

STATE OF MAINE.

IN SENATE, February 13, 1869.

On motion of Mr. HERSEY,

Ordered, That the report of the Joint Special Committee of the Legislature of 1836, on Capital Punishment, be taken from the archives of the State, and that the usual number of copies be printed forthwith for the use of the Legislature.

Read and passed. Sent down for concurrence.

THOMAS P. CLEAVES, *Secretary*.

IN HOUSE OF REPRESENTATIVES, }
February 13, 1869. }

Read and passed in concurrence.

S. J. CHADBOURNE, *Clerk*.

A true copy—ATTEST:

THOMAS P. CLEAVES, *Secretary of Senate*.

FORTY-EIGHTH LEGISLATURE.

SENATE.

No. 22.

SIXTEENTH LEGISLATURE.

No. 37.

SENATE.

REPORT OF THE COMMITTEE ON CAPITAL PUNISHMENT.

The Joint Select Committee to whom was referred the proceedings of the last Legislative session, relative to the punishment of death, together with sundry petitions and memorials in favor of the abolition of the same, have had the whole subject under consideration, and ask leave to

R E P O R T :

That having given to the subject all that deliberative attention which the time and circumstances would permit; your committee have agreed that in their opinion the punishment of death ought to be abolished, and that public sentiment demands the adoption of the measure. Considering the able Report of the Committee of the last Legislature, on the question now under consideration, your Committee have not thought proper to reiterate the same train of arguments, especially those relating to the Mosaic Law contained therein; nor can they perceive why the Legislator should be influenced by those laws any more than by those of Greece or Rome, aside from their wisdom and justice. If it should be found therefore that there are arguments not contained in this report, their omission will not be taken as evidence that the committee did not attach importance to them. They have labored more to illustrate the principles on which Legislative proceeding should be predicated in relation to crime, the principles of justice and natural right, together with the expediency of the measure than to give voluminous details of arguments having one common object. They have therefore taken a somewhat different view of the subject from the former committee. And in doing this they are gratified in being

able to state that gentlemen of talents and worth have essentially aided in the accumulation of facts to illustrate and substantiate, even in prejudiced minds, the correctness of the positions which they have thought proper to assume in this report. In discharging this duty they are not conscious of being actuated by prejudice, a false delicacy towards criminals, or any considerations other than the public good.

It is necessary to the general interest, to the perpetuity of individual and public liberty, that we should recur, occasionally, to first principles—that we should scrutinize the acts of government in order to determine whether it has kept within the sphere of its legitimate, or constitutional powers. If it is found to have encroached upon the rights of citizens and to have been in the practice of meting out cruelty and oppression under the imposing name of necessity, no matter if sanctioned by all nations upon the face of the earth, by past ages, by its great antiquity, for as precedent cannot confer the right, it ought to be visited by the hand of reform. If the inviolability of human life was not recognized in the early period of the world, after the wickedness of man had perverted his way upon the earth, and in the dark and barbarous ages; if in consequence, oceans of blood have been made to flow, while inglorious ambition, ignorance, superstition and bigotry consigned their victims to the most unfeeling and heart-rending cruelties which the ingenuity of man could invent, to the violent sufferings of maiming, the rending asunder of limbs, the rack, the torture, the gibbet, the stake and the halter; if it be a relic of those times when the despotic will of tyrants and conquerors enriched the soil of empires with the blood of human victims, sometimes innocent, and for the smallest, as well as the more aggravated offences, surely we, who profess so much abhorrence of the tragic scenes of those times, who profess to be guided by the greater light of modern intelligence and the immutable principles of right; and above all by the pure and benign principles promulgated by the world's great Law-giver and Benefactor, ought to pause and reflect whether we can consistently with the spirit of our free institutions, with the improvements of the age in moral reform, continue a practice so demoralizing in its tendency and so abhorrent to the feelings of humanity, against the strong and decided opinions of a large, very respectable and discreet portion of the people as the punishment of death; and whether it is not in our power to so elevate the character of our people and to throw

around human life a sacredness which will secure its inviolability to a greater extent than can possibly be done by the sanguinary punishment of death.

To adopt such measures as are best calculated to promote the greatest good, to ensure the tranquility, happiness and prosperity of the people, is the legitimate object of our assemblage. To depart from this, is to betray the trust confided to us by our constituents and prove our unworthiness to serve them.

The measure prayed for by your petitioners and memorialists, is the abolition of the punishment of death for treason, murder, arson and accessories thereto before the fact, these being the only crimes punishable, by our statute laws, with death. As treason against the State will not be likely to be committed without at the same time committing this offence against the United States, and be liable to be punished by the laws of the latter, it is practically a nominal offence, so that virtually the petitioners ask for the abolition of the punishment of death for the crimes of murder and arson.

Your Committee are strongly impressed with the importance of adopting this change in our criminal code on the ground of its justice as well as its expediency; and in giving their views will commence with a few postulates, or what they deem self-evident truths.

1. All men are born equally free and independent, and are endowed by their Creator with certain unalienable rights among which is that of life.*

2. All power is inherent in the people.†

3. Government is instituted by their authority, and acquires rights, only so far as they are surrendered by the people, the legitimate end of which is, the greater security of the natural rights of those for whom it is instituted, and is in its nature a "*quid pro quo*," or an equivalent for those surrendered.

4. A natural right cannot be transferred or given up, for which, in the nature of things, no equivalent can be rendered.

5. It therefore necessarily follows that government is a delegated trust, founded in compact, and must possess limited powers: that the assumption of unlimited or absolute powers, is an usurpation of the rights of the people not delegated; that acts founded on such an assumption of power cannot be legally or morally binding

* Declaration of Independence.

† Constitution of Maine, Art. 1.—Sec. 2.

on the citizen, the exercise of which is tyranny; and that as no adequate consideration can be given in exchange for the inestimable privilege, the enjoyment of life, no man has the right to dispose of it, either according to the whims, caprice or opinions of himself or others.

6. Right and obligation are correlative. Neither government nor a citizen can possess civil rights without having imposed on them corresponding obligations. Each severally is not only under obligation to respect the rights of the other, but to defend them when invaded. To preserve a just balance between these so that one shall not encroach upon the other, and to ensure their respect in tranquility and peace, constitute the most important business of government.

Human life therefore can be taken only by virtue of this obligation, which makes it imperative on the government to preserve its own existence and just rights and those of each individual member of it unimpaired, however poor or humble in life.

If these premises be correct, government as well as individuals, have the right of self-defence, and to do this, if an absolute necessity shall exist, to take the life of the aggressor. But without such necessity no power on earth can of right take it. Now if it can be shown that the destruction of life is absolutely necessary to protect the State or the citizens against foreign or domestic aggressions, it is both lawful and right; it is then not a matter of mere choice, or expediency, because the first law of nature, self-preservation, imposes the necessity. But if, on the other hand, it can be shown that in a civilized, intelligent and moral community like our own, no such necessity exists, then it must be conceded that to inflict the punishment of death is not only unlawful and impolitic, but unjust and cruel. In determining this we must not barely consider whether crimes of an aggravated nature are committed or not, but we must take into consideration the nature and constitution of man, the means best calculated to control his actions in conformity to the rules of society, the proper ends of punishments, and the practical experience of past times.

Although men are born equally free and independent, so far as their natural rights are concerned, and in our government have no prerogatives, or exclusive privileges, (unless they may be found in the numerous monopolies which hang like a vampire upon the Republic, and may be descendible, as property from father to son,) yet there is a difference in their physical organization and suscep-

tibility to intellectual and moral attainments. The object is not, however, to enter into a consideration of the truth or falsity of metaphysical abstractions and speculations; to speak of the absurdities and incongruities, or of the truth and consonance of any system of philosophy, whether of Bacon, of Locke, or of Gall and Spurzheim, but, to speak of the nature of man in general, and his susceptibility to intellectual and moral culture, though he may have been nursed in the lap of venality and reared in the commission of crime.

It will be sufficient for our present purpose, to observe that all the animal propensities and manifestations of mind depend upon organization; that every animal function, and every primitive faculty of the mind has its own appropriate and peculiar organ which is somewhat differently developed and may also possess different degrees of energy or activity, in different individuals; and that all men are naturally influenced either by a preponderance of their intellectual and moral faculties, or of their animal propensities, except, where they are so equally balanced as that there is no decided predominance on either side. No attentive observer of the conduct of men, can have failed to have perceived this difference, founded as it is in nature, though he may not have attributed it to the same cause. This natural difference is the basis of a division of men into three classes.

