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THE DEATH PENALTY.

REMARKS

OF

JOHN L. STEVENS,

IN THE SENATE OF MAINE, FEBRUARY 11 AND 12, 1869,

ON AN ORDER

Instructing the Judiciary Committee to report a bill abolishing Capital Punishment.

SECOND EDITION.

In Senate, Feb. 11 and 12, 1869.

MR. PRESIDENT: The order now before the Senate, was introduced by me yesterday under a full sense of its importance to the people of this State and its relation to the general welfare of the society of this country. In the remarks which I shall submit, I ask the indulgence of the Senate as to my imperfect and feeble manner of statement.

I regard the subject which the order involves, which is now before the Legislature and the people of this State, as one of the most important upon which the Legislature has been called to act for many years, and we ought to approach it, not with feeling, prejudice, and passion, nor with preconceived opinions. It becomes us to remember that we are the legislators of the people of Maine, who live under the principles of that old maxim, which is dear to the American people—ours »*is a government of laws, and not of men*». Those who live under an absolute monarchy, who are controlled by the will, prejudices, or interests of a ruler, or of a privileged few, rather than by a government of laws, have no such reason for gratitude and patriotic pride.

Living, then, under a government of laws, and not of men, we should not be subjected to the prejudices, passions, or misconceptions of individuals, associations, or rulers, or to the excitements and hasty judgments of the people in mass, but to certain well-defined principles which are fairly deducible from facts and experience, just as principles of practical science are deducible from facts in the natural world—just as certain principles of mechanism are ascertained by the experience and products of mechanical minds and hands. Citizens thus of a country so favored by laws and popular intelligence, the question properly may be put in this connection: Where do we get the authority in a christian, civilized, and peaceful state

of society, where government, the agent of society, is in full command of all its powers, and holds the criminal securely in its grasp, with the ampliest means of thus holding him;—where do we get the right to take the life of that utterly helpless criminal? Society is an aggregation of individuals, or in other words, society is a compact. Now these individuals cannot put into this compact more powers and rights than they possessed before they entered it. Can persons when forming a partnership of any kind, put into that partnership anything they did not possess? Certainly not. Society then being a compact, where did these individuals, before society was combined, get the authority to take the life of an individual? Had any one of these individuals when he entered into this compact, the right to take his own life? You say no. God gave him that life, and the individual has no right to form a partnership, one of the terms of which is to surrender or forfeit his life. Society, then, being a compact of individuals, not having the right to bargain or surrender life, we want to know where that society gets the right to take life? It does not get it from any guarantees or agreements made by the individuals; that we think is settled. In the earliest records we have of government on this earth, we find the declaration, »take not life». One of the ablest legal minds of this country, and one of its leading statesmen and lawyers, declared on a memorable occasion that the command—*thou shalt not kill*—is binding alike on individuals and civil society. The correctness of this doctrine cannot be questioned by thoughtful and humane citizens of a free and christian government. In this statement relative to the original rights of the individual, or of society, I do not mean to include the idea of self-defence. (The right of self-defence belongs to the individual and to society alike, even to the extent of taking life as the means of saving the life of the individual or society in peril.) The legitimate rights and the authorized laws of war with their vast sweep of terrible consequences grow out of this idea of self-defence. But this does not involve the right of society, in the full and legal possession of its powers, to put to death one of its members securely in its possession. *On this deduction from the nature of society as a compact, I do not, however, rest the argument against Capital Punishment.* It is not necessary to do so. I merely state it for what it is worth. Many who do not receive this view of the nature of society as a compact, are none the less opposed to the Death

Penalty on other and sufficient grounds. The first murderer, the first violator of this command binding alike on individuals and society, was Cain. He was not hanged by the neck, he was not shot down with the rifle, he was not guillotined. There was no human tribunal that presumed or dared to hang him. The divine method of punishment was not inconsistent with the preservation of his life.

But I shall be told in this connection that the civil and penal code of Moses being divine, has been authoritative and binding on human society from the period of its establishment to the present time, and here is the hitch with many persons who still adhere to Capital Punishment. Now, in the Mosaic code we find thirty odd offences made punishable by death; murder, kidnapping, eating of unleavened bread, suffering an unruly ox to be at liberty if he kill, witch-craft, bestiality, idolatry, oppression of the widow and fatherless, compounding holy ointment, violation of the Sabbath, smiting of father or mother, sodomy, eating the flesh of the sacrifice, eating the fat of offered beasts, eating any manner of blood, offering children to Moloch, eating a sacrifice of peace offering, screening the idolater, going after wizards, adultery, incest, cursing of parents, blasphemy, coming nigh the priest's office, and nine other offences, making thirty-three in all.

Thirty-three offences punishable by death, and among them Sabbath-breaking! A poor woman goes out and picks up a few sticks to kindle a fire on the hearth to cook a supper for her little children and is hanged. Now, if the argument is good for anything, it is good for the whole extent, and thus we should at once pass laws punishing with death the Sabbath-breaker—every editor who writes an editorial on the Sabbath for his Monday morning issue, every clergyman who writes a part of a sermon on Sunday morning —every mother who gathers a few sticks to heat the kettle to cook the Sabbath morning breakfast, and so on to the end of the chapter; from which it is obvious that this argument is good thirty-three times too often. It is a settled principle of logic that what proves too much proves nothing, and this argument for hanging from the criminal code of Moses proves more than thirty fold what its present supporters desire. It will not, then, be contended that the Mosaic code is binding upon individuals and communities at the present period. It is well known that the Sacred Teacher himself said in so many words, that the criminal code of Moses, an eye for an eye

and a tooth for a tooth, designed for the Hebrew nation, was superseded by another and a better—the code of Christianity designed for all nations and after centuries of mankind. In the Christian teachings we find no authority for a civil government in a state of peace and in the full exercise of its powers to take the life of the criminal when fully in its control. How the early Christians understood the teachings of their Divine Master is conclusively evident from a most reliable and authoritative historian. Milman shows that the Emperor Julian, after his apostacy from Christianity, about the year 361, in withdrawing from the Christians certain powers and rights which they had before enjoyed, withdrew from them the right to serve in the office of Prefect; and the reason was, *because their law forbade them to adjudge Capital Punishment.* So far as any appeal to divine revelation is concerned there is not any authority for the Death Penalty at the present time. In the case of Cain, where the Almighty is supposed to have given special direction to man, there was no society or government which presumed to or dared hang him.

