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also *scire*, e. g. de Orat. II. 22. 91: *sed tamen ille nec deligere sci-  
vit*; and *discere*, e. g. de Orat. II. 16. 70: *etiamsi haec nunquam  
separatim facere didicisset*, and *perdiscere*; Ibid. 69: *qui hominis  
figuram pingere perdidicerit*. An example of a peculiar use of an  
infinitive after *possum* may here be mentioned. Cic. pro Caecina  
XVII. 50: *Potest pulsus, fugatus, ejectus denique; illud vero  
nullo modo potest, dejectus esse quisquam*. This whole passage af-  
ter the proleptic *illud* is very peculiar.

† 613. *Cupio* is not followed by *ut* in Cicero. Here also belongs  
*cogito* in this sense. Cf. Sic. pro Sext. XXXVIII. 81: *siquidem  
liberi esse cogitaretis*; Ibid. 82: *ut—Graecum illum suum—occi-  
dere cogitarint*; pro Mil. XX. 53: *qui ipsius loci spe facere impe-  
tum cogitarat*.

Various peculiarities might be mentioned here, but we must  
limit ourselves to the citation of one passage which renders the  
distinction of the different constructions after *concedere* very clear.  
Cic. pro Rosc. Amer. XIX. 54: *Verum concedo, ut ea praeteras,  
quae, quum taces, nulla esse concedis*.

† 614. *Nihil antiquius habeo* is followed by the infinitive in Cic.  
ad Fam. XII. 29. 3: *Nihil ei fuisset antiquius, quam ad Capito-  
nem—reverti*.

† 615. *Suadeo* with the accusative before the infinitive is  
found in Cic. pro Arch. VI. 14; pro Caecina V. 10; with the in-  
finitive only de Finn. II. 29. 96: thus *admonere* in Verr. I. 24;  
*monere* de Finn. I. 20. 66.

[To be concluded.]

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## ARTICLE II.

### CAPITAL PUNISHMENT.

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

[Concluded, from No. XIV. p. 323.]

[It is due to the writer of this Article, and to the readers of the  
Bibliotheca, to say, that the whole of the Essay was prepared  
some months before the publication of the former part, and for a  
destination quite different from its appearance in this Review.  
If therefore the following portion should seem when taken by

itself, to wear too much of a political aspect, we trust it will be excused, partly for the sake of this apology, and partly for the sake of its connection with the more strictly Theological portion which has preceded it. We have not thought it best altogether to omit the portion which follows, because, although considered in relation to the general principles involved, the former part of the discussion is by far the most fundamental and important; yet, considered in practical connection with the particular question in hand, we cannot help regarding the branch of that question discussed in this latter part, viz. the point of expediency, as really containing the substantial and decisive portion of the whole argument to all men of impartial minds and plain common sense.]

Before proceeding to the argument from expediency, we will first dispose of a few miscellaneous objections which have not fallen directly in our way in the foregoing investigation of the question of right.

1st Objection. "Capital punishment is wrong because the innocent are sometimes executed."

If innocent men have been recklessly executed, whenever and wherever it may have been done, we shall be the last to say one word in extenuation of the deed. The wilful execution or procurement of an unrighteous sentence of death, knowing it to be such, we hold, of course to be murder, and murder of the most atrocious die. It adds to the common enormity of the crime the character of a treacherous and nefarious attempt against the moral basis on which the whole fabric of human society reposes. Hence the Jews are properly stigmatized in the New Testament as the murderers of our Lord; although his crucifixion took place according to all the forms of law.

Further, we maintain that all possible precaution against error ought to be taken in capital cases; and a capital sentence never passed or executed so long as there is any reasonable doubt of the guilt of the accused.<sup>1</sup>

<sup>1</sup> By "reasonable doubt of guilt" we do not mean mere uncertainty, for absolute certainty is not to be expected; we mean a reasonable ground for believing that the innocence of the accused is not altogether improbable. "*La certezza, morale non è che una probabilità, ma probabilità tale che è chiamata certezza, perchè ogni uomo di buon senso vi acconsente necessariamente per una consuetudine nata dalla necessità di agire, ed anteriore ad ogni speculazione. La certezza che si richiede per accertare un uomo reo è dunque quella che determina ogni uomo nelle operazioni più importanti della vita. Ma questa morale certezza di prove è più facile il sentirla che l'esattamente definirla.*"—Beccaria; de' delitti e delle pene; sez. 14.

