? We think not. Now, unless he claims to be more faithful than the Son of God, he must allow that the case before us furnishes an argument in favor of Capital Punishment.' We think, in meeting objections of this nature, a great error has been committed. Too much reliance has been placed on mere phrases, and cold, unmeaning criticisms. Jesus himself never stopped by the way to controvert mere words. He began by laying the axe at the root of the tree. The law of retaliation lay in his way. He said, at once, 'Love your enemies, bless them that curse you.' (1 Peter ii. 21-23.)

'It is apparent,' says a writer, 'throughout all Christ's teachings, that he was careful to confine himself to the great object of his mission, that of flinging broadcast over the earth, to make their eventual way to its remotest corners, the imperishable seeds of great principles, to the natural germination and growth of which, slow but certain, he committed all the practical social reformations which, in the ripeness of time, were to be their fruit. Wisely abstaining from attacking directly even those existing civil institutions most essentially at variance with those principles, he thus, by the words of power which he sent forth, planted at the very depths of their roots a blight which would not fail, earlier or later, to wither them to their topmost branches, and soon to bid them cumber the ground, and mar the fair face of the earth no more.' For ages, the church has been engaged in discussing mere words and trifling ceremonies, while humanity has been suffering, human rights disregarded, and prisons and gibbets strewn over the earth. How little has been done! Eighteen centuries have rolled away. Yet, even now, when a poor, feeble voice, amid din, and strife, and blood, is raised for the poor, degraded criminal, it is drowned by the cries of morbid benevolence, sickly sympathy, infidelity! It is indeed

lamentable to see the subjects which have, for ages, occupied the attention of the church, as of primary importance. Such as whether baptism by immersion or by sprinkling was the true mode. Whether Christ was really in the sacramental symbols, &c. &c.

We admire the remarks of Rev. Mr. CHAPIN, of Charlestown, on this point. (See below.) The still small voice will be heard. It may be long before it reaches the heart. But its mission will be effected. Truth is powerful, and must prevail.' Who can calculate the orbit of a word? 'He who sends out a great truth, will reap his reward. It may lie long buried in the earth, but it will eventually bring forth the fruits of righteousness. Like Jesus, the great Reformer, the advocate may be put to death, but he will have that peace which flows like a river. From his very death will flow a power that his life could never have imparted. 'The good man shall be satisfied from himself. 'He looks not to outward circumstances, but to God, the faithful rewarder of suffering virtue.

Christianity is a great, a perfect system. It is a system of light and love. It comes from Him whose name is love, and who is the Moral Sun of the universe. It contains immutable and eternal truths. It appeals to man's moral nature. It is a system, benevolent in its origin, and omnipotent in power. Its design is to soften the human heart, to light up the world with joy, to bind up the broken heart, to break every yoke, to open the prison door. In short, to sever every chain, to purify and refine every soul, and to subdue all things to God.

In the New Covenant, I find re-enacted in the most solemn manner the great command, 'THOU SHALT NOT KILL.' As the old covenant was passing away, with its rites and observances, Jesus gathered up the Moral Law, stripped it of all tradition, and incorporated it with the gospel. And one of the commands of that Moral Law was, 'THOU SHALT NOT KILL.' True, there are other portions, of importance to the well-being of society. But our duty is

to bring out this, in all its distinctness and awful solemnity. Other writers may take up the several parts of the decalogue, but, to us, this one seems all-important; for, I cannot expect human rights to be respected so long as human life is disregarded. The immutability of life lies at the foundation. We can safely build on no other principle. So long as the Punishment of Death is permitted, all other rights will be unsafe. We must begin here: 'THOU SHALT NOT KILL! How solemn! It shines out everywhere in the Gospel. It does not come to us now amid the thundering of Sinai. It drops gently from Him who 'came from the bosom of the Father;' from Him who is 'the Way, the Truth, and the Life.'

But the Hon. Senator, to whom we alluded, wonders why the Son of God did not speak against Capital Punishment on the cross. Indeed! Was that a time to point out the evils of a particular law. A law by which he himself was condemned to be crucified? Had he not already laid down principles that would eventually subvert every cruel law? Had he not, in his very first sermon, spoken directly against the law of retaliation? And was he not, in that dark hour, giving his life in attestation of his principles? Could he not have called down twelve legions of angels? The very crucifixion itself, when felt as it should be, will break every fetter, will cast down every gibbet, and open every prison door. It was this doctrine that gave to a suffering world the angel-spirit of a Howard. And the crucifixion is now moving the hearts of philanthropists to ameliorate the condition of the prisoner. It goes to the cold, damp dungeon, and speaks kindly to him. (We cannot mention the name of Howard without peculiar emotions. When we remember that he spent thirty thousand pounds in the cause of humanity, and traversed nearly sixty thousand miles, fearlessly daring the dungeon's gloom and the squalid aspect of the miserable occupant, as he lay in his filthy straw, on the damp, clay floor, who can help admiring his

ardent love for the degraded. Cowper, the great moral poet of England, has pronounced the following just and beautiful eulogy:logium on his character:.

‘Patron of else the most despised of men, Accept the tribute of a stranger’s pen;
Verse, like the laurel, its immortal meed, Should be the guerdon of a noble deed;

I may alarm you, but I fear the shame, (Charity chosen as my theme and aim,)

I must incur, forgetting Howard’s name, Blest with all wealth can give you, to resign

Joys doubly sweet to feelings quick as yours. To quit the bliss your rural scenes bestow, To seek a nobler amidst scenes of woe, To traverse seas, range kingdoms, and bring home, Not the proud monuments of Greece or Rome,

But knowledge such as only dungeons teach, And only sympathy like yours could reach;

That grief, sequestered from the public stage, Might smooth her feathers, and enjoy her cage;

Speaks a divine ambition, and a zeal, The boldest patriot might be proud to feel

O that the voice of clamor and debate, That pleads for peace till it disturbs the state, Were hushed in favor of your generous plea, The poor your clients, and Heaven’s smile your fee!’)

It endeavors to show him that all is not lost, that he has a Father in heaven, and that Jesus waits with open arms again to receive him. It goes to the gallows and says, That is my brother, spare him; let him live. Degraded though he may be, still there is hope. Mercy and compassion may yet subdue, and he whom you

consider an outcast, may yet become a blessing to that community whose laws he has violated. (Private Christians, selected at once for their judiciousness and philanthropy, by conversation, look and encouragement, must touch within the convict chords which have long ceased to vibrate; must awaken new hopes; must show him that all is not lost.—Channing.)