The first class embraces all those who have a decided predominance of intellect and moral feeling. In these the animal propensities are proportionately weak, but sufficiently strong for their legitimate ends, the preservation of the individual and the propagation of the species. The inferior tendencies of these, though sometimes strong and vigorous, can never gain that ascendancy over the higher and nobler faculties of the mind so as to impel them to the commission of crimes. Endowed with quick moral perceptions, commanding intellect, and a natural aversion to crime, they instinctively shrink from its commission and it becomes morally impossible. Thus having the law written in their hearts they are a law unto themselves. Actuated by high-minded and honorable motives in their intercourse among men, the government nor individuals have nothing to fear from low, grovelling selfishness, or unlawful acts of violence from them. To engage in active benevolence, to disseminate intelligence and virtue throughout the world and make men wiser and better, is to them enjoyment, it is satisfaction and peace.

The second class includes a larger portion of mankind. In them the animal propensities are generally stronger and always so far counterbalance the intellect and moral feeling, that there is no very decided predominance on either side. Hence they are vacillating and unstable, because influenced by transient and external causes. Education and moral culture bias them on the side of virtue and respectability, and such, by a frequent recurrence to the principles of religion and virtue, under the influence of good examples, continue good citizens. Reverses of fortune often prove fatal to their virtue. But when born in the less fortunate conditions of life, uneducated, neglected and exposed to the numerous deceitful allurements from the path of rectitude, to the influence of vicious practices, they in turn, become vicious and often criminal. Selfish and self indulging, they become sensual and profligate. To reform such, the external causes of vice must be withdrawn in order to remove those morbid passions, lusts and appetites acquired by habitual abuses or criminal indulgence of the natural; or so continually counteracted by the influence of good advice and example, as at length, by giving tone to the intellectual and moral faculties, to change their habits, and, ultimately morbid appetites.

The third class are those, for whom criminal legislation is mainly intended. In the words of the late writer,* they are "those whose animal appetites or propensities are so powerful as to overbalance the restraining force of their moral and intellectual faculties, and, like thorns, choke any good seed sown in them. Beings of this constitution of mind are under the dominion of strong lusts, violent passions, and intense selfishness. Their impressions of moral duty are so weak as to offer no restraint to the gratification of their selfishness, at any cost of property, limb or life, to those, no matter how unoffending, who stand in their way; while in most of them a limited intellect has obscure views of the real nature of things, confused perceptions of consequences, overweening confidence in their own power of concealment, evasion and escape, total blindness to the guilt of their actions, a fixed rejection in their own case of all idea of retribution,—on the contrary, a persuasion that all restraint imposed on themselves, is the unwarrantable act of the strongest; and, finally, the feeblest powers of

* James Simpson, to whom the Committee are indebted for some important suggestions.

controlling their passions even when they do see the fatal consequences of yielding to their sway. Any better endowment of intellect in this class, is always perverted to the purposes of crime; hence expert plan-laying thieves, pick-pockets, swindlers and forgers."

Men with this organization are peculiarly unfortunate without any fault of their own. To inflict upon such, punishments which the safety and good of society does not require, is to punish them for their misfortunes more than their faults.

Your Committee are aware that they are treading upon new ground in criminal legislation, and that a belief in this three-fold distinction, has, practically, had but some slight acknowledgements of its existence. But they are highly gratified in the belief that new light has broken in upon the world, and is about being brought to the aid of that long since promulgated by the world's great Law-giver and Benefactor, who left us graphic illustrations of similar distinctions of men. And until this great truth, founded as it is in nature, and on which is stamped the indelible sentiments of the human mind, shall be practically acknowledged in criminal legislation, code after code, for the protection of society, will be swept away and become obsolete among the rubbish which will continue as a perpetual memorial of the imperfections of human legislation without obtaining the object proposed.

It is a fundamental error, as will appear from what has already been said, that "in power to obey the laws there is among men no difference of mental constitution; that a good man has *willed* to be virtuous, and a bad man has *willed* to be vicious, and that either might have *willed* equally easy the opposite character. That it was a mere voluntary choice, that on the one hand, filled the prisons with wretches, whom a Howard visited, and that determined Howard on the other to visit them."* This error has been so generally embraced and acted upon by both people and legislators, that neither have been satisfied when an unfortunate fellow being has committed depredations upon the rights of society, without a visitation upon him of retributive vengeance, and for a justification they appeal to the violated law, and to that given to the Hebrews by Moses, both of which are founded on the principles of the "lex talionis" or law of revenge, which is according to the Jewish law, life for life; an eye for an eye; and a tooth for

* J. Simpson on efficient protection from crime.

a tooth. But a greater law-giver than Moses taught not this doctrine, which is inconsistent with reformation, and the first and eternal principles of right. Archbishop Wheatley says, "man has no right to think of inflicting vengeance."

One of the best and most powerful means of guiding men in the path of rectitude, and of protecting society from crime, is a right system of early education and moral culture, continued through a series of years, and such as will not only elevate the standard of education but that of morality, and come within the reach, not merely of a few individuals who may have means above the ordinary fortunes of men, but to the great mass of the people, both rich and poor—to all alike. To this important end the length our primary schools should be increased, and more should be required of instructors, not merely prescribed in the Statute book, but practically required. They should be chaste in their conversation and general deportment, and of virtuous and elevated sentiments, and, at least, of respectable attainments in the branches of learning which they are required to teach. While their own sentiments are elevated into a purer moral medium, they will hardly fail to instil the same into the minds of youth. Thus knowledge will be increased, the intellectual and moral faculties strengthened, the animal propensities restrained, and the character of the whole people elevated. Then will men value character and shun crime. And if additional means are found necessary to do this, they should not be withheld.

Laws are enacted not merely as a rule of conduct but penalties are annexed as a restraining power. But yet how precarious and uncertain is the operation of laws, however just and politic, in a community uneducated and destitute of moral virtues, more especially when ambitious and unprincipled men endeavor, for selfish purposes, to excite popular feeling against them.

Burlemaqui says, "it is not laws and ordinances, but good morals that properly regulate the State.

' Quid lego sino moribus
Vanæ proficiant.'—*Horat.*

"Those who have had a bad education," says he, "make no scruple to violate the best political constitutions; whereas they who have been properly trained up, cheerfully conform to all good institutions."* But as some men from their innate propensities,

* Principles of Politic Law, vol. 2, p. 145.

and neglected education become dangerous to society, necessity requires there should be some efficient mechanical restraint imposed on such. This subject is of great magnitude to society and leads us to consider the ends of punishments.

The true design of all penal inflictions is to prevent crime principally by reforming the criminal. There are cases, however, in which reformation is out of the question, requiring mechanical restraint for the safety of society. These, however, will generally be found, it is believed, on close examination, to be those of *insanity* or *non compos mentis*, in all of which the restraint loses both the name and nature of punishment.

"The end of punishment," says Beccaria, "is no other than to prevent the criminal from doing further injury to society, and to prevent others from committing the like offence."

"The end of all correction," says Seneca, "is either the amendment of wicked men or to prevent the influence of ill example."

"In punishments," says Grotius, "we must either have the good of the criminal in view, or the advantage of him whose interest it was that the crime should not have been committed, or the good of all indifferently."

The proper objects of punishments are generally believed to be,

1. The efficient protection of society from any further injury by the criminal.
2. The influence which the example of punishment affords to deter others from the commission of crime.
3. Reformation of the criminal.
4. Reparation for the injury done.

Your committee cannot admit the right of government to punish a citizen with death solely for the example it affords to others. Protection of society, reformation of the criminal and reparation for the injury done are the legitimate ends of all punishments. But as wicked men, especially the more desperate, cannot be reformed without efficiently protecting society and affording the influence of example to others, so far as the government can justly furnish it, the third end in the enumeration includes the two former, so that in the language of the Constitution of Ohio, "the true design of all punishments being (is) to reform not to exterminate mankind."* But as these are generally believed to be the

* Constitution of Ohio, Art. 8, Sec. 14.

objects for the attainments of which government has the right to inflict punishments, let us examine them separately, in order to determine whether the attainment of them necessarily requires the punishment of death.

Of the first, it is only needful to say that as society can receive sure protection against further injury from the criminal, by so complete mechanical detention of his person, in a reformatory asylum, as to preclude all possibility of escape, no necessity exists for the punishment of death to accomplish this first requisite. Experience will commend this assertion to the minds of all without argument.