Leaving divine revelation, suppose we seek the best light on this subject we can find among the laws and experience of nations down to this time. What has been the light of the ancient civilization on the subject? We read of the code of Draco—it is familiar to every reader of history—Draco the Grecian legislator, who punished nearly *every* offence with death, even the stealing of a few garden herbs, and which has been fitly denominated in all subsequent ages the *Code of Blood.* The people of Athens endured it for thirty years only, and then were gratified to receive the wisdom and moderation of Solon. It is well known that the Egyptians were a cultivated people, with established laws and institutions. Professor T. C. Upham, for many years connected with Bowdoin College, a man of learning, of comprehensive views, and an author of no mean reputation, in his Manual of Peace, says:

»One of the Sovereigns of ancient Egypt, of the name of Sabacos, who is justly numbered among the legislators of that inventive and intelligent people, abolished capital punishment. He reigned fifty years, and ordained that such criminals as were judged worthy of death, should be employed in the public works. He thought that Egypt would derive some advantage and profit from this kind of punishment, while at the same time, being imposed for life, it seemed sufficiently well adapted to the purpose of discouraging and repressing crimes. And it does not appear from any remarks on the subject, that the result disappointed his expectations.«

The same writer shows on the authority of Livy, Cicero, and Montesquieu, that the Death Penalty so far as Roman citizens were concerned, was abolished in the Commonwealth of Rome, in the

year of the city 453, by the Porcian Law. This statute ordained that Roman citizens convicted of crime, should go into exile, instead of being punished with death. This law is said to have been successfully continued in force for two centuries. The standing of Cicero among the most enlightened of the ancient law makers, thinkers, scholars, and statesmen, is well known. His words of grief over the corruptions and sanguinary violence of his times, were:

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

This is the summing up of all the experience of that profound legislator and statesman, whose name has come down so consecrated in the world's opinion to the present time. Seneca who followed Cicero as a teacher of morals and laws, says: »The end of all correction is either the amendment of wicked men or to prevent the influence of ill example.«

Here we have the purest wisdom of Rome in its best days. After Seneca, came on the dark ages, when blood-shed by individuals and governments prevailed, and violence and terror were the rule. We find as late as the latter part of the last century, in England, which stood at the head of European governments, more than *one hundred and sixty* offences were punishable with death. That nation which during the reign of Henry the VIII, about thirty-six years, put to death on the scaffold *seventy-two thousand* of its citizens, and between 1813 and 1833 condemned to death *twenty-four thousand,* and hanged more than nine hundred. But there were those in England at the close of the last century who began to receive the same ideas that the best teachers had announced in preceding centuries, and one of the first of these was Sir Samuel Romilly, admitted to have been among the most distinguished teachers of jurisprudence that England ever produced. He threw his influence and great power to reform the criminal code of England, and the result was great modification of the criminal code. So that instead of punishing with death one hundred and sixty offences, that penalty was inflicted on comparatively a small number. What was the result? A marked improvement in the condition of that country in respect to crime. Prior to Romilly was Beccaria, the celebrated Italian teacher of the science of government, whose Essay on Crimes and Punishments ranks among the first works of the kind of modern times. He says

»The end of punishment is no other than to prevent the criminal from doing further injury to society, and to prevent others from doing the like offence.» Grotius, a writer of high authority on laws, says:

»In punishment we must either have the good of the criminal in view, or the advantage of him whose interests it was that the crime should not have been committed, or the good of all indifferently.»

Montesquieu declares that «*Every punishment which does not arise from absolute necessity is tyrannical.*» These are the conclusions of the wisest legislators, the ablest expounders of law, the best teachers of the true science of government at the close of the last century, and they exercised an immense influence in modifying the criminal codes of European nations and in the light of their teaching, Tuscany with king Leopold as its ruler, abolished Capital Punishment from his dominions. What was the result? An increase of crime? No, sir; but a very large decrease. That continued for twenty-five years, and the testimony is undisputed, that for this period the experiment was a complete success. Tuscany had in 1860 a population of 1,815,243, and probably nearly a million in the time of Leopold. According to the official declaration of that sovereign, »All crimes had diminished, and those of an atrocious nature had become extremely rare.» According to the testimony of Benjamin Franklin, who spent some time in Europe during the reign of Leopold: »In Tuscany, where murder was not punished with death, only five had been committed in twenty years, while in Rome, where the punishment is 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 Rome are exactly the same.» Who changed this beneficent state of things in Tuscany? Napoleon, that enemy of European liberty, that despot who should be hated in the heart of hearts of all who love justice and the rights of man. It was in accordance with his plans to take possession of Italy and by its domination to become the absolute monarch of Europe. His conquering armies took possession of Tuscany and swept aside the code which had been adopted, and made its laws correspond with the code of France. He wanted his brother to accept the rule of Tuscany, and his private correspondence demonstrates conclusively that that brother, more benign and humane, could not become the monarch of Tuscany unless he became a mere puppet of Napoleon.

That brother refused to accept the rule of Tuscany under suc humiliating terms, and the results of the wise and humane effor of the disciple of Beccaria were swept away.