The death of Christ was a complete embodiment of Christianity.

Jesus then carried his principles to the highest degree of perfection and purity. It was not simply a friend dying for a friend. It was a development of a higher principle. 'Greater love,' said Jesus, at the Last Supper, 'hath no man than this, that he lay down his life for his friends.' Human love may rise to that point. 'God commendeth his love toward us in that, while we were yet sinners, Christ died for us.' 'Herein is love, not that we loved God, but that he loved us, and sent his Son to be the propitiation for our sins.' What love! Who can measure its height, its depth, its length, or its breadth? Let us seek for an illustration. History furnishes nothing that equals the truth itself. We may refer to the hero, who mounts his steed, and buckles on his armor, and bleeds for his country. 'The world calls him great, as he goes forth amid the flourish of drums and trumpets, trampling upon the bodies of the slain and the wounded. Community throws up the splendid arch; it calls on music to praise his deeds, upon the statuary to imbed them in the marble, and upon the poet to portray them in letters of fire. But the hero died for fame, perchance for country. Jesus died for his enemies. Then, I turn from the bloody deeds of the earthly hero. Behold the mother, bending over the couch of her sick child! She is there when the midnight taper burns dimly. She is there when the morning smiles. She is there when the sun pours down his noon-tide splendors. She is there, day after day, till death marks her for his victim, and she is conveyed to the house appointed for all living. She has fallen a sacrifice to her child. But Jesus died for

his enemies. Amid the agonies of his expiring hour, he exclaimed, 'Father, forgive them, for they know not what they do.'

A touching incident fell under the eye of the writer. During the imprisonment of LEAVITT, the murderer, in Plymouth, Mass., a convention was held by the Universalist denomination. It was proposed to hold a prayer-meeting in his cell. The proposal was looked on with surprise. A prayer-meeting in a murderer's cell! Who ever heard of it? The prison-door was opened. Several devout men and women entered. The first prayer was from a female. It melted every heart. The beautiful hymn, 'The poor way-faring man,' was sung. And a thrill of sympathy ran through every heart when we came to the words,

'In prison I saw him next, condemn'd

To meet a traitor's doom at morn.'

Tears flowed from every eye. And, as we addressed the murderer in cheering, confiding language, recognizing him as a brother, he wept aloud. He was disarmed. The murderer was gone. The lion became a lamb; the serpent a dove. He was 'clothed in his right mind.' Say not there is no power in the love of Jesus. It will subdue the stoutest heart. It made that dungeon a palace. It was a heaven on earth. We left that cell with chastened feelings; with renewed sympathy for 'the poor way-faring man.' And would not such meetings do more good than chains and gibbets? Let him answer who has felt the love of Christ in his soul.

Yet I am told that Jesus said nothing against the law which demands 'life for life.' Go, ye advocates for blood! go, stand at the foot of that cross! Go, imbibe

its spirit of forgiveness and forbearance! Go, while the blood flows fresh from the wounded Saviour! Go! and then take your fellow human being, one for whom Christ died; one, weak, helpless, tempted, frail, like yourself; one made in the image of God; go, and erect your scaffold. And, amid his shrieks and groans, innocent though he may be, hurl him into the presence of his God! To show the power of the sufferings of Christ in reclaiming the vicious and degraded, I present the following touching incident: At Berlin,' says Rev. C. E. STOWE, 'I visited an establishment for the reformation of youthful offenders.' The children,' he says, 'received into this institution are often of the very worst and most hopeless character. Not only are their minds most thoroughly depraved, but their very senses and bodily organization seem to partake in the viciousness and degradation of their hearts. An ordinary man,' he adds, 'might suppose that the task of restoring such poor creatures to decency and good morals was entirely hopeless. But not so; the superintendent 'took hold with the firm hope that the moral power of the word of God was competent to such a task.' On one occasion, 'I am informed, when every other means seemed to fail, he collected the children together, and read to them, in the words of the New Testament, the simple narrative of the sufferings and death of Christ, with some remarks on the design and object of his mission into this world. The effect was wonderful. They burst into tears of contrition, and during the whole of that term, from June till October, the influence of this scene was visible in all their conduct. The idea that takes so strong a hold when the character of Christ is exhibited to such poor creatures, is, that they are objects of affection. Miserable, wicked, despised as they are, yet Christ, the Son of God, loved them, and loved them enough to suffer and to die for them and still loves them. The thought that they can yet be loved, melts the heart, and gives them hope, and is a strong incentive to reformation.'

ESSAY V

Objections



‘Pertness and ignorance may ask a question in three lines which it will cost learning and ingenuity thirty pages to answer. When this is done, the same question shall be triumphantly asked again the next year, as if nothing had ever been written upon the subject.’

BISHOP HORNE.

OBJECTIONS have always been made to every reform. Human progress is very slow. Long-established laws and customs, however absurd and barbarous, are not easily changed. And he who ventures beyond the prejudices of his age must endure persecution, perhaps even to martyrdom. We expect reproach; but that shall not turn us aside from laboring for humanity. Our efforts may have a very limited influence. But if we reach a single mind, dry up a single tear, modify even one unjust law, or soften a single heart, something will be gained.

There is an unfairness in the objections that are urged against this reform. It is common to present highly colored pictures of atrocious crimes. We are referred to the unnatural wretch who has assassinated his father. Or the

incarnate fiend who has set fire at midnight to the habitation of his enemy, and gloated over the destruction of a whole family. We are asked if such men should be allowed to enjoy the boon of life, of which they have pitilessly deprived the innocent and the virtuous.

But will the execution of the offender restore the murdered man to life? Will it again gather around him his ruined home, his massacred wife and children? The objection is based on vengeance. It was an admirable maxim of Bentham, 'Never do evil solely on the ground that it is deserved.' Unless some good purpose is gained, I have no right to inflict evil on the offender. We have shown that the existing law is subversive of all the ends of punishment.

Some persons seem to have a sort of morbid dread of the consequences that might ensue if Capital Punishment were abolished. They imagine that it is the only sure protection for their lives and their possessions. They seem to think the very foundations of society would be broken up. Such persons should remember that those countries have always been the most luxuriant in crime where blood has been spilled with the greatest freedom. We have shown the insecurity of property by the petitions of the bankers in England, who found the law so inefficacious that they prayed for its abolishment. And such persons should remember that even after the experiment has been tried, society may go back and try again the efficacy of the scaffold. All I ask is the experiment. The friends of Capital Punishment have had their turn for centuries. (See Essay III, on the scruples of jurors and witnesses.) We beg of them to let us try ours at least for a few years.