The effect of the second requisite, the example which the punishment of death affords to deter wicked men from the commission of crime, is very justly doubted, even had the government the right to inflict it for such a purpose, which is by no means conceded. For if there be any force in the principles of natural right which have been enumerated ; if government be instituted to ensure justice and tranquility, by what right is the life of a citizen taken to afford an example to others ? It is a war, as has been justly said by Beccaria, of a whole nation against a citizen whose destruction they consider necessary. But where is the right of war to be founded ? Was it surrendered by the terms of the Constitution ? It has been shown that neither the citizen can surrender nor the government acquire such a right. Is it justice that dictates such examples ? What ! unlawfully punish an unfortunate fellow being to afford an example for the benefit of others ! The idea is preposterous. The punishment of death as has been shown, is not necessary to secure the person of the criminal, and as it proposes no good to him nor restores any thing to the injured party, it must be justified solely on the ground of example for the exclusive benefit of others. There is manifestly more propriety in taking the property of one man without rendering an equivalent, for the advantage of another, because it is of infinitely less value, and the injury may be repaired. But pass such a law and the whole population will throw themselves upon their reserved rights and resist it at the threshold. If the principle be correct, why not punish before crimes have been committed at all in order to prevent their occurrence ? Will it be said, in answer, that because no one has forfeited his rights by the commission of crime, no one can justly be made a public example ? Neither has the criminal forfeited that of life, to publicly execute him for the benefit of others, in-

volves precisely the same inconsistency. Men are always committing offences of some kind, and if life may be taken for one offence it may be for another, even the smallest, as was contemplated by the sanguinary code of Draco, the expediency of the measure being the only thing to be considered.* But there is no such right. It may be supposed to have had its origin in savage cruelty or mistaken views of necessity—the practice is one of those *little* usurpations of government, long and silently acquiesced in by the people who suffer the injury. What says the great Montesquieu? “Every punishment which does not arise from *absolute necessity* is tyrannical.” And Beccaria has made this more general by saying “every act of authority of one man over another, for which there is not an absolute necessity, is tyrannical.” † And it is humbly conceived that the opinion of another great philosopher, Seneca, “that the end of all correction is either the amendment of wicked men or to prevent ill example,” is much more in consonance with the principles of natural right and just powers of government. He makes the amendment of wicked men the first and principal object of punishments, and by reforming them takes away ill example. There is much more sound, practical wisdom in this opinion than at first appears. But this sanguinary practice as has already been said, were it right, has not the effect proposed, Instead of deterring, it prepares wicked men for the commission of crime, and having committed one offence to multiply them in order to escape detection. Experience proves that mild, reformatory punishments properly graduated to the nature and aggravation of offences and executed with *promptness* and *certainly*, will have a much greater effect to deter men from the commission of crime. By rendering penal inflictions milder, those ferocious feelings which barbarous and cruel punishments call into action, are softened down and put more under the control of reason and reflection.

It is true that at first, men instinctively shudder at the thought of death; but when it becomes familiar to those whose moral perceptions are feeble, and whose proclivity to crime is strong, it hardens the heart and begets those very feelings which prepare them for its commission, while the spectacle is revolting to those of higher moral susceptibilities and of finer feelings. It operates

* In England, at one time there were 160 offences punishable with death.

† Beccaria on crimes and punishments, Chap. 2.

differently upon men differently constituted. It is also true, that by those whose intellect and moral feeling predominate, ignominious death by the guillotine, the halter or upon a gibbet would be considered and felt as one of the greatest of calamities, but it is morally certain that they will not incur it. In an absolute and tyrannical government they might indeed and probably would be guilty of heresy in the church or of what in such a government would be deemed political offences, but they will be guilty of crime only through absolute necessity which is generally considered as an absolution of it.

Their higher moral feeling and this exemption have led them to judge erroneously and harshly of others less fortunate than themselves, and to feel towards them the spirit of retributive vengeance, little thinking that sanguinary and barbarous punishments have a demoralizing effect and make wicked men more desperate villains. Beccaria, whose views were greatly in advance of those of the rest of his countrymen and the age in which he lived, says, "the punishment of death is pernicious to society, from the example of barbarity it affords. If the passions, or the necessities of war, have taught men to shed the blood of their fellow creatures, the laws, which are intended to moderate the ferocity of mankind, should not increase it by examples of barbarity, the more horrible, as this punishment is usually attended with formal pageantry. Is it not absurd, that the laws, which detest and punish homicide, should in order to prevent murder publicly commit murder themselves?"

The Rev. Mr. Roberts of Bristol, England, states that he conversed with 167 convicts under sentence of death and found that 164 of them had witnessed executions.* It appears by this that all but three had the benefits of this example! What an appalling commentary upon this practice! But if our philosophy be correct it is what we ought to expect. Men who are guilty of the higher crimes are principally of the third class, of narrow intellects and of feeble moral perceptions, which are generally made more feeble by habits of intemperance. "When the last sentence of the law overtakes them, clergymen who have attended them, have declared, that one of the chief difficulties was to give them the idea of guilt, or to bring them to connect the punishment they were about to suffer with their crime."† Is it to be wondered at then

* J. Simpson on efficient protection from crime.

† Simpson.

that men of this constitution of mind and with the strongest proclivity to crime, should be urged to its commission by such sanguinary examples, especially, when under the influence of intoxicating liquors ?

“ In England, for instance, in the time of Blackstone, no less than one hundred and sixty different species of crime were by the laws capital and liable to be punished with death. It is stated on respectable authority, that 72,000 persons died by the hands of the executioner during the reign of Henry VIII. being at the rate of 2000 every year. But it does not appear that this immense loss of life was attended with any beneficial effect ; crimes continued to be committed ; and the ends of punishment whatever may have been the reason of it were obviously not as well secured as they would have been on some other system.”*

There are no practical dispensers of death like those who touch, and taste, and handle death, by daily committing capital offences. † This is the effect produced by frequent public executions, rendering the destruction of life familiar to those on whom they are intended to operate as examples of terror. This familiarity takes away the terror and teaches them to place a less value upon human life, and consequently diminishes the repugnance they otherwise would have to take it away by acts of personal violence. On these persons they have precisely the same effect as the influence of bad examples in other things, and does not even deter them from the commission of other capital offences which do not consist in murder, as the following case will show. “ An Irishman found guilty of issuing forged notes, was executed, and his body delivered to his family. While his 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 in the mouth of the corpse and there the officers found them.” ‡ Dymond mentions a similar case.

Mr. Livingston in his admirable Introductory Report to a system.

* Prof. Upham's Manual of Peace, p. 235.

† Irving's Orations.

‡ Livingston's Criminal Code, p. 121.

of penal laws for the State of Louisiana treats this subject in his usual masterly manner; and to which your committee beg leave to refer. Among the numerous facts embodied in his report he mentions an execution in Lancaster, Pennsylvania, which was followed by an aggravated case of murder, on the same day by a man who went purposely to witness the execution, and twenty-eight committals for divers offences, such as assault and battery, larceny, &c. while "the pick-pockets escaped, or the jail would have overflowed."*

May we not inquire what has been the effect of the example afforded by the execution which took place at our Capital a year ago? Surely that public example of hanging the criminal has not prevented like offences. When has there been a year since we have been a State in which there have been so many cases of murder and homicide as during the past? † It is not certain that men have been instigated to their commission by the example, but it is certain that it has not prevented them. As it is admitted by nearly all that the example is demoralizing in its tendency, why should we refuse to learn wisdom by experience?

That the punishment of death is necessary for the attainment of the third and fourth requisite, is not pretended, and as it is impossible to conceive how it can have that effect we may affirm without fear of contradiction that it cannot.

It is obvious to every mind that hanging a man by the neck, burning him at the stake, strangulation in the prison, or decapitation cannot reform him or restore anything to the injured party. What has been said it is believed clearly proves that no absolute necessity, and consequently no right exists for perpetuating a practice so revolting to the better feelings of men; and could human testimony avail anything in this case, that of the distinguished Franklin, ‡ Rush and Bentham might be quoted against it, based upon reason, philosophy and the dictates of humanity.

Reparation for the injury done is very justly an object of punishment, or rather the attainment of which justice demands. But as it cannot, in the nature of things, always be made, it becomes a secondary consideration. Reformation of the criminal is the great object of punishments in general; and as we have hospitals for the

* Livingston's Criminal Code.

† Four cases of murder and homicide have occurred since the execution.

