

Theology on the Web.org.uk

Making Biblical Scholarship Accessible

This document was supplied for free educational purposes. Unless it is in the public domain, it may not be sold for profit or hosted on a webserver without the permission of the copyright holder.

If you find it of help to you and would like to support the ministry of Theology on the Web, please consider using the links below:



Buy me a coffee

<https://www.buymeacoffee.com/theology>



PATREON

<https://patreon.com/theologyontheweb>

[PayPal](#)

<https://paypal.me/robbradshaw>

A table of contents for *Bibliotheca Sacra* can be found here:

https://biblicalstudies.org.uk/articles_bib-sacra_01.php

his sins from their burial places in the bosom, to show unspiritual, unregenerate man to himself, as odious, guilty, lost. We are to present the Saviour, to depict his noble character, to paint his dreadful sufferings, to tell the story of his love. We are to hold up Christ, to recommend him, to draw sinners to him. We are to heal broken hearts, to rebuild the ruined temples of humanity, to lift up degraded man to companionship with Jesus, to a rest in the bosom of God. We are to transform society, till it becomes a second Eden, whose trees are all trees of life, and around whose branches no serpent coils.

Men have been eloquent in the senate and on the field of battle; there are also Homers and Miltons and Shakspeares in the world; but there is an inspiration which neither patriotism nor blood can furnish, which Urania and Melpomene never felt; it is the inspiration of the Holy Ghost. This is the nerve, the energy, the soul of the true Christian orator. Its influence will often come upon him, and while he utters the Spirit's truth, as revealed in the holy word, he will preach with the Spirit's demonstration and the Spirit's power; for it is not he that speaks, but his *Father* that speaketh in him. Let him not be discouraged, then, by the greatness of his work. The germ of eloquence is in him. Meditation, study, prayer, will develop it. Great emotions, excited by great subjects, will give it vent. Wisdom will make it perfect. He who devotes some attention to Christian oratory every day, and has the soul of a true man within him, can scarcely fail to become eloquent at length.

ARTICLE IV.

CAPITAL PUNISHMENT.

By Daniel R. Goodwin, Professor of Languages, Bowdoin College, Brunswick, Me.

OUR readers will not be surprised at meeting the title of this Article in a Theological Review; for they must have observed that almost all, whether clergymen or laymen, who have hitherto discussed the subject proposed, have given it more or less of a theological aspect. The principles involved in the range which the discussion has taken, are *fundamental* in Christian as well as political ethics. We shall, therefore, offer no apology for introducing the subject here.

Yet we cannot dissemble that we have found it a most painful subject to reflect upon. So repulsive is the very thought of inflicting an ignominious death upon a fellow-being; so invidious is the position of defending penal severity, however just and necessary, against the claims of professed philanthropy, however misguided or mis-called; and such are the perfect chaos and furious *mêlé* in which this question of capital punishment has become involved—old landmarks abandoned, first principles disputed, almost every assertion or argument which is put forth with confidence on one side, challenged and disputed with equal confidence on the other—that our readers will give us credit for sincerity in saying, that the writing of the following pages has been to us not only no pleasant duty, but no easy task. Perhaps there is no subject in whose treatment flippancy, denunciation and personalities are more rife, or more entirely and grossly out of place. Should we be tempted to indulge in them, in any case, we humbly crave pardon of those who may feel thereby aggrieved.

The term "capital punishment," as generally used in the following pages, will be understood to refer to *the penalty of death for murder only*. With the infliction of this penalty for other crimes, we are not at present concerned. As to its infliction for murder, our position is affirmative; but, at the same time, our general course of argument will be *defensive*.

It is proper that it should be so. Here is something which is assailed. Suppose no sufficient reason can be given for its abolition; shall it, then, be abolished? The question is not whether capital punishment shall be instituted. It is instituted. The question is, shall it be abolished? A law exists, has existed these four thousand years. Shall it be abrogated? This is the action which is called for. The abolitionists, therefore, (of course we use the word in its relation to the subject in hand,) have the aggressive, and their opponents the defensive side. On the former, therefore, the burden of proof must practically lie.

We say this, not for the purpose of getting any advantage in the argument by any logical trickery or technicality. Practical questions are not to be settled by logical figures or formulas or weather-gages, or lines of vallation or circumvallation, or any *ruse de guerre*. Our opponents are at perfect liberty to use what form of argumentation they please; and so are we. We wish it, therefore, to be understood once for all, that, though we shall freely employ positive arguments—for all such arguments are also nega-

tive, so far as they are made good—our main business at present is defensive, apologetic.

This question of capital punishment naturally and ordinarily divides itself into two parts, that of right, and that of expediency. But if these two branches are recognized at all, they must be understood in such a sense as not to involve one another, and should be kept clearly separate in the management of the discussion. Each must be considered as being capable of proof, independently of the other; so that we may not infer the right or wrong of capital punishment from its expediency or in expediency, nor, on the other hand, its expediency or in expediency from its being right or wrong; still less may we prove, as the abolitionists often attempt to do, in the first place, that it is wrong because it is inexpedient, and, in the second place, that it is inexpedient because it is wrong. It is true that, if, by appropriate evidence, we prove it to be a duty, or prove it to be wrong, though even then the question of its expediency or in expediency, so far as that question depends upon independent evidence, may not be settled, yet, for us as moral beings, it is not worth while to inquire further. The absolute authority of reason must prevail over all conclusions from sensible appearances. But if the point of expediency or in expediency should be established so far as it can be by experience and observation, the question of right or wrong will still remain not only undecided, but in the highest degree important.

Of course we fully admit that *practical* right is always coincident with *absolute expediency*; if indeed *absolute expediency* is not a contradiction in terms. But if we would distinguish the right from the expedient at all, (and it is plain men do ordinarily consider them distinct,) we must attach to them a meaning and assign to them a derivation and a direction consistent with such a distinction. Right is theoretical; expediency is practical. Right (or rather duty) commands; expediency advises. Right is to be ascertained by *deduction* from authority, intuition, or, in general, from some higher principle whether of reason or revelation; expediency is to be ascertained by an *induction* from facts. However, therefore, right and expediency may coincide in their last analysis and ultimate result, they yet differ essentially in their mode of proof. And the difference is important in this particular, that while the deduction of the right *may* be complete demonstration, the induction of the expedient can at best but *approximate* the absolute character of perfect proof.

That a certain procedure might appear to be expedient—might be *proved* to be expedient, so far as the proper appeal (that, namely, to facts) could ascertain the point, and yet might be found forbidden by the highest authority, that is to say, might be *wrong*, we suppose will be admitted. But *duty* and not mere *right* is the absolute antithesis to *wrong*; therefore, on the other hand, a certain procedure may be proved to be theoretically and generally right and yet be found practically inexpedient under given circumstances; or, in other words, an individual or a government may have a right, which nevertheless it may not be expedient to exercise. For example, it might be perfectly right legally to compel men to pay their debts of more than six or twenty years' standing, and yet not be expedient. On the other hand, however expedient it might seem, on grounds of mere utility, to kill off the insane, the infirm and the aged, and thus rid society of their burden, no Christian man could be brought to believe such a course to be right.

In our present investigation, therefore, the general question of right comes first, and after that the particular question of expediency. We do not propose to prove that the infliction of capital punishment is a *duty*; we shall defend it from the charge of being *wrong*; and thus, its rightfulness being established, its expediency will be left to be settled by its own proper, independent evidence—an appeal to facts. So far as any may choose to consider the right and the expediency necessarily interdependent, we may state our projected course of argument thus; to show, 1st, that capital punishment is right *if* it is expedient; and 2nd, that it is expedient *if* it is right.

But here we are met at the threshold by two opposing parties in the philosophy of jurisprudence, each of which claims for itself the entire field. The one party seems to maintain that the primary, if not the whole business of penal law is the simple execution of justice, that punishments are inflicted simply on account of the intrinsic demerit of crime and consequently that their ground and reason lie only in the past. The other party seems to maintain that the sole ground of human punishments is expediency, the good of society; and consequently that the reasons for them are to be sought in the future without any regard to the merit or demerit of him who suffers them; in short, that moral guilt is in no sense the ground of punishment.

Now the truth seems to us to be on both sides mixed with just so much of error as prevents the two parties from coalescing.

The *causa sine quâ non* and the *causa finalis* have long been distinguished. The general, rational ground of a proceeding and its particular, practical end are two things.¹ In our view, the idea of just punishment does involve, as its ground, the idea of crime—of crime as such. And this notion of ours is founded not upon the mere etymology of the word; which we readily admit to be a fallacious basis of reasoning, though not destitute of all pertinency—and they who urge it, do not urge it as their only reason; but upon sheer common sense, upon the general opinion and feeling of mankind. In our view, too, the idea of crime involves the idea of moral delinquency, demerit. We maintain therefore, that delinquency, demerit, moral guilt, are the indispensable condition, the *rational* or fundamental *ground* of just punishment. Without the assumption of this ground, there can be no proper punishment, though it may be falsely assumed, and then the punishment is misapplied.

It is in this point of view alone that human punishments can be brought into contact with the human conscience. Men who suffer punishment do not feel, ought not to feel or be taught to feel, that they suffer, either as benefactors of mankind, simply for the public good; or as victims of society, simply by the right of the public power;² or finally as victims of fate, simply in consequence of an unfortunate natural or social organization. And when the doctrines of some of our modern philanthropists shall have so far succeeded in undermining the moral basis of our social fabric, that such shall come to be the general feeling of criminals, we cannot help thinking that the *ground* of punishment will be so far slipped away from under it, that it will hardly stand much longer.

Should any think to demolish our position, and prove that expediency is the true ground and *norma* of human punishments, by the acknowledged maxim, that *no unjust punishment can be expedient*; we answer that such a maxim, so far from demolishing our position, does utterly demolish all antagonist positions. It

¹ This article was written before we saw, in a late number of the *Biblical Repository*, an able article by Dr. Lewis, in which he explains and defends his former positions and makes essentially the same distinctions which are made above. We have not thought it best to alter or omit anything in consequence of such coincidences.

² "Osservate, che la parola *diritto* non è contraddittoria alla parola *forza*, ma la prima è piuttosto una modificazione della seconda, cioè la *modificazione più utile al maggior numero*."—Beccaria, delle Pene, sez. 2. Such are the ethics of cold-blooded utilitarianism!

shows, what we most earnestly insist upon, that it can never be expedient for civil governments to *ignore* moral distinctions, to renounce their hold upon the consciences of men, to discard the idea of guilt from their definition of crimes. But if they recognize the just at all, they must recognize it as the fundamental, supreme law; it will not condescend to serve in a subordinate position. If, in that maxim, the just and the expedient are held to be synonymous terms, or the idea of the one be derived from that of the other, then the maxim amounts to just this: "nothing which is unjust can be just," or, "nothing which is inexpedient can be expedient"—a maxim from which no very mighty inference can be made either way. But, if *the just* and *the expedient* are understood to designate ideas radically distinct, then the truth of the maxim must rest on *a priori* grounds; it never could be established *a posteriori*. It is the expression of a faith which believes in the immutability and supremacy of moral distinctions, and in the wisdom and goodness of an Almighty Providence. For if the maxim be inverted thus: "no punishment which is expedient can be unjust;" its certainty, its evidence have vanished. To make a logical application of such a maxim, it is plain that, if you would avoid the vicious circle, you must first determine the question of expediency independently of all ideas of justice, and then bring your conclusion to the test. The maxim so applied must be unsafe and sometimes false, if you content yourself with any practical induction of facts in proof of the expediency in question; and if a still more extensive induction is demanded, the maxim of course becomes useless.¹ In short, the political expediency which undertakes to dispense with the ideas of morality, is the most inexpedient of all things, a perfect *felix de se*; the political expediency which would push away the basis of the just and right from beneath it, can neither support itself nor find anything else to rest upon; and can never come to a stable equilibrium until it has sunk to its own place in the bottomless pit.

A very acute writer in a late number of the Democratic

¹ Assuming that the questions of justice and expediency are to be ascertained by independent methods of proof, as stated above; not only will it not follow that whatever punishment is expedient must be either just or obligatory, but neither will it follow that "whatever punishment is just must be expedient." It will most certainly follow, however, that whatever punishment is obligatory, whatever punishment it is the *duty* of society to inflict, must be expedient. For it must be remembered that the opposite of the unjust, which designates what we are bound not to do, is, not the just, which designates what we are permitted to do, but *duty*, which designates what we are bound to do.

Review,¹ has undertaken to show, that all the principles of the common law are in direct opposition to those who maintain, that the *ground and reason* of punishment is the moral guilt of the offence. And how does he make this appear? Why, he says, that "all the great jurists have held it to be the great *aim and object* of penal law to prevent crime and to protect society;" and he, then quotes Blackstone, who says that "the *end or final cause* of human punishment is as a precaution against future offences of the same kind." But what does all this prove as to the *ground or reason* of punishment? Let a man read an indictment for murder or for any felony, drawn up according to the established formulas of the common law, and then ask himself what that law recognizes as the *ground and reason* of punishment. And the *dicta* of the commentators, fairly interpreted, agree perfectly with the principles and doctrines implied in those old formulas.

Blackstone, having defined a crime, says that, "in all cases it includes an *injury*; every public offence is also a *private wrong and something more*." As to the distinction of crimes into *mala prohibita* and *mala in se*, it is perfectly consistent with our views, so long as it is allowed, on the one hand, that it is morally wrong, wantonly, maliciously or selfishly to do anything which is injurious to society; and, on the other hand, that it is possible for society to inflict an *unjust punishment*; for that implies some rule of right above the mere will of society, and above the suggestions of any mere temporary and fluctuating expediency. "Criminal law," says Blackstone further, "should be founded upon principles that are permanent, uniform and universal; and always conformable to the dictates of truth and justice, the feelings of humanity and the indelible rights of mankind; though it sometimes (*provided there be no transgression of their eternal boundaries*) may be modified, narrowed or enlarged, according to the local or occasional necessities of the State which it is meant to govern." In commenting upon the *measure* of punishments, he implies continually that crimes may differ in their intrinsic "magnitude," "malignity," "atrociousness," "enormity," etc.; and concludes that "where men see no distinction made in the nature and gradations of punishment, the generality will be led to conclude there is no distinction in the *guilt*."² In all this Beccaria agrees with him. Lest this should be thought antiquated authority, we quote from the current language of lawyers at the present

¹ Vol. XIX. p. 91.

² Blackstone, Com. Book 4. ch. 1.

day. "All crime is sin, as well as misfortune; it is deliberate wickedness, which the criminal can avoid if he will; otherwise it is not *crime*." "Prisons, therefore, should be regarded as, and should be made, places of *punishment*, to which none are to be sent who are not deliberately wicked."¹

We feel sure, therefore, that we are following no mere theological prejudice, but the best expounders of the common law, the highest authorities in political ethics, and what is more, the plain dictates of common sense, in maintaining that the idea of just punishment always implies, as its *ground* or *reason*, the idea of *demerit* in the offender. The madman may be confined, chained, killed perhaps in an extreme emergency; yet he cannot be *punished*, whatever mischief he may have done. The ground of *demerit* is wanting.