I. The proposed reform is an innovation. This objection has been urged in every age. We freely admit that every innovation is not an improvement, though every improvement is an innovation. We have no respect for antiquity when it conflicts with humanity. If general usage be a test, no improvement

will ever be made. We may plead antiquity for every execution for heresy or witchcraft. On this ground, the most cruel tortures, and even human sacrifices, may be justified. But do those who urge this objection respect antiquity when it conflicts with a favorite theory? Christianity itself is the greatest innovation the world has ever seen. Jesus himself was an innovator. He invaded long-established customs. He came to invade a whole dispensation of rites and ceremonies. He came to establish sentiments that will eventually overthrow every idolatrous temple. He said, 'I am come to send fire on the earth, and what will I, if it be already kindled?' This fire is still burning, and will continue till every species of violence is removed from the earth, till every passion is subdued, till 'the kingdoms of this world become the kingdoms of our Lord and his Christ.'

But if the objector still urges antiquity, I would go with him to the most antiquated case on record, to the very first murderer! Was there a gibbet erected for him? The very first law in existence, respecting murder, was to preserve the life of the murderer himself! Surely, antiquity is in our favor. We know that the Rev. Mr. Cheever urges that this was an experiment on the part of the Deity; that, in consequence of 'the divine lenity, in the case of Cain, the crime of murder had become frightfully common, and the earth was filled with violence! 'Indeed! what a sad mistake! So this advocate for blood would correct the errors of the Great Legislator of the universe. Would it not be well first to enlighten our own legislators? We shall be content if we can correct but a single human error. This would amply repay the labors of a whole life. But we leave this divine to his work.

II. The advocates of the abolition of the law are not the friends of humanity. This has been urged against philanthropists in every age. Wilberforce, Clarkson and Sharp had this to encounter, in their efforts to abolish the slave

trade. It has even been urged against the peace enterprise. War, it is said, has carried forward civilization and the arts, and nations have become improved by conquest. Without assuming too much, we simply ask the community to judge in this matter. Is there not as tender a sentiment of love and kindness among those who oppose the Punishment of Death as among its advocates? Let there be a day appointed for an execution. And who are the most angry if a reprieve is announced? Is it the most refined and the most amiable? Who go to the gallows? Who indulge in coarse and vulgar expressions? Instances have been where the multitude were so eager for blood that they have rushed into the cell, torn off the chains of the prisoner, and dragged him to the scaffold! An instance is given by Mr. Livingston, where the poor victim was a maniac! And yet, when we plead for the repeal of the law, we are not the friends of humanity! ‘Tell it not in Gath! Publish it not in the streets of Askelon!’ (See Essay V, on the effect of public executions upon the spectators.)

III. It is urged that Capital Punishment is necessary to restrain those who are imprisoned. What shall be done with those who are sentenced to imprisonment for life? Suppose the warden, or some other officer, is killed. Then there is no heavier penalty, unless life can be taken. To meet this point, I present a conversation held in Thomaston prison, in Maine, with an officer. During a visit there, the writer was asked what could be done in such a case, alluding to the murder of Mr. Lincoln, warden of the Massachusetts State Prison, which had just occurred. ‘Suppose,’ we replied, ‘that all the prisoners, (about two hundred and seventy,) had been engaged in that affray. Would you hang the whole?’ The officer hesitated. He never thought of that. We observed that the same principle that allowed the execution of one murderer, would admit that of ten, or five hundred, or any number that might be concerned. And where should we end? We may say this might never happen. True, but one should look out, in laying down principles, to see how far they may be

carried. we can see that, in war, this very principle has been adopted. But, then, war justified any expedient. Let us be careful and not carry its principles into our codes.

IV. Not wholly dissimilar to the last, is another objection. The execution of a criminal may save the lives of others. This is the doctrine of expediency, a doctrine which has sacrificed thousands, whose names were dear to literature, to patriotism, and the great cause of humanity. On this ground, even the Son of God was put to death. 'Ye know nothing at all,' said Caiaphas, 'nor consider that it is expedient for us that one man should die for the people, and that the whole nation perish not.' And so ONE must be put to death, in whom no fault was found. But the Romans did come, despite this, and the whole nation perished. (See the debate held at the Windward Islands on the punishment of death, in Essay II of Part II.)

This experimenting upon human nature is shocking. We kill one man in order to reform or confirm the virtue of another. It is an entire perversion of all moral reasoning. History, observation, and experience all demonstrate that crimes increase with the severity of laws. Public executions tend to promote cruelty and a disregard for life.

But if it be necessary to hang the murderer, why not hang the maniac? He is by far the most dangerous man. But our statute makes provision for the culprit if he become insane after sentence. The sheriff, then, is to wait till he comes to his senses. If it be a female, then, if she be in a 'peculiar situation,' the sentence must be delayed!

But why hang at all? Why not simply have the appearance? Perhaps hanging in effigy might answer in some cases.^t Our law reminds us of an incident. It

appears that, on the morning of an execution, the physician reported that the prisoner was not well enough to be hung!.

At the Cape of Good Hope, the Dutch made use of a stratagem, which could only succeed among Hottentots. One of their officers having killed an individual of this inoffensive tribe, the whole nation took up the matter, and became furious and implacable. It was

‘Suppose,’ says Mr. Rantoul, ‘by an arrangement with foreign nations, all the criminals condemned in all the courts of the old world could be brought within this Commonwealth, and executed in its different towns throughout the next year. Does any one believe that such is the moral effect of these exhibitions, that capital crimes would be less frequent after the expiration of that period than before? Is it not a more reasonable conclusion, that the value of human life would be so cheapened in the eyes of the spectators of such a lavish waste of it, that capital crimes, and particularly murder, would be fearfully multiplied, and almost in the ratio of the executions? If a thousand executions would produce this most miserable effect, one execution would produce much more than a thousandth part of it, since the first execution that a man witnesses gives a much severer shock to his moral sense, and inflicts a deeper and more lasting injury upon his character, than any ten or twenty scenes of the same sort that he may witness afterwards.’

V. It is frequently said that the friends of the proposed reform have too much sympathy for the criminal. But who is the criminal? Is he not a man and a brother? (It was necessary to make an example to pacify them. The delinquent was therefore brought before them, in irons, as a malefactor. He was tried with great form, and was condemned to swallow a goblet of ignited brandy. The man played his part; he pretended to be dead, and fell motionless. His friends covered him with a cloak, and bore him away. The Hottentots declared

themselves satisfied. The worst one should have done with the man,' said they, 'would have been to throw him into the fire, but the Dutch have done better. They have put the fire into the man.'—Works of Jeremy Bentham, vol. i, p. 398. Edinburgh: 1843.)