All cases of unjust executions whose occasion falls under these two heads, viz. false testimony or want of due caution in weighing the evidence, are cases of *abuse*. They prove nothing at all in regard to the right, except that, like all other rights, it may be *abused*. Other cases, if there are any, which do not fall under either of these two heads, are to be ascribed to the necessary fallibility of human judgments; and, if they prove that therefore, there is no right to inflict capital punishment upon the murderer, they prove that there is no right to inflict any punishment or in any way to administer legal remedies, until human justice can be raised above all liability to human error. It cannot be denied that more caution, as a matter of fact, is taken in capital cases, than in any other, whether civil or criminal; so much so, that the exceeding difficulty of obtaining a conviction for murder is constantly urged against the expediency of capital punishment by its assailants. Let them agree upon their indictment. They have busied themselves of late most strenuously in making up all the cases that can be discovered or surmised of unjust executions for whatever crime and arising from whatever cause, and are apparently endeavoring to make the world believe it the ordinary rule that no sooner does a capital trial come on than, by some inexplicable fatality, both judges and jury are seized with such a headlong desire to hang somebody, anybody but the right man, that they always convict the innocent and acquit the guilty.<sup>1</sup>

The cases of injustice which they allege are depicted in the most glowing colors and form a great part of the staple of most of their essays on this subject, interspersed here and there as the spice and spirit of the whole.<sup>2</sup> But such things are addressed to men's feelings and imagination much more than to their reason; and would be appropriately answered by frequent pictures of horrible murders and massacres. Let them sift their cases and see how many of them are cases of real, unavoidable error; and then let them show that a liability to error in this case invalidates the

<sup>1</sup> We have heard a good woman urge it as a personal objection to capital punishment, that she lived in bodily fear of being one day hung in her innocence. People commonly think it more important to be protected from being murdered, as the greater danger of the two.

<sup>2</sup> Montesquieu has well said: "C'est mal raisonner contre la religion [on toute autre chose,] de rassembler, dans un grand ouvrage, une longue énumération des maux qu'elle a produits, si l'on ne fait de même celle des biens qu'elle a faits. Si je voulais raconter tous les maux qu'ont produits dans le monde les loix civiles, la monarchie, le gouvernement républicain, je dirais des choses effroyables."—*Esprit des loix*. Liv. XXIV. ch. 2.

right any more than in all other departments of the administration of human justice.

2d Objection. Here they meet us with another objection as a sort of clencher to the first. "Capital punishment is the only punishment which is remediless." We deny it utterly. All unjust punishment is in one sense remediless. Done is done. Besides, it is practically remediless, for rarely, if ever, is any effort made to remedy it so far even as a remedy is possible. This is not all. When a man, after having been imprisoned for a crime one, two, three, four, five, ten, twenty, or thirty years, dies; and is then found to have been innocent; how will you remedy it? Any man may die at any time; are you not, then, afraid to imprison him, lest you should do him remediless wrong? It is said to have been ascertained that some hundreds of persons have been buried alive; must we therefore keep all dead bodies above ground until the air is tainted with the putrefaction? Is no sexton allowed to throw a clod of earth upon a coffin, is no man allowed to have anything to do, directly or indirectly, with a burial, until he has assured himself to a perfect certainty by the evidence of his own senses, that death has actually taken place? In short, will the consciences of good men one day grow so tender that they will not dare to move to the right hand or the left, without first stopping for a demonstration?