‡ See appendix marked A.

cure of diseases of the body, so we should consider penitentiaries hospitals for the cure of moral diseases, and the detention of convicts in the latter, should as in the former, be till the malady is cured. Relapses may and undoubtedly will occur, but in general, when the cure is effected the convict may be safely restored to his friends and society. But to do this, short sentences to even a reformatory asylum and separated from other criminals, will not be sufficient. They will be to the convict what medicine, in the hands of an empiric, is to a patient laboring under bodily disease. The remedy is good, but being badly administered the patient is not cured. Desperate villains require long moral training, nor should they be restored to society till it can be done with safety; and when this can be done there is no reason why he should be detained longer, unless it be to make restitution for the injury done, by applying the proceeds of his labor to extinguish the claims the injured party may have upon him. Like some disease of the body, there may be some of the mind which will defy all moral treatment—such are incurable and should never be let loose upon society. It has already been observed that it is believed, that such on a close examination, will be found to have lost their moral agency and consequently criminality. On these principles the criminal is treated as unfortunate, remedies of a moral nature are applied for his restoration or cure, all ideas of retributive vengeance are dismissed from other minds, and in the place of feelings of revenge and alarm, we rejoice that an unfortunate fellow being may be again restored to his family and friends. This is the dictates of reason and philosophy; it is humane; it is christian. But for the punishment of the crime of deliberate or wilful murder, perpetual confinement to hard labor in the State prison ought justly to be inflicted; but even in these cases moral instruction should be connected with the labor required, for although the criminal may be guilty of crimes of great turpitude we should not abandon a fellow being to drag out a miserable existence without an effort to reclaim him. For by this measure all become benefited who are in any way connected with him. Reclaim the convict and you benefit him—he will become more obedient and will sustain better the relations between himself and his keepers—he will become more industrious and perform his work better, and hence more profitable to the State. While thus dictates of humanity are complied with the criminal will feel the punishment with greater severity, because he will have been made to see the nature of the crime for which

he has been incarcerated in a prison and the justice of which he will also perceive and voluntarily acknowledge, and even express his gratitude for the blessings of prison instruction; while the public exhibition of such facts will have a tendency to elevate public morals, they will have a much greater effect to deter men from the commission of crimes than the punishment of death can possibly have, and when contrasted with the latter your committee do not hesitate which to prefer. Firm but humane and kind treatment will subdue that moroseness and obduracy of heart which cruelty and the halter, in prospect, could never effect. Imprisonment for life, in the State prison, connected with labor and moral instruction, furnishes also, a perpetual admonition to the wicked, whereas the infliction of death is short and transient, and its effects upon such minds are pernicious

But some will say innovations upon the long established usages of society are dangerous, and ought to be adopted with caution. It is admitted that they ought to be adopted with due consideration, but no truth should be rejected because it has never before been received or received only in a few instances. Ages passed away before the great truths in the several departments of the arts and sciences, philosophy, astronomy, chemistry and medicine, were discovered. And when known, the prejudices of mankind have often pursued the discoverers, the real benefactors of men, with the most unrelenting persecution. But do we now consider them the less true or important to mankind on that account? Surely not. We are not, however, left in the dark, in the labyrinth of uncertainty as to the practical effects of this measure. It is affirmed as a matter of history that the Roman Commonwealth by the Porcian law, introduced by the Tribune Marcus Porcius, in the year of the city 453, prohibited the infliction of the punishment of death upon a Roman citizen, which continued in force two hundred years.* "It was never observed," says Montesquieu, "that this step did any manner of prejudice to the civil administration."

In an after and corrupted age, Cicero, in attempting to bring back the Roman people to this ancient practice, said "far from us be the punishment of death—its ministers—its instruments. Remove them, not only from the actual operation on our bodies, but banish them from our eyes, our ears, our thoughts, for not only

* Prof. Upham's Manual of Peace, p. 237.

the execution, but the apprehension, the existence, the very mention of these things is *disgraceful to a freeman* and a Roman citizen."

If this measure did Rome no manner of injury may not an American government adopt it with impunity? Are we not freemen? Do we not boast of possessing Roman liberty, and more of being under the benign influence of the only true religion? Yet how long must we suffer the reproach of perpetuating a punishment among us abhorrent to the people of Rome in her best days and which Cicero considered "*disgraceful*" in his own time? Shall we suffer ourselves to be tauntingly asked where are your Roman virtues? You boast of American freedom, of American liberty, and of the pure spirit of your ancestors, but where are your corresponding virtues? Where are the precepts of your immortal Franklin carried out in your practice? Do not our cheeks crimson at the thought? Do we not blush for the honor of the American name, that these things are practiced in a land of liberty, in an asylum for the oppressed? And shall christianity always be reproached because of the sanguinary spirit of some of its professed followers? Shall any of its ministers continue their exertions to perpetuate this reproach by advocating, by demanding the blood of unfortunate fellow beings against the wishes of so large a portion of the people, and against the good of society? Shall mercy be deaf to justice, and the cries of suffering humanity? Shall sensibility sleep in the lap of luxury? Heaven forbids it—reason and philosophy forbid it—the pure principles of christianity forbid it.

The empress Elizabeth of Russia during her reign abolished the punishment of death in that empire, and the empress Catherine II. following the footsteps of her predecessor, excluded it from the new code of laws which she introduced.* Of this measure Blackstone in his Commentaries on the laws of England, says, "was the vast territory of all the Russias worse regulated under the late empress Elizabeth, than under her more sanguinary predecessors? Is it now under Catherine II. less civilized, less social, less secure? and yet we are assured, that neither of these illustrious princesses, have, throughout their whole administration, inflicted the penalty of death; and the latter has, upon full persua-

* Livingston's Criminal Code, p. 120, and Prof. Upham's Manual of Peace, p. 237.

sion of its being useless, nay, even pernicious, given orders for abolishing it entirely throughout her extensive dominions."

The illustrious example of Leopold, Grand Duke of Tuscany, by abolishing, not only this sanguinary punishment, but the different kinds of torture and other inhuman barbarities, thus moderating the rigor of penal inflictions, is the most conclusive.* The result of this experiment was a diminution of crimes of every description while it had a most beneficial effect in the administration of justice, and was in all its bearings the most glorious for humanity. Mr. Livingston gives the following almost conclusive facts on the testimony of the venerable Dr. Franklin, "that in Tuscany where murder was not punished with death, only five had been committed in twenty years; while in Rome, where that punishment was inflicted with great pomp and parade, *sixty murders* were committed in the short space of *three months* in the city and vicinity. It is remarkable," he adds to this account, "that the manners, principles, and religion of the inhabitants of Tuscany and of Rome are exactly the same. The abolition of death alone, as a punishment for murder, produced this difference in the moral character of the two nations."†

Count de Sellon of Geneva, a gentleman of high character, assures us that the suppression of the punishment of death in Tuscany, under Leopold was attended with the happiest effects, since crime almost entirely disappeared during the thirty ‡ years in which this suppression was rigorously enforced, whilst it had increased in the surrounding countries in which the punishment of death was frequently inflicted.§

By this experiment Leopold rendered a most important service to mankind throughout the civilized world, as well as to his own people, and has acquired for himself an imperishable renown. Here an objection is anticipated to this experiment. If the measure was attended with such beneficial results why was it not continued? Why was the punishment of death restored? In reply to this inquiry your Committee feel authorized in saying it was restored because an enlightened and humane sovereign was succeeded by a foreign conqueror. It was known that the code of

* See Appendix marked B.

† Criminal Code, p. 130.

‡ It may be well to observe that Leopold abolished the punishment of death several years prior to his edict in Nov. 1786.

§ Herald of Peace, Vol. 9, No 8.

Leopold was abolished by the French conquest ; but the policy of the conqueror has just been disclosed in a recent work 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 had 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, as far as regarded the interior, provided I left the whole exterior relations to him ? I understand you, replied he, and will answer you in the same spirit of frankness with which you have spoken. * * * *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 allow you to make Tuscany happy and tranquil all travellers from France would envy it.*" This then was the reason why this measure was not continued longer, because *it would have made Tuscany happy and have excited the envy of France.*

Lord Suffield in remarking in the British Parliament on the 18th of July, 1834, upon the merits of Mr. Ewart's bill repealing the statutes which award the punishment of death to the convict who returns from *transportation*, or the person guilty of letter stealing, &c., after declaring that the *indirect but certain tendency of the punishment of death is to increase crime*, cited the following case in proof. In Bombay, under the recordership of Sir James Mackintosh, capital punishments were suspended altogether for *seven years, and the number of murders diminished during that period to six, whereas during the preceding seven years when twelve executions took place, there had been eighteen convictions for murder.* So that murders diminished to one third the number by discontinuing the use of the scaffold.

