THE DEATH PENALTY

A Thesis
for the degree of B.L.

by

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1882.
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Mankind is unruly, dissatisfied and restless, and constantly strains every faculty of mind and body for the amelioration of its condition to a degree of which no former age can furnish an example. Customs which half a century ago were considered so firmly rooted into our institutions that they could never be extirpated, have entirely vanished. Others have been so modified and transformed as scarcely able to be identified. As civilization advances, men receive new ideas. Every reform in a society requires earnest effort or it must fail. Wendell Phillips said "To get men to listen is half the battle and the hardest half in all reforms." A statement which is only too true. Not until the conquest is completed and the benefits are perceptible, do men appreciate in what ignorance they have so long lived.

There exists an antithetical difference between Radicalism and Conservatism. To accept all innovations simply on the recommendation of others without personal investigation or to rush into all
reforms is inexpedient and unadvisable. On the other hand to step to one side and listen to nothing, is retrogression. Nations and communities as well as individuals who do not keep pace with the tendency of the human race to advance, must necessarily need. No reform could be made but for Radicalism, which stretch is out its hands for new means of serving humanity. No discovery, invention or exploration would be attempted but for Radicalism. When Newton was discovering the laws of gravitation or Franklin electricity, Conservatism derided their endeavors. The thirteen colonies would never have dared to revolt against their mother country nor would slavery ever have been abolished but for the constant and untiring efforts of those enterprising and patriotic spirits who were not content with the well-worn paths of their ancestors but longed for more just and humane ones. Human reforms, those which pertain to the life and well-being of man, are worthy of the most attention. At no period within the history of the world has the subject of capital punishment or the Death Penalty
been agitated as it now is. Men who formerly shook their heads, intimating that the extreme penalty was so intimately interwoven with the well-being of society that abolition was equivalent to anarchy and lawlessness, now possibly consider it worthy of trial. The newspapers and periodicals are earnestly discussing the Ancien of the gallows. Such philanthropists as Bentham, Livingstone, Macintosh, Beecher, Bright and others have completed their tasks and passed away. Today such able moralists as Urndell Phillips, Bore, Tunby and Stage have taken up the good cause. In the discussion of this most important question I will only attempt to demonstrate that the present law of capital punishment is not a necessity and that society can exist as securely without it. Yet powerful arguments could be advanced showing its injurious and its immoral effect on society. So that if it can only be proven that capital punishment can be dispensed with, no one can consistently favor its retention if society be equally as safe.
The more savage and cruel a people, the cheaper is human life. As they grow more civilized, barbarous customs are laid aside. Draco, the Athenian, affixed the penalty of death to all offenses alike:—to petty thefts, as well as to sacrilege and murder. And he explains this by saying, that small offenses deserved death, and he knew no severer punishment for great ones. With what abhorrence and horror do we read those laws to-day, and wonder how men could have been so inhuman! From such laws our idea of the people of those times is largely formed; especially because this severity must be attributed rather to the spirit of the times, than to any peculiar harshness in Draco himself, who simply wrote down the ordinances of his brother Eupatrids, which the latter used in his decision of cases.—Dr. Smith's Greece. Afterwards, Solon, the great law-giver, repealed all these laws and retained the death penalty only for murder. At a later period, Rome, proving how much she was in advance of other nations, passed the Porcian laws, which did not allow a Roman citizen to be severed
or put to death. When we read in the history of England, of the reign of Henry VIII in the sixteenth century, we are told that no less than 72,000 robbers were hanged. But after the people became more enlightened, Blackstone is authority that only a hundred years ago 16 offenses were punishable by death; at present the law hangs for three offenses. Shall we hesitate to say that England is farther advanced in penal legislation now than she was at that time? Surely no one can.