3d Objection. We find the objection gravely made in respectable quarters, "that the innocent relatives and friends of the guilty man, who is hung, are made to suffer with him, and often more than he, the disgrace and infamy, etc." How is this to be avoided in any case? Does the infamy attach itself to the punishment, or to the crime? Or is it the mode of the punishment which is most complained of? How came this mode of punishment to be so infamous? How, except from its association with the crimes for which it has been inflicted? Crucifixion was a most ignominious punishment among the Romans; would it be so among us? Do people expect to make murder any more respectable by imprisoning instead of hanging the murderer? Suppose it were possible, is it desirable to do it? Will they not rather make imprisonment more odious? It is now felt to bring some disgrace on a man's friends when he is sent to the State prison. If murderers are sent there too, will it diminish the disgrace attached to imprisonment for other crimes? According to the objection, if any such disgrace or suffering already falls upon the innocent relations of the incarcerated culprit; imprisonment ought

to be abolished. Much more then ought it to be abolished when this disgrace and suffering are increased. And the conclusion from the whole is, that it is wrong to hang or imprison any man who has any friends in the world; but if you can find a man perfectly friendless, this objection abandons him to his fate.

4th Objection. "Capital punishment is retaliatory." The whole force of this objection rests upon a paltry play upon the ambiguity of a word. If it be meant that this punishment is *revengeful*; we deny it totally. We deny that it ought to be, need be, or is any more *revengeful*, than any other punishment—imprisonment for example. If it were we would not defend it a moment. It is just and right. When the protection of society requires its infliction, it may be executed and ought to be executed, from motives of the purest justice and philanthropy. If, however, by its being retaliatory is meant merely that it is the infliction of like for like, and is therefore wrong; we see no force at all in the objection. According to this, if a man is guilty of false-imprisonment, it would be wrong to punish him with imprisonment, because that would be retaliatory; or if a man defrauds or steals from his neighbor, you may require him to make restitution perhaps, but as to any punishment beyond that, you may inflict what you please except taking another cent from him—that would be retaliatory.<sup>1</sup>

5th Objection. "The administration of this punishment is, always has been, and must be, unequal; and therefore unjust." If this objector mean, that all who are capitally convicted should be treated exactly alike—that no pardons or commutations should be granted; then he must settle the question with some of his friends whom he will find bitterly complaining of the unparalleled barbarity of Massachusetts in executing *sixty per cent.* of her con-

<sup>1</sup> Beccaria, the great apostle of our modern anti-gallows philanthropists, has no objection to this sort of retaliation. Of the punishment of false accusation he says: "Ogni governo e repubblicano e monarchico, deve al calunniatore dare la pena che toccherebbe all'accusato." This is the special case to which the principle is applied in the Mosaic code, and for which it has been retained in the canon law. But Beccaria is willing to give it a much wider application. He would have injuries against the person punished corporeally; against property, punished pecuniarily; against the honor, punished infamously. "Che la pena," says he, "sia conforme quanto più si possa alla natura del delitto." "Attentati contro la persona debbono infallibilmente esser puniti con pene corporali." "I furti che non hanno unito violenza dorrebbero esser puniti con pena pecuniaria." "Le ingiurie personali e contrarie all'onore debbono essere punite coll'infamia."—De delitti e delle pene; Sez. 15, 19, 20, 22 and 23.

victs. If the objector complains of caprice or wrong motives in the exercise of judicial or discretionary power, we heartily agree with him in condemning them; but we deny that they are necessary—at least to any greater extent than in most other cases of punishment. Like many other objections, this is as applicable to the administration of penalties and of legal remedies generally as to this particular case. Human laws and their execution are necessarily imperfect; but their imperfection need not, and probably, but for the disturbing influence of such objections, as we have been considering, upon public opinion, it would not be (if indeed it actually is,) greater in this case than in any other.

6th Objection. Some of the Abolitionists say that “the punishment of death is needlessly severe;” and others insist upon it that it is “inadequate to the enormity of the crime for which it is inflicted.” These two objections may offset one another.

7th Objection. “Capital punishment violates the sacro-sanctity of human life.”