But it must not be supposed that, wherever that ground exists, human laws should or may provide a punishment; that their punishments should be coëxtensive with ill-desert. These punishments may be coëxtensive with crime; but only, provided crime be defined as implying not only the injurious act, but the forbidding law.

Among offences, faults or sins, those are selected for the punishments of human laws which are assumed to be more or less remotely injurious to society. It is true that *all* faults and sins may be said to have this character. But, in the first place, it is not simply as faults or sins that they are punished by human laws; they are so punished only as considered in relation to the welfare of human society. The *object*, *end* or *final cause* for punishing them is to secure society from harm or injury; we say, negatively, to secure society from injury; not, positively, to promote the good of society. Punishments are not suffered as *sacrifices* for the public good. In the second place, not all wrong action, which can be shown to be injurious to society, should be made the object of human punishment. There is another limitation. It may be impossible from their very nature to ascertain and punish them; or the attempt so to do may cost more, or result in more harm to society, than the culpable actions themselves. The remedy may be worse than the disease. The disease must then be left to take its course.

Actions, in themselves indifferent, may become wrong by being *injurious to society*. Among actions, which, being in themselves

¹ Law Reporter, Vol. 9, p. 427.

wrong or indifferent, are injurious to society, it is the business of the legislator to ascertain those which it is expedient to punish, and to prescribe the just degree of punishment. Although, therefore, the civil government may not punish sin as sin, it punishes that only as crime, which has in it the nature of sin—demerit; it punishes on the *ground* of that demerit, with the *design* of protecting society; and the severity of its punishments should be graduated according to the enormity of offences, as measured both by their intrinsic character and by their injurious effects.

We confess that we agree with Franklin in the opinion that the thief, who thought it "hard that a *man* should be hung for merely stealing a *horse*," had quite as much reason on his side as the judge, who is said to have coolly told him, "he was to be hung not for stealing a horse, but in order that horses might not be stolen."

Beccaria, having reached the conclusion, "Che l'unica e vera misura de' delitti è il danno fatto alla nazione; e però errarono coloro che credettero vera misura dei delitti l'intenzione di chi li commette;" concludes the paragraph with the following: "Qualche volta gli uomini colla migliore intenzione fanno il maggior male alla società: e alcune altre volte colla più cattiva volontà ne fanno il maggior bene."¹ Strange he should not have seen that this last statement is a perfect refutation of his own exclusive *measure* of crimes (as related to human punishments), as well as of that other measure which he taxes as erroneous. Each taken separately is imperfect and false; both combined are perfect and conclusive.

That the common law recognizes the *intention* as constituting, in part, the measure of crime, is evident from the forms of indictment for felony; and especially from the distinctions made between the different degrees of murder and man-slaughter.

We have been surprised to find the authority of Coleridge quoted in proof that "expediency is the sole foundation of *penal law*." We think it will be found, by examining the *Essays of the Friend* on "the Principles of Political Knowledge," that Coleridge has in view throughout, not *penal laws*, but the origin of government, constitutional arrangements, political and civil institutions in the more general sense, (as being monarchical or democratical, for example;) all which he doubtless held to be

¹ Dei Delitti e delle Pene. Sen. VII.

matters not of absolute, inalienable right, but of mere prudence and expediency.¹

¹ It is worthy of note that the writer in the Democratic Review, already referred to, cites Coleridge as saying (in Essay III) : "Every institution of government needs no other justification than a proof that under the particular circumstances it is *EXPEDIENT*." And this the reviewer would evidently have us apply to *penal laws*. Now, in our edition of Coleridge, the passage reads thus : "Every institution of *national origin* need no other justification," etc. The difference strikes us as significant. Are *penal laws* institutions of *national origin*? Again, the reviewer continues to quote Coleridge as "declaring himself a zealous advocate for deriving the origin of all government from human *prudence*, and of deeming that to be just which experience has proved to be expedient." "That to be just?"—"that" what? Anything in general? Such an idea would have been as abhorrent to Coleridge's mind as hell to heaven. "That" penalty? There is nothing to authorize this in the context. It must mean, "that" *government*, or form of government; and if so, how does it appear that Coleridge makes "expediency the sole foundation of penal law?"

But the truth is, from Coleridge in the different moods of his mind, as from the sacred Scriptures, the most discordant doctrines may be proved by detached quotations. To ascertain his true meaning, especially when treating on practical subjects, we must always bear in mind two things: 1st, the general tone and spirit of his mind; and 2nd, the particular point of antithesis at which he aims in a given case; otherwise we may make citations from his writings which he himself would have considered libellous.

The strongest passage, we think, which the reviewer could have quoted from the "Friend," in favor of his views, occurs on page 173 (Marsh's ed.). "*Expediency* founded on *experience* and particular circumstances . . . must be admitted as the maxim of all legislation and the ground of all legislative power." But here, it will be seen by the context, he has in view such things as "the right of suffrage," which he denies to be either a universal or *natural* right; so far as it exists, he holds it to be a matter of *expediency*, and founded upon *property*. "From my earliest manhood," he says, "it was an axiom in politics with me, that in every country where property prevailed, *property must be the grand basis of government*," (p. 190). "To property, therefore, and to its inequalities *all human laws* directly or indirectly relate, *which would not be equally laws in a state of nature*," (p. 171). [To which class would capital punishment for murder belong?] "Thus as perspicuously as I could . . . I have pointed out the one only ground on which the *CONSTITUTION OF GOVERNMENTS* can be either condemned or justified by wise men," (p. 213). So far as governments have the basis on which Coleridge thus insisted, viz. property, their fundamental rule is, of course, *expediency*; who doubts it? But does capital punishment for murder come within the province of such an idea of government? That Coleridge cannot be supposed to refer to *penal laws*, in the sense alleged by the Reviewer, is evident from the following: "the *intention* of the agent, [in case of a charge of libel,] whenever it can be independently or inclusively ascertained, must be allowed a great share in determining the character of the action; unless the law is not only to be divorced from *moral justice*, (according to

Guizot has nearly expressed our views of the proper character of penal laws, in the following passages. "*L'Église ne faisait pas un code, comme les nôtres, pour n'y définir que les actions à la fois moralement coupables et socialement dangereuses, et ne les punir que sous la condition qu'elles porteraient ce double caractère; elle dressait un catalogue de toutes les actions moralement coupables, et, sous le nom de péchés, elle les punissait toutes,*" etc. Again, in showing the superiority of the laws of the Visigoths in Spain, drawn up under the influence of Christianity, to those of the other barbarian nations, he says: "*Ailleurs c'est le dommage presque seul qui semble constituer le crime, et la peine est cherchée dans cette réparation matérielle qui résulte de la composition. Ici le crime est ramené à son élément moral et véritable, l'intention. Les diverses nuances de criminalité, l'homicide absolument involontaire, l'homicide par inadvertence, l'homicide provoqué, l'homicide avec ou sans préméditation, sont distingués et définis à peu près aussi bien que dans nos codes, et les peines varient dans une proportion assez équitable.*"¹ So it seems the scientific codes of Europe agree with our common law in regarding the intention, the moral element, as fundamental in the idea of crime.

We protest, therefore, with equal earnestness against that theory of the rights of civil government, in reference to jurisprudence, which resolves it into a sort of human theocracy, grasping the prerogatives of the omniscient Judge, and trenching upon the retributions of eternity; and against that other theory which assigns to civil government a theoretical as well as practical omnipotence, founded upon a mere utilitarian expediency, and uncontrolled either by divine authority or the unchangeable principles of natural justice. And this we say, although we should be quite ready to rest the whole argument for capital

the old adage: you are not hung for stealing a horse, but that horses may not be stolen,) but to wage open hostility with it," (p. 63).

We close this long note by recommending all quotation-mongers to digest the following: "I have seldom felt greater indignation than at finding, in a large manufactory, a six penny pamphlet containing a selection of inflammatory paragraphs from the prose-writings of Milton, *without a hint given of the time, occasion, state of government, etc.* under which they were written; not a hint that the freedom which we now enjoy exceeds all that Milton dared hope for, or deemed practicable; and that his political creed sternly excluded the populace, and indeed the majority of the population, from all pretensions to political power," (p. 65).

The Italics in the above quotations are, in many cases, our own.

¹ De la Civilisation en Europe. Leçons 5me. et 6me.

punishment on the simple ground of expediency—which we think is the proper position of the question, if its opponents would fully and unequivocally yield the point of right and fairly meet us on that practical ground. A conditional right is all that we claim for it; that is to say, we deny that it can be shown to be wrong irrespective of its expediency. The abolitionists commonly assert or *imply* that society absolutely has no right to inflict it.

They deny, in the first place, that any such right can be derived to society from the individual right of self-defence, through the so-called social compact. Whether the theory of such a compact be well founded or not, we neither affirm nor deny. But we observe, that the abolitionists should not so readily take for granted that the right of self-defence, of which individuals have thus divested themselves, and with which they have clothed civil society, is after all just the same right in kind and degree, which each individual still retains as a member of constituted society and a subject of civil government; in other words, that the portion of right surrendered is the identical portion which has not been surrendered; that the individual right was originally no broader and no other than it still continues to be. Such was not the view of the originators, and most approved expounders of this theory. Blackstone, whose authority is so often quoted by the abolitionists, says: "It is clear that the right of punishing crimes against the law of nature, as murder and the like, is in a state of nature vested in every individual." It is plain from the connection, he means "the right of punishing" such crimes with *death*. Is it said that the precepts of the Gospel are against such a right? We answer; one thing at a time, gentlemen. We are now reasoning from the theory of the social compact; and our only sources of evidence are the light of reason, and the natural instincts and laws of the human mind. The precepts of the Gospel are addressed, not to men in a state of nature, not to society as such, but to individuals as living under constituted government. We conceive it to be one of the gravest errors of our modern "philanthropists," that the rights and duties of society and of the civil magistrate are no more, and no other, than the rights and duties of each individual as defined and limited in the Gospel.

In the second place, the right is denied because, it is said, individuals have not the right to take their own lives, and therefore they cannot convey such a right to society. This reasoning would

be very good, if, when they enter into the social compact, these gentlemen mean to commit murder; otherwise it is quite impertinent. Men are not supposed to invest society with this right in order to expose their lives, but in order to protect them. The object of inflicting capital punishment is to save lives by preventing assassinations; and the question is, have men a right to expose their lives to a less risk in order to secure them from a greater? When the small pox was committing its fearful ravages, before the use of vaccination was discovered, multitudes were inoculated with it because they could have it artificially at much less risk than in the natural way. It was found that about one in a hundred of those who were inoculated died, while perhaps ten of the hundred would probably have died of the disease in the natural way, had they not been thus protected. Now, had these hundred persons a right to have themselves inoculated, when it was morally certain that one of their number would lose his life by it? And had the physician a right thus to communicate the disease to a hundred persons when he knew that he should thus be instrumental in killing one of them? Men risk their lives in a thousand ways every day by sea and by land for no greater object than to secure their comfort or increase their wealth; shall they not be allowed to risk life in order to save life itself?

In the third place, some of the abolitionists seem to admit that society may have a natural right to inflict capital punishment. But it is only a seeming—an ostentation of logical liberality; for in the next breath they call it “legalized murder,” and, throughout, proceed upon the tacit assumption that it is absolutely wrong. They will say that “society must be sustained at all hazards;” but this they say only on condition that you will admit capital punishment to be unnecessary to that end. They will allow, for example, that society has a right of self-defence, as society, analogous to the right which individuals retain, as individuals; so that if it be *immediately and palpably necessary to its very existence* to take the life of the murderer, it has the right to take it. “We maintain,” say they, “the right of society to impose any restraint or punishment essential to its existence. We see not where [whence] it is to derive the right to imprison, especially for life, if it have not also the right to take life.”¹ This really sounds at first as though it were admitting, or rather maintaining, something. But immediately afterwards we are told, by ringing a change upon the trite dogma of Blackstone, which has become the funda-

¹ North American Review, Vol. LXII. pp. 44 and 48.

mental article in the abolitionists' creed, that, "To take life . . . is a fearful use of power, not to be justified by anything less than the express word of God, [and therein we are then assured there is no justification,] and the *absolute necessities* of human society;" that, "To take life for life must be *essential to the very life of society.*" Now, is it not plain, that, on this strict method of interpretation, the doctrine which had just been so formally announced contains just nothing at all? It asserts and denies; it gives and takes, in the same breath. Are imprisonment and all legal penalties to be placed upon the same ground? This seems to be clearly implied. But if no legal penalty is justifiable which is not absolutely and demonstrably essential, *not to the well-being*, but to the *very existence*, the immediate self-preservation of society; and if, as we are told, such a necessity is not to be inferred from our "associations and fears;" if we are to wait until it is absolutely demonstrated from actual experience and palpable facts; it is easy to see whither this course of reasoning is leading us. For aught which appears in the shape of any such demonstration, society might exist, no man can say how long, if all administration of criminal jurisprudence were utterly abolished. There are doubtless, as we are often significantly told, other and more powerful influences and agencies to operate upon the good order of society than penal laws. There are moral influences, spiritual influences, the natural conscience, the love of happiness, some will add, the press and voluntary associations. On this doctrine, then, thus interpreted, if, as they maintain, the burden of proof must be thrown upon the law, we are bound to try the experiment and continue it until the absolute necessity required can be demonstrated to exist. The experiment might occasion great expense, great discomfort, great disorders; it might cost the sacrifice of a vast deal of social happiness and a multitude of useful lives. All this would prove nothing at all, so long as society could exist; for, so long, the prevention of such evils could not be shown to be absolutely *essential to its existence*. The exception, which even Beccaria makes, for cases of sedition or rebellion, would not be tenable on democratic principles.¹

¹ The Hon. Robert Rantoul, Jr., in one of his late letters on the Death Penalty, quotes from Montesquieu, as "an axiom which no one in the nineteenth century will be hardy enough to gainsay," the following sentence: (which is also cited by Beccaria;) "Tout châtement dont la nécessité n'est pas absolue devient tyrannique." But if this "axiom" is to be taken, as Mr. R. seems to urge and leave it, *without any limitation whatever*; then we not only make bold