Is he beyond the pale of human sympathy and kindness? Have we not all, in some form, violated the law of God? And may we not be led to commit the same crime? Let us not be too hasty. We should remember the words of Jesus: 'He that is without sin among you, let him cast the first stone.' We believe that a murderer is as much an object of commiseration as a man afflicted with a loathsome bodily disorder, and that it is as much our duty to heal the moral maladies of the former, as the physical infirmities of the latter. But I do not forget the victim of the assassin. We feel for his family. We mourn that crimes are committed. Gladly would we restore the loss. But would the taking of another life, or even a thousand, bring back the dead? Would it revive the joys of the desolate hearth? We say, then, spare the culprit. He may yet be reformed, and perhaps even benefit the very family from whom he has taken his victim. It is because I feel for the loss of others, that I would stay the progress of crime. We have shown that public executions do not produce this effect. We have often thought that better arrangements might be made in regard to criminals. Why could not, at least, a portion of their earnings go towards the support of the family of the murdered victim? The prisoner now works for the state, and a portion is devoted to his own security. He does, in fact, build his own cell, and forge his own chains. He does this not only morally but literally. Could he but know that he was doing something for the family whose peace he had invaded, would he not feel encouraged? On the contrary, if he was still regardless of those whose rights he had violated, would it not be a punishment to know he was laboring for their benefit? Even some of the most despotic governments of

the old world have shown greater care for the welfare of their prisoners than capital punishment allows.

But did not Jesus manifest a sympathy for the wrong-doer? Did he not say to the adulteress, 'Neither do I condemn thee. Go and sin no more?' Had we his spirit, we should feel for the degraded and the forsaken. But we are revengeful, impatient for blood. A victim must bleed upon the altar! An amiable author has finely presented this feeling on the day appointed for the execution of Colt, in New York. He, however, chose to be his own executioner! The hearts of men were filled with murder. They gloated over the thoughts of vengeance, and were rabid to witness a fellow-creature's agony. They complained loudly that he was not to be hung high enough for the crowd to see him. "What a pity!" exclaimed a woman who stood near me, gazing at the burning tower. "they will have to give him two hours more to live!" "Would you feel so if he were your son?" said I. Her countenance changed instantly. She had not before realized that every criminal was somebody's son.' And had he not the same right that the government had, to take his own life? Surely, if any one has the right to take life, it is the individual himself. And it is remarkable that public executions, as Mr. Rantoul says, 'lead to a form of suicide scarcely known to the ancients.' Who ever read of the heroes of antiquity hanging themselves with a halter? But if ours is a weak humanity; if we are, as one nicknamed us, humanity-mongers, we have only to reply that, if this is a weak humanity, it is the weakness of Dr. Johnson, of Judge Blackstone, of Beccaria and Montesquieu. It is the weakness of Erasmus and Sir Thomas More; of Chillingworth and Goldsmith; of Franklin and Livingston; of Rush and Howard; of Fox and Pitt; of Wilberforce and Romilly, and even of him, above them all, who 'came not to destroy men's lives, but to save them.' (Letters from New York, by Mrs. Child. Probably this expression was suggested to the fair authoress by an incident in New Haven. A horse was running violently through the street with a boy in a wagon. A lady

rushed from her house to save him. Her daughter endeavored to check her, saying, 'Mother! it is not your son.' 'Yes,' she replied, 'but it is somebody's son!' When we see the poor criminal dragged through the street, did we but realize that it is somebody's son, what a sympathy would it awaken in the soul!) (See Essay IX, on the future condition of the soul.)

It is not merely in regard to the Punishment of Death that cruelty manifests itself, but it is so in all our laws. In 1833, an estimate was made of the number confined for debt. It was found, by that oppressive system, seventy-five thousand were deprived of their liberty, in the United States. An instance occurred, where an individual was imprisoned for two or three cents, and an advocate of the law justified the arrest and incarceration of the body. (See Essays on Imprisonment for Debt, by the author, p. 14.)

VI. But some say that, with all our sympathy and kindness, some criminals are beyond the reach of all moral influences. Is this true? Have we exhausted all moral power? Are there not numberless instances that show the power of love upon the human soul? We believe there is moral power enough in Christianity to remove every moral evil on earth. We must bring it to bear upon the human soul. Look at the labors of Mrs. Fry and Howard. Let us not despair. And all around us and about us is a great moral movement named after him who led our armies on to triumph and to victory. What a change has this moral revolution effected in the social habits of our country! But I shall refer to this more distinctly in our next chapter, on encouragements.

But who makes the objection that criminals are beyond our reach? Does it come from those who have engaged in the holy enterprise of bringing men back to virtue and holiness? No. The true philanthropist never despairs. He is obliged, sometimes, to adopt the language of the apostle, 'We are troubled on

every side, yet not distressed; we are perplexed, but not in despair; persecuted, but not forsaken; cast down, but not destroyed.'

How little is done in comparison to what might be effected! Who visits our prisons? Who thinks of the poor convict? When his trial is ended, and he is consigned to the sufferings and degradation of a prison, all interest dies away in the cold inquiry, 'Is he safely lodged within the prison walls? Then the multitude turn away, satisfied if bars, and bolts, and chains, guard the space between them and their brother! Thenceforth, he is viewed as a ruined man, an outcast from society, and from human compassion. Few go to his cold, damp cell, to speak a kind word. Few care whether he comes forth from his den a penitent, reformed man, or a malignant fiend, to scourge and destroy. And even if a feeble voice is raised, the cry is, Morbid feeling! Weak humanity! Sickly benevolence! 'Humanity-mongers!'" But let the cry be raised. We are willing to be reproached. We will labor on, satisfied if we can but reach a single heart, and bring only one back to truth and virtue. And while we labor sincerely and heartily, I know I shall have the approbation of him who 'went about doing good,' and who said to the sinner, 'Be of good cheer, thy sins are forgiven thee! We close this chapter in the affecting words of the great moral poet of England:

'My ear is pained, My soul is sick with every day's report

Of wrong and outrage, with which this earth is filled.

There is no flesh in man's obdurate heart;

It does not feel for man.' COWPER.

ESSAY VI

Encouragements



'He that goeth forth and weepeth, bearing precious seed, shall doubtless come again with rejoicing, bringing his sheaves with him.'