Sir James Mackintosh is known to every lawyer, to every phil sophical thinker, to every reader of the literature and history Europe. He was the remarkable man that Macaulay says »carrie more facts in his brain than any other mortal,» and, I may ad knew how to use them, and from them deduce certain government principles as well as any man in England. His writings, as well of those already named, had their influence in modifying the cod of Europe. In 1804 he was sent to India, as the Governor Bombay. He was Governor until 1812, when his health brol down, and he was obliged to resign. Prior to his administration tl punishment of death had prevailed for many offences. Bombay ha a population of 200,000, made up of a variety of nationalities:- 120,000 Hindoos, 40,000 Mohammedans, 12,000 native Christian 15,000 Parsees, and 5,000 English. He abolished the penalty death for all offences, and the result was highly successful. Ne the close of his term of office he made a celebrated charge to tl grand jury of the Supreme Court of Bombay, in which he say »Since my arrival here in May, 1804, the punishment of death h not been inflicted in this Court. * * * From May, 1756, to Ma 1763, the capital convictions amounted to one hundred and forty-on and the executions were forty-seven. The annual average of perso who suffered death was almost seven, and the annual average capital crimes ascertained to have been perpetrated, was nearly twe ty-seven. For the last fifty years the population has more tha doubled, and yet from May, 1804, to May, 1811, though we had capital execution, there has been but six convictions for murde Murder in the former period, with executions, were, therefore, near as three to one to those of the latter, in which no Capital Punis ment was inflicted. This small experiment has, therefore, been ma without any diminution of the security of the lives and proper of men. Two hundred thousand men have been governed for sev years without a Capital Punishment, and without any increase crimes. If any experience has been acquired, it has been safe and innocently gained.»

Russia, with a population of 80,000,000 has not tolerated the Dea Penalty for more than 125 years. The Empress Elizabeth, wl

ascended the throne, in 1741, declared she would not take life for crime, and this resolve she kept through her extended reign. After test of years, she said:

»Experience demonstrates 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.«

The same policy was followed by her successors, and thus the nation which has made such gigantic strides in civilization and power has demonstrated the wisdom of not allowing the Death Penalty.

Belgium is without Capital Punishment. This prosperous and enlightened nation has a population of 5,000,000. Full and accurate tables of crime, running through many years, show that the abolishment of the Death Penalty has had a result highly gratifying to humane and wise legislators. The Penal code of Belgium, was once exceedingly severe. In nineteen years, ending with 1814, there were 533 executions, 399 of which were for murder, or 21 per annum; the law was then modified, making less capital offences, and for the next fifteen years there were 72 executions and but 114 murders, or only 8 per annum. Capital Punishment was then completely abolished, and for the next five years there were but 20 murders, or only *four per annum.*

In 1846, Michigan abolished Capital Punishment. Now mark, Michigan you all know, you know her people and how she is situated. She is one of those American Commonwealths that is to take a high rank in the future of this continent. Her people are a cross between New Englanders and Western New Yorkers. She has a northern climate, a rolling territory, with lakes upon the north, the east, and the west, and thus has the favorable conditions for the rearing of men. She was a fitting State to abolish Capital Punishment, which she did in 1846, following our example of 1836. The uniform testimony is that it has worked well. The percentage of murder is less, and the percentage of convictions larger. There is no thought of returning to the Death Penalty. The official testimony is specific and decisive. Next to Maine and Michigan, Wisconsin took a step forward. Now, you will agree with me, that next to Michigan, should be ranked Wisconsin of the States of the West, in all the conditions of a great Commonwealth, of superior morals and intelligence. The success there for 16 years has been the same as in Tuscany, Bombay and Michigan. The letter of Governor Fairchild of that State, read the other evening before the Judiciary

Committee, was conclusive as to the success of the reform and proves that there is no thought of restoring the gallows. A brave soldier in the war and the Chief Magistrate of a State that sent more than a hundred thousand men to the field, he sees no necessity for the Death Penalty in the time of peace. Rhode Island abolished hanging 14 years ago, and with the same success as in other States where the experiment has been tried. There have been less murders in Rhode Island since the abolition of the gallows than during the same years in the county of Worcester, Massachusetts, with a less population, and to-day the people of the home of Roger Williams would not return to hanging as they would not return to other exploded errors of the past.

Now, one word as to Maine. Since 1835 and '36, when the people of this State discussed this question so thoroughly, generations have grown up, and therefore are not well informed as to the facts and arguments then brought out, and the conclusions then reached by the public mind. I have taken the pains to examine the reports of the committees made in those years. James R. Abbott of Vassalboro', now dead, was chairman of the legislative committee of 1835 on this subject. It came up on the petition of the Friends of Vassalboro' and other towns of the State, and all of you know the substantial and reliable character of that class of citizens. In 1835 no effectual action was taken. In 1836 the subject was again before the Legislature, and a strong committee gave it careful and thorough consideration, Tobias Purrington of Cumberland, of the Senate, being chairman. He made a report which for clearness of statement, thoroughness of analysis, and terseness of expression, entitles him to a first position among the writers and legislators of Maine. They then passed the law which is now upon our statute book, and which until lately was construed as abolishing the Death Penalty. The statistics of the State show conclusively that the result was highly successful for thirty years. In a letter to Mr. Fay of Boston, Prof. Upham of Bowdoin College, under the date of Feb. 14, 1855, said:

»It is now twenty years since the Maine Law on this subject was introduced here. There has been no infliction of capital punishment during that period. The punishment is understood to be practically abolished, and I have heard no wish from any quarter to restore it. Convictions are now more easily obtained than formerly, and the people feel as secure, I presume, as in any other State.«