If, from such reasonings as are above referred to, the abolitionists would avoid the conclusion that imprisonment and all penalties ought to be abolished, they must maintain, that the right of inflicting the punishment of death, is to be put upon a different ground from that on which the right of inflicting other and inferior punishments is placed. And this they sometimes openly do. They say or assume that this is altogether a peculiar case. Probabilities may answer elsewhere, but demonstrations are required here. *Now we demand on what ground of natural right this distinction is made?* Here is a point in the argument of vital consequence to the cause of the abolitionists; a point, too, in regard to which the burden of proof clearly falls upon them. We call special attention to this; and we ask again, if those who assume this distinction have shown, or can show, on the ground of natural right, any sufficient reason for it? Do they appeal to the spontaneous instincts of men in a state of nature? These, as far as we can judge, are totally and unequivocally against them. Do they appeal to the teachings of the Gospel? This is not a proper source of proof on a question of natural right; and if it were, we should still answer, that we know of no distinction made in the Gospel between the right of inflicting capital punishment and any other punishment; say, imprisonment for life, or for any term of years. Do they appeal to the peculiar sacredness and value of human life and the consequent incomparable severity of the punishment of death? They can say nothing, (which shall not amount to a *petitio principii*,) tending to show the peculiar severity of capital punishment (for murder), without at the same time enhancing, *pari passu*, the peculiar enormity of the crime for which it is inflicted, and the unapproachable value and sacredness of the interest which it is designed to protect. Do they appeal to the theory of the social compact? That theory must be itself established, before they can prove or disprove anything from it; and, being admitted, we have seen that, according to the interpretation of its founders and apostles, it decides against them rather than for them. We fully admit and maintain that the severer the punishment, the greater should be the caution exercised in its infliction.

in "the nineteenth century" to gainsay it; but we declare it a palpable absurdity on any theory short of that which demands the abolition of all "châtiment." If, however, Montesquieu meant, as he probably did, using his words in a loose and popular sense, that all punishment which is not necessary to the *highest good* of society, i. e. that all *wanton* punishment, all punishment which is not in some way useful, expedient, becomes tyrannical; then we heartily subscribe to the "axiom," and the abolitionists are welcome to its full benefit.

tion; and, if you please, in the ascertainment of the authority on which it is inflicted. Consequently the infliction of infinite punishment would require absolute certainty, perfect demonstration of authority. And we presume that whenever it is inflicted, it will be inflicted on such authority. But here is no question of infirmities. Here is a practical distinction of degrees; for most of the abolitionists themselves insist that there are many things more terrible to men than death; many things sufficiently desirable to banish the fear of it. We therefore throw the burden of proof for their distinction on the other side.

The authority of Blackstone is cited, in a passage to which we have already alluded, and which has become a sort of *symbolum fidei* for all the impugners of capital punishment, to show that nothing short of *demonstration* is required in this case. But, in the first place, if such strong expressions were extorted from Blackstone by the unparalleled rigor of the English law as it existed in his time, when, as he says, "among the variety of actions which men are liable to commit, no less than a hundred and sixty had been declared, by act of parliament, punishable with instant death;" and if they were used (as is the fact) with exclusive reference to the punishment of death for merely *positive* offences, infringements of the rights of property, is it fair, is it quite honest, to adduce them, with the authority of Blackstone's name, as applicable in their full force to the right of inflicting that punishment for murder? In the second place, if the authority of his name must be appealed to, let that authority be taken entire, and not in detached fragments; let him be allowed to interpret his own words. We suppose it will not be denied that he maintained the right of society to inflict the punishment of death for murder; and we have seen what sort of "demonstrations" he considered sufficient in the case.

For ourselves, we enter into no theories about the origin of society. Society is older than any theory. It is not a creature of theory, but of nature and necessity. We appeal to the laws of man's social and moral being, and to the exigences of his earthly existence. Wherever civil society exists, it is one of its inherent rights, and wherever civil government exists, it is one of its paramount duties, *to administer justice so far as the conservation of the general well-being may require—so far, at least, as to defend and protect the lives of its citizens.* A civil society which has not this right, and a civil government which cannot or will not perform this duty, fail of one of the essential objects for which civil society

and civil government were instituted among mankind. If it be asked, whence society derives this right? we answer, from its very nature; just as the individual derives the right of self-defence from his nature. The two rights are *analogous in their origin*, although the one is not derived from the other.¹

The civil government, therefore, is authorized and required to inflict the just penalty of death upon the murderer, whenever that penalty is necessary, in the common and practical sense of the word, for the protection of the lives of others, for the safety and defence of the community in general; that is to say, whenever it is strictly expedient. Our present positions are, therefore: 1st, that the punishment of death for murder is *just*; and 2d, that, being just, civil government has a right to inflict it, whenever it is expedient.

In defence of these positions we appeal to the common consent and consciousness of mankind, and to a deep and indestructible instinct of the human heart; a consent of consciousness impressed upon the pages of all history, both sacred and profane; exhibited, with a few trifling and partial exceptions, in the legislation and practice of all nations, ancient and modern, barbarous and civilized, pagan and Jewish, classical and Christian; a universal instinct, which began to utter itself in the conscience-stricken exclamations of the terrified Cain, and which has reverberated in the soul of every murderer from that day to this; which has been confirmed by the consenting voice of the poets, philosophers, and

¹ "Livingston concedes, and we think wisely, that governments have an undoubted right to inflict capital punishment provided it can be proved necessary to the preservation of public and private peace. Beccaria, it is well known, distinguishes the right of governments, which he defines to be the sum of the smallest portions of the private liberty of each citizen (*una somma di minime porzioni della privata libertà di ciascuno*), from the power which grows out of the supreme law of the safety of the people (*la suprema legge della salvezza del popolo*). Now, this distinction, as its author understood it, however unsound, is a perfectly innocent one, because, although he denies the right of a State to inflict death as a punishment, yet he grants the existence of the power, wherever its exercise can be proved useful and necessary, and therefore leaves the argument just where it would have been without the distinction. But his disciples, by losing sight of the true grounds of the distinction, have strangely misapplied it, in maintaining that capital punishment ought to be abolished for the mere reason that the right to kill cannot, as they say, have been among the rights surrendered in the social compact. The only intelligible and defensible notion of political right is that a State has a right to do whatever, on the whole, the best interest of the community requires."—*North American Review*, Vol. XVII, p. 265.

ages of all time, and which, as we believe, finds a response more or less distinct in every unsophisticated human heart.

We do not say that all this consent of nations, and this voice of humanity proves, demonstrates, our assumptions. We plead no prescriptions of fact against the dictates of reason. No;—time sanctions no abuse, sanctifies no sin. All mankind may have erred. But surely it becomes the individual mind to be modest, when it calls in question the voice of the race—modest, we should say, even in urging its supposed demonstrations. And surely it hardly becomes the individual to arraign the race *publicly* at his bar, demanding of it to prove itself to be right, and threatening it, in case of its failure so to do, with summary condemnation; and that without deigning, on his part, to offer any reasons to prove it to be in the wrong.

We say that this almost universal consent of mankind makes out a *prima facie* case; that mankind are not bound to prove themselves in the right, but the dissentient is bound to prove them in the wrong, if he asserts it. This is the true position of the question. The assailants of capital punishment have generally felt it to be so; and they have undertaken to prove that it is absolutely wrong for society to inflict the penalty of death upon the murderer; that, in so doing, it but solemnly imitates and publicly authorizes the very crime which it professes to punish!

How do they prove this tremendous assertion? Not by appealing to the universal consciousness. That is against them. Not by urging their own private consciousness. That could prove but little. They usually scout at authority; which means, such authority as is against them; for you will find most of their essays half made up of the same quotations from the same authorities, re-arranged according to the principles of permutations and combinations, and retailed over and over again, as if repetition would compensate for addition. It is not to be denied that they have a few great names on their side, of which they are careful, from time to time, to give us a list, but neither is it to be denied that authorities are a hundred to one against them. They do well, therefore, not to rest their appeal with human authority. Their chief appeal is to the sacred Scriptures and to the spirit of Christianity. Some make this appeal in a manly and honest way; some, as an *argumentum ad hominem*; and some in their favorite alliteration, "the Gallows and the Gospel!" We accept the appeal and meet the issue.

We are thus brought up fully and fairly to the Scripture argu-

ment ; and we shall be the last to shrink from any results to which it may conduct.

But in entering upon this argument we must have one thing distinctly premised and understood. We take the appeal to the Scriptures both of the Old and New Testaments. We hold that these two great portions of the word of God are not contrary to each other ; though we freely assign the greatest weight to the latter, as possessing an interpretative character and containing the latest decisions. But the instructions of the different parts of Scripture must be interpreted in consistency with the divine truth and authority of each other ; else the whole loses its authority together. To our minds it is a perfect absurdity to pretend to rest upon the authority of the New Testament while denying that of the Old. As well might a man sitting aloft upon the limb of a tree think to retain his position after severing that limb from the trunk. What is the New Testament, on the hypothesis that the divine authority of the Old Testament is denied ? A book which contains on the very face of it its own refutation, as far as any claim to divine authority for itself is concerned ; a mere collection of the writings of a number of deluded men, about another deluded man who really thought himself the Messiah divinely predicted and promised, when in fact no Messiah at all was ever divinely predicted or promised. We take the Bible and the whole Bible. We hold that the same " God, who at sundry times and in divers manners, spake in times past unto the fathers by the prophets, hath in these last days spoken unto us by his Son ;" and that his voice, however he may, from time to time, have condescended to make it clearer for our apprehension, can never contradict itself.¹ As to

¹ There are some who seem to think that in adhering to the New Testament to the exclusion of the Old, they cease to be " Jewish," and become superlatively " Christian." Now we beg leave respectfully to ask how a " Christian" can deny the proper " *Messiahship*" of Jesus ? and how he can believe that, without accepting the divine inspiration of the Old Testament ? Men were first called *Christians*, not because they were very good men, but because they believed and maintained that Jesus was the *Messiah*. That a man may be a good and honest man without believing this dogma, and without being a Christian, we neither doubt nor deny ; and, on the principle that " an honest man's the noblest work of God," he may think this appellation the more honorable of the two. We shall not dispute that it is. Only, let him who thinks so be content with it. Let us not be misunderstood, however ; our Christian courtesy would forbid us to deny the name of *Christian* to any who may be desirous of assuming or of retaining it. We mean only to deny the exclusive, superlative claims which are sometimes put forth in certain quarters.

any distinctions which any may choose to draw between the different books of the Hebrew Scriptures, in respect to their inspiration; we presume the divine authority of the Pentateuch is as little likely to be disputed as that of any portion whatever of the Old Testament. With Esther and the Song of Songs our present question has nothing to do.

In arguing from the Scriptures against the right which we have undertaken to defend, some content themselves with merely saying, that "if the Gospel, by its whole tone, does not disprove the right of taking blood for blood, they despair of doing it by any extracts or reasoning of their own," and then throw the burden of proof upon the other side—(which they may reasonably hope is better able to furnish it?). This, to be sure, is a very cheap and summary method of reasoning. Few, probably, will consider it "demonstration."

Others make specific allegations from the Gospel. These may chiefly be reduced, so far as we know, to the inferences they draw from the "Sermon on the Mount."

Now this "Sermon" is no new thing in the Christian world. It is not to be numbered among modern discoveries. It has been received and acknowledged by the church in all ages, and loved by all good men in it. But it has been received in connection with the rest of God's word contained in the Bible, and interpreted consistently therewith. No Christian nation, from the time a Christian nation first existed till now, ever understood this sermon as abolishing civil government, or depriving the magistrate of the right to administer justice for the defence and security of society. No sect of Christians ever so understood it; except perhaps a few obacure heretics in former times, and a portion of a small but very respectable Christian society in modern times. No doctor of the church, and, we think we may say, no critic of respectable learning and abilities, who has been held in general estimation or authority, whether in the church or out of it, and to whatever school he may have belonged, supernaturalist, or rationalist, mythic, mystic or infidel, has so understood it.¹

¹ We ought perhaps to except Bayle, who maintained that a society of Christians could not subsist, and alleged in proof the command—"if any man strike thee on the one cheek offer also the other," and similar evangelical injunctions. Such commands Bayle urged, not as annihilating civil government by their authority, but the Gospel itself by their absurdity. "Il est étonnant," says Montesquieu, "que ce grand homme n'ait pas su distinguer les ordres pour l'établissement du christianisme d'avec le christianisme, même, ni les préceptes de l'évangile d'avec ses conseils. Lorsque le Législateur, au lieu de donner des loix, a

With those interpreters, therefore, who designedly and openly go the whole length of abrogating all penal jurisprudence, all civil government, all commercial intercourse, on the authority of this "Sermon," we hold no argument. They have the virtue of consistency and openness at least; and we respect them for it. But, for our present purpose, we shall consider it refutation enough of any interpretation, to show that, carried out consistently, it will not stop short of the entire abolition of all administration of human justice.

We suppose that the passage, "ye have heard that it hath been said, an eye for an eye, and a tooth for a tooth; but I say unto you that ye resist not evil," is as strong a passage, in the letter and spirit of it, as can be urged against capital punishment from the New Testament. But can it require any labored argumentation to show that, if this passage can be thus applied, it is equally applicable to all cases of punishment, i. e. of the infliction of evil or suffering for crime? If a resort to the tribunals of human justice is here forbidden in cases of the most aggravated personal injuries, much more is such resort forbidden for minor wrongs; and if all such resort for redress is forbidden, then the administration of criminal jurisprudence, if not itself positively forbidden, is so by implication; or, at all events, is left without any use whatever for which it should exist among Christian men. And not only is the administration of *criminal* law forbidden, but all *civil* processes also; for did not our Saviour expressly add, "of him that taketh away thy goods ask them not again?" And does it not inevitably follow thence, on this method of literal and political interpretation, that no magistrate or civil officer has any right, as a Christian man, to demand, much less to compel, the payment of debts or the restitution of stolen goods? Why then should our courts of justice be kept open any longer? Their whole business is solemn, systematic, legalized outrage upon the first principles of the Gospel! As though the Gospel of Christ was given for the special protection of thieves and murderers!

Is it said that it is only the *form* of the old law as a *lex talionis*,

donné des conseils, c'est qu'il a vu que ses conseils, s'ils étaient ordonnés comme des loix, seraient contraires à l'esprit de ses loix."—Esp. des Loix. Liv. 24. Ch. 6.

We should also except Rousseau, if he is entitled to the name of "critic." His inferences from the Sermon on the Mount, he gives as follows: "Je me trompe en disant une République chrétienne; chacun de ces deux mots exclut l'autre. Le christianisme ne prêche que servitude et dépendance. Les vrais chrétiens sont faits pour être esclaves."—Du Contrat Social. Liv. 4. Ch. 8.

which is here repeated? We answer that the substitute is of the most general and absolute character: "I say unto you that ye resist not evil,"—not only are ye not to resist by direct retaliation but in no way whatever. Besides, is it to be supposed that our Saviour meant to say, "If a man strike you on your cheek, or deprive you of an eye or a tooth, you may have him punished in any way by a court of justice, provided only he be not punished by being smitten on his cheek, or deprived of his eye or tooth in return?" And so, if a man have committed murder, "he may be punished in any other way, by the knout or the rack, or any length or severity of imprisonment—only life must not be taken for life." Is this what our Saviour meant? If not, then it would seem it was not merely the *lex talionis*, as such, that he designed to repeal,—if he designed to repeal anything.