In our own country, prior to the year 1847 every state in the Union authorized the use of the gallows; the law has now been abolished in four states namely, Michigan, Rhode Island, Wisconsin and Maine, while in a number of others it has been discontinued. The relation between man and man has been carried to a higher state of perfection, and some day in the near future, we hope to see the "bloody code" forever blotted from our statute books. So it would appear that this, as all other reforms, is the product of growth. It is a slight matter to pass a
bill in the legislature and insert it among the laws of the state. But of what benefit is it to society if its every detail is not rigidly enforced. Such an enactment would be a dead letter to the extent of its non-enforcement. Even if the laws are not severe in order to produce their proper result, they must be strictly executed at all times and under all circumstances. Law must be uniform, decisive and prompt. Otherwise it does not fulfill its mission.

Up to this point I have only endeavored to show that the human race has a natural disposition to improve, that while the public mind is maturing with wisdom, it is softening with benevolence. Let us now turn our attention to the object of punishment and examine its utility. According to a correct interpretation of the ends of punishment, the three most frequently understood are: first, and the most weighty, for the safety of society; second, the reformation of the criminal; and third, that the criminally disposed may be deterred by the fear of the consequences. The only ground that can
be assumed by the "defenders of the faith" of this mode of punishment, is that of self-protection. In fact, this is the only foundation on which society can justify any punishment. "Self-protection is the first law of nature"—is a maxim which applies to society as well as to individuals. If hanging a murder prevents another murder, the state has a perfect right to hang, but if the same ends can be attained through more humane means, the people have committed a crime more grave and harmful than the victim of their revenge. The principal question then is, does hanging protect society? This point will be treated at greater length under the third kind of punishment. Again, I refuse to believe that a community is more secure between the time when a violator of the law has been sentenced to death and the time when that doom is carried than when he is condemned to prison for life. The demand for pardons and delays are made so much more frequent and effectual if the sentence of death is passed. And should the petition be refused before the execution? the probabilities are
it never will be acceded to. Besides with our strong pins and our almost perfect system, how many criminals, after once being inside, escape? In early times, when a state is not thoroughly organized, perhaps, the argument could be advanced that no suitable place of confinement was prepared, but now the reason is worthless. The second object receives much concern in every well-regulated prison. Good influences are brought to bear on the felon during his prison life. The criminal is provided with comforable clothing with nutritious food, has regular labor, moral, and religious instruction and is well cared for in every respect. The benefit of 'good time' is allowed him. All this is done with an aim to encourage and influence the offender to try again. But when he is executed the prime purpose of this point is defeated. When the drop falls and the victim is cut down, all is over.

Now we arrive at the paramount argument for the retention of the death penalty; that is, its presumed necessity as a restraint and corrective.
of the atrocious crime of murder. No one will dispute the fact that a certain amount of prevention is attached to it. But the real question is rather, as remarked by M. Modderman, Minister of Justice for Holland: "Is the capital penalty more deterrent than, or even equally so with, a more certain but severe secondary punishment such as life imprisonment?" So this may be added that the capital penalty specially tends to impose obstacles upon its own enforcement. These obstacles arise from its irrevocable nature, from the sacredness of life and from the uncertainty of the penalty which we will consider farther on. Our fear of death is not as great as is generally supposed. In many cases death would even be looked upon rather as a blessing than as a curse. Especially it is not so fearful unless actually impending. How often do we witness the doomed boldly meet that grim monster, and even long to die. Jesse Barber was hanged a short time ago at Winnnsboro, S.C. The Chicago Tribune in recounting the execution, said, he met his death
with exultant willingness born of religious excitement which usually characterizes criminals on the gallows. The petition for commutation that was sent to the Governor was refused, being apprised of this he manifested no motion, and told the jailer that he was eager for the day of execution to come. When the fatal day came he said that so far from fearing death, he was eager to be led as a lamb to the altar. He stepped on the gallows willingly and actually smiled as he threw his head back in order that the sheriff could the more easily adjust the noose. There scarcely passes a day but that we can read of similar occurrences. Men will gradually become accustomed to the gallows as to physical dislikes, so it will lose its import. Often we read and even witness ourselves of a person risking his life simply for the sake of gain or pleasure. Again if the tendency of the gallows is so moral in its character and necessary as an example, why hide it from the sight of the people? Why not
permit the multitude to witness the strangling and the other horrors attending an execution so that they will be prevented from following in the footsteps of the murderer? Only a few such as ministers, reporters, and officers are let in, and these do not need the lesson believed to be taught, but the very ones for whom the "example" is produced do not obtain the benefit. Another potent objection to this penalty is its grave uncertainty and inequality. Frequently the real rascal is permitted to escape, who, if either, deserves the enforcement of the extreme penalty, while the innocent man receives the punishment. There are other reasons for this uncertainty as the antipathy to act as jurymen in a case involving death, and the natural dislike which a judge is well-known.