The great motive of capital punishment, the only proper motive is, the protection of human life from violation. It is wonderful to observe by what jugglery its opposers are endeavoring to engross all the credit of this motive to themselves. We profess to have at least as much regard for the sanctity of human life as they; and we retort that it is they who would expose it to violation. They are not distinguished from us by any greater regard for the sanctity of human life, but only for the “sacro-sanctity” of murderers. The Roman tribunes were held to possess this attribute of “sacro-sanctity,” so that whatever they might do while in office, it was sacrilege to offer them any violence. These men would have the privileges of such a character attach to all murderers. They would have every murderer possessed of a charmed existence. And this they call a superlative regard for the “sacro-sanctity” of human life! They might as well deny the right of the magistrate (as indeed some of them do) to seize the property of the thief; and then take to themselves the credit of a superlative regard for the rights of property!<sup>2</sup>

<sup>1</sup> Vid. N. A. Rev. Vol. 62. p. 56.

<sup>2</sup> It is a remarkable fact that multitudes of the abolitionists—the mass of them, we should think—are friends of war. Is one of their neighbors barbarously murdered? Such is the sacro-sanctity of human life in their eyes, such the tenderness of their consciences, and such the overflowing exuberance of their Christian sympathies, that they can by no means consent that the villain, who is convicted of having perpetrated the horrible deed, should suffer the pen-

8th Objection. "When a murderer is executed, he has either repented and is prepared to go into another world—and in that case he is certainly fit to remain in this; or he has not repented, and in that case, by taking his life, men send him unprepared into eternity, and consequently consign him to endless torment." This dilemma seems to be considered by many as conclusive of the question. But we utterly protest against thus appealing to the retributions of eternity. It is getting entirely out of our depth, and setting ourselves about business which does not belong to us. But if such objections must be made then we reply, to the first horn of the dilemma, that we never heard of a murderer confessing and deploring his crime in Christian penitence, who did not, as the apostle Paul said he would do, consent freely to die. He has magnified the law whose penalty he suffered. Nay more; men under the influence of repentance and of the instinctive consciousness of the justice and fitness of capital punishment for murder, have voluntarily confessed their guilt and surrendered themselves to the hand of human justice. So much for the guilty but penitent sufferer. As for society, which is represented as endeavoring to replace the loss of one man, good or bad as the case may be, by voluntarily throwing away another man confessedly good; we say, on the other hand, that society gains more good from the imperturbable execution of its just laws upon one such offender than it could derive from the useful lives of many such if they were spared. But we wish to be understood distinctly to repudiate any argument tending to defend capital punishment as proceeding from any motive of benevolence towards the criminal. We do not believe in any such way of showing kindness. The benevolence of the law in this case is not a private but a public benevolence, a love which prefers the lives of the innocent mass to the life of the guilty murderer.

To the other horn of the dilemma, we answer; that by all

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alty of death; such is their fellow-feeling for the criminal, they will move the three worlds to save him from the gallows. But let a foreign people refuse reparation for encroachments or depredations on our *property*, and they are forthwith ready to attack that people with fire and sword, they are willing to spill the best blood of our own citizens, and to cut down thousands of innocent men on the other side—not to speak of helpless women and children! Alas, for the consistency of poor human nature! We saw not long since, paraded in one of the abolitionists' journals, a list of the great men who had espoused their cause, and among the rest the name of Chancellor M'Coun. Soon afterwards we saw a report of the same distinguished gentleman presiding at a war meeting in the city of New York!

means a long respite should be given to every convict before his execution. But if, after such respite he is still unprepared to be launched into eternity, his blood is upon his own head. He has in reality destroyed himself. Living under the known laws of God and nature and human society, he committed a crime whose penalty he knew to be death, and he must abide the consequences. It is not so much the hangman that takes his life, as he that kills himself by the hangman's instrumentality. We ought by all means to beware that we *do the murderer no injustice in this world*. That is our sphere. That is our business. Let us see well to that. And we need not trouble our heads with any fears that God will do him any injustice in the world to come. Let us leave the retributions of the next world in God's hands. They are matters too high for us to meddle with. *If it be any injustice to the executed murderer to suffer endless torment hereafter, if it be inconsistent with infinite benevolence, we may be tolerably sure he will not suffer it.* Further, we are not aware that this objection is often made or much felt by those who believe in the eternity of future punishment. It is thrust upon them as an *argumentum ad hominem*, by those who deny such eternal punishment; and, as thus urged is fully answered by the *argumentum ad hominem*, that, according to the creed of those who urge it, capital punishment, so far from being over-severe or cruel, sends the impenitent murderer from this world, where he might do much harm and could enjoy but little good, directly to eternal blessedness.