If it be asked what interpretation, then, can be given to the passage; we answer, that is no present business of ours. We are under no obligation to show what the text does mean. It is enough for us to have shown that the interpretation by which it is arrayed against us, is untenable, short of requiring the abolition of all penalties whatever for crime. But there is an old interpretation which has been given by most Christian critics, and received in the Christian church from time immemorial. According to that interpretation our Saviour did not mean in this discourse of his to abrogate the law of Moses, or any part of it, as a civil regulation; but to condemn the prevalent abuse which was made of its principles to the purposes of private selfishness, licentiousness, malice and revenge.¹ If any allow themselves to sneer at this ancient interpretation, or think it sufficiently refuted by being exclaimed at, it remains for them and not for us to offer a better. And we

¹ If a particular authority is wanted to confirm our exegesis, take the following, which we find in Michaelis; Mos. Recht. Art. 242.

"Christ does not find fault with the Mosaic statute of *eye for eye, tooth for tooth*; for he has throughout his whole sermon nothing to do with Moses, and neither expounds nor controverts his doctrines; he only condemns the bad morality of the Pharisees, which they thought fit to propound in his words. In the present instance these expositors confounded, as on many other occasions, *civil law and morality* together; and when the moral question was, How far may I be allowed to carry my resentment and gratify my thirst for revenge? they answered in the words which Moses addressed, not to the injured, but to the injuring party, or to the judge; and said: *eye for eye, tooth for tooth*. * * * Moses addresses the magistrate, or the delinquent who has mutilated his neighbor, and says: *Thou, delinquent, art bound to give eye for eye, tooth for tooth; and, thou, judge, to pronounce sentence to that effect*. Christ, on the other hand, manifestly addresses the person injured, and forbids him to be vindictive."

think it worth while here to observe, that in this law of like for like, which contains, under a mutable form, the immutable principle of even-handed justice, the specification "life for life," as it stands in the Old Testament, is in every case placed first. (Ex. 21: 23—25. Lev. 24: 17—20. Deut. 19: 21). Why then, if our Lord meant to abrogate the law, did he not begin with its principal and leading title? With our interpretation the reason of this is clear. The law of life for life, hedged in by all the cautious limitations of the Mosaic code, could hardly be perverted to purposes of private revenge; besides, if he had mentioned it, it would have been incongruous with his subsequent positive instructions.

But some will ask in amazement, if we presume to deny that the law of Moses was abrogated in the Gospel? We certainly do presume to deny it, in any such positive and formal sense as that in which we understand our opponents to maintain it. Did not our Saviour most solemnly deny it in that very sermon to which the appeal has been made? "Think not," says he, "that I am come to destroy the law or the prophets; I came not to destroy but to fulfil." It boots nothing to tell us, this applies only to the Decalogue. That is a mere assumption. Our Saviour makes no such distinctions. This is the very preface which he prefixes to those same comments upon the law, which our opponents undertake to interpret as its abrogation—a preface which was intended to serve as an express and solemn warning against all such misinterpretations.

Was the law of Moses too rigorous? So far from abating one jot or tittle of that rigor, Christ only reasserts it in all its length and breadth and depth and height. And it is remarkable, that he begins his comments with that very command in the Decalogue, for whose temporal sanction God himself originally instituted, and for which we maintain that civil governments have still a right to continue, the penalty of death. Does he repeal that command? No. Does he repeal that sanction? No. He recognizes and enforces it by still higher sanctions. It is indisputable that the enforcement of rigor is here the general drift and tendency of his discourse; *and in harmony with such drift and tendency* we are bound to interpret; unless we are to imagine our Saviour to have dealt in insinuations and inuendoes. "Ye have heard," he says, "that if any man kill, he shall be in danger of the judgment; [which, according to Josephus, was the designation of the lowest court of judicature, consisting of seven judges;] but I say unto

you, that, [according to any interpretation of the law and its sanctions], whosoever shall be angry with his brother without a cause shall be in danger of the judgment; and whosoever shall say to his brother, Raca! shall be in danger of the synedrium; [by the "synedrium," all critics agree, the Jewish sanhedrim, or council of seventy is meant, which had the power of inflicting the penalty of death by stoning;] but whosoever shall say, Thou fool! shall be in danger of the fire of Gehenna;" [i. e. of being burnt in the vale of Hinnom—the most terrific punishment which a Jew could imagine.] Does all this indicate any remission of the rigor of the law—any abrogation of its sanctions?

We not only freely admit, but strenuously maintain, in consonance with the authority of the best and oldest critics, that our Saviour here intends something more than mere temporal punishment; but that certainly is strange argumentation which would prove that, by merely asserting that a higher punishment was right, he intended to assert that the lower punishment was wrong, that in using the lower punishment as a symbol and illustration of the higher, he thereby intended to cashier the former as "savage and barbarous," as utterly inconsistent with the benign and merciful character, the indulgent and gentle spirit of the new dispensation. Let no one undertake to misrepresent us, as though we should say that our Saviour here enacted a law binding on all Christian governments, that whoever should say to his brother, Raca! should be stoned; and whoever should say, Fool! should be burnt. We neither say nor mean any such thing. We have already said that, according to our view, neither in this sermon, nor, we might have added, in any of his instructions, did our Saviour interfere, or intend to interfere, with the rights or duties of the magistrate, or have them in view in any shape further than to recognize them. That he does here recognize and does not abolish, but rather, if any inference can be made one way or the other from his words, does indirectly sanction and confirm, the penalty of death for murder, we cannot but think is sufficiently clear.

The drift of the whole passage, as bearing upon our present discussion—and it is one of the proof-texts adduced by our adversaries, we understand as follows. Our Lord would say: The murderer is by law punishable with death. Lest any should think that this is too severe a punishment, or that I came to substitute a milder; or lest any should think that the whole penalty ends here; I say unto you that the murderer, according to my interpretation of the law, is not only punishable with temporal and natural death, but

also with what that death foreshadows, with eternal and spiritual death. I would not have you confine your views to the punishments of time, but would have you carry them forward to the more awful and equally just retributions of eternity. And not only so; lest any should think that, provided they avoid the actual perpetration of the crime of murder, they may indulge freely in feelings and expressions of hatred, malice and contempt, I tell you that though you may thus escape the temporal penalty, you are nevertheless exposed to the eternal.

With those who deny all allusion to future punishment in this passage, we have no occasion to dispute the point. Their view only the more clearly defines its direct meaning as bearing upon temporal sanctions. And that the sanctions, if temporal, are *positive*, and not mere natural consequences, we suppose is sufficiently evident from the exigences of the context.

But we are reminded of the case of divorcement. In regard to a regulation on this subject, our Lord did indeed say, "for the hardness of your hearts Moses wrote you this precept;" and this, as far as we remember, is the most disparaging remark he ever uttered in regard to the law of Moses or any part of it. But here we see not a particle of evidence that he intended to abolish that precept as a civil regulation. The true meaning would seem to be, "Moses, (or rather God, who spake by the mouth of Moses,) knowing your cruelty and selfishness, and the danger in which a hated wife therefore would stand of abuse, allowed you to put away your wives by a certain legal formality, thus preferring a less evil to a greater." And is not this a good reason for a civil regulation? As a civil regulation, therefore, our Lord did not profess to interfere with it, but protested against its being assumed as a standard of moral purity, and declared that individuals had not the moral right, according to the true spirit of the law itself, and *in foro conscientiae*, to avail themselves of this legal permission, except in one case; which exception being made, his doctrine on the subject is brought into almost perfect coincidence with the interpretation given of this very law by one of the schools of Jewish doctors.¹

¹ Since writing the above, our attention has been directed to the account given of this matter by Michaelis in his *Mosaisches Recht*. We quote from it not only because it confirms our views, but because we have been struck with the almost perfect coincidence in the forms of expression. "Divorce was permitted by Moses for the prevention of greater evils, and on account of the *hard-heartedness* of the people. It may therefore be politically inexpedient, but it is not sinful, in a sovereign, even in certain cases not specified by Christ, to permit married persons to separate, on account of their unyielding and irreconcil-

The Pharisees did not understand him as hereby treating with disrespect, or proposing to annul, the law of Moses or any part of it; though they stood ready to catch at the least word of such a tendency, that they might accuse him to the people. Nay, he seems to appeal to his doctrine on this very subject as an illustration and proof of his assertion that he came not to destroy but to complete the law. "It is easier," saith he, "for heaven and earth to pass, than one tittle of the law to fail;" and immediately adds: "Whosoever putteth away his wife and marrieth another, committeth adultery." (Comp. Luke 16: 17, 18 and Matt. 5: 17, 18). But even if we admit that, in this solitary instance, he did censure or annul a precept of the Mosaic code, what does this instance prove? What was the tendency of his amendment? Was it greater mildness and lenity? No. He censures a particular precept for its too indulgent character. "Moses suffered you to put away your wives," saith he, "but I tell you that whosoever putteth away his wife and marrieth another, committeth adultery." This he said knowing well that, by the law, adultery was punishable with death; but he said not a syllable about abolishing the penalty. That is the essential point.

Some may be hardy enough to assert that he did abolish the penalty; and refer in proof to the story of the woman taken in adultery in the 8th chapter of John's Gospel. Here let us quietly observe the material facts: 1. The authority of this passage is doubtful. It was not read in the churches for several centuries; it is wanting in some of the oldest Mss. and is rejected

able tempers. They are guilty of a sin in availing themselves of such a permission, but he is, as it were, sheltered under the example of God and of Moses, and sins not in granting it unto them to avert greater evils." Mos. Recht. Art. 2. Tr. Smith. And again in Art. 93: "Our laws might properly enough permit married persons of incompatible tempers to separate on the score of the hardness of their hearts, when we find that even Moses, who was sent by God himself, allowed divorce among the Israelites for that very reason; although even then it was, both in the sight of God and conscience, sinful. However, I do not, in thus speaking, mean to controvert the propriety of our permitting divorce in no other case than that wherein Christ has declared it morally right, and allowable *in foro conscientiae*; because I am sensible that facility of divorce is a very formidable evil and fraught with the most pernicious consequences to the morals of a nation."

"According to Christ's decision, that man who gave his wife a bill of divorce-ment for whoredom, committed no sin. It is allowed that here whoredom is to be understood not only of infidelity in the married state, but also of previous incontinence. The word in the original shows this; for Christ does not mention adultery, but makes use of the general term *πορνεία*, which signifies want of chastity, or fornication."

by some of the best critics. But we waive this fact. 2. Under the Roman government the Jews had not the power of life and death. By the laws of Moses adultery was a capital offence; but, by the Roman law it was not. 3. The question proposed to our Lord was both invidious and hypocritical; invidious, because his interrogators hoped to draw something from him on which to ground an accusation of contempt either for the Roman or the Mosaic law; hypocritical, because they pretended to have such an exuberant zeal for the honor of the law of Moses that they had conscientious scruples about submitting to the prohibition of their conquerors. 4. The question was not answered, but evaded. Again, this is the material point. In saying, "neither do I condemn thee," our Lord must be understood not in a moral but a judicial sense. That in such a sense he should not condemn the woman is natural. Why should he? He always declined, positively declined, assuming the office of magistrate or judge; and besides, both accusers and witnesses had disappeared. How could a judicial sentence be pronounced when there was neither accuser, judge nor witness in the cause? And as to the words addressed to the Pharisees: "He that is without sin among you, let him first cast a stone at her;" many of the best critics suppose the particular sin of which the woman had been guilty to be referred to; and, in this sense, the answer can hardly be urged against us, for no man would propose that secret murderers should take it upon them to inflict capital punishment on him who may have been discovered. But, at all events, the words were addressed either to extraordinary sinners or to ordinary sinners. If addressed to a set of great villains, whether secretly or notoriously so, they can prove little for our opponents; neither can they serve their purpose if addressed to sinners in the ordinary universal sense; unless it be argued that Christ meant to abolish all human penalties whatever; for, if their execution is to remain in abeyance till absolutely sinless men are found to execute them, it is hardly worth while to contend for the theoretical right of inflicting them.

Where then is the abrogation, either express or implied, of the judicial precepts of the Mosaic law? If any stronger cases in proof than these to which we have referred can be brought, we should like to know them.

We have purposely omitted alluding to the law of the Sabbath, because we suppose that case will hardly be urged. Yet it might easily be shown, that there is more evidence in the New Testa-

ment for the abrogation of that commandment than of any other in the Mosaic code.

And let it here be distinctly understood that the main point of our argument does not depend upon the validity of every particular in our exegesis. The burden of proof lies upon our adversaries. They array the teachings of the New Testament against the institutions of the Old Testament, and against the common consent of mankind. It behoves them, therefore, not merely to assail some particular points in our exegesis, but to refute it *in toto*; and not only so, positively to establish their own ground. In doing this, it will not avail them to appeal to this or that authority, which, though generally with us, may be against us in this or that particular. If the appeal is to authority on one point, it is so on every point,—main question and all. And with such an appeal we should be perfectly willing to submit the question. Besides, as to this gleaning of exceptions and stray admissions here and there, it is altogether a deceptive mode of reasoning. Fifty men may agree in maintaining a doctrine for which fifty reasons may be given. Each of the fifty men may urge forty-nine of the reasons and doubt or reject the fiftieth; and should the reason rejected be different in each case, this exception and admission-gleaner might show that every one of the fifty reasons was rejected by some one of the fifty men; and consequently, that their whole doctrine was utterly destitute of proof on their own showing; though every one of them stoutly maintained it with forty-nine good reasons to back him!

If it be still insisted, that the whole "spirit of the Gospel" is manifestly against our position; we answer, that those who urge this argument might do well to consider, whether, if they can maintain no more specific allegation than this, it may not be that they have mistaken their own spirit for the spirit of the Gospel. This is one of the most facile arguments in the world to urge, and one of the most difficult in the world to answer. It is an *inanis umbra*, a magnificent subject for declamation; but, as for its logic, you might as well attempt to grasp a pure spirit in your arms as hope to feel or find its substance anywhere. How, without immediate inspiration, have men ascertained the spirit of the Gospel, otherwise than from the instructions of the Gospel itself, or, perhaps, also, from the doctrines of the church and the general consent and practice of Christians?

If, as some seem to argue, the great touchstone of the spirit of the Gospel is *the example* of our Saviour, so that it is right for a

Christian to hold no office, pursue no business, do no action, for which He has not left a specific example ; then, indeed, is the business of Christian ethics very much simplified, and several other things will be abolished besides capital punishment.