Again a man who commits a crime and is amenable to the death penalty, is either actuated to perform the deed by excitement or passion or does it with "malice aforethought." In the first case
the imagined deterring power would avail nothing for a man would not stop to think. The fear of death will not turn aside the infatuated brute, a deadly enemy, nor can it conquer the most powerful passions. Second, the assassin who carefully plans a murder has not the remotest fear of detection. Lord Macaulay, in his admirable notes on the Indian Code, said, that the capital penalty added nothing to the security of human life, and that, as far as that consideration was concerned, all prints for execution might as well be selected by lot. A few statistics, proving the non-deterrent effect of this penalty, right here may serve to make the point more emphatic. The states of Rhode Island are contiguous. The former has abolished capital punishment; the latter retains it. What has been the practical results of these different conclusions, as given in the most recent official returns? In Rhode Island during the ten years 1865-74, the commitments for murder were
In Connecticut for the same period there were twenty-eight. That is to say, in proportion to the population of the respective states, murders were 62 per cent. more numerous in the state of Conn. when the law of capital punishment exists than in the state of N. Y. where it is abolished. In Belgium, the ten years before 1863, 921 murders, or 92 per year; in the ten years to 1873, 703 murders, or 70 per year were committed. In the last decade there was no capital punishment.

Many vainly attempt to deny that there is an idea of revenge connected with it. But how often do its most faithful advocates exclaim a most miserable offender of the law, "Hang him up! He has outraged society and deserves death." But is this more or less than revenge? "Revenge is sweet." In perhaps every criminal trial the friends of the sufferer cry aloud for retribution. But are the relatives and friends of the murder ed man compensated by the death of the assassin? Because one evil has been done will another
require it? No doubt the most cogent and powerful consideration against the extreme penalty which is really appalling to think of is its irrevocability. "I shall ask for the abolition of the P. until I have the infallibility of human judgment demonstrated to me," said Mr. Gladstone. It is a matter of record that innocent persons have been sacrificed through the irrevocable nature of the P. "Fear is human" and for human tribunals, with human testimony, which may be swayed by passion or prejudice, to sit in judgment over a fellow-citizen to decide between life and death is a power which belongs to a higher court than we have on earth. An estimate has been made to the effect that, in England, 10,000 men and women have been executed who protested with their last breath, that they had no knowledge of the crime for which they were about to suffer. In the United States the number is increasing to three hundred. To be sure all these may not be true, yet out of so many, it is only reasonable
to suppose some were innocent. Not long ago, Gaetano Ardolfo was tried and convicted for killing Tony Sabnuzzo at New Orleans. He received a sentence for life. On appeal to the Supreme Court, the verdict was set aside and a new trial ordered. By this decision every conviction had in the New Orleans court since the adoption of the Constitution of 1879 was rendered illegal. Yet some of the convicts have suffered death. Had they had a life sentence, justice could now be dealt out to the unfortunate ones. In 1874 a man on his death-bed confessed himself the perpetrator of a murder for which an innocent man, R. Lewis, had previously been hanged. In a recent number of the North American Review, the writer of an article on Mary Surratt has sufficient and adequate reasons for declaring that she was innocent of the assassination of President Lincoln and of the abduction plot. Payne, who testified against her confessed to Gen. Hadley, the Special Prosecutor, that she had no knowledge of the...
conspiracy. It is said that President Johnson avowed on his honor that he never saw the communication sent to him to give mercy in her case, until two years after. Better allow scores of criminals to escape than hang one helpless innocent mortal. It is but "dust in the balance" in comparison with destroying a guiltless man. Very often, murder, unlike all other crimes, destroys the chief and often the only witness of the act, the victim.