I know it is said there are so many who commit murder they ought to be hanged—nothing but death will answer. Ignoring all the experience of States and Nations, who have tried a better way,

they still adhere to the spirit of the Draconian code—that there is nothing like blood to give protection to human society. Terror—this doctrine of terror, strangely warps the judgment of its advocates. They say you must strike terror to the hearts of the vicious by the Death Penalty—that there is nothing like that to deter them from crime. But they greatly overestimate the power of the fear of death with those inclined to crime, especially when the small number of convictions is considered that are secured where the penalty is death. Lord Bacon was wonderfully accurate in his estimate of the passions and motives of men. He says: »*There is no passion in the human mind so weak but it mates and masters the fear of death.*» This doctrine of Terror for the prevention of crime has been tried for thousands of years without avail. It was tried in the reign of Henry VIII, of England, when during thirty-six years 72,000 persons were punished with death. It was illustrated in London fifty years since, when two men were hung for stealing watches, and forty watches at the same time were stolen under the very gallows by those who came to the execution. Of 167 convicts under sentence of death, Rev. Mr. Roberts of Bristol, England, found that 164 had attended executions. Mr. Dymond, a reliable author of distinction, relates the well attested story of a man executed for uttering forged bank notes, whose body was delivered to his friends. With the corpse lying on a bed before them, they were seized in the act of carrying on the same traffic, and the officer coming upon them suddenly, the widow thrust a bundle of the bills into the mouth of her dead husband for concealment. An execution which took place at Worcester, Massachusetts, on the 8th of December, 1825, was soon followed by an attempt of a brother of the criminal, to commit the same crime, for which his relative had just suffered the penalty of death. For many years arson had been punishable with death, prior to 1821, but executions had been seldom, though house-burning had much prevailed. In May of that year, 1821, Stephen M. Clark of Newburyport, a youth of 17, was hanged in Salem for setting fire to a building in Newburyport. Such was his horror of death that it was found necessary, amidst his cries and lamentations, actually to force him from his cell and drag him to the place of execution. Now, the believers in the potency of *Terror* to deter from crime, would conclude that house-burning in Newburyport and Essex county would have been effectually and speedily cured. But the reverse proved

true. The execution of young Clark was almost immediately followed by a considerable number of attempts to commit the same crime in the town where Clark had committed it.

Edward Livingston, in his introductory report to a system of penal laws for Louisiana, gives an instance of »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 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.» He also mentions a well authenticated instance of 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 commitals for divers offences, such as assault and battery, larceny, &c., while the pickpockets escaped, or the jail would have been overflowed.

This dogma of Terror has had its weakness shown in the bloodiest annals of men these thousands of years. It was demonstrated in a remarkable degree in the French Revolution between 1789 and 1793. The revolutionists, who had been so long outraged and oppressed, abolished monarchy and established a Republic. Their enemies at home and abroad plotted against them. The leading monarchs of Europe resolved to stifle the fires of democracy within the ancient boundaries of France. They put their armies in motion, and organized and stimulated their diplomacy to make good their resolves. The Republicans determined to meet danger with Terror. They declared they would hurl at their enemies the head of a king. They beheaded Louis XVI, and his beautiful and accomplished queen. Other members of the royal family were carried to the block, and the bold lines of defiance written in blood were drawn around France. Then it was found necessary to apply the dogma of Terror to the necessities of faction. First, the Girondists, the most brilliant and able of the revolutionists, were executed. The enforcement of the Death Penalty was reduced to a science. Then Robespierre found it necessary to apply Terror to some of his associates. Danton, who had thundered audacity from the top of the Jacobin Mountain, was carried to the guillotine. Then the friends of Terror turned on Robespierre himself and remorselessly took his blood. The whole

French people were possessed with the mania of blood. They piled up hecatombs of human beings, a spectacle to God and the nations of the earth. Even children became possessed with the demon of blood, and amused themselves by guillotining chickens. But Terror was as powerless in the defence of a Republic as it had so often proved in maintaining other forms of government. It is a falsehood and delusion, whether applied as a security against despotism, murder, or other forms of crime. The liability of the innocent becoming its victims is one of the strongest arguments against it. Lafayette, after his many years of experience in governmental affairs, said: »I shall ask for the abolishment of the Penalty of Death, until I have the infallibility of human judgment demonstrated to me. * * * The punishment of Death has always inspired me with feelings of horror since the execrable use made of it during the former rebellion.»

Benjamin Franklin declared that »Laws which inflict death for murder are, in my opinion as unchristian as those which justify or tolerate revenge. * * * If society can be secured from violence by confining the murderer, so as to prevent a repetition of his crime, the argument of extirpation will be answered.»

Daniel O'Connell, the statesman, patriot, and advocate, long the representative of all that was noblest and best in Ireland, in the later years of his life, when thought and judgment had fully ripened, declared:

»He had long been deeply impressed with the conviction that Capital Punishment ought to be utterly abolished. He could not forget that 'vengeance is mine, saith the Lord, and I will repay it.' 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 bedroom at night, and stabbed him, but did not treat him with any brutality. He prosecuted two brothers for the crime, and they being unprepared with any defence, 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 a broken-hearted mother, the gentleman discovered his fatal mistake. Mr. O'Connell said he would mention another instance of which he had a personal knowledge. He defended three brothers who were indicted for murder, and the judge having a bearing, 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 passing sentence. A military guard was kept ower him, 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 young boy, who was but eighteen. And they were innocent, but were executed.»

EDWARD LIVINGSTON, one of the most illustrious names of the American bar, one of the most learned and profound in American jurisprudence, long conspicuous as a leading statesman, in his able

and elaborate work on the Criminal Code of Louisiana, takes strong ground against the Death Penalty. The following is his language:

»Would to God that, if death must be inflicted, some sure means might be discovered of making it fall upon the guilty. These things have happened. These legal murders have been committed! and who were the primary causes of the crime? Who authorized a punishment which, once inflicted, could never be remitted to the innocent? Who tied the cord, or let fall the axe upon the guiltless head? Not the executioner, the vile instrument who is hired to do the work of death—not the jury who convict, or the judge who condemns—not the law which sanctions these errors; but the legislators who made the law,—those who, having the power, did not repeal it. These are the persons responsible to their country, their consciences, and their God. These horrors not only have happened, but they must be repeated; the same causes will produce the same effects. The innocent have suffered the death of the guilty; the innocent will suffer. We know it. The horrible truth stares us in the face. We dare not deny, and cannot evade it. A word, while it saves the innocent, will secure the punishment of the guilty; and shall we hesitate to pronounce it? Shall we content ourselves with our own imagined exemption from this fate and shut our ears to the cries of justice and humanity? I urge this point with more earnestness, because I have witnessed more than one condemnation under false construction of law, or perjured, or mistaken testimony—sentences that would now have been reversed, if the unfortunate sufferers were within the reach of mercy. I have seen, in the gloom and silence of the dungeon, the deep concentrated expression of indignation which contended with grief; have heard the earnest asseverations of innocence, made in tones which no art could imitate; and listened with awe to the dreadful adjuration poured forth by one of these victims, with an energy and solemnity that seemed superhuman, summoning his false accuser and his mistaken judge to meet him before the throne of God. Such an appeal to the high tribunal which never errs, and before which he who made it was in a few hours to appear, was calculated to create a belief of his innocence; that belief was changed into certainty. The perjury of the witness was discovered, and he fled from the infamy that awaited him; but it was too late for any other effect than to add one more example to the many that preceded it of the danger, and I may add impiety, of using this attribute of the divine power without the infallibility that can alone properly direct it. And this objection alone, did none of the other cogent reasons against capital punishment exist,—this alone would make me hail the decree for its abolition as an event, so honorable to my country, and so consoling to humanity, as to be cheaply purchased by the labor of a life.«

Lord Henry Brougham, of England, devoted a long life to an extensive practice at the bar, was elevated to the wool-sack, became a laborious and influential member of the House of Lords, and had a commanding position among the thinkers and statesmen of Europe. After long experience with courts and criminal proceedings, he gives his testimony that the Death Penalty is a failure in Great Britain. These are his words:

»His firm belief and conviction were, that capital punishment had failed in all and every case—even in those cases of murder *for which alone* it was justifiable, *if* justifiable at all; yet even for that he thought its tendency was not the prevention of crime; on the contrary, it *tended to brutalize the mind, and to prepare men for the commission of that very crime* for which alone, if retained at all, it ought to be continued.«

Who that loves Justice and Free Government, that feels an interest in all noble enterprises, and has his blood stir quick at the mention of the names of great and good men, is not willing to listen to what JOHN BRIGHT, of England, has to say on the question now under discussion? By great powers of mind and pure devotion to correct principles of morals and government, he has arisen to be one of the foremost men of Europe. The friend of this country for many years, and warmly so, during our recent civil war, he takes a lively interest in whatever tends to the improvement and benefit of American institutions. I will read the letter which he not long since addressed to a citizen of the United States on Capital Punishment

ROCHDALE, Jan. 3, 1868.

M. H. BOYEK, ESQ.

DEAR SIR: — I do not think the punishment of death is necessary to the security and well-being of society; and I believe its total abolition would not tend to increase those crimes which it is now supposed by many to prevent. The security and well-being of society do not depend on the severity of the punishments. Barbarism in the law promotes barbarism among those subject to the law; and acts of cruelty under the law, become examples of similar acts done contrary to the law.

The real security for human life is to be found in a reverence for it. If the law regarded it as inviolable, then the people would begin also so to regard it. A deep reverence for human life is worth more than a thousand executions in the prevention of murder, and is, in fact, the great security for human life. The law of capital punishment, whilst pretending to support this reverence, does, in fact, tend to destroy it.

If the death penalty is of any force in any case to deter from crime it is of much more force in lessening our chief security against it, for it proclaims the fact that kings, parliaments, judges, and juries may determine when and how men may be put to death by violence, and familiarity with this idea cannot strengthen the reverence for human life.

To put men to death for crimes, civil or political, is to give proof of weakness rather than strength, and of barbarism rather than Christian civilization.

If the United States could get rid of the gallows, it would not stand long here. One by one, we »Americanize» our institutions; and I hope, in all that is good, we may not be unwilling to follow you I am very truly yours, JOHN BRIGHT.

Now to Prussia—that nation with a population of 25,000,000, which has arisen to her present commanding position with marvelous energy and rapidity, which recently crushed and humbled imperial Austria in a campaign of thirty days, and then said to Louis Napoleon: lift your finger if you dare; which has the best educational system in the world, which has the best managed finances and the best organized army in Europe; where at the touch of the telegraphic wires by the finger of her matchless statesman, Bismarck, a million of men will spring to arms in the defence of unified Germany, — Prussia has under consideration the proposition to abolish the death penalty, and before twelve months expire the Prussian Parliament and Cabinet may stand in the rank with those enlightened states and nations which have adopted the most effective methods for the punishment of crime and the protection of society against its enemies. And newborn Italy, which has been suddenly uplifted to the proportions of a great and free nation by a wondrous resurrection inspired by the genius and enthusiasm of Mazzini, consecrated by the unselfish heroism of Garibaldi, and whose opportunities were so wisely improved by the consummate statesmanship of Cavour—this new nation, whose latter history promises richer fruits than the Italy of the classic centuries, is about abolishing the death penalty in obedience to tho wise teachings of Beccaria as illustrated by the noble reign of Leopold in Tuscany. This nation of 25,000,000 under the advice of her High Court of Appeal is thus proving her clear appreciation of the true demands of Christian civilization.

But the charge is made against those who would abolish the gallows, that their sympathies are with the criminal, while the sup-

porters of hanging sympathize with society and demand its protec tion. On this point we take issue with the supporters of the death penalty. The abolishment of hanging is demanded because it has signally failed to protect society. The *certainty of conviction* and punishment is what society needs for its security. In England the machinery of Law and Courts is thought to be as complete as in any country in the world. By the most recent statistical informa tion given in the Westminster Review, it is shown that not more than *one murderer in ten* is convicted, and that the worst murderers escape. E. C. Stedman, in an elaborate article in the last number of Putnam's Monthly, an able and reliable writer, says that in the State of New York not more than *one murderer in ten* is convicted—the same proportion as in England. The same general result is shown in all civilized nations where the death penalty prevails. The proof in cases of murder is in a large degree circumstantial, and juries will convict with extreme reluctance, inasmuch as their decision is liable to place the accused beyond remedy in the contingency of mistake. As I have already shown by statistics which work with mathematical precision, the abolishment of the gallows in various nations and states, gives far more conviction much surer punishment of criminals, and more certain protection to society.