- BIBLE.

ENCOURAGEMENTS are necessary to carry forward every reform. And the philanthropist will always look around him for incitements to duty and action. And he has the right and the privilege to call to his aid every encouragement that society may present to animate and invigorate him in his efforts. The present reform is very extensive in its bearings upon the prosperity of society. It does not look to a single state or territory. It has no bounds. It knows nothing about territory. It knows nothing about sect or party. It does not aim solely at a single point. At the mere saving of a fellow-being from an ignominious death; though this is accomplishing much. It takes higher ground. Its great object is to show the sacredness of human life; that no hand of man or angel can lawfully touch it without permission of

Him who gave it existence. And, to inculcate this sacredness, the reform begins with abolishing the Punishment of Death. Other rights never will be regarded

till human life is respected. We may form our associations; I may create new governments; I may form new parties. But never will any great work be accomplished till society receives and feels the doctrine of the Inviolability of Human Life. It is the doctrine of Capital Punishment that is the great support of the slave system, that infernal traffic in flesh and blood. The Punishment of Death has been, in every age, the weapon ready formed, both for the political and the spiritual despot.

Here is a great work to be done, a work as honorable as it is great. ‘a work, ‘to use the words of an excellent writer, ‘which aims at the renovation of society, not by the inefficacious methods of the block, the gallows, and the guillotine. But by the nobler methods of moral culture. By purifying the fountain of good and evil in the youthful breast. By planting the seeds of knowledge and virtue, which shall afterwards spring up and incorporate the strength of their branches and the beauty of their flower and foliage in the mature life and action of the man. ‘

In closing this labor, therefore, I feel that I cannot do better than to present such encouragements as society would seem to warrant. But it must be remembered that we have got to work, and to work hard. Prejudices must be overcome; long-established customs must be changed. Even our very literature must be improved. The arts themselves have contributed to strengthen crime. (To support this remark, see the criminal codes of the slave-holding states, Appendix I.)

There are but few flowers to cull in this field; but little to please the taste. There is little poetry in blood, chains and scaffolds. We have a stern work to do in society. Not merely to say to the state, spare that man; he is my brother. But society will demand that we bring him back a reformed man. Still, there are encouragements, though, as the Rev. Mr. Curtis, chaplain of the

Massachusetts State Prison, remarks, 'I am aware that everything which relates to prisons, and their guilty inmates, is, to multitudes, revolting; in them such themes create no interest; they awaken no sympathy. On all this moral desert, they can see no verdant spot. Other wastes may be made to bud, and blossom, and bear fruit. But within the precincts of a prison-house, nothing is found to attract the eye of faith, to enkindle the dawning of hope, or call forth the aspirations of the spirit.' There are some, however, who see, amid all this darkness, some light. Amid this moral waste, hearts that can be touched, and beings bearing the image of God. And we must work, though we bring back but a single soul to virtue and truth.

I. An encouragement is derived from the fact that the proposed reform is not a new experiment. Rome, Russia, Bombay, Belgium and Tuscany, have all set before the world the results of abolishing the Punishment of Death. We need not repeat the facts in this place. They prove, beyond all doubt, that crimes lessen as laws become more humane.

In looking abroad, we derive much encouragement from the efforts of English philanthropists. For several years there has been, in London, a 'Society for the Diffusion of Information on the subject of Capital Punishment.' This society has done an immense service to the cause of humanity. It has circulated many valuable works. And I have been much indebted to their labors for many valuable facts. (See Part I, Essay VII.) And how much does the world owe to the labors of Mrs. Fry! Language is utterly inadequate to express our own feelings. Her whole history is a commentary upon the practical influences of Christianity.

In looking abroad, we derive encouragements even from the movements of the non-Christian! A long debate was held in the Windward Society Islands, on

this subject. And even the Esquimaux are beyond the civilized world on this law.

II. Another ground of encouragement is, that humanity has triumphed so far as to change the place of execution from the public gaze to the jail-yard. This is, in fact, giving up almost the entire ground; for the argument always has been, 'Have executions made public?' for an example. (According to Sir John Ross, the crime of murder but rarely occurs among the Esquimaux. When it does, the murderer's punishment consists in being banished to perpetual solitude, or shunned by every individual of his tribe-so much so, that even the sight of him is avoided by all who may inadvertently meet him. On being asked why his life is not taken in return, it was replied, 'that this would be to make themselves equally bad-that the loss of his life would not restore the other and that he who should commit such an act would be equally guilty. Would it not be well to send there for a few missionaries to enlighten our Christian country? We hope, after this, no one will say that a civilized state of society cannot exist without the law of the Punishment of Death.)

During the French revolution, when executions seemed too slow, Fouquier proposed to put the guillotine under cover, that the victims might be dispatched with few spectators. 'Wilt thou demoralize the guillotine?' asked Callot, reproachfully. Now, the bloody work is to be done within the walls of the prison-yard. With a surgeon and physician-to see if the man is really murdered, I suppose-a spiritual comforter, a few citizens, and the relatives of the prisoner. A very interesting sight, indeed, for them! Mrs. Child has described this point admirably, in reference to the death of Colt, in New York. We were to have had an execution yesterday. But the wretched prisoner avoided it by suicide. The gallows had been erected for several hours, and, with a cool refinement of cruelty, was hoisted before the window of the

condemned. The hangman was all ready to cut the cord. Marshals paced back and forth, smoking and whistling. Spectators were waiting impatiently to see whether he would 'die game.' Printed circulars had been handed abroad to summon the number of witnesses required by law: 'You are respectfully invited to witness the execution of John C. Colt.' I trust some of them are preserved for museums. Specimens should be kept, as relics of a barbarous age, for succeeding generations to wonder at. They might be hung up in a frame. And the portrait of a New Zealand chief, picking the bones of an enemy of his tribe, would be an appropriate pendant. It is mortifying to think of the dense crowd that assembled at the place of execution. One man went from New Hampshire, on purpose to witness the entertainment. And even women were there, and I am told by Mrs. Child, 'that they did not think themselves treated with becoming gallantry because tickets of admittance were denied to them!' 'And there 'the multitude stood, with open watches, and strained ears, to catch the sound, and the marshals smoked and whistled, and the hangman walked up and down, waiting for his prey, when, lo! word was brought that the criminal was found dead in his bed! He had asked one half hour alone to prepare for his departure. And at the end of that brief interval, he was found with a dagger thrust in his heart! The tidings were received with fierce mutterings of disappointed rage! 'It was a remarkable coincidence that at the very hour of the death of the poor culprit, a fire broke out at the very top of the cupola of the prison. 'The wind was high, and the flames rushed upwards as if the angry spirits below had escaped on fiery wings.' But I turn away from such scenes, for, really, they do not look very encouraging!