Dr. Livingston has laid down, that the law should never command more than it can enforce. Therefore, when, from public opinion or any other cause a penal law cannot be carried out, it should be repealed. It is a waste of power, which no government can endure. A few figures will, certainly, go farther than mere empty words in showing the difficulty in enforcing this particular penalty. In Denmark 1868-77, 94 were sentenced to death for murder; only one was executed. North Germany had 1301 convictions for homicidal enmity from 1869-78. Of whom 484 were sentenced to death, and only one (Bredel) executed. As for the United States the average is 2500 murders
per annum, of which 100 are hanged and 100 lynched. The "lynchings" occur almost exclusively in the States which retain l.c.P. It is truly stated "the severer the penalty the greater the uncertainty." Courts and juries are incapable of judging of those cases of diseased minds which often manifest themselves in homicidal acts, says a distinguished writer. The recent perplexing case of Guiteau is too familiar to reiterate, but aptly illustrates the serious impediment which this law imposes. Reliable authority asserts that 17 percent of persons tried for murder in England are found insane, and only a quarter percent are found insane in other criminal trials in general. During the period from 1836 to 1865 out of 1,311 persons tried for murder in England and Wales, 263, or 19.7 percent were found insane. There is no need of attempting to ignore these figures for they are facts. Our own country has probably had the same experience. Human nature is not essentially dissimilar the world over. On this plea, juries shrink from imposing the penalty on a criminal.
and are disposed to mitigate it as far as possible. Jurors do not object to imprison, but they do hesitate to hang. It is a hopeless impossibility to distinguish in most cases between subterfuge, insanity and deliberate guilt. The wisest of judges, the most prudent of jurors and the most skilled of experts are unable to understand the condition of the criminal! How presumptions is it then for human tribunals to impose impossession penalties! Where can we draw the line between insanity and sanity? On the other hand insanity could be feigned or eccentricity may be mistaken for that misfortune, and thus the criminal may completely escape the punishment which is due him. Repeal the law of B.C. and the entire difficulty disappears.