Benjamin Franklin, who did so much for the American people and who was nearly one hundred years ahead of his time in many respects, saw clearly what the interests of society demanded, when he asked the abolition of the death penalty. You know that Franklin was not a man of theory and abstractions, but arrived at his conclusions by practical tests. He brought them to bear on the State of Pennsylvania, to modify her criminal code—and with him was the influence of the Society of Friends. It is an old saying that »blood will tell», and a long received maxim that the seeds of truth once planted, will surely germinate and bring forth fruit. The influence of Penn and associates did not perish.

The State of Pennsylvania abolished capital punishment for every crime but one, seventy-five years ago, and the effect was a large decrease of those very crimes which had before been punished with death, and to such an extent was that the fact that she has had no desire to return to the death penalty for arson, rape, robbery.

I could give if necessary, the figures and facts carefully collected through a series of years, showing to a mathematical demonstration the salutary results of this change made in that State in 1794.

Now, to our own State. By the law of 1821, rape, burglary, robbery as well as arson and murder, were punishable by death. In 1826 the law making robbery, rape and burglary punishable by death, was abolished. I have the statistics running through fifteen years, gathered by Mr. Purrington and the keepers of jails in the counties of the State, and the facts are unmistakable. The result was, that although the penalty was less, the convictions were more certain, and the crimes of robbery, rape and burglary were reduced more than *two hundred per cent.* Now if the penalty of death should be abolished for the crime of rape, it should be for murder, for I believe one as criminal as the other.

The case which has brought this question before the people of the State and before this Legislature, is remarkable in its character and circumstances. The crime committed was horrid in its inception and details. It should be dealt with according to the most exact and best methods of governmental science. A case somewhat analogous may be found in the judicial proceedings of New York. In that State in 1846 transpired a startling drama of blood. William Freeman murdered Van Nest, a prominent citizen, his wife, his mother, and child, and nearly slew another member of the family. The murderer was promptly arrested and put on trial. Who was William Freeman? The son of a poor slave. His lineage on the side of the father was traceable to the tiger hunters of the African jungles, and on the side of his mother to the Narragansett Indians. At the age of eighteen years he was thrust into State Prison for theft, on the perjured testimony of the villain who had committed the offence. Roughly treated in prison, his mind and feelings wrought to intensity by the sense of injustice which had incarcerated him for five years, his brain was riven with insanity before the time of his liberation arrived. Turned adrift at the expiration of his sentence like a useless dog, he wildly sought remuneration for false imprisonment. Without sympathy and friends except among the powerless and degraded, in maddened desperation he armed himself with the weapons of death, and struck with the might of the maniac's arm. The community was wrought to the highest pitch of excitement, and it was with extreme difficulty that

the officers of the law prevented his being slain without trial. He would have been speedily convicted and executed as a murderer had it not been for the voluntary efforts of a distinguished citizen of that State who became acquainted with the facts of the case WILLIAM H. SEWARD was then in the flush of his power and popularity—at the age of forty-five. Say what we may of some of his recent history, he is one of the ablest men this country has ever produced. He had been twice Governor of that great State. He was the idol of a powerful party. Not since Alexander Hamilton had there been a statesman more warmly beloved by his political friends. In the tempest of excitement which pervaded the popular mind, it was a hazard for him to volunteer the defence of this poor son of a poor slave arraigned for the terrible crime. But convinced that William Freeman was insane, he threw the whole force of his great powers in defence of the accused. At his own expense he secured the aid of the best medical science of the country, and learned experts pronounced William Freeman irresponsible, while the medical testimony put in by the prosecution was that the accused was responsible. The witnesses, the court, the jury of the community to which the murdered family belonged, rendered the remarkable efforts of the counsel of the accused without avail. Freeman was convicted, and sentenced to be hanged. His counsel pleaded in vain for a new trial. William H. Seward made appeal to SILAS WRIGHT, then Governor of New York, for reprieve, but in vain. He then obtained hearing before the Supreme Court for another trial. It was finally granted. But before the new trial was commenced, William Freeman died in prison a hopelessly demented man, and his unmistakable insanity for more than two years before he slew the Van Nest family, was made apparent to all. Had it not chanced that distinguished counsel had assumed his defence, he would have been speedily hanged, and the general verdict would have remained unreversed, that he was a deliberate fiend of blood deserving to be stamped out of existence by the iron foot of the law, like a poisonous worm.

Clifton Harris furnishes the occasion of the discussion of this great question by the people of this State. Shall Capital Punishment be entirely abolished, and the best legal principles known to civilized governments be substituted in its stead? The instance may seem to some unimportant. Abstract principles of truth in government rarely