The statistics of crime in England and Wales clearly show the inefficiency of this mode of punishment in the suppression of crime. The uncertainty of the infliction of the punishment of death in that country is very great. The condemnations to death for twenty-one years, from 1813 to 1833, in England, were 23,700 ; of whom 933 were executed ; giving 1,128 average annual condemnations, and 44 executions, and making the chances to escape after condemnation more than 25 to 1. If in connection with this we take into consideration the chances to escape suspicion and if discovered,

arrest and committal, and, afterwards, conviction, the uncertainty of the punishment will appear so great to those who are disposed to commit crime as to remove nearly all apprehension of it, and consequently its restraint. Lord Suffield was therefore right, even aside from its demoralizing effects, when he said that the indirect but certain tendency of this punishment is to increase crime; and that they might certainly be expected to diminish in number by diminishing the *severity* of punishment, in order to increase its *certainly*. With these views sustained by the statistics of crime in that country he pronounced it *unsafe to retain* capital punishment.

The benevolent Howard, who visited the prisons throughout all the kingdoms of Europe, assures us that in Denmark executions are seldom known: and that a great number of women for the murder of their children were condemned to the spin-houses for life; and that since its adoption this crime had been of much less frequent occurrence.

In Pennsylvania, murder, in the first degree, is the only offence punishable with death; in New Hampshire, treason* and murder; in Massachusetts, treason, murder, arson, burglary, robbery and rape. Yet in the two former crimes are less frequent than in the latter.†

In our own State as appears by the returns of the Clerks of the Judicial Courts for the several counties, the committals for the crimes of rape, robbery with intent to kill, and burglary, since the repeal of the law in 1829 making them punishable with death, have diminished to five thirteenths, of the former number,‡ although the wealth and population of the State have rapidly increased. For nearly seven years since the repeal of the above law in one thousand eight hundred twenty-nine, there have been in the County of Cumberland only one committal for these offences, which was a case of burglary, and the criminal was convicted and sentenced to State prison; whereas in the six years preceding there were two committals for burglary, two for robbery and three for rape; making seven cases in all, but not one was convicted for the offence for which he was committed, but for a different one, and sentenced to State prison, thereby saving the life of the criminal.§ So that the number of committals since the repeal of the law declaring them

*Treason against the State is a mere nominal offence.

†See appendix marked C.

‡See appendix marked F.

§See appendix D.

punishable with death, have diminished to one seventh of what they previously were in that County. The return from the County of Washington shows a similar result.* Here the question naturally arises, why are so many criminals arraigned for one offence punishable with death, and found guilty of another, punishable with imprisonment? Why are criminals arraigned under false indictments? Why is the great disproportion between murders and manslaughters? Why are jurors so reluctant to find a verdict for a capital offence? It is because sanguinary, barbarous and cruel punishments are not founded in the indelible sentiments of the human mind. Every day's observation cannot fail to convince us that men in whom intellect and moral feeling predominate, have an instinctive dread of taking human life, hence they have conscientious scruples against convicting men of crimes, the punishment of which is forfeiture of life. And it is of frequent occurrence that where jurors do find a verdict of guilty in such cases that they recommend the criminal for clemency or petition for his pardon; clearly indicating that in their opinion our penal code is too severe. All the jurors who recently found a verdict of guilty of wilful murder against the criminal in Penobscot county, have petitioned for a commutation of the punishment of death to that of hard labor in the State prison for life: and the commutation has accordingly been granted. The progress of correct views relative to sanguinary punishments is making such rapid strides that soon it will be difficult to execute the law instituting them. Recently in New York, in a capital case, forty-five persons excused themselves from acting as jurors, in consequence of their doubts of the propriety of inflicting the punishment of death. Is it not better then that the proper Legislative authority should modify the laws so as to conform to the actual wants and condition of the people, than that those who have their execution and the administration of justice committed to their charge, should be permitted to evade and defeat their intended object with impunity?

In a good government the pardoning power should be rarely exercised. If penal infliction be made mild and proportioned to the nature and aggravation of offences, clemency and pardon will be seldom necessary. That government is best which, being founded in justice, causes its laws and mandates to be most promptly obeyed, affording equal and certain protection to all its

*See appendix E.

members, and speedy and sure correction to the disobedient. Frequent pardons are inconsistent with the ends of government. Happy the nation, says Beccaria, in which they will be considered dangerous.

It is again repeated that *promptness* and *certainly* of punishment are much more efficacious in the prevention of crime than *severity*. The great severity of the punishment of death necessarily renders its infliction uncertain even after conviction, as has already been shown, while it is attended with the very grave objection, that if it fall upon the innocent or insane, an injury is done which cannot by any possibility be repaired. That this has been the melancholy fate of numerous innocent and insane persons, no intelligent man will attempt to deny. Their history would be a volume of itself and the perusal of which would chill the blood in our veins. Humanity shrinks back abashed at the thought—and we tremble as we think of the frailties of men, and the imperfections of human institutions.

If any further arguments be necessary to lead to the adoption of a measure fraught with such happy consequences to the State, they may be found in the Constitution which we are bound by the most solemn obligation to support. Article 1, Section 9, declares that "sanguinary laws shall not be passed; all penalties and punishments shall be proportioned to the offence; excessive bail shall not be required nor excessive fines imposed, nor cruel nor unusual punishments inflicted." Can language be more plain and explicit? It positively declares without any reservation, or the least intimation of any qualification by implication or otherwise, that "SANGUINARY LAWS SHALL NOT BE PASSED:" NOR SHALL CRUEL PUNISHMENTS BE INFLICTED. Sanguinary is derived from a Latin word which signifies blood, and is synonymous with the Latin sanguinarius and the French sanguinaire, both of which signify bloody; murderous; cruel. These are the definitions given by Webster and other lexicographers, and it is in this sense that it is here used. If an objection be raised to this construction on the ground that the law requiring the punishment of death, by hanging, for certain offences, is not one requiring the blood of a fellow being, it will be readily perceived that such an objection is unwarranted by the common use of language. If one man shall put to death another, whether by poisoning, strangulation or suffocation, he is said to be guilty of the blood of the murdered person, and is even said to have shed his blood, although no blood has literally been spilt. It is in this

sense that the advocates of the punishment of death explain and make the practical application of the passage of scripture, "whoso sheddeth man's blood by man shall his blood be shed." Hence they say the man who has shed the blood of another should be hung upon the gallows, that is, his blood should be shed to expiate the crime. It is obviously true that the taking of life and the shedding of blood are used synonymously. In this sense hanging a man with a halter till he is dead, is as much a sanguinary punishment as decapitation. The law, therefore, prescribing this mode of punishment is a sanguinary law and consequently unconstitutional. The people, then, in instituting this government by their Delegates in Convention, have not only withheld this power of inflicting the punishment of death, but have in the most express terms forbidden the passage of such laws; and if the Legislature shall disregard this prohibition of the Constitution, it as expressly forbids their execution by the Executive authority, when it declares that *cruel*, that is, inhumane, barbarous punishments SHALL NOT BE INFLICTED. How can Legislators having imposed upon them the responsible duties of citizens of a free government and the more solemn obligations of their official oath to support the Constitution, and to discharge faithfully the duties incumbent on them, as such, in conformity thereto, consent for a moment to legislate away the lives of their fellow citizens in contravention not only of the supreme law of the land, but of the natural right of the citizen? Strongly impressed with the conviction of the truth of what has been advanced, your Committee indulge the pleasing anticipation that more correct views of criminal legislation will be adopted, and that we shall cease to invade the Constitution and just rights of those we represent.

An obstacle has however been presented to the full consummation of the wishes of your Petitioners, by the present Legislature, in consequence of the opinion of the Judges of the Supreme Judicial Court on the question propounded to them, being in the affirmative, viz: If the Legislature shall abolish the punishment of death, will the crime of murder become by the Constitution a bailable offence? There are evils which would arise from this construction if carried into practice, but they are such as the people in their primary assemblies are competent to remove, if the Legislature shall think proper to place the subject within their control. This will remove the principal objections to the repeal of the present laws prescribing the punishment of death in certain cases, so that no valid ex-

cuse will be left for perpetuating this infraction of the Constitution and rights of the People. For this purpose, your Committee ask leave to report a Resolve, which is herewith submitted.

TOBIAS PURRINGTON, *Chairman.*

APPENDIX A.