But this general argument is sometimes stated in a somewhat more specific form, thus : the gentleness, meekness, forbearance, forgiveness, compassion, mercy and love, which everywhere characterize the Gospel, are inconsistent with the infliction of capital punishment for anything. When this objection is made in simplicity and sincerity, and in a spirit of gentleness and meekness ; when it comes from a heart which really embraces and submits to the Gospel, or from a mouth which openly and publicly assumes all the obligations of a religious and Christian faith and life, we meet it with unfeigned respect. But we beg leave honestly to say that, when it is insisted on by men who make no such pretensions, merely as an *argumentum ad hominem*, or a galling insinuation, coupled, it may be, with odious allusions and opprobrious epithets ; we do not attach to it any great importance.

We are not disposed for a moment to admit, that the defenders of the right of society to inflict the just penalty of death for murder, are any less thoroughly imbued with the evangelical spirit of meekness, forgiveness, compassion and love, than its assailants are. We devoutly recognize and heartily embrace these glorious traits of the Christian system. We cling to them with all the energy of our souls. We would not have the smallest iota frittered away from their full significance.

Look into any of the humble, noiseless spheres of Christian charity ; whose hearts and hands are busy there ? There are a great many objects of Christian compassion besides a handful of the worst of criminals ; a great many calls of Christian benevolence as imperative as that to save a few murderers from the gallows ; but devotion to those objects, obedience to those calls, may not be so sure to make a man notorious. We owe to the criminal our benevolent sympathies, our kind offices, our fervent prayers, our best efforts for his reformation and salvation ; but we owe to the rest of mankind a vast deal more. We need not revile Moses, we need not be more benevolent than Christ, in order to be truly Christian. We need not prefer the good of the murderer to the good of society, his life to the lives of hundreds of innocent men and women exposed by his impunity, in order to be truly Christian. The gentleness, compassion, love and forgiveness of the Gospel are no canting sentimentality, no sympathizing with

sin, no fondling of felons as poor unfortunates, no one-sided fanatic enthusiasm. They are calm, practical, comprehensive, manly, divine. For ourselves, we neither claim nor expect that our compassion and love should exceed the compassion and love of God himself, who expressly enacted the earliest law, so far as we can ascertain, inflicting capital punishment for murder, and, so far as we can ascertain, never expressly repealed it.

We utterly deny that the spirit of the Gospel is against that venerable enactment. It is instructive to find that the spirit of Robespierre and of the bloodiest Jacobins of the French revolution, was at one time against it; and with what fruits, the world has seen.

But some of our readers may have been ready to ask, whether we propose to have the *blue-laws* of early New England times re-enacted? whether we intend seriously to maintain that the penal code of Moses is still in force? By no means. We are not aware of having lisped a syllable to that effect. What we have all along maintained is, that the Gospel, neither by its teaching, example, nor spirit, has condemned or abrogated the judicial code of Moses. It left that code just where it was, just as it was, untouched and unimpaired. We have our Saviour's express words that he came not to abrogate the law, (for so the original word most literally means); can any express words of his be adduced to the contrary?

These are no new or strange views. They are simply the old-fashioned, plain, common-sense doctrine. The law of Moses may be divided into three parts: 1. The moral law, or Decalogue, which is generally recognized as binding in the New Testament; 2. The ceremonial law, or ritual, which was fulfilled and terminated by the Gospel, the whole truth which it was designed to adumbrate being revealed and realized by the crucifixion, resurrection, ascension and intercession of Christ; 3. The civil, judicial or penal code, (the judgments,) which, though not abolished or interfered with by the Gospel, was never enacted for the Gentiles; and ceased by its own limitations, or rather from the nature of the case, when the Jewish polity ceased.

We need not, nor do we, by any means, deny that the whole Mosaic law, judicial, ritual, *moral* and all, was abolished, utterly abolished, in the Gospel, as a *ground of human justification in the sight of God*. But what this has to do with the duties, powers, properties or uses of the *civil government*, it hath not been given to us to perceive.

Should any accuse us, therefore, of holding that the Mosaic code is still obligatory upon Christian nations, they will accuse us disingenuously and falsely. The Mosaic code is just as obligatory upon Christian nations as the laws of Solon, or Lycurgus, or the Twelve Tables; just as obligatory on us, in this country, as the Roman civil law, or the *code Napoléon*, and no more.

But this we contend for, nevertheless, that though, as a system of law, it is no longer in force; yet, having been divinely instituted, and never divinely annulled or condemned, it is not without great irreverence to be charged with barbarity, cruelty, folly or injustice;¹ that the principles involved in it are still valuable and available precedents; and that, in particular, it furnishes conclusive proof from divine authority that the punishment of death for murder is just; and strongly corroborates the evidence, drawn from the nature and objects of society, in proof that its infliction by the civil government cannot be in itself wrong.² If it be asked, whether Christian governments have a right to inflict the penalty of death in all the cases in which it was prescribed by the Mosaic code; we answer, yes, provided always, it can be shown that the light of nature is as clear in those cases as in that of murder, and that such a course is expedient. And it is only on condition of its expediency, nay, of its practical necessity, that the penalty of death for murder should be inflicted. We have not been contending with a man of straw, as some might reasonably suppose, in contending against the denial of such a conditional right; for the abolitionists do almost universally deny such a right. Besides, if there is any difference between right and expediency, if they are not taken as convertible terms, and if this question has anything to do with both; such a conditional right is all that can be contended for under the name of right. Such a conditional right established, the theoretic right, in its full and absolute extent, is established; which then waits for expediency in order to become a practical right, i. e. in order that its exercise should become fit and proper.

That the assailants of capital punishment deny its right, irrespective of its expediency, the whole course of their argument

¹ "A sanguinary," "crude, cruel, unchristian," "Draconian" code. See *O'Sullivan's Report*.

² No fair and reflecting mind can fail to perceive the wide difference, in the way of authority and precedent, between a set of general, formal enactments, intended as a system of permanent jurisprudence, as the divine norms of political justice, for a whole nation; and special commands and commissions given by God to individuals or nations in particular emergencies, or for specific, insulated and temporary purposes.

from the Scriptures implies; and one remaining argument, on which they have almost uniformly dwelt, will show still more conclusively. They contend that the sixth commandment cuts off from the civil authority all right to inflict the penalty of death for any crimes whatever. The Rev. Messrs. Spear, Chapin, Upham, Tenney, Lake, etc., insist upon this point as fundamental; Mr. O'Sullivan, in his Report, appeals to it with the greatest devotion; and even Mr. Rantoul, in his Letter of Feb. 14, 1846, as well as in his Report of 1837, calls the infliction of capital punishment a "violation" of the divine command "Thou shalt not kill."¹

As the learned author of the Manual of Peace handles the question more methodically than the rest, and as his authority as a Biblical critic must naturally have great practical weight, and perhaps has served as a basis for the declamations of many others; we shall meet the argument as he has presented it. He states his position thus: "We have no idea that this command, *Thou shalt not kill*, was limited, as some imagine, to cases of manslaughter and murder. We are aware that some distinguished names would impose this limitation. Even Rosenmüller translates it by the Latin expression, *NE HOMICIDIUM COMMITTITE*; thus limiting the prohibition to the crime of murder in its various forms. But we venture to assert, it will not be maintained by Biblical critics, that this limitation of meaning is found in the verb itself, which is unquestionably one of the most general import. The meaning of the passage, taken by itself, is simply this: Thou shalt not take life; life is sacred, inviolable." pp. 90, 91. And again, on p. 222, he repeats: "It will be noticed that the command is given in the most simple and explicit terms. It is possible, however, that some may maintain, that it means simply, Thou shalt not *maliciously* kill; thou shalt not kill with *evil intent*; thou shalt not murder. But we are compelled to look upon this as a wholly gratuitous limitation. There is nothing in the Hebrew term itself, and nothing in the immediate connection, which requires us to limit the command in this way."

First, then, as to the meaning of the Hebrew term, considered by itself, which is the main pivot on which the controversy is made to turn. We shall not endeavor to determine it by an appeal to

¹ The writer in the North American Review, already referred to, while asserting his belief that the sixth commandment forbids "only murder, and has been wrongly used against all taking of life," yet allows himself to say, in another place: "Governments cannot monopolize the privilege of killing." Is this meant for declamation, or argument?

etymology, or to the definitions of lexicons or commentators; but we make our appeal directly to the final tribunal, the usage of the term in the text of the Hebrew Bible.

The Hebrew word translated "kill," in the sixth commandment, is רָצַח ; and whenever we thus speak of a word, in this discussion, we wish it to be generally understood as standing for this, or some of its derivative forms. This word is used, in all, forty-nine times in the Bible; of which, twenty-eight are in the Pentateuch and eight in Joshua; and in every one of these thirty-six cases, it is used in connection with laws relating to murder and manslaughter. Of the remaining thirteen cases, we omit two, (to which we shall refer hereafter,) in Ez. 21: 27 (22) and Ps. 42: 11 (10), where the Hebrew abstract noun is used, and which would not affect the result. Two more in Jer. 7: 9 and Hos. 4: 2, may also be set aside, as they are plainly quotations from the commandment in question, the same words being used in immediate succession for *murder, stealing* and *adultery*, as are employed in the sixth, seventh and eighth commandments. That in Ps. 62: 4 (3), can determine nothing either way. Neither can that in Prov. 22: 13; though, in this last case, some English readers might suppose that the "lion" was the implied "slayer." But there is nothing expressed or implied, in the original, to favor such a supposition. It might, with equal propriety, have been translated: "There is a lion in the way; I shall be *murdered* in the streets;" the Septuagint reads: $\lambda\acute{\epsilon}\omega\upsilon\varsigma \epsilon\acute{\iota}\nu \tau\alpha\iota\varsigma \omicron\delta\omicron\upsilon\varsigma \cdot \epsilon\acute{\iota}\nu \delta\grave{\epsilon} \tau\alpha\iota\varsigma \pi\lambda\alpha\tau\epsilon\iota\alpha\iota\varsigma \theta\omicron\upsilon\omicron\epsilon\upsilon\tau\alpha\iota$.

Seven cases still remain, which are properly to decide the meaning of the word *out of* the Mosaic code; and in every one of which, there can be no doubt the word means *murder*, in the strictest sense. In 1 Kings 21: 29, we have a clear case of murder. Jud. 24: 4 records one of the most atrocious cases imaginable; which, in the sequel, led to the slaughter of more than forty thousand Israelites, besides the almost total extermination of one of their tribes. In Ps. 94: 6, Hos. 6: 9, 2 Kings 6: 32, Job 24: 14, and Isa. 1: 21, our translators have rendered the original word by *murder*; how correctly, any English reader can judge for himself.

Let us now return to the books of Moses and Joshua. Here, besides being used twice to express the prohibition of the sixth commandment, the word is employed thirty-four times in laws defining explicitly the mode of procedure in regard to those who should be chargeable with its violation. The passages referring to these regulations are contained in Dent. 4: 42 and 19: 3—13,

in the 35th chapter of Numbers, and in the 20th and 21st chapters of Joshua, and nowhere else does this word occur.

Thirty-two times out of the thirty-four, it is employed to characterize the act of homicide; where, in every case, the perpetrator was held to be, *primâ facie*, guilty of murder, and treated as *reus rei capitalis*. Hence, although, in its strict and proper sense, it indicates *murder*, it is used of course to designate the involuntary as well as the voluntary homicide. The matter can hardly be set in a clearer light than by quoting a portion of the 35th chapter of Numbers, italicising the words which are translations of רצח.

9. And the Lord spake unto Moses, saying,

10. Speak unto the children of Israel, and say unto them, When ye come over Jordan into the land of Canaan;

11. Then ye shall appoint you cities to be cities of refuge for you; that the *slayer* may flee thither which killeth any person at unawares.

12. And they shall be unto you cities of refuge from the avenger; that the *manslayer* die not, until he stand before the congregation in judgment.

16. And [But] if he smite him with an instrument of iron so that he die, he is a *murderer*: the *murderer* shall surely be put to death.

17. And if he smite him with throwing a stone wherewith he may die, and he die, he is a *murderer*: the *murderer* shall surely be put to death.

18. Or if he smite him with a hand-weapon of wood wherewith he may die, and he die, he is a *murderer*: the *murderer* shall surely be put to death.

19. The revenger of blood himself shall slay the *murderer*: when he meeteth him he shall slay him.

20. But [And] if he thrust him of hatred or hurl at him by lying of wait that he die;

21. Or in enmity smite him with his hand that he die, he that smote him shall surely be put to death; for he is a *murderer*: the revenger of blood shall slay the *murderer* when he meeteth him.

Now is it not manifest that we have here a technical use of the word *murderer*, defined on principles similar to those on which it has always been defined by the common law? We say, a technical use; else, what mean the oft-repeated exclamation רצח, "a murderer!", and the reëchoing awful sentence, "the murderer shall surely be put to death?" What can be the force of such expressions, unless we have the proper, the strict legal sense of the term employed?

And as for the use of the word when it is translated "slayer," i. e. when it designates the unintentional homicide; in such a case, after the description of the fact it is never said, רצח, he is a "murderer!" but it is plain, nevertheless, that such a man was not to be treated as innocent. He was assumed to be guilty. So sa-

cred was human life, so jealous was the divine Legislator of the strictness of the sixth commandment, that whoever violated its letter, merely in the external act, was liable to be immediately cut down by the "avenger of blood," and was compelled, if he would avoid this doom, instantly to flee for his life to the city of refuge. And though, when arrived there, no man, whether a voluntary or involuntary homicide, was to be put to death, except at the mouth of two witnesses, testifying to the homicide act and its malicious character; yet, inasmuch as, owing to the absence of witnesses, many murderers might thus escape death, and as all verbal definitions and human judgments are necessarily imperfect, and many cases might arise with circumstances so complicated that it would be impossible to distinguish with precision between the voluntary and the involuntary homicide, as the involuntary homicide would, in most cases, be strictly chargeable with some degree of guilt, at least of imprudence, and as it was important for all to see that no man, by taking advantage of the technical distinctions of the law, or of its cautious provisions in regard to testimony, could intentionally or carelessly kill his fellow-man and escape all punishment; therefore, every homicide, having escaped to the city of refuge, and been there, on trial, acquitted of the charge of malicious murder, should nevertheless be compelled to remain there in custody till the death of the high-priest. In custody, we say; for this answered more nearly to imprisonment among us, than did anything else provided for in the Mosaic code. Such a homicide was not, indeed, shut up within the walls of a prison; but if he durst venture beyond the narrow precincts of his city of refuge, it was at the peril of his life; the avenger of blood might slay him and not be "guilty of blood."

What, then, could be more natural than that, in the spirit of such regulations, the involuntary homicide should be designated by the same technical term which properly designated the murderer? And can this application of the term be fairly adduced as throwing any doubt upon the strict meaning of the word when used without any explanatory connection?