get engrafted into laws, unless facts or occasions force them on the attention of legislators. The little question of ship-money precipitated a revolution in England, drove the Stuarts from the throne, and made a great improvement in the English Constitution. The casting of a few chests of tea into Boston harbor was the initial step to the establishment of this Republic. The execution of Joseph Sager in Augusta in 1835, kept Maine from the shame of hanging for *thirty years.* Shall the conviction and sentence of Clifton Harris be the means of fully emancipating the people of the State from the delusions and mischiefs of the Death Penalty forever? He may, or may not, be responsible for the crime for which he has been convicted. He may, or may not, have been the instrument of the more subtle, powerful and criminal will of another in the commission of the terrible deed, for which he has received the sentence of death. It becomes society, it becomes the people of the State, it becomes this Legislature, to give consideration to the origin, the personal history, the circumstances that surrounded him from birth to the day of his arraignment by our laws. His ancestry was torn from a barbaric land by the agents of Anglo Saxon cupidity. His father was whipped, outraged, robbed, without the protest of the laws of our common country. His mother had heaped on her every vile indignity and insult of which brutes would be ashamed. His sisters were despoiled of their innocence amid circumstances of infamy that would make savages blush. His brothers were sold at the auction block by men of our kindred and our associates in the government. Born and reared thus amid the foulest barbarism that ever scourged the human race, shall Clifton Harris, the fruitage of our country's lust and crimes, the outgrowth of a civilization born of New England avarice and Virginia cupidity, the aimless waif that floated northward on the returning currents of the recent civil war—shall this uninstructed, friendless, defenceless creature who since his advent among us has had no one to care for him but God—shall he die on the gallows of our rearing? There is a deep mystery about this case that has not yet been unraveled by human fingers or rightly read by human eyes. Why need hasten him to the execution? If the legal mania of blood must have its victim, let a more fitting one be taken. Let the hangman exercise his stern vengeance, which belongs to the Almighty alone, on some tough, gnarled, large-brained villain of Anglo Saxon blood, whose ancestry,

though sprung from robbers on the seas, has had the advantage of Christian culture through many generations, who has crime enough in his composition to stock a whisky ring or play the demon of libertinism in the temple of virtue. But in the name of a just and enlighted majesty of the law,—in the name of society which should be shielded from great crimes by penalties sure and impartial in enforcement—in the name of that reform in the criminal codes of men whose wisdom is the irresistible deduction of overwhelming testimony accumulated from many lands—in the name of that enlightened spirit of humanity which is everywhere abroad, seeking the best methods of improving government and restraining men from deeds of wrong and wickedness, do not fail to use the legislative will against shedding the blood of Clifton Harris, by abolishing Capital Punishment forever from the statute books of Maine.

ADDENDA.

The following paper by the author of the preceding remarks, now United States Minister to Sweden and Norway, was originally published in the Gospel Banner, an American Newspaper, in 1878. It may be regarded a fitting supplement of the speech, only the more important part of which was reported, it having been delivered entirely without notes. Maine completed the entire abolition of the Death Penalty in January 1876.

RESULTS OF THE ABOLISHMENT OF THE DEATH PENALTY.

A Voice From Europe.

It is undeniable that when Maine, after many years of discussion, abolished Capital Punishment, and substituted imprisonment for life, she took an important step, and gave sanction to certain governmental principles which are gaining increased consideration in all civilized countries. Whether this new policy, as to the highest offences known to our laws, has been wisely or erroneously adopted, the future will show. Persons equally intelligent and sincere have taken hitherto both sides of this question, and may continue to do so for some period to come; for it is not easy to arrive at an absolutely correct conclusion as to what is wisest in legislation, by abstract discussion of the philosophy of crime and the surest methods of government to lessen it. The real solution — that on which the people and their chosen agents must finally rely — is not the one which comes from dogmatic assertion or demonstration, but that which is made fully obvious by *experience* as the best, after a sufficient time has transpired, should be adhered to firmly and without deviation. The sacred and the common sense maxim, that »the tree must be determined by its fruit,» illustrates with stern precision, the safe rule of civil govern-

ment. Casting aside in the main, all pleas of sympathy for the criminal, all arguments of speculative sentimentalism, if you will, and let the facts, fairly measured, show just where the line of experience runs. In the light of testimony, so far given by the practical results of the death penalty abolition, in various nations and states, it is quite clear that the citizens of Maine have strong reasons to hope that they have made no mistake in substituting perpetual imprisonment for the uncertainties of the gallows.

A partial review of the workings of abolition in Europe may not be without interest to the readers of the BANNER. It is well that the experience of Tuscany should be given first, for the trial there has been of many years' duration, and the real facts have been misrepresented often in other countries. Influenced by the teachings of Beccaria, that remarkable writer on crimes and punishments, Tuscany ignored capital executions from 1774, and in 1786 the penalty was absolutely abolished by its wise sovereign, Leopold I, and his son, Ferdinand III, continued the enlightened policy of his father. The abolition worked favorably for more than twenty years, when the country fell under the conquering dominion of Napoleon, who, with his wonderful genius for mischief and despotism put in force in Tuscany, the laws of France which contained the death penalty. When Napoleon was driven to St. Helena, and the allied powers had everything their own way, the death penalty was continued in the former dominion of the wise and humane Leopold. Between 1816 and 1831, there were eight executed in Tuscany.

Official and other testimony proved conclusively that the restoration of the penalty was less successful than abolition from 1774 to 1795. After 1831, for twenty nine years, the death penalty was suspended by the reigning sovereigns, with successful results, and in 1860, it was abolished in form, and thus has continued to the present date. Tuscany has a population of nearly 2,000,000. From the Inspector General of Italian prisons come the following statistics: —

For the years 1873, and 1874, Naples had 21 homicides for each 100,000 inhabitants; Sicily 31 to each 100,000; Rome and Umbria 9 to each 100,000, and Tuscany 6. Containing about *one-twelfth* of the population of Italy, Tuscany had *one-twentieth* of the crime, and for nearly fifty years has been without a capital execution.

The successful abolition in Tuscany, after so long a trial, is one cause why the present tendency to entire abolition throughout Italy is so strong, the popular branch of the Italian Parliament, having recently given a majority vote for the proposition.