Mr. Livingston says, in a note at page 130, of his Introductory Report to the code of crimes and punishments, if ever any philosophy deserved the epithets of useful and practical, it was that of Dr. Franklin. His opinions must have weight, not only from his character, but from the simple, intelligible reasoning by which they are supported. What says this venerable and irreproachable witness in the cause of humanity, which we are now pleading? "I suspect the attachment to death, as a punishment for murder, in minds otherwise enlightened upon the subject of capital punishments, arises from a false interpretation of a passage in the old testament, and that is—'He that sheds the blood of man by man shall his blood be shed.' This has been supposed to imply, that blood could only be expiated by blood. But I am disposed to believe, with a late Commentator* on this text of scripture, that it is rather a prediction than a law.† The language of it is simply, that such is the folly and depravity of man, that murder in every age shall beget murder. Laws, therefore, which inflict death for murder, are, in my opinion, as unchristian as those which justify or tolerate revenge; for the obligations of christianity upon individuals, to promote repentance, to forgive injuries, and to discharge the duties of universal benevolence, are equally binding upon States.

"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.

"If society can be secured from violence by confining the murderer, so as to prevent a repetition of his crime, the end of extirpation will be answered. In confinement he may be reformed; and if this should prove impracticable, he may be restrained for a term of years that will probably be coeval with his life.

"There was a time when the punishment of captives with death or servitude, and the indiscriminate destruction of peaceable husbands, women and children, were thought to be essential to the

* Rev. Mr. Turner.

† Professor Upham also gives it this interpretation. *Manual of Peace*, p. 219.

success of war, and the safety of States. But experience has taught us that this is not the case; and in proportion as humanity has triumphed over these maxims of false policy, wars have been less frequent and terrible, and nations have enjoyed longer intervals of internal tranquility. The virtues are all parts of a circle. Whatever is humane, is wise; whatever is wise, is just; and whatever is wise, just and humane, will be found to be the true interests of States, whether criminals or foreign enemies are the subject of their legislation.

“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 on 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.

“I shall conclude this inquiry by observing, that the same false religion and philosophy which once kindled the fire on the altar of persecution, now doom the criminal to public ignominy and death. In proportion as the principles of philosophy and christianity are understood, they will agree in extinguishing the one and destroying the other. If these principles continue to extend their influence upon government, as they have done for some time past, I cannot help entertaining a hope, that the time is not very distant, when the gallows, the pillory, the stocks, the whipping-post, and the wheel-barrow, (the usual engines of public punishments,) will be connected with the history of the rack and the stake, as marks of the barbarity of ages and countries, and as melancholy proofs of the feeble operation of reason and religion on the human mind.”

[Inquiry upon Public Punishment.]

APPENDIX B.

The following extracts from the Edict of Leopold, Grand Duke of Tuscany, for the reform of criminal law, dated the 30th of No-

vember, 1786, will show the manner in which he commenced the reformation of the Tuscan Penal Code, not only by abolishing the punishment of death, but also other barbarous and cruel punishments. He commences by saying, "Since our accession to the throne of Tuscany, we have considered the examination and reform of criminal laws as one of our principal duties; and having soon discovered them to be too severe, in consequence of their having been founded on maxims established either at the unhappy crisis of the Roman empire, or during the troubles of anarchy; and particularly, that they were by no means adapted to the mild and gentle temper of our subjects; we set out by moderating the rigor of the said laws, by giving injunctions and orders to our tribunals, and by *particular edicts abolishing the pains of death*, together with the different tortures and punishments, which were immoderate and disproportioned to the transgressions, and contraventions to fiscal laws; waiting till we were enabled by a serious examination and by the trial we should make of these new regulations, entirely to reform the said legislature.

With the utmost satisfaction to our paternal feelings, we have at length perceived, *that the mitigation of punishments joined to a most scrupulous attention to prevent crimes, and also a great despatch in the trials, together with a certainty and suddenness 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*: we have therefore come to a determination, not to defer any longer the reform of the said criminal laws; and having *abolished* in an absolute way *the pain of death*, deeming it not essential to the aim of society in punishing the guilty; having *totally forbidden the use of the torture.*" * * *

At page 28th of his edict, section liv., he says, "We have already *abolished* by our edict, the *punishment of branding with a red-hot-iron*, ordered by the law of the 6th of Feb. 1750; and the punishment known by the name of the *strappado*,* so often mentioned in the ancient laws of the grand duchy, likewise remains abolished, with special injunctions to our judges and tribunals. Confirming therefore our order to that purpose, we forbid our said judges and tribunals ever to employ the said punishment, either in ordinary cases of justice, or in matters of police; for which effect, besides destroying the gallows wherever they may be found, we

* A military punishment by cruelly torturing the offender.

order that all pulleys and cords used for the *strappado* be taken away from the places where the said punishment used to be inflicted, and that they be no more kept exposed to the public sight; and whereas in many and different statutes of the cities of the grand duchy, the barbarous and inhuman punishment of the mutilation of limbs is ordered and prescribed for certain crimes, although it has not been employed for many years, yet we annul and abolish, as far as may be necessary, the said statutes as to that effect, and likewise any other laws ordaining said punishment."

He further observes, page 26, "We have seen with horror the familiarity with which, in former laws, the *pain of death was decreed, even against crimes of no very great enormity*; and having considered that the object of punishment ought to consist, in the satisfaction due either to a private or public injury, in the correction of the offender, who is still a member and a child of the society and of the State, and whose *reformation ought never to be despaired of*, in the security, where the crime is very atrocious in its nature, that he who has committed it shall not be left at liberty to commit any others, and finally in the public example; and that the government, in the punishment of crimes, and in adapting such punishment to the objects towards which alone it should be directed, ought always to employ those means, which, whilst they are the most efficacious, are the least hurtful to the offender; which *efficacy and moderation we find to consist more in condemning said offender to hard labor, than in putting him to death*; since the former serves as a lasting example, and the latter only as a momentary object of terror, which is often changed into pity; and since the former takes from the delinquent the possibility of committing the same crime again, but does not destroy the *hope* of his *reformation*, and of his becoming once more an useful subject; and having considered besides that a legislation very different from our preceding one, will agree better with the gentle manners of this polished age, and chiefly with those of the people of Tuscany, we are come to a resolution to abolish, and we *actually abolish forever*, by the present law, *the pain of death*, which shall not be inflicted on any criminal, present, or refusing to appear, even confessing his crime, of 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*.

"And as those who are guilty of crimes formerly deemed capital, and other grievous offences, shall continue to live, to atone by

some good actions for the bad ones they have committed, we order that *public labor during the term of their natural life*, as the greatest punishment for the men, be *substituted for the pain of death*, which we abolish; and for the women, *confinement in bride-well, likewise for life*.

APPENDIX C.

The following experience of Pennsylvania, New Hampshire and Massachusetts, is taken from the Tenth Annual Report of Boston Prison Discipline Society, 1835.

Experience of Pennsylvania.—No crime is punished with death, except murder in the first degree; while murder in the second degree, high treason, arson, rape, burglary, sodomy, robbery, are punished with imprisonment, mostly for a term of years, not exceeding 21 for second offence. Murder in the second degree, second offence, is punished with imprisonment for life.

Does this system deluge the land with crime? Eastern Penitentiary received in 1833, seventy-six prisoners; of whom for horse stealing, 17; larceny, 25; felony, 1; burglary, 14; passing counterfeit money, 4; manslaughter, 3; murder, 2; robbery, 4; forgery, 5; rape, 1; total, 76.

Of the above no one was sentenced for life; two only for a term equal to twelve years each; one for eight years; three for seven years; and all the others for a less term of years. The average sentence was two years seven months and ten days.

The above is not a bloody list of crimes, compared with that in Massachusetts for the same time.

Western Penitentiary of Pennsylvania received in 1833, sixty-seven prisoners; of whom for larceny, 39; robbing the mail, 2; horse stealing, 7; murder, 3; fraud, 1; attempt to kill, 1; assault to ravish, 1; manslaughter, 2; murder in the second degree, 1; burglary, 1; passing counterfeit money, 2; rape, 1; accessory to rape, 1; total, 67.

Of the above no one was sentenced for life; two only for a term of years equal to twelve; two for ten years; one for nine years; three for eight years; two for seven years, and all the others for a less term of years. Average sentence three years two months and five-sixths of a month, nearly.

Population of Pennsylvania in 1830, 1,348,233. Whole number

of commitments to both the State Prisons, 143; commitments to the State Prison, one to 9,428 of the population.