But two extraordinary cases yet remain to be considered—two only out of the thirty-six in the law—two only, we might say, out of the whole forty-nine in the Hebrew Bible.

When it is said, in verse 27th of the chapter from which we have quoted above, "if the avenger of blood *kill* the slayer" who has escaped from his city of refuge; the word translated "kill" is this same *רָצַח*. But before any hasty inferences are made from

this case, we would direct attention to the facts; that this is the only case where the word is used in a similar connection; that it is not said here, the avenger of blood *shall* kill the slayer, as it is repeatedly said above, he *shall* slay the murderer (where of course a different word is constantly used for his act); nor is it even said, he *may* kill the slayer; but only, *if* he kill the slayer under these circumstances, he shall not be himself punished with death, he shall not be held guilty at law. But that the avenger of blood in such a case was not morally free from guilt is more than hinted at by the word employed. *In foro conscientiae* he was guilty of murder; he had slain a man whom the magistrates of his country had acquitted of death; he had shed "innocent blood," as plainly appears by a comparison of this passage with Deut. 19: 10. His act, therefore, though not punished legally, is not improperly designated by the same term which technically designates "murder."

The remaining case is the only one in the Bible which, to our apprehension, contains any real difficulty. Let us see how great that is. In the 30th verse of the 35th chapter of Numbers, the phrase, "shall be put to death," is given as the translation of מָוֹת in the third person singular of the future *active*. Now, it is to be observed that, elsewhere in this chapter, the phrase "put to death," constantly corresponds to some form of מָוֹת, to die; and, indeed, with the exception of one other case (Jer. 18: 21 where it is used for מָוֹת), this phrase is used throughout the whole Bible (how often any English reader can determine) *only* as the translation of the same Hebrew word מָוֹת. And, by the way, this is the word which would certainly have been employed in the sixth commandment, had it been the intention of the lawgiver, as alleged, to forbid the simple *taking away of life*, absolutely, under all circumstances.

In the second place, the original of this verse is very difficult, if not doubtful, so that some critics, Le Clerc for example, have proposed an emendation of the text.

In the third place, the Seventy, apparently aware of the difficulty of the case, have translated the clause, very literally, thus: *Πᾶς παράξας ψυχὴν, διὰ *ζόματος μαρτύρων φονεύσει τὸν φονεύσαντα*. [ed. Breiting. 1730]; of which if any one can make sense, and especially the sense given in our translation, he is welcome.

In the fourth place, without proposing any new rendering, we shall content ourselves with observing that, *if* the common English translation conveys the true sense, the fact that the same

word, in two forms, stands here for the "murderer," and for the act of "putting him to death," is to be explained as an effect of paronomasia; a figure which, as is well known, plays a great part in Hebrew phraseology.¹

Finally, we protest against the criticism which would urge this solitary and difficult, if not doubtful case, to unsettle the primary and proper sense of the word in question, as inferable from its ordinary and almost universal use.

We know it may be plausibly said, and it is all which can be plausibly said, that the word in question is used to express the taking of life excusably, as in the case of the manslayer, as well as maliciously in the case of the murderer; by permission [once only, and hardly by *permission* then], and by commandment [in one solitary and doubtful instance]. We know that this statement can be plausibly made; but whether it can be intelligently and honestly urged against our position, in the light of the foregoing investigation, we leave our readers to judge.

If any more proofs are needed to confirm our position, they are at hand. We add, then, that if the Hebrew word translated kill, in the sixth commandment, do not mean, by its own proper force, and when not modified by any connection, "to murder," then there is no word in the Hebrew language which has that meaning—nay more, there is no word which comes so near that meaning by many degrees. *The word used is by far the strongest and most definite, for such a purpose, which could have been used.*

It is true that the excellent and learned author of the *Manual of Peace*, while he maintains in general that the sixth commandment properly forbids the taking of life, of any life, human or animal, does, a little after, generously admit, that "from the general objects and manner of the communication made at this time, we may infer, [so it seems we may infer *something* from the general objects and manner of the communication; let us remember that.] that the prohibition relates to the taking of human life and not that of brute animals." So much, then, "*may*" be granted; but that, observe, only on the ground of a faltering inference. So that the right of a Christian to kill a calf rests only on the uncertain basis of an inconclusive inference! Perchance he may thereby violate the sixth commandment! It will not do for him to appeal to the covenant with Noah; in this matter of "killing," we are expressly assured, the sixth commandment "was the beginning

¹ We might resort to the *future tense*, as the abolitionists do when driven to straits, but we will not.

of days." The Jews might have been subsequently allowed to kill calves "for the hardness of their hearts."¹

But, seriously, we think we can show that the term in question is limited in its signification, so as not only to exclude the case of killing calves, but a great many other cases of killing; and show it not on the ground of a begging inference, but on the demonstrative evidence of universal usage.²

¹ It is said that some sects in India hold the precept, "Thou shalt not kill," in a sense so absolute that they think it unlawful to *kill vermin, or even seeds* to which they ascribe a vital principle.

² We may as well say that we have examined with our own eyes all the passages—a thousand or thereabout—in the Hebrew, Greek and English Bibles, in which "killing" is referred to in any form. This we have been obliged to do without the aid of a Hebrew concordance, by the help of Trommius and Cruden. From the mass of our results we give below what seem to us the most important additional facts and references.

As above stated, the phrase "*put to death*" in the English Bible, always stands for some form of *חָטַם*, except in Jer. 18: 21 and Num. 35: 30.

"*Smite*" in the English Bible always stands for *חָבַט*, except in Ex. 12: 23 and 21: 22; Num. 24: 17; Dan. 2: 34 and 5: 6. Remarkable are Ex. 21: 12 and Josh. 20: 5, where "*smits*" implies *murder*.

"*Cut off*" corresponds constantly to the Hebrew *כָּרַע*.

"*Kill*," "*slay*," "*murder*" correspond to various Hebrew words as follows: *רָצַח*. The usage of this word has been fully presented above.

רָחַק. This, next to *רָצַח*, is the strongest and most definite word, according to the usage of the Hebrew Bible, to express the idea of "*murder*." It occurs about 173 times, and is translated, once by "*put to death*," Jer. 18: 21; three times by "*murder*," Ps. 10: 8, Hos. 9: 13 and Jer. 4: 31; once by "*destroyed*," Ps. 78: 47; once by "*slayer*," Ex. 21: 16 (11); nine times by "*slaughter*;" twenty-seven times by "*kill*;" and 131 times by "*slay*." The Seventy translate it 109 times by *ἀποκτείνω*, twenty-one times by *ἀποκτενέω*, and the remaining times by various other words.

This verb frequently signifies to "*kill*" or "*murder*," in the same sense with *רָצַח*; [it is used for the act of Cain, for example; the later verb *רָצַח* occurring, for the first time, in the sixth commandment;] but one of its most ordinary uses is to signify *slaying enemies in battle*. It is employed also in a variety of other connections. Three times it has an *animal for subject*, 2 Kings 17: 25, Job 20: 16 and Is. 14, 30; seven times it has an *animal for object*, Lev. 20: 15 and 16, Num. 22: 29, Is. 22: 13 and 27: 1, and Zech. 11: 4 and 7; twice it has an *inanimate subject*, Job 5: 2 and Prov. 1: 32; once it has an *inanimate object*, Ps. 78: 47 [tr. "*destroyed*"]; seven times it is used for *killing by commandment from God*, Num. 31: 17 (twice) and 19, Deut. 13: 9, Ex. 32: 27, Num. 25: 5, Ex. 9: 6; and *twenty times it has God himself for subject*, Gen. 20: 4, Ex. 4: 23, 13: 15, 22: 23 (24) and 32: 12, Num. 11: 15 and 22: 23 [the angel of the Lord], Ps. 59: 11, 78: 31, 34 and 47, 135: 10 and 136: 18, Amos 2: 3, 4: 10 and 9: 1, Hos. 6: 5, Lam. 2: 4 and 21 and 3: 43. Here are about forty cases out of the whole 173, besides that very numerous class in which it refers to killing ene-

The *killing* of brute animals is spoken of in the Hebrew Bible more than three hundred times; but רָצַח is NEVER thus used;

mies in battle. Surely, therefore, it cannot be compared with רָצַח, for the strength and definiteness with which it may denote "murder." We may add that it is never substituted for the latter verb in any repetitions or quotations of the sixth commandment.

רָצַח. This verb might be supposed to rank next. It is, however, either in its Hebrew or Chaldaic form, used but ten times in the Bible. Once it is translated "kill," Job 24: 14; and nine times "slay," "slain" or "slaughter," Job 13: 15, Ps. 139: 19, Obad. 9, and six times in Daniel.

It has *God for its subject* twice, Job. 13: 15 and Ps. 139: 19; an *inanimate thing for its subject* once, Dan. 3: 22; and an *animal for its object* once, Dan. 7: 11. In four cases out of the ten, therefore, it cannot mean "murder."

We may remark incidentally that the fact of this word's being used twice in the book of Job, while it occurs so seldom in the Hebrew Scriptures, and elsewhere exclusively in the later writers, and is so very frequent in the Targums, may be added to the other evidence collected by Vaihinger to show the later origin of the book in question.

רָצַח is translated into English by "smite," times unnumbered; and *always* means "smite," with such modifications as the connection would show, with the English as well as the Hebrew word. It is translated, however, once by "murderers," 2 Kings 14: 6; once by "slayer," Num. 35: 24; sixteen times by "kill," (sometimes, as in Lev. 24: 17, 18 and 21, signifying to kill man or beast, but always when connected with רָצַח, as it is four or five times, it signifies to kill man,) seventy-nine times by "slay;" and eighteen times by slaughter. N. B. While it is translated "slew" in Ex. 2: 12, the same word is rendered "smiting" in verse 11th; from which it would seem that Moses may not have been so much a "murderer" as some have been willing to suppose (See N. Am. Rev. Vol. 62, p. 46); but rather an avenger of the death of his brother Hebrew; not to appeal to his probable consciousness of a divine mission; see Acts 7: 24 and 25.

מָוַת, while, with its derivative forms, it is translated into English by "die" and "put to death" times without number, is also rendered thirty-three times by "kill" and ninety-one times by "slay."

רָצַח and רָצַח are used about 230 times. Among these our translators have rendered it by "kill," "slay" and "slaughter" thirty-eight times; and in the remaining cases they have rendered it by "sacrifice," "offer," and their derivatives or equivalent words. Of the thirty-eight times, it is translated by "kill," (of animals, not for sacrifice,) seven, or perhaps nine times, Ex. 22: 1, Prov. 9: 2, Gen. 43: 16. 2 Chron. 18: 2, 1 Sam. 25: 11 and 28: 24, Ezek. 34: 3, and perhaps Deut. 12: 15 and 21; by "slay," (of animals, not for sacrifice,) four times, Deut. 28: 31 and 1 Kings 1: 9, 19 and 25; by "slaughter," (of animals, not for sacrifice,) ten times, Ps. 44: 22, Prov. 7: 22, Isa. 53: 7, Jer. 11: 19 and 12: 3 [רָצַח is used for "slaughter" the second time in this verse] Jer. 25: 34, and 50: 27 and 51: 40, Ezek. 9: 2 (?) and Isa. 34: 6 (?); by "kill," (of men, not in sacrifice,) once, Lam. 2: 21 [where God is the subject]; by "slay," (of men, not in sacrifice,) once, Ps. 37: 14; by "slay," (of men, in sacrifice,) five or six times, 2 Kings 23: 20, 1 Kings 13: 2, Ps. 105: 35 and 36, Ezek. 16: 20 and probably Isa. 66: 3; by "slaughter," (of men, not expressly in sacrifice,) seven times, Isa.

animals are not *murdered*. Animals and inanimate things are sometimes said to kill; but רָצַח is NEVER thus used; they do not *murder*. In hundreds of instances God commands to kill, smite, slay, put to death; but רָצַח is NEVER thus used [except that single doubtful case already considered]; God does not command to *murder*. In a great variety of cases, God or an angel are said to kill, slay, smite, cut off, etc.; but רָצַח is NEVER thus used; God and angels do not *murder*. Times without number the Bible speaks of killing enemies in battle; but רָצַח is NEVER thus used. Is the killing of enemies in battle then to be called murder? The same cannot be said of any other word meaning to take life

14: 21 and 34: 2 and 65: 12, Jer. 48: 15 and Ezek. 21: 15, 20 and 33 (Eng. verses 10, 15 and 26).

עָרַב , with its derivatives, is used about eighty-five times. Our translators have rendered it three times by "beaten" (with gold) 2 Chron. 19: 15 and 16; once by "shot out" (with arrow) Jer. 9: 8; once by "slaughter" Hosea 5: 2; twice by "offer," forty-two times by "kill," and thirty-six times by "slay." Of the last eighty cases, in sixty it means to *kill or slay animals for the passover or for sacrifice*; in four or five cases it means to *kill animals to eat*, Gen. 37: 31, 1 Sam. 14: 32 and 34 (twice), Num. 11: 22, and perhaps Isa. 22: 13; in four, it means to *kill human beings for sacrifice*, Gen. 22: 10 [Abraham and Isaac], Isa. 57: 5, Ezek. 16: 21 and 23: 39; and in eleven cases it means simply to *kill human beings*, 1 Kings 18: 40, 2 Kings 25: 7 and 10: 7 and 14, Num. 14: 6, Jer. 39: 61 (twice) and 41: 7 and 52: 10 (twice); though in all these last cases its true meaning would be more exactly expressed by retaining the figure of the original and translating by *slaughter or immolate*.

In Lev. 17: 3 we have supposed the meaning of this verb to be to *kill animals for sacrifice*; although Michaelis (Mos. Recht. Art. 169) thinks it means here to *slaughter* in general, without any reference to sacrifice. But surely the former is the prevailing sense of the verb, and it seems to us supported rather than opposed by the context. It is very instructive to compare this passage with Isa. 66: 3 and the context of the latter passage with Isa. 57: 15.

There is but one other Hebrew word which deserves to be noticed in this connection. That is:

בָּיַד with the adj. בְּיָד , which very frequently is used in the sense of "wounded;" and in the sense of "slay," "slain," (chiefly of enemies in battle,) some seventy times.

From all the above facts we think it abundantly evident that there is no other Hebrew word which, according to the *usus loquendi* of the Hebrew Bible, could, by its own proper force, signify so definitely and unequivocally, to MURDER, TO KILL HUMAN BEINGS WITHOUT LEGAL AUTHORITY, as the verb רָצַח which is actually used to express the prohibition in the sixth commandment.

¹ This last class of cases we commend to the special attention of the author of the Manual of Peace, as having a bearing upon his main subject in connection with which he often quotes this very sixth commandment as decisive authority.

that is ever used in the Hebrew Scriptures; and we believe the cases above described include more than nine-tenths of all the cases of taking life mentioned therein.