III. Another ground of encouragement is, that society looks even upon the executioner with abhorrence. It was a singular remark of one of the most amiable men that I have ever met with, that, 'if human governments were all right, Jesus could hold any office connected with them!' We know not that it is

wrong to bring in his sacred name in such a connection. A whole volume is contained in the remark. Could he be a hangman? But I leave the thought with the reader. The office of the hangman is a hateful one, 'detestabile carnificis ministerium.' Men scorn to give him the right hand of fellowship. They flee from him as from a pestilence. It is not only so in a state of society like our own, but the same feeling is found abroad, and even in Spain, where bull fights are tolerated. The following account is given by that great philanthropist, Mr. William Ladd. He said that no man, however low and despicable, would consent to perform the office of hangman. And whoever should dare to suggest such a thing to a decent man, would be likely to have his brains blown out. This feeling was so strong, and so universal, that the only way they could procure an executioner, was to offer a condemned criminal his own life, if he would consent to perform the vile and hateful office on another. Sometimes executions were postponed for months, because there was no condemned criminal to perform the office of hangman. A fee was allotted by law to the wretch who did perform it, but no one would run the risk of touching his polluted hand by giving it to him. Therefore, the priest threw the purse as far as possible. The odious being ran to pick it up, and hastened to escape from the shuddering execrations of all who had known him as a hangman.

Even the poor animal that carried the criminal and his coffin in a cart to the foot of the gallows, was an object of universal loathing. He was cropped and marked, that he might be known as the "hangman's donkey." No man, however great his needs, would use the beast, either for pleasure or labor. And the peasants were so averse to having him pollute their fields with his footsteps, that when he was seen approaching, the boys hastened to open the gates, and drive him off with hisses, sticks, and stones. "

IV. Another ground of encouragement is the increasing difficulty of obtaining jurors to convict in cases where the penalty is death. And the same scruples are found among witnesses. And even judges will compromise the dignity of their office and the demands of strict veracity, under the impulse of humanity. Numberless instances have occurred in England, where a prisoner was brought in guilty of stealing property only to the value of thirty-nine shillings, when it actually exceeded that amount, because death was the penalty for stealing forty shillings. But I need not dwell on this point. (A variety of illustrations, with abundant facts, is given in Essay III, on the scruples of jurors and witnesses.)

V. Another ground of encouragement is, the gradual advancement of society towards greater purity in principle and practice. Science is extending her empire. Political institutions are becoming ameliorated. Morality and religion are advancing onward. There is a deeper, stronger feeling of sympathy for the degraded and the fallen. The intellectual sun is visibly advancing towards its noon. Great efforts are making to diffuse the influence of religion. We live, indeed, in one of the most brilliant eras in human history. A flood of light has burst in upon us. We know there are many lamentations over the happiness or excellence of other times; but they have little foundation. We have great hopes of our race, and these hopes incite us to new efforts. We see, we feel—though we may, in the course of our labor, have spoken despondingly—that there is a perceptible advance in the community towards a higher standard of morality. (An instance lately occurred where, upon sentence of death being pronounced, the whole assembly rose, by a sudden impulse, while the judge addressed the throne of grace in solemn prayer.)

Perhaps the law of imprisonment for debt affords a very good criterion to judge of the progress of society, in respect to the amelioration of penal jurisprudence. It has been abolished in New Hampshire, Vermont, New York, and

Tennessee. And in Connecticut, where, previous to 1831, a creditor could confine the debtor till he rotted, by paying his board. And, in Pennsylvania, a man was actually imprisoned thirty days for two cents! Seventy-five thousand freemen were then annually deprived of their liberty, in the United States, for debt alone! The writer well remembers the various objections that were made to his humble efforts, on this subject, in the year 1833. (See *Essays on Imprisonment for Debt*, by the author.) But he has lived to see these objections gradually give way, and the cause of humanity triumphing. He hopes to see an equal progress made in the reform to which he is now giving his feeble efforts. He looks forward to a time when, not only the scaffold will be removed, but even our prisons will be changed into hospitals for the mind and schools of instruction. Perhaps the time may arrive when the reign of Alfred, king of England, will return again. It was brought about, not by severe laws, but by mildness. Such was the general security throughout the country, towards the conclusion of his reign, that a child could walk from one end of the country to the other, with a purse of gold around its neck, in perfect security. Many pleasing indications are already occurring to strengthen and animate him and others in the good work. A fine story is told of the quiet town of Nantucket, since the temperance reformation. The jail had become empty of all its inmates but one, and it was left in such miserable condition that even the key was lost—or, as another version of the story is, that there was but one prisoner left. Feeling rather lonesome, and not being very comfortably situated withal, we are told he sent word to the sheriff ‘that if he did not see to repairing the jail, he should leave pretty soon himself!’

The inefficiency of Capital Punishments begins to be seen and felt. It has been tried for ages, and found wanting. Its progress has been marked with the most lamentable consequences. It has contributed to the impunity of the guilty. It has caused the destruction of the innocent. It has, in every age, been a ready and

subservient instrument in the hands of the oppressor. And its advocates cannot even say that it has effected the object of intimidation. (See Part I, Essay X, where a very thrilling speech from O'Connell may be found, in connection with an affecting instance of the execution of three innocent brothers. And see Part I, Essay VIII, where may be found many illustrations of this remark.)

It begins to be seen, then, that a milder system may safely be adopted; at least, that we may be safe in trying the experiment.

Several influences have been at work to bring about a better condition of society. Among these influences, we should, in justice, place the principles of the Quakers. The community have seen a whole denomination living in peace and quietness, who have protested against the Punishment of Death. True, they have not accomplished so much as I could have wished. They have protested against the law as unchristian, but they have done little towards bringing into clear light, and sending forth with new power, the spirit to which the law must yield. Cutting themselves off, by outward peculiarities, from the community. Secluding themselves from ordinary intercourse, through fear of moral infection. Living almost as a separate race, they have been little felt in society, they have done little to awaken that deep religious interest in man as man, that sensibility to his rights, that hatred of all wrong, that thirst for the elevation of every human being, in which Christian love finds its truest manifestation. In fact, every sect is too much imbued with the spirit of sects, and too exclusive to under- It is a singular fact, that even in the colony of WILLIAM PENN, murder was a capital offence, though he had great light, considering the age in which he lived. The following was the statute: 'Murder, willful and premeditated, is the only crime for which the infliction of death is prescribed, and this is declared to be enacted in obedience to the law of God, as though there had not been any political necessity even for this punishment,

apparent to the legislature.’ BRADFORD, p. 16. See a very able work, entitled, *Observations on Penal Jurisprudence and the Reformation of Criminals.* By WILLIAM ROSCOE, Esq., p. 84. London: 1819.

stand or spread the true spirit of human brotherhood. We have all been blind to the dignity and the value of human nature. We have not realized the worth of man. Oh! could we but see that all are the children of one common Father, what a love and sympathy would fill every heart!