I will not dwell on the bible argument, strong points can be produced on either side of the question. Very few supporters will, to-day, attempt to defend the Death Penalty on this ground. Though when they are driven from every other position,
they will cite the divine authority for their actions. The Mosaic law will not apply to our times, therefore, their whole defense rests on the passage, "Whoso sheddeth man's blood, by man shall his blood be shed." - Gen. ix. 6. Early versions have a translation of another character, by cliff and others omit the words "by man." Again the question arises whether "shall" is imperative. Whether it is not used in a similar sense to other passages which have "shall." As for instance "all they that take the sword, shall perish with the sword," can this be construed to be a command to destroy all soldiers? The whole question narrows down to the point: Is it just to inflict this penalty, unless experience proves that it is absolutely necessary? Of all the arguments brought forward so far, I doubt if anyone would have the least weight unless I can demonstrate decisively that they are in accordance with fact, with actual experience and not with mere theory; that states have given the abolition of this punishment a trial and find it a success. I will here append a number of the
countries that have abolished L.P. with a portion of their experience. These prove that wherever this system has been substituted by a severe secondary punishment, as life imprisonment, enforced with comparative certainty, and under common-sense conditions, murders have not augmented, but the certainty of conviction and "fit retribution" has increased. As for example in Holland L.P. was abolished in 1870. The Minister of Justice of that country stated in 1880, that during the period from 1861-69 inclusive, there were 19 murders, but that during the period from 1869-79 there were only 17 murders, although the population had increased. Russia has had no executions, except for political offenses, since the days of the Empress Catherine. Considerable has been said of Switzerland's returning to L.P. again. The new constitution in 1874 abolished it in all the cantons, but in 1875 five desired to restate the punishment. Yet no hanging has occurred since the law was altered. Tuscany, Italy, has executed no one since 1830, Portugal since 1846, Saxony since 1868, and others.
Wisconsin abolished the penalty in 1853. Geo. W. Carter, warden of the state prison, has written that public sentiment in that state is largely against the Death Penalty. Murder in the first degree, is punished by imprisonment at hard labor during life. Rhode Island also abolished this code in 1852. In answer to a letter, the Governor says, crimes have not increased since the extreme penalty was abolished, that public sentiment is in favor of the present law and that he does not consider it necessary to the well-being of society. The state of Michigan revoked the code in 1847. A report from there of 1871 says, "there is no generally expressed belief that murders are of more frequent occurrence than in the states where the Death Penalty still prevails, and the people are just as safe." W. B. Wilcox, of Michigan, president of the board of prison inspectors, has written to say, "Public sentiment is divided in that state. There are undoubtedly more convictions under the present law, and there have been convictions when the man has proven innocent after long confinement."
When man can restore life it will be time for him to take life." Again the question is often put to the advocates of abolition, "What would you do with criminals if b.i.r. was abolished?" This is an important matter of consideration. What do they do with the many criminals now for whom the punishment of death did exist in England? They are just as well taken care of now as they were a hundred years ago. What do the states in this country that have abolished do? Of 93 criminals convicted of "murder, in the first degree" in Michigan since March 1, 1847, who have been sentenced to "solitary confinement at hard labor in the State prison for life", 29 have been discharged by order of Court, 27 have died and 3 declared insane leaving but 34 in prison now. Surely this will not substantiate the theory that new prisons must be built if b.i.r. is done away with. Besides in the system of life-sentences, there is a notion or idea of humanity and a chance of reform. If society positively cannot be protected in this manner, we might as well destroy the criminals we would
a rabid dog or a poisonous snake. But let the murderer the moment he is convicted, "be borne away silently and swiftly from the face of man and the light of heaven" to be consigned for a time in a darkened cell, alone with his God and his conscience, the past and the future.

With all this evidence, which could be doubled, I ask a trial and its permanent adoption is proven adequate and efficient in our own State as it has in other States. If it should fail on the other hand, to meet the ends in demand, twenty-four hours legislation will restore the former law. Catherine of Russia once said, "Experience shows that a frequent repetition of executions has never yet made men better."

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 gallows has not only failed in its purpose, but continually lowers the morality of a State. Capital Punishment tends to demoralize the God-given instinct of the sacredness of human life.
and so in a certain degree to cajole men for murderous deeds. Every time an execution is completed, the estimate of life is lowered. It naturally hardens men, and brings out just those vils that it should prevent. It is mainly from neglect, poverty, and ignorance. From the hovels of illiteracy and paupersim, men are often driven to commit desperate deeds. Then let the state educate her sons and daughters. Let her teach them moral lessons of love and reverence for a human life, and not do a wrong because a wrong has been done. "Evils do not cast out evils." Our benevolence and charity for humanity should not permit us to calmly sit still while abuses are being inflicted on our fellow-men. Each one should raise his arm and voice against useless and cruel practices that are imposed on society. Evils, whether moral, social or legal can only be overcome by good influences. As a relic of barbarism and wretched exemplars, the gallows stands without a rival. An age enlightened as ours, demands a higher standard of humanity. That dark and bloody ground has passed, and only a complete eradication of this code, will satisfy mankind.