Does all this look as though the word translated "kill" in the sixth commandment meant to take away life, in any way, and under any circumstances? If any have ascertained such to be its meaning, they certainly did not discover it from the usage of the Hebrew Bible.

We turn to the usage of the Septuagint translators. By them *φονεύτης* is used as the translation of *רָצַח*, sixteen times, and NEVER for any other word.¹ *Φορεύω* is used for *רָצַח* twenty-nine or thirty times, and only nine or ten times for all other words put together.

On the other hand *רָצַח* is ALWAYS translated in the Septuagint by *φονεύτης* or *φορεύω*, with two exceptions. These exceptions are the cases of Ez. 21: 27 (22) and Ps. 42: 11 (10), which we promised to notice again. In the first passage the Seventy have put *βοή* for the Hebrew noun, and our translators have restored "slaughter," [qn. onslaught? sacking? butchery?]. In the second case they have translated the passage by a circumlocution, and our translators have put for the Hebrew noun "sword;" evidently with the right tact, considering *sword* as a general term for any deadly or murderous weapon.

The argument from this general correspondence of usage between the Hebrew and the Greek words signifying "to murder," is strengthened by considering that, among other Greek words used in the Septuagint in the general sense of *kill*, *ἀποκτείνω* alone is used more than 200 times.

Finally we turn to the authority of the New Testament. Here we ALWAYS find the sixth commandment translated by *φορεύω*. We NEVER find *φορεύω* or *φονεύτης* employed in any other sense than that of "murder;" while the word *ἀποκτείνω* is employed some seventy times in the various senses and applications of which *kill* is susceptible. How would it sound for a universal command, *μὴ ἀποκτείνης*?

We cannot but think it demonstrated, therefore, as far as anything in the use of language can be demonstrated, that the sixth commandment, according to the inherent and proper force of the Hebrew verb, means neither more nor less than, "NE HOMICIDIUM COMMITTITE," "Thou shalt do no murder."

We are aware this whole tedious inquiry will be considered by

¹ Except in some copies once.

many as a work of supererogation ; (and in that case we hope not entirely without *merit* ;) or perhaps as a foolish waste of time and pains. But if we have been fools, we have been so in answering far wiser men than ourselves according to their folly. We have seen and heard the assertion here controverted, so often reiterated by the assailants of capital punishment, until it has become, as it were, a stereotyped head of argument or rhetoric, that we thought it high time to have it thoroughly sifted. In attempting to accomplish that task, we have taken a great many more words than would be required for a very effective declamation on the other side. But let it be remembered, that as it is easy to make a true assertion which it might be very difficult to prove, so it is easy to make a false assertion which it may be very difficult to disprove.

But now, suppose our whole investigation in regard to the proper lexicographical meaning, or rather the true *usus loquendi*, of the term in question, resulted in just nothing at all. Suppose, which is manifestly false, suppose the word might of itself mean, as alleged, "to take life," in the most general and indifferent sense, in connection with any subject, object, or circumstances whatever; still it would not follow that there should be any reasonable doubt about its precise import in the sixth commandment. It seems we may "infer" something "from the general objects and manner of the communication ;" and what inference more natural than that which has been made, apparently, by the Jewish doctors, the Septuagint translators, the New Testament writers, the Christian church, and almost all Christian critics in all ages, viz. that that commandment means simply, "Thou shalt do no murder."

Surely God is his own best interpreter ; and unless He, in the most solemn manner, *commands* (not permits) in one breath what He has just solemnly prohibited in another, the 21st chapter of Exodus (vid. verse 12) and the 35th chapter of Numbers furnish ample evidence that He nowhere forbids the civil magistrate to take the life of the murderer. Is there not just the same evidence that the laws contained in the 21st chapter of Exodus and in the 35th chapter of Numbers were uttered and enacted by the express voice of God, as there is that the Decalogue was so uttered and enacted? And will it do for "Christians" to shrug their shoulders at them, mattering contemptuously the name of Moses? The contents of Exodus 21st were uttered, according to the record, amidst the awful thunderings of Sinai, and immediately after the promulgation of the Ten Commandments, comprising the solemn injunction,

"He that smiteth a man so that he die, shall surely be put to death." The more explicit regulations contained in the 35th chapter of Numbers, are introduced with these words: "And the Lord spake unto Moses, saying, Speak unto the children of Israel," etc.; and that Jehovah is the real legislator, throughout the chapter, is further evident from its close: "Defile not the land wherein I dwell; for I, the Lord, dwell among the children of Israel."

But when we appeal to God's statutory and judicial decisions, upon the meaning of his own fundamental law, this new school of interpreters enter one universal demurrer, in the words of our Saviour on the subject of divorcement: "For the hardness of your hearts, Moses wrote you this precept." But what right have they to apply this saying, the exact import and bearing of which is so uncertain, so as to nullify the meaning of Scriptures to which our Saviour never applied it, and which are perfectly clear and intelligible without it? It is too weak to bear the direct inferences they would make from it; much less ought they to suspend upon it such a huge mass of indirect conclusions. Granting that this oft-quoted saying means all which they assume in respect to the case then in hand, still its application to other cases can, at best, amount to nothing more than a *may-be*; and is this what is called proof? They seem to take for granted that there is not a word of the Mosaic law expressly confirmed in the New Testament except the Decalogue. But this is far from being the case. "Thou shalt not avenge;" "Thou shalt love thy neighbor as thyself;" and, "Thou shalt love the Lord thy God with all thy heart," etc., are express commands of the law of Moses expressly confirmed by our Saviour. Suppose, now, we should argue from these premises, that, *may-be*, this or that other law, nay, all the rest of the Mosaic code, has also been thus implicitly confirmed? But our opponents have not even room for a *may-be*, in the present instance. Hear the words with which Jehovah concludes the enactment of the laws referred to:

31. Moreover, ye shall take no satisfaction for the life of a murderer which is guilty of death; but he shall be surely put to death.

32. And ye shall take no satisfaction for him that is fled to the city of his refuge, that he should come again to dwell in the land, until the death of the high-priest.

33. So ye shall not pollute the land wherein ye are; for blood it defileth the land; and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it.

34. Defile not therefore the land which ye shall inhabit, wherein I dwell; for I the Lord dwell among the children of Israel.

Now what sort of a cause must that be, which feels driven to the necessity of maintaining, that these laws were not enacted as being right and good and well pleasing to God, but merely as a temporary indulgence to the savage character of the Jewish people? Yet the assailants of capital punishment generally, and the highly respected author of the *Manual of Peace* among the rest, have agreed to say that those laws, for which God himself thus gave his own reason, were given to the Jews because of the "hardness of their hearts!"¹

We confess that we see such assertions, from such men, with unfeigned and unspeakable amazement. What, then, could God have said more than he did say to make his design and meaning clear? Is it uncharitable to ascribe it to *their* "hardness of heart," (taking the phrase in the sense which it has in Mark 16: 14.) that they fail to perceive that those words of the Almighty will bear no such interpretation as they feel compelled to put upon them?

But, say they, if civil governments have a right to break the sixth commandment, and commit murder upon the murderer, why have they not also a right to break the eighth, and steal the property of the thief? We answer, that if these gentlemen will define what they mean by "property," and by "stealing," they will leave us nothing to do in demolishing their objection. According to their present argumentation, it will clearly follow, that all compulsory restitution, all legal seizure of the property of the thief is "legalized stealing." It is so by their own showing, just as much as the legal execution of the murderer is "legalized murder." There is no avoiding this conclusion. They have offered their own issue.

¹ Some seem to think they can evade the authority of the law of Moses by quoting Ezek. 20: 25: "Wherefore I gave them also statutes that were not good, and judgments whereby they should not live." But the same prophet had already described the law given at Sinai thus: (10th and 11th verses) "I brought them into the wilderness, and I gave them *my statutes*, and showed them *my judgments*, which, if a man do, he shall even live in them." To which class, now, is Exodus 21st to be chronologically referred, to that described in the 25th, or that described in the 11th verse? Besides, by comparing the 25th and 12th verses, it would seem that what God *permitted*, rather than what he *positively ordained*, is there referred to. Or, will any choose to say that God positively commanded the Israelites to offer their children to Moloch, (verse 26th)? a question which may serve to disclose the impious absurdity of the whole supposition we are here controverting. What will these interpreters say to Malachi 4: 4: "Remember ye the law of Moses my servant, which I commanded *unto him* in Horeb for all Israel, [with] THE STATUTES AND JUDGMENTS?" Such is the solemn admonition with which the Spirit of prophecy sealed up its revelations, until the coming of the Messiah and of Elias his forerunner.

and let them abide by it. For a mere private citizen to take the life of a murderer, is doubtless murder; and so for a mere private citizen to take the property of a thief, though it be to make just restitution to himself, is doubtless theft. But these men apply the same principle to the case of the magistrate. Has the civil magistrate, has civil society, no more right or power than each private citizen? So they seem to argue. And yet this very objection is urged not only by recluse divines, but by practical lawyers and legislators! See the unanimous Report of a Committee of the New York legislature, drawn up by Mr. O'Sullivan, p. 23.

We have thus defended the right of inflicting capital punishment against all the arguments, so far as we know, adduced from the Scripture in opposition to it. We have shown that this right, proclaimed by the consent of nations and the common voice of humanity, is not contradicted by the voice of Christ, the spirit of Christianity, or the letter of the sixth commandment, but rather confirmed by them all. We wish it to be distinctly understood, that our argument, thus far, has been strictly *defensive*.

But we shall not leave this branch of the inquiry without referring to one *positive* argument from Scripture, which, if not irrefragable, certainly has never been refuted; we mean that founded upon the command addressed to Noah, and through him to all mankind: "Whoso sheddeth man's blood, by man shall his blood be shed; for in the image of God made he man." The abolitionists generally affect to consider this text as quite unimportant. Yet they have turned it over and over, and wistfully examined it on all sides, if perchance they might detect some flaw in it. They have twisted, and wrenched, and tortured and tested it by all manner of critical and uncritical machinery and manipulation, in order to extort or extract from it some sense not absolutely contradictory to their notions. But, to this day, they have never agreed among themselves upon any other translation of it, than that which is given in the common English Bible, and which, for substance, has been given in almost all versions which have ever been made. But, say they, it is a solitary, antiquated, difficult text. As to its solitariness, is not a solitary command of God, authority enough? As to its antiquity, it answers our purpose the better for that. And as to its difficulty; wherein does it consist? We are bold to say that, grammatically and lexically considered, it contains as little difficulty as the average of Hebrew texts. If we cannot be reasonably sure of its meaning, we may give up the Hebrew Bible altogether, as little better than the Sphinx's riddle.

There are none so deaf as they who will not hear, none so blind as they who will not see. The text is indeed a difficult one, a grievously difficult one, for those who are determined not to receive from it the simple sense which lies upon the face of it.

Some have professed to think it satisfactorily set aside by being resolved into a mere prediction. But, even considered as a mere prediction, it would prove too much against them; since, coupled with the reason assigned, the predicted act of shedding the murderer's blood, would seem very plainly to be approved by God as proper and right.

Others, seeing this, have preferred the interpretation: "Whatsoever sheddeth man's blood, by man shall its blood be shed;" a translation, by the way, to which we have not the slightest objection, provided only it be rightly understood by the English readers. No critic of common sense, who could spell a Hebrew word, ever doubted that, in the original, the idea of *man* was *included* as the agent in the shedding of human blood; the term "*whatsoever*" was originally suggested in order to *include* the idea of the *beast also*, which was thought to be equally implied in the original; but some of the abolitionists who resort to this rendering, have been stupid enough to suppose that the idea of *man* as the shedder of blood was thereby *excluded*, and that in spite of the manifest exigences of the connection.¹ The same acute in-

¹ See Chapin's Three Discourses, Boston, 1843, p. 17. Also O'Sullivan's Report, p. 27.

Mr. O'Sullivan ventures to allege, as his authority, "that *profound and learned critic* Michaelis of Göttingen, who, in his commentaries on the laws of Moses (ch. 4. art. 274) says expressly: 'the sixth verse must be rendered, not *whosoever*, but *whatsoever* sheddeth human blood.'" Now, turning to the Article referred to in Michaelis, we read as follows: "*Whosoever* creature sheddeth human blood, be it man or beast, by man shall its blood, in like manner, be shed, Gen. 9: 6; for, according to the tenor of the preceding verse, where beasts as well as men are mentioned, and where God had said that from men as well as beasts he would require the blood of man, not, indeed, *immediately*, but, as he himself expressly declares, by the instrumentality of man, to whom he assigns the duty of avenging it, the sixth verse is to be rendered not *whosoever*, but *whatsoever* sheddeth human blood, so as to include beasts AS WELL AS MAN." We have before us the 2d edition of O'Sullivan's Report, and Smith's Michaelis, Lond. ed. 1814. We are amazed at Mr. O'Sullivan's quotation from the "profound and learned critic of Göttingen." We have no respectful words by which to characterize such audacious garbling.

Our statements, in the text above, had been written before we saw Mr. O'Sullivan's Report or consulted Michaelis. The Report fell under our notice first, and when we saw the citation from Michaelis, we feared that we had expressed ourselves quite too strongly; but how great and agreeable was our surprise, on

terpreters insist upon the phrase, "At the hand of every man's brother will *I require* the life of man," as proving that man is not authorized to execute the judgment *upon man*, but God is to do it in *propriâ personâ*; as though it was not said, "at the hand of every beast will *I require* it," also. Is God, then, to execute the judgment upon beasts in *propriâ personâ*? Another thing is observable; these interpreters abandon the theory of a prediction in connection with the sixth verse, as soon as they think they can confine it to the punishment of beasts, apparently thinking it a sense intolerably jejune to suppose the Almighty to have solemnly announced to Noah and his sons the momentous prediction, that if a beast should shed human blood, the beast's blood would probably be shed likewise. The verb, therefore, they think to be *imperative*.

Others have contrived different, and still different ways of obtaining a sense to suit their purposes. We may not ascribe such efforts to dishonesty, but is it uncharitable to ascribe them to prejudice?

At length, none of the old hypotheses having given general satisfaction, a new hypothesis has just been broached;¹ viz. that this statement to Noah contains no reference whatever to murder or manslaughter, but simply prohibits cannibalism! Against this crime, however, it seems to be acknowledged a punishment is denounced.

This hypothesis is put forth with an imposing display of various linguistic lore. Its sacred sense, laid up originally in the "sanctuary of the Essenes, the depositaries of the Jewish spiritual philosophy," [is not the Christian, the New Testament philosophy, spiritual enough?] and transferred thence, (by what cabalistic process one does not exactly understand,) into the "mystic" head of Monsieur D'Olivet, has been now at length raked up from some long forgotten essay, in which D'Olivet undertook to "restore the Hebrew language," by translating the *spiritu* instead of the *letter*.