Holland, one of the best governed countries in the world, having nearly 4,000,000 population, has had no capital executions since 1860, and abolished the death penalty by law in 1870. Belgium, with a population of 5,400,000, had 921 murders in the ten years ending in 1863. In the ten years closing in 1873, there were 703 murders. In the latter ten years thus specified, there were no capital punishments, the penalty having been abolished in 1863. Saxony, with a population of 2,750,000, abolished the death penalty in 1868 with successful results so far. There is a strong tendency to abolish throughout Germany. Portugal, with a population of 4,000,000, has has had no capital executions since 1846. The death penalty was removed from the statutes in 1867, after having been suspended 21 years. Switzerland taught the sublime lessons of her mountains, enlightened as she is patriotic, free as she is brave, abolished capital punishment in 1874, several of the cantons having previously tested abolition successfully for some years. In Austria, which has a population of 36,000,000, in 1876 there were 124 sentences of death, and only three carried into execution. M. Wahlberg, Imperial Councillor, remarks as follows: —

»The application of capital punishment in Austria, and even the very trade of the executioner, are in their expiring throes.«

The plucky little kingdom of Roumania, with a population of 4,000,000, abolished the death penalty in 1864.

Perhaps one of the most striking illustrations of the effects of abandoning the penalty of blood is found in Finland. This country has an area nearly twice that of New England, and a population of 1,750,000. For nearly 700 years it belonged to Sweden, but for the last seventy years it has been under the dominion of Russia, though her Swedish civil code remains to her, and she is left chiefly to herself as to her internal laws and administrations. Since 1826 there has been no capital executions in Finland. In the Finland Diet of 1864, was discussed a proposition for a new penal code. The committee, which elaborated the project, expressed itself as follows, in regard to capital punishment: —

»It is known that with us, for *forty years*, no capital sentence has been executed, yet neither the crimes for which the law pronounces the penalty of death, have not augmented, though every criminal knows very well that by the terms of the Imperial Ordinance of April 21, 1826, the execution of the sentence will not take place. The Committee see in this fact a proof so strong of the improvement of the Finland people, as to render the death penalty in our country so superfluous, that any other proof in that regard seems unnecessary.«

Public opinion and the local rulers of Finland continue to remain of this opinion, so clearly stated by the committee of its Diet in 1864.

In Sweden there has been a marked tendency in the same direction indicated in other European countries. Many years since, the writings of Beccaria were received with special interest by some of the leading minds of the country. The pronounced opinions of a former sovereign, Oscar I, the father of the present king, Oscar II, who occupied the throne from 1844 to 1859, a most enlightened and humane ruler, had a decided influence in the education of public opinion on questions of criminal law. In 1840, being then the Crown Prince, he published a highly important work of which he was the author, entiled »*Punishments and Prisons*.» In this book he remarked: —

»It is easy to judge from a criminal legislation of the price, more or less, that is attached to the dignity of man. * * * The legitimacy of the penalty of death having been in our time combatted by many jurisconsults and distinguished writers, merits to be studied with care. The State doubtless has the right and the mission to punish every act which violates its common law — it has the right of putting the criminal, incorrigible and dangerous to the public security, beyond the liability of injuring any peaceable members of society, but does that right extend beyond the privation of liberty by which that end is attained?»

After having demonstrated that to go beyond securing the criminal from farther violence to the public safety, is to fall into vengeance and the arbitrary, the royal writer deduced from the criminal statistics the inefficacy of the death penalty as interdicting man the possibility of his amendment which the privation of his liberty preserves to him. He wrote: —

»Is it not contrary to reason and justice to accord to some offenders the faculty of reformation, and refuse it to others?»

He also reproached that penalty as rendering reparation impossible in case of judicial errors. This work made a deep impression in Sweden, and translated into German and French produced in Europe a marked influence in respect to prison reform as well as to the correct principles of punishment. When Oscar ascended the throne in 1844, a celebrated jurisconsult of Sweden, Richert, member of the Commission for the revision of the criminal code, of which he was the principal author, pronounced for the abolition of the death penalty, but found opinion not sufficiently advanced in the Diet for the adoption of the measure. An able successor of Richert is found in Knut Olivecrona, who with others obtained in legislation that peculiar legal provision by which the judicial magistrate can consider punishment by forced labors equivalent to the death penalty, which was secured in the law of 1861. Judge Olivecrona is a gentleman of extensive learning, for sixteen years Professor of Law at the University of Upsala, an institution founded in 1477, is the chief university of the kingdom, has thirtyfive professors and fifteen hund-

red students. He is now and has been for some years one of the Supreme Judges of Sweden. His very able volume on Capital Punishment was issued in 1866, has been published in French and Italian, and I think also in German and Spanish. For its authorship he has been honored by the »Academy of Moral and Political Sciences» of Paris, and by the Italian government. The year following the publication of this work, another effort was made to completely abolish the death penalty. A decided majority was obtained in the lower House, but the abolition proposition failed in the upper Chamber. How nearly the penalty is abolished in practice, is shown by the following figures. The official returns of sentences for murder in Sweden for the eleven years from 1866 to 1876 are respectively 8, 9, 8, 15, 7, 7, 8, 11, 7, 13, and the only executions of these years was 1 in 1872, and 2 in 1876. The tendency towards abolition is quite as strong in Norway, as shown by the almost universal putting aside the execution after conviction. The official figures, for the nine years from 1867 to 1876, of capital sentences respectively, are 2, 4, 0, 3, 1, 1, 4, 0, 4, and only four executions in that period. Both in Sweden and Norway the numbers of murders are much less than in former decades when capital executions were far more numerous and the population less. There can be little doubt that it would be better were the death penalty entirely removed from the statutes of these two countries, thus taking away most cases of pardon and rendering punishment more certain and impartial.

The present Sovereign of the two countries, an accomplished civilian and enlightened ruler, is understood to hold on the question essentially the same views as his father, Oscar I, but rightly regards it his duty to administer a constitutional government according to the laws and public opinion.

Thus it is manifest from this brief review that those of the United States which have ranged themselves on the side of abolition, are strongly supported by many European examples and à compact array of practical experience, in verification of the divine maxim, that »the tree is known by its fruits.»

Stockholm, March, 23, 1878. J. L. S.