This is a favorable result, more so than can be found in either of the New England States, except New Hampshire, except in regard to the cases of murder.

The Secretary of the Commonwealth has obligingly favored us with a certified copy from the records, of the cases of capital punishment in Pennsylvania for fifty-six years, by which it appears that the law abolishing them, except for murder in the first degree, took effect on the 22d of April, 1794; and from that period to the present time, the average number of cases of capital punishment is less than one annually. It will be seen also, by examining the table, that the average number of cases, during the fourteen preceding years, was one annually for murder; so that it appears from the table, that capital punishments for murder did not increase in Pennsylvania after the change in the law, although the population greatly increased.

List of Criminals executed within the Commonwealth of Pennsylvania, as taken from the Executive Minutes of Record in Secretary's Office.

Year.	Murder.	High Treason.	Robbery.	Burglary.	Rape.	Arson.	Uttering and passing counterfeit money.	Offence not stated.	Whole number executed.	Year.	Murder, first degree.	Whole number executed.*
1778	1	2	1	2					6	1806	3	3
1779	6	1	4	2			3	2	18	1809	4	4
1780		2		5					7	1812	1	1
1781			1	5	1	1			8	1816	1	1
1783	2		1	2				2	7	1817	3	3
1784			1					1	2	1818	4	4
1785	1								1	1722	2	2
1786	2								2	1823	2	2
1788				1	1		1	2	5	1824	4†	3
1789	1								1	1826	1	1
1792	1				1				2	1828	1	1
1795									2	1829	2	1‡
1797									1	1830	2	2
1798									3	1832	3	3
1799									1	1834	1	1§
Whole number executed,										98		

* By act of the 22d of April, 1794, capital punishments were abolished in all cases except those of murder in the first degree.

† One reprieved, and died in prison.

‡ One pardoned.

§ This execution took place in the jail yard, agreeably to an act of the 10th of April, 1834. Previous executions were public.

SECRETARY'S OFFICE, Harrisburgh, May 8, 1835.

"I hereby certify to all whom it may concern, that the foregoing are true extracts taken from, and carefully compared with, the records of the proceedings of the Governor and of the supreme Executive Council of the Commonwealth of Pennsylvania, now in my keeping. In testimony whereof, I have set my hand, and caused the seal of the said office to be hereunto affixed, the day and year aforesaid.

"JAMES FINDLAY, *Secretary of the Commonwealth.*"

Experience in New Hampshire.—No crime is punished with death, except murder and treason. Such has been the law of New Hampshire for many years. The old and bloody law of February 8, 1791, was modified and ameliorated June 19, 1812, and the law of 1812 was revised and re-enacted, in all its essential features of mildness, January 2, 1829. By these new and mild laws, burglary, robbery, rape, and arson, are punished with solitary confinement not more than six months, and hard labor for life; which were before punished with death.

Has this system deluged the land with crime? The following table answers the question, by showing the population of five of the New England States, and the number committed to their State Prisons respectively. The other New England States punish more crimes with death.*

Although the sentence of death was in many cases taken away, was not a sentence of great severity given in the State Prison? And is not the small proportion of crime in New Hampshire to be attributed to this?

Year.	Maine.		N. Hampshire.		Vermont.		Massachusetts		Connecticut.	
	Pris.	Pop.	Pris.	Pop.	Pris.	Pop.	Pris.	Pop.	Pris.	Pop.
		399,437		269,328		280,657		610,408		297,675
1820	-	-	18	-	49	-	71	-	-	-
1821	-	-	23	-	30	-	84	-	-	-
1822	-	-	16	-	30	-	91	-	-	-
1823	-	-	26	-	29	-	107	-	-	-
1824	20	-	19	-	38	-	86	-	-	-
1825	56	-	24	-	35	-	96	-	-	-
1826	58	-	13	-	44	-	81	-	-	-
1827	35	-	12	-	22	-	80	-	-	-
1828	55	-	20	-	32	-	104	-	34	-
1829	47	-	11	-	24	-	79	-	66	-
1830	-	-	31	-	-	-	115	-	73	-
1831	-	-	24	-	-	-	71	-	65	-
1832	-	-	19	-	-	-	76	-	65	-
1833	-	-	16	-	-	-	119	-	52	-
1834	-	-	13	-	-	-	-	-	54	-
	1 in 8,683		1 in 16,208		1 in 8,770		1 in 7,016		1 in 5,222	

* In Maine, treason, murder and arson, are punished with death. In Vermont, treason, murder and arson, are punished with death. In Massachusetts, treason, murder, arson, burglary, robbery and rape, are punished with death. In Connecticut, treason, murder, arson and rape, are punished with death.

The average sentence in the State Prison for thirteen years, from November 23, 1812, to September, 1825, in the whole number of commitments, not including three who were sentenced for life, was two years, ten months and twenty-six days.

Was not a large proportion of the sentence to solitary confinement?

Of those received during the period of thirteen years above mentioned, one hundred and ninety-one had no term of solitary confinement at all; one had two months' solitary, and sixty-five had from one to thirty days' solitary.

Did not the crimes of those who were committed to the State Prison, after this amelioration of the criminal code, become of a very aggravated character; showing that those crimes which had been punished with death, and were now punished with imprisonment, such as arson, burglary, robbery and rape, were now very common?

From the time of the reform in the criminal code, in 1812, for thirteen years, the crimes of those committed to the State Prison, including all committed, were as follows:—For stealing, 192; passing counterfeit money, 24; assault, 10; forgery, 3; burglary, 3; arson, 3; perjury, 1.

It is difficult to find in the history of Prisons ONE, where for so long a time, and among an equal number of convicts, so few were sentenced for the crimes of arson, burglary, robbery, and rape.

Eight criminals (for crimes not punishable with death in New Hampshire,) were punished with death in Massachusetts from 1812 to 1831.

Experience of Massachusetts.—Treason, murder, robbery with dangerous weapons, arson, or burning a dwelling-house in the night time, rape, carnally knowing a woman-child under ten years of age, and burglary when armed with a dangerous weapon, are punished with death.

The following list of persons have been condemned to death, and executed in Massachusetts, since 1794, under the jurisdiction of the State and United States courts; the name, crime, and time of execution, are given. The number under the jurisdiction of the State courts is twenty-six, of whom ten are for other crimes than murder. Those under the jurisdiction of the United States courts, but executed in Massachusetts, *i. e.* fourteen, are all for piracy and murder.

APPENDIX.

33

Names.	Crimes.	When executed.
Henry Pyner,	Rape,	Executed Nov. 5, 1813.
Ezra Hutchinson,	do	" Nov. 18, 1813.
Jonathan Jewett, Jr.,	Murder,	Committed suicide in Prison, Nov. 10, 1815.
Henry Phillips,	do	Executed March 13, 1817.
Peter Johnson,	Rape,	" Nov. 25, 1819.
Michael Powers,	Murder,	" May 27, 1820.
Stephen M. Clark,	Arson,	" May 10, 1821.
Michael Martin,	Highway Rob'y	" Dec. 20, 1821.
Samuel Clisby,	Robbery,	" Mar. 7, 1822.
Gilbert Close,	do	" do
Samuel Green,	Murder,	" April 25, 1822.
Horace Carter,	Rape,	" Dec. 8, 1825.
John Halloran,	Murder,	" Mar. 3, 1826.
Samuel B. Charles,	do	" Nov. 22, 1826.
Robert Bush,	do	Committed suicide in Prison, Nov. 14, 1828.
John Boies,	Murder,	Executed July 7, 1829.
John F. Knapp,	do	" Sept. 28, 1830.
Joseph J. Knapp, Jr.,	do	" Dec. 31, 1830.

List of criminals capitally executed, under sentence of the United States Circuit Court for Massachusetts District, from the adoption of the Federal Constitution, in 1789, to June 11, 1835.

Names.	Crimes.	When executed.
John Baptiste Collins,	Piracy and murder on high seas,	July 30, 1794.
Manuel Furtado,	do	do
Augustus Poleski,	do	do
Samuel Tulley,	Piracy on the high seas,	Dec. 10, 1812.
John Williams,	Piracy and murder on the high seas,	Feb. 18, 1819.
John P. Rog,	do	do
Francis Frederick,	do	do
Nils Peterson,	do	do
William Holmes,	Murder on the high seas,	June 15, 1820.
Thomas Warrington,	do	do
Edward Rosewaine,	do	do
Perry Anthony,	do	Dec. 21, 1824.
Winslow Curtis,	do	Feb. 1, 1827.