Such is the pedigree of the theory. We have heard before of *spiritualizing* texts of Scripture; but this is the first time we ever heard of applying this process in the very act of translation, of

turning to Michaelis, to find that his authority was altogether against the very opinion for which Mr. O'Sullivan quotes him, and precisely coincident with our own views!

¹ Vide "Cannibalism, the crime prohibited in the ninth chapter of Genesis," by John W. Browne. Boston, 1846. Charles and John M. Spear, Publishers.

substituting the spiritual sense to the entire exclusion of the literal sense, and thus getting rid of the latter altogether by rendering it nonexistent. This is a refinement and perfecting of the process of spiritualizing which is doubtless destined to work wonders. Who can tell what metamorphoses this process may not produce? What an entire revolution in the whole business and art of "correct translation?"

The present herald of this "spiritual" hypothesis, professes to have devoted himself to the study of the passage in question, after having first carefully divested his mind of all prejudices and prepossessions; and invites others to follow his example of unbiassed, childlike simplicity. Yet, in another place, he admits that he "*presumed* a mistranslation" in what he is pleased to call "James's Bible." That is to say, the only prejudice he had in his mind was, that, at all events, the sense of our present translation was not the true sense. Let others follow him thus divested of prejudice, and very likely they may reach the same results. Dr. Strauss, in his *Leben Jesu*, insists strongly upon his claims to the almost solitary honor of bringing to the criticism of the Gospels a mind swept perfectly clear of all prepossessions and assumptions; and then goes on to reduce the whole history of Jesus—that title-deed of man's salvation—to a mere myth, a pious fable! Let us not be charged with appealing to the *odium theologicum*. Indeed the throwing out of this charge commonly implies in the bosoms of those who make it, the existence of that very intolerant spirit which they assume in others and profess to rebuke. We do not mean to charge any one with being an infidel either openly or in disguise like Dr. Strauss. Surely a man may believe in antediluvian cannibalism and yet be an honest man and a good Christian. What we do mean to say is, that these claims of superior freedom from prejudice are mere idle talk, or something worse.¹

Are this writer's notions of the origin of the Mosaic code to be inferred from the following passage? "If the law of degenerate,

¹ We cannot forbear quoting one passage from the Essay containing this new theory; because it is so distinct an acknowledgment of the truth of our positions in regard to the general consent of Christians on the main subject of our present discussion. "It is to be taken," says this writer, "that the great body of all persons who are inclined to orthodox views of religion, with the orthodox clergy at their head, sincerely believe capital punishment sanctioned by the express revelation of the voice of God in that chapter of Genesis. The shadow of this belief, more or less dark, as it may be, rests upon almost the whole heart of Christendom."

godless human society had not *first assumed* to punish crime with death, *out of its own evil and fallen state, on the authority of its own passions and darkened heart*, would this passage [in Genesis] ever have been resorted to as Divine sanction for that penalty?"

That *he* knows no human code, any more than we, which inflicted the penalty of death for murder, before the Mosaic was enacted, is clear from another passage, from which he thinks to draw various important inferences. "From the beginning of Genesis," he says, "down to the Mosaic code, from Cain down, no murder which is mentioned in the Bible, and there are several, is stated to have been punished with death."

Others, as well as he, have constructed long arguments¹ to prove that, because God did not directly and personally carry into effect the laws, which, most expounders of the Scriptures declare, he made for inflicting on the murderer the penalty of death, therefore he never made such laws! As though any body had ever maintained that the Almighty constituted himself the direct executor of the commands which He addressed to others.

Dr. Cheever had suggested the idea that the principle of lenity, exhibited in God's treatment of Cain, had been so abused by the antediluvian world, that murder had become rife among the crimes—the deeds of violence, which called aloud for the Divine vengeance. And this experiment of lenity having proved thus signally abortive, a severer course of administration was divinely instituted, immediately after the flood. This suggestion seems to have been a special offence to the abolitionists, over which they have stumbled headlong one and all. And no wonder. It threatened to take out of their mouths one of their most familiar topics of declamation. They have generally dismissed it with a sneer, as though Dr. Cheever, or any man in his senses, had suggested that God tried this experiment for His own instruction, and not for man's correction. Dr. Cheever doubtless meant that these gentlemen might learn something from the experiment themselves, not that God had learned anything from it.

But it is a mere assumption, they say. Suppose it is; is it not as good and as likely as some other assumptions, until it is disproved? It has some show of evidence; else, what means the infallible statement: "the earth was filled with violence?"

Now the author of this new theory of primitive cannibalism, *though he cannot bring a solitary instance in point of fact to prove*

¹ Vide North American Review, Vol. LXII. p. 46.

his theory—and Dr. Cheever has one, the instance of Lamech—yet, having no longer any motive to reject the principle of interpretation on which Dr. Cheever's inference is founded, accepts it and enlarges its application. "But," says he, "what was this mystery of wickedness, this solemn *all flesh had corrupted his way on the earth*, and *the earth was filled with violence*, so that it must be drowned in the baptismal waters of a flood to cleanse it? May it not be this very thing? (i. e. antediluvian cannibalism). What could like this fill up the measure of all iniquity, and make an exterminating flood-baptism needful?"

In short, therefore, says this theory, it ought not to be a capital crime merely to kill a man; it is heaven-daring impiety to punish the mere murderer with death; the real crime consists in eating the man you have murdered; only abstain from the eating, and all is well; but whoever eats a man shall——be eaten in turn! This seems to be the only consistent sense to be made of all this learned and spiritual exegesis about primeval cannibalism, when the different parts of it are put together.

But in all seriousness, dismissing this novel theory, we beg leave to ask those who not only deny that the right to inflict capital punishment can be founded upon this text in Genesis, but who also maintain (as the abolitionists do, almost with one united voice) that the infliction of the penalty of death upon the murderer is as much *murder* as the act for which it was inflicted—we beg leave to ask them, what sense, on this theory of theirs, they make of the text, whether considered as a command or a mere prediction: "Whoso sheddeth man's blood, by man *shall his blood be shed, for in the image of God made he man?*" According to this doctrine, it will be observed, if the first shedding was a crime, the second is equally so; and then comes in, *as a reason for both*, "for in the image of God made he man"!!

As to the question whether this passage do indeed contain a command or a prediction; it is perfectly clear, there is no occasion for appealing from the English "shall be shed" to the original, under the pretext that the original throws any new doubt or any new light on this particular point. It is true that the English language has another and more unequivocal form for the future; but it seems to be forgotten that it has also another and more unequivocal form for the imperative. The original language has no other form for either, and may therefore be understood here in either sense; and so may the English by which our translators have rendered it. How then would you get a more faithful trans-

lation? *Is it desirable absolutely to decide, IN THE TRANSLATION, a question which the original does not decide?* The defenders of capital punishment have shown no such desire. They are constant, and always have been, with the translation of the verb as it stands. No phraseology, in English or in any other language, could convey the precise impression of the original, with all its two-fold associations, with all its definiteness and all its ambiguity, (if it have any,) better than the simple English "shall be shed." To appeal from this to the original as being more indefinite or more ambiguous, is merely throwing dust into the eyes of the unlearned; and betrays the weakness of the cause from which the appeal proceeds.

The English translation, in this particular at least, furnishes just as good a basis on which to construct the meaning of the text as the original does. What then is the meaning? For an answer to this question, we appeal to all the readers of the English Bible, to say whether the first, obvious and unprejudiced interpretation of the passage is not that which receives from it the impression of a command? We cannot doubt the answer.

We believe it to be a command; but we do not therefore believe it to be binding, *ad literam*, as a mandate of absolute, universal and perpetual obligation. We believe it to be a command addressed to reasonable men, as reasonable men, couched in the most general terms, and left to their conscience and common sense to be interpreted and applied according to the exigencies of times, places and circumstances. We believe its expressed purpose, viz. to preserve inviolate the image of God in man, to be of vastly more consequence, according to the true *animus* of the divine legislator, than the precise manner in which that purpose is to be secured. Still we cannot but find in this connection, a clear *authorization*, at least, for the infliction of capital punishment for murder, whenever and wherever men find such infliction expedient for the protection and security of human life. And we confess, further, that the existence of such a command, made on such an occasion, does, to our mind, create a strong antecedent *probability*, that the infliction of this punishment for this crime *will be* expedient, as long as the descendants of Noah continue in their present fallen state upon earth.

But some say, if we are to understand this as a command, then we must take it just as it stands, without any explanations, exceptions or modifications; and consequently we are as much bound by its absolute requirement to execute the hangman (not

to say the sheriff, judge, jury, legislature, nay the sovereign people themselves, of whom the others are only the representatives and agents;) as we were to execute the murderer, whom the hangman has just killed. The utter absurdity of such suppositions is a sufficient proof of their fallacy. Indeed, assume as true the meaning which these gentlemen attach to the sixth commandment, and the conclusion they have reached would be equally applicable to all the regulations of the Mosaic code requiring the murderer to be put to death; from which it would follow that the first murder that should be committed after the enactment of those regulations, would imply the extermination of mankind *seriatim*, after the fashion of the story of the woman and her kid. (We beg pardon for the comparison, but it is as dignified as the objection).

We have said that, supposing this in Genesis to be a command, we also suppose that command to be addressed to reasonable men, and to be received by them as such; and this cuts off the force, not only of such supposed objections as that above, but of several others equally ingenious, about executing animals, insane men, etc., which have been from time to time invented. To say that because it is a divine command, men cannot be allowed to *interpret it in good conscience and by the light of reason*, is to say that it is impossible for God, by the medium of human language, to convey a command to the human mind. We are not to suppose that in wording his commands God had an eye to the special accommodation of quibblers.¹

¹ It is said that, according to the context, if a man is killed, it is made the duty of his brother and not of the magistrate to shed the blood of the murderer. Be it so. But here again the means are subordinate to the end. Unless this provision had been abused, it might have accomplished the purpose as well, probably, as any other. As every man must have an *heir*, so, in the sense of this passage, every man must have a *brother*. The provision existed, and probably was abused. It is recognized as an existing fact in the Mosaic code, but is guarded, regulated and modified. If, in process of time and under an almost total change of circumstances, regular political societies and governments being established, it is found necessary further to restrain the exercise of this primeval right, or wholly to transfer it from the private individual to the magistrate, we see nothing, according to our view of the original law, inconsistent with so doing; *provided only the end of the law be secured*: *Qui facit per alium facit per se*. The main point is, the end must be secured; and somebody must be empowered to secure it.

But again it is said: by the context we are forbidden to *eat flesh with the blood*; and it is added: "this injunction has never been observed by Christians." We answer that according to Acts 15: 28, it did "seem good to the

But it is asked; if this were understood as a command, why did not men think of obeying it until the promulgation of the Mosaic code? We answer, if such be the fact, then you must cease to wonder at the distinct, stern and stringent provisions of that code on this subject.

Finally, it is said, (as though those who say it did not perceive that they are helping to answer the question they had just asked), that even after the enactment of the Mosaic code, we read of

Holy Ghost and to the apostles" [this is better authority than Moses?] to require the Gentile converts to observe this prohibition. Its object was to guard against idolatry on the one hand, and "savagery" on the other. And though it be by no means expedient in the present state of civilization and refinement among Christian nations, that the prohibition should be expressly incorporated either into the civil or canon law; we, nevertheless, take the liberty to think that it was a wise prohibition for the times; and, for the principle of it, is still binding not only upon every Christian, but upon every man of refined sensibility and cultivated understanding. But it is still insisted that by this law we are directed as much to put the beast to death, which kills a man, as to execute the man who kills his fellow. We think this a good principle too, and civil society has a perfect right to make such a regulation. But we shall be told of a horse throwing his rider and killing him, and similar cases. We answer, they are nothing to the purpose. They are not within the intent of the law. But if an ox or a horse, from the impulse of a *vicious* temper violently assault a man, run upon him and kill him; we are disposed to think it a wholesome regulation that the beast should be put to death. Such was the regulation which God condescended to make in the Mosaic code; thus interpreting, (as any reasonable man except our modern ingenious critics must have done before,) the meaning of the general enactment in Genesis. It is true that in putting the beast to death we cannot make the example a terror to other beasts; but, if we could, it would be an additional reason for his being killed. And if Christian governments have not enacted such a law in modern times, it is either because they do not deem it needful or expedient; or it is because they have a less sensitive regard for the sanctity of God's image in man than their maker would have them cherish.

But it is triumphantly said, no Christian government has forbidden eating blood, or requires the execution of capital punishment upon beasts. Be it so. What does that prove? That they have not enacted the infliction of capital punishment upon the murderer? The inference is strong. That they have not professed to derive their right for the infliction of capital punishment from this passage in Genesis? The inference is false, in point of fact. That they are inconsistent? Still it would remain to show, in which scale the change should be made so that the balance of consistency might be restored. But according to our view there is no inconsistency at all. We regard the text in question as containing a general principle, couched in the form of a command, but which is after all not so much *mandatory*, perhaps, as *permissive* and *advisory*; but which, at least, confers a right, in all the particulars of it—a right whose exercise is to be determined according to the exigences of time and place.

many murderers who were not punished with death; as David, for example; one favorite instance for all. We admit the fact. But now for the inference. Is it, that the law of Moses, therefore, did not exist? Or that its enactment had been only a divine farce, meant for temporary effect? Or is it not rather that the law, a divine and therefore a wholesome law, existing in all its force, was not executed? We think the last is the most likely inference. And we find other evidences of its truth. It is one of the most frequent complaints which God makes of his people by the mouth of his prophets, that they do not "execute judgment," that "violence" abounds; that the land is "polluted with innocent blood," from which God had told them it could be cleansed *only* by the blood of him that shed it.

We repeat, therefore, the solemn divine admonition, "Whoso sheddeth man's blood, by man shall his blood be shed;" and hold that it contains in it a voice of universal warning and of universal right; of warning, to the murderer; to the magistrate, a right of punishment. The abolitionists may stumble at it, and stumble over it, as they will; they can never move it out of their way. There it stands, and there it will stand forever.

[To be continued.]

ARTICLE V.

ON THE STUDY OF HOMER.

The Iliad of Homer, from the Text of Wolf. With English Notes.

By C. C. Felton, Eliot Professor of Greek in Harvard University.
New and Revised Edition. Boston: James Munroe & Co. 1847.

By James E. Boise, Professor of the Greek Language, etc., Brown University.

WE hail with peculiar pleasure the appearance of a new edition of Felton's *Iliad*. In this age of books, when the press teems with innumerable productions, like flies in a summer's day, just entering on their brief existence, it is pleasant now and then to be reminded of the past, to converse with those colossal minds which flourished when Carnac and the pyramids were built; and the monuments of whose genius, unlike those astounding piles of