VI. Another ground of encouragement may be derived from the Washingtonian movement. A little more than two years ago, six men commenced this great moral revolution. It is a startling illustration of the power of truth. It commenced at a time when the friends of temperance had almost despaired; when, indeed, the community had settled down upon the doctrine that there was no hope for the confirmed drunkard; that something, it is true, might be done to secure the rising generation. In the midst of this darkness, light came from heaven, and from a quarter where the world had never looked. And so it has been in every age. For the wisdom of this world is foolishness with God.’ It is ‘a cloud by day and a pillar of fire by night.’ And, as ages roll on, the great principle, which this moral revolution has developed, will be extended till every prison is thrown open, and every criminal reformed. In this mighty work, I have not seen the literal dead arise, the cold, inanimate clay we start into life, but I have seen more. have seen the cold heart, that had remained untouched by all the influences of parental kindness, by all the pleadings of a tender wife, by all the cries of affectionate and starving children, moved and made to respond to the pleadings of the Washingtonian. And what a lesson does this movement teach the world! What room does it give for hope and faith. We cannot refrain from closing this part of my subject with the beautiful, touching language of the Rev. Mr. Peabody, of Portsmouth, in one

of the best sermons I have seen upon this subject: 'Here is indeed a stone cut out of the mountain without hands. It is at the very moment, when the cause of temperance has sustained several serious checks and revulsions, and its friends and leaders feel themselves peculiarly lame in counsel, and embarrassed in effort; when, in some communities, all exertions are suspended, and, in others, conducted languidly and despondingly; when there is hardly a ray of promise, and the enemies of the cause are rejoicing over its decline. Least of all, is there hope among the wretched inebriates themselves. As well may we expect to see the paralytic take his own bed and walk, as to see these men standing erect among their fellows, and saying, And is it in their own strength that these men arise and stand? I solemnly believe not. The finger of God is here. It is a moral Pentecost of his own sending, sent too at The far-reaching mind of Channing saw, before his death, that the same principle which was adopted in the temperance movement, might be applied to criminals. The following incident, which he related to the writer, on a visit to him, may not be uninteresting: 'Last evening,' said Dr. Channing, Capt. H. [name withheld], the president of the Washingtonian society, was here, relating to me the instances of the power of kindness upon the intemperate.' I asked him if the same principle could not be applied to other forms of crime.' He replied, 'that he thought the circumstances were very different; that should the robber and the murderer relate their experience, they would be prosecuted at once. May we not live to see converted thieves and murderers bringing back the degraded and the forsaken of their own cast to truth and virtue?.'

the moment when the wisest counsel was baffled, and the most ardent philanthropy discouraged, that the glory may be his. I look back upon that period with a sort of religious awe. I believe that, while God is not far from any one of us, there are times and ways, in which his spirit moves over the great heart of a nation, and this is one of them.'

VII. But Christianity affords the greatest encouragement. Its predictions are glorious. It looks forward to a time when men of every tribe and language will unite in one holy and harmonious society; when 'violence shall no more be heard in the land;' when 'the knowledge of the Lord shall cover the earth;' when 'the wolf shall dwell with the lamb, and the leopard shall lie down with the kid, and the calf and the young lion and the fatling together, and a little, child shall lead them. Then 'judgment shall dwell in the wilderness, and righteousness in the fruitful field, and the work of righteousness shall be peace, and the effect of righteousness quietness and assurance forever. And all people shall dwell in peaceable habitations, and in sure dwellings, and in quiet resting places.'

EDITORS' NOTES

On names and references in the text

Theodoric the Great. Theodoric the Great (c. 454–526), Ostrogothic king who ruled Italy 493–526. Spear takes the maxim from the political writers of the eighteenth century, who frequently cited Theodoric as a model of clemency.

Thomas C. Upham. Thomas Cogswell Upham (1799–1872), Professor of Mental and Moral Philosophy at Bowdoin College from 1825 to 1867, author of *The Manual of Peace* (1836) and several widely-read works of moral philosophy. A close ally of Spear's in the reform movement; the book is dedicated to him.

Robert Rantoul. Robert Rantoul, Jr. (1805–1852), Democratic legislator from Massachusetts whose 1836 *Report on the Abolition of Capital Punishment* to the Massachusetts House was the era's most influential American abolitionist text on the subject.

Benjamin Rush. Benjamin Rush (1746–1813), physician, educator, and one of the Founding Fathers of the United States, was among the earliest and most influential American opponents of capital punishment. A signer of the Declaration of Independence and Surgeon General of the Continental Army, Rush was appointed Professor of Chemistry and later Professor of Medicine at the College of Philadelphia (later the University of Pennsylvania), where he trained a generation of American physicians. He is widely regarded as the father of American psychiatry for his humane advocacy on behalf of the mentally ill at a time when madness was considered a moral failing rather than a medical condition. His "Enquiry into the Effects of Public Punishments upon

Criminals and upon Society" (1787), read before the Society for Promoting Political Enquiries at the home of Benjamin Franklin, was the first sustained American argument against public execution. His later pamphlet "Considerations on the Injustice and Impolicy of Punishing Murder by Death" (1792) went further, arguing against capital punishment altogether on both philosophical and Christian grounds. His central claim — that the power over human life belongs solely to its Creator — is the epigraph for Essay I of Part I of this volume: "The power over human life is the sole prerogative of Him who gave it. Human laws, therefore, are in rebellion against this prerogative when they transfer it to human hands." Rush was also a co-founder of the first American antislavery society (1774) and of the Philadelphia Dispensary, the first free medical clinic in the United States. His work provided the philosophical foundation on which Spear and his generation of reformers built their more comprehensive argument.

J. O'Sullivan. John Louis O'Sullivan (1813–1895), editor of *The United States Magazine and Democratic Review* and author of the 1841 New York Assembly Report in Favor of the Abolition of the Punishment of Death by Law. (Now best remembered as the coiner of the phrase "Manifest Destiny.")