Names.	Crimes.	When executed.
John Duacan White,*	Murder on the high seas,	
Joseph Gadett,	do	July 1, 1831.
Thomas Collinette,	do	do
Henry Joseph,	do	Dec. 2, 1834.
James Otis,	do	Pardoned.
Pedro Gibert,	Piracy on the high seas,	June 11, 1835.
Manuel Boyga,	do	do
Manuel Castillo,	do	do
Angel Garcia,	do	do
Juan Montenegro,	do	do
Bernardo De Soto,†	do	
Francisco Ruiz,†	do	

Has this system of capital punishments diminished the number or aggravation of the offences for which persons have been sent to the State Prison? It does not thus appear, so far as an opinion can be formed by comparing the number and crimes in the Massachusetts Prison, as stated in the following tables, with the number and crimes of the Pennsylvania and New Hampshire Prisons, as stated previously.

The crimes of 277 convicts in confinement in the State Prison at Charlestown on the 30th of September, 1834, were as follows :

Larceny,	184	Bestiality,	1
Common and notorious thief,	3	Burning barn,	1
Passing and having in possession counterfeit money,	19	Malicious burning,	1
Assault, with intent to kill,	7	Obtaining goods under false pretences,	1
Felonious assault,	2	Escaping from the House of Correction in Suffolk county,	1
Assault and battery, with intent to murder,	2	Assaulting, beating and biting,	1
Murder, sentence commuted,	3	Burning a dwelling house,	1
Attempt to poison,	1	Assault, with intent to rob,	1
Attempt to rape,	7	Manslaughter,	2
Burglary,	21	Felonious assault and battery,	1
Forgery,	10	Felonious assault, with intent to kill,	1
Adultery,	6		277

* J. D. W. committed suicide the night before the day of execution.

† Condemned to death, but not executed June 11, 1835; De Soto having a reprieve for sixty, and Ruiz for thirty days.

The crimes of the 119 convicts committed to the prison at Charlestown, during the year ending September 30, 1834, were as follows :

Larceny,	87	Attempt in rape,	2
Passing or having in possession counterfeit money,	4	Assault with intent to rob,	2
Forgery,	6	Burning a dwelling,	1
Burglary,	4	Escaping from the House of Correction in Suffolk county,	1
Assault with intent to kill,	2	Manslaughter,	2
Assaulting, beating and biting,	1		
Adultery,	6		
Common and notorious thief,	1	Making,	119

The average length of sentence in Massachusetts of the above list, not including one life sentence, was three years, one month, and one third of a month.

It appears, therefore, by comparing the experience of Massachusetts, New Hampshire and Pennsylvania, as here stated, that the number of crimes punished with death is greatest in Massachusetts: the number and aggravation of offences of the convicts, in the State Prison, except in regard to those committed for murder in Pennsylvania, is little or no better; the average length of sentence is greater; and, therefore, if anything can be inferred from this experience, that severity of punishment has not deterred from crime; that Massachusetts where seven crimes are punished with Death, is no more secure in person and life, than Pennsylvania, where only one, and New Hampshire, where only two crimes are punished with Death.

APPENDIX D.

PORTLAND, Dec. 16, 1835.

SIR,—In answer to your inquiries, “what effect has the repeal of the law in Feb. 1829, punishing the crime of rape, robbery with intent to kill and accessaries thereto before the fact, with death, and also so much of the first section of an Act, passed the 28th day of February 1821, ‘providing for the punishment of the crime of burglary and other breaking and entering of buildings,’ as prescribes the punishment of death, and substituting therefor confinement to hard labor in the State prison for life, had upon the commission of these crimes since that time?” I give you the following statement from the records of my office, viz :

Year.	Crime.	Number of Committals.	Number of Convictions.
1823	Robbery,	2*	-
1824	-	-	-
1825	Rape,	1*	-
1826	Rape,	1*	-
1827	Rape,	1*	-
1828	Burglary,	2*	-
Total,		7	-
1829	-	-	-
1830	-	-	-
1831	-	-	-
1832	-	-	-
1833	-	-	-
1834	Burglary,	1	1
1835, Dec. 16	-	-	-
Total since the repeal of the law in 1829,		1	1

You will see by my statement that for six years *before* the repeal of the law inflicting death there were *seven* committals, and for the seven† years *since*, only one.

Yours very respectfully,

A. BAILEY, *Dept. Jailor, Cumberland Co.*

* The criminals thus marked are all indicted by the Grand Jury for the offence under a different name so that they might escape with their lives, proving how reluctant are Grand Jurors to take the life of a fellow man, if it can be avoided. The three first were indicted for the offence in these words, “assault with intent to commit a rape,” and were convicted and sentenced to State prison for five and ten years. The two for burglary were indicted for larceny, and convicted and sentenced to State prison for five years each.

† It will be seven years next February.

APPENDIX E.

“Statement of the number of committals and also of convictions for the crime of rape, robbery with intent to kill, burglary and such other breaking and entering of buildings as was punishable with death by the first section of an Act passed the 28th day of February, 1821, which have occurred since 1823, to Jan. 23, 1836, inclusive, in the County of Washington, State of Maine.

Year.	Number of Committals			Number of Convictions.			
	Rape.	Robbery.	Burglary.	Rape.	Robbery.	Burglary.	Total.
From 1823 to 1826, 1827, 1828,	- 1 2	- - 2	- - -	- - -	- - -	- - -	
	3	2	-	-	-	-	5
1829, From 1830 to January 23, 1836,	- -	1 -	- -	1 -	- -	- -	
	-	1	-	1	-	-	2—7

STATE OF MAINE.

Washington, ss.—Clerk's Office, Machias, January 23, 1836.

I, Aaron L. Raymond, Clerk of the Judicial Courts within and for the County of Washington, do hereby certify that the foregoing statement is correct.

Attest, A. L. RAYMOND, *Clerk.*

APPENDIX F.

The following is an Abstract of the returns from the several Counties in the State.

Counties.	No. of Commit- tals from 1822 to 1829—6 yrs.			No. of convic- tions from 1822 to 1829				No. of committals from 1828 to Jan. 1836—7 years.			No. of convictions from 1829 to 1836—7 years.			
	Rape.	Robbery.	Burglary.	Rape.	Robbery.	Burglary.	Total.	Rape.	Robbery.	Burglary.	Rape.	Robbery.	Burglary.	Total.
York,	1	-	-	1*	-	-	1	-	-	-	-	-	-	-
Cumberland,	3†	2	2‡	-	-	-	7	-	-	1	-	-	-	1
Lincoln,	-	-	-	-	-	-	-	(1834)1§	-	-	-	-	(1833)1	2
Kennebec,	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Oxford,	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Somerset,	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Penobscot,	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Waldo,	-	-	-	-	-	-	-	-	-	-	1	-	-	1
Hancock,	-	-	-	-	-	-	-	-	-	1 ^c	-	-	-	1
Washington,	3	2	-	-	-	-	5	-	1	-	1	-	-	2
	7	4	2	1	-	-	13	-	2	2	2	-	2	7

*Convicted of "an assault with intent to ravish."

†Indicted for an "assault with the intent to commit a rape," and were convicted and sentenced to State Prison for five and ten years.

‡"The two for burglary were indicted for larceny and convicted and sentenced to State Prison for five years each."

§The indictment in this case was "for robbery with a dangerous weapon with intent to kill, but the conviction was for robbery without a dangerous weapon, &c."

||Convicted of an "assault with intent to commit the crime of rape." Was not committed.

Acquitted on account of insanity. This case and the one for robbery in Lincoln in 1834 should be deducted from the seven cases which have occurred since 1829. This will leave five cases since the repeal of the law making them punishable with death, while for the six years preceding there were thirteen cases.

JOINT SELECT COMMITTEE ON CAPITAL PUNISHMENT.

Messrs. Purrington, Robinson, Allen, Kelsey, Strickland,	} <i>of the Senate.</i>
Messrs. Mildram of Wells, Gerry of Waterford, Cunningham of Brooks, Webb of Bloomfield, White of Windham, Allen of Bangor, Holt of Bluehill, Purrington of Bowdoinham, Packard of Houlton, Tabor of Vassalborough,	} <i>of the House.</i>

STATE OF MAINE.

In SENATE, February 19, 1836.

ORDERED, In concurrence with the House of Representatives, that 1000 copies of the foregoing Report and Resolve be printed for the use of the Legislature.

[Extract from the Journal]

Attest,

WILLIAM TRAFTON, *Secretary.*