Lafayette. The Marquis de Lafayette (1757–1834), French aristocrat and American Revolutionary general. The motto on Spear's title page is from a letter Lafayette wrote in 1830 opposing capital punishment; the "former Revolution" to which Lafayette refers is the French Revolution of 1789–99, during which thousands were executed by guillotine.

Blackstone. Sir William Blackstone (1723–1780), English jurist whose *Commentaries on the Laws of England* (1765–69) was the leading exposition of common law in the English-speaking world. Spear quotes Blackstone's criticism of the English "Bloody Code" of capital statutes.

Charles Lucas. Charles Lucas (1803–1889), French penal reformer and the most prominent European theoretical opponent of the death penalty in Spear’s lifetime. *De la Peine de Mort* (Paris, 1830) and *Recueil des Débats des assemblées législatives de la France sur la question de la peine de mort* (1831) are the works cited.

M. Urtis. The “M. Urtis” quoted at length in Essay I of Part I has not been identified by Spear’s name; the views attributed to him are characteristic of Charles Lucas’s circle. The name may be a typesetter’s error for an unidentified writer.

Jean Jacques. Jean-Jacques Rousseau (1712–1778), whose “letters on suicide” appear in his epistolary novel *Julie, ou la Nouvelle Héloïse* (1761), Letters XXI–XXII of Part III.

Beccaria. Cesare Beccaria (1738–1794), Italian philosopher and author of *Dei delitti e delle pene* (*On Crimes and Punishments*, 1764), the founding text of modern penal reform and the principal Enlightenment argument against capital punishment.

Romilly. Sir Samuel Romilly (1757–1818), English legal reformer who as a Member of Parliament led the early-nineteenth-century effort to reduce the number of capital offences in English law.

Mackintosh. Sir James Mackintosh (1765–1832), Scottish jurist and historian, an ally of Romilly in the parliamentary fight to narrow the English Bloody Code.

Livingston. Edward Livingston (1764–1836), American jurist, drafter of the *Louisiana System of Penal Law* (1822), the earliest comprehensive American

legal code based on Enlightenment principles. Livingston opposed capital punishment.

Bowdoin College. Bowdoin College, founded 1794 in Brunswick, Maine. Upham taught there from 1825 until his retirement in 1867.

O'Connell. Daniel O'Connell (1775–1847), the Irish nationalist leader known as “The Liberator” or “The Great Agitator.” Spear refers to his 1832 speech before the London Society for the Diffusion of Information on the Subject of Capital Punishment. The 1844 charge against O'Connell mentioned in Spear's preface was a prosecution for sedition over his Repeal Association activity; O'Connell was convicted but the conviction was reversed by the House of Lords.

Tati / Pati / Upuparu / Hitoti / Utami. Tahitian chiefs whose speeches Spear quotes at length in Essay II of Part II (“Covenant with Noah”). The source is the missionary William Ellis, *Polynesian Researches* (1829), where Ellis reports a 1824 meeting at which Tahitian leaders debated whether the recently-Christianized kingdom should adopt the death penalty for murder.

William Ladd. William Ladd (1778–1841), American Congregationalist minister and founder of the American Peace Society (1828). The closing anecdote of Appendix II (the “Pulsifer” story) is drawn from Ladd's career as a Maine farmer and peace advocate.

Mrs. Fry. Elizabeth Fry (1780–1845), English Quaker prison reformer whose work at Newgate Prison made her the era's most famous advocate of humane treatment of female prisoners.

Pillsbury. Captain Amos Pillsbury (1789–1873), warden of the Wethersfield (Connecticut) State Prison from 1827 to 1832, whose regime there was widely cited as a model of reform through kindness.

Chardin. Jean Chardin (1643–1713), French Huguenot traveler whose *Voyages en Perse et autres lieux de l'Orient* (1711) was a principal European source for European knowledge of the Safavid Persian Empire. The passage Spear quotes (here translated from the French) appears in volume III, page 417, of the 1711 edition.

Father Lobo. Jerónimo Lobo (1595–1678), Portuguese Jesuit missionary in Abyssinia (modern Ethiopia). His *Voyage to Abyssinia*, translated from French into English by Samuel Johnson in 1735, was a standard European source on Ethiopian society.

FURTHER READING

On Charles Spear and the antebellum abolition-of-the-death-penalty movement: Louis Filler, “Movements to Abolish the Death Penalty in the United States,” *Annals of the American Academy of Political and Social Science* 284 (1952), 124–136. David Brion Davis, “The Movement to Abolish Capital Punishment in America, 1787–1861,” *American Historical Review* 63:1 (1957), 23–46. Stuart Banner, *The Death Penalty: An American History* (Harvard University Press, 2002), esp. chs. 4–5. Philip English Mackey, *Hanging in the Balance: The Anti-Capital Punishment Movement in New York State, 1776–1861* (Garland, 1982). Hugo Adam Bedau, ed., *The Death Penalty in America: Current Controversies* (Oxford University Press, 1997), introductory historical essays.

On the writers Spear cites most heavily: Cesare Beccaria, *On Crimes and Punishments and Other Writings*, ed. Aaron Thomas, trans. Aaron Thomas and Jeremy Parzen (University of Toronto Press, 2008). Robert Rantoul, Jr., *Memoirs, Speeches and Writings of Robert Rantoul, Jr.*, ed. Luther Hamilton (J. P. Jewett, 1854). John L. O’Sullivan, *Report in Favor of the Abolition of the Punishment of Death by Law* (New York Assembly, 1841). Thomas C. Upham, *The Manual of Peace* (1836).

On nineteenth-century reform networks Spear belonged to: Ronald G. Walters, *American Reformers, 1815–1860* (Hill and Wang, 1978; rev. 1997). Thomas L. Haskell, “Capitalism and the Origins of the Humanitarian Sensibility,” *American Historical Review* 90:2 and 90:3 (1985). Karen Halttunen, “Humanitarianism and the Pornography of Pain in Anglo-American Culture,” *American Historical Review* 100:2 (1995), 303–334.

Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815–1848* (Oxford, 2007).

On the contemporary American debate: Carol S. Steiker and Jordan M. Steiker, *Courting Death: The Supreme Court and Capital Punishment* (Belknap/Harvard, 2016). Bryan Stevenson, *Just Mercy: A Story of Justice and Redemption* (Spiegel & Grau, 2014). Death Penalty Information Center, *Facts About the Death Penalty* (annual report).