9th Objection. "We ought to say to ourselves when a convict is led to execution, 'There goes my father, or my brother, or my son,' and so feeling, how could we think the infliction of capital punishment to be right?"

This reasoning, if good for anything, would strike out all penal inflictions. But we reply, it is false. The great, manly heart of the elder Brutus was to be preferred to all this effeminate sentimentality. He loved his sons, but he loved his country more. He preferred her welfare, her liberty and the integrity of her laws to his private affections and personal happiness. The objection derives its force from sheer weakness and selfishness, and not from the precepts of Christianity. Christianity is not inconsistent, we trust, with the keenest sense of justice and the most enlarged benevolence. We admit the fact that we ought to feel as the objector requires, but we deny the inference. Let the culprit be a son or a brother—and it might be salutary for us to en-

deavor to feel that every convict were thus nearly related to us—still, if he has committed that crime which by laws human and divine is declared worthy of death, we should not refuse to let him die—he should not himself refuse to die. If it were our own personal selves, and we were possessed of right feelings, we should not refuse to die. We ought not so to refuse; and the experience of others shows that we should not as a matter of fact. Now it is surely enough, if we fulfil the royal law according to the Scriptures, to love our neighbor, not merely as a son or brother, but as ourselves.

10th Objection. “The voice of nature, as expressed in the universal, instinctive horror of the hangman and his office, condemns capital punishment.” We answer, that this feeling is not directed exclusively against the hangman’s office, but the same feeling, though in a less degree, attaches to the office of the police-man and the jailor. Indeed it is shared in some degree by all the ultimate instrumentalities in the infliction of penalty. The more ultimate, the more *absolutely necessary* any office is, the *less honorable* it is. Those external functions in our physical economy which are the most indispensable to our existence are deemed the most base. This is a sufficient answer to those who say, “if you consider the office of hangman so necessary, why not assume it yourself?” For the rest, we answer in the words of Diderot, who thought capital punishment inexpedient, and whose views may therefore be considered by our opponents the more impartial. “I have before shown,” he says, “how natural it seems that the laws should have ordained death as the punishment for murder, and that the public feeling was in harmony with those laws. The horror which is felt for the executioner by no means proves that the penalty of death is unjust. That horror arises from the peculiar compassion which man feels for his suffering fellow-man; and which would be the same if he saw him in *that state in which despair does not terminate his woes, but only begins them*: [terms by which Beccaria had described the horrors of that imprisonment which he proposed to substitute for the penalty of death]. Arm the executioner with chains and scourges; make it his office to render odious the life of the culprit; and the spectacle of the sufferings of which he will be the instrument, will make him equally detested; but the penalty he inflicts upon the convict will be none the less just. It is not therefore nature that inspires the horror which is felt for the executioner, but this is rather an instinctive emotion, a physical repugnance which one man feels

in seeing another suffer, and from which I conclude nothing against the goodness of the law."—Beccaria *De' delitti e delle pene*. Nota 66. Diderot might have added that we are probably irritated by the want of feeling which the executioner commonly exhibits, and disgusted by the barely mercenary motives which induce him to undertake the office. But surely it will not do to abolish all offices in society which are usually exercised from base motives, or which are repulsive to delicate sensibilities, or by which men of respectable standing would feel degraded. In short the paradox we meet with here, is of wider application than the abolitionists seem to suppose.<sup>1</sup> They must find better grounds than this before they can demolish the right of society to inflict capital punishment. We recommend them to make diligent inquisition.

We now turn to the concluding branch of our argument; that which relates to the *expediency* of the penalty in question.

We do not flatter ourselves that we have answered all objections and opposing arguments which have ever been urged on the question of *right*; but this we have done—we have honestly and openly met, and refuted as we might, those of the greatest weight,

<sup>1</sup> It is indispensable for the health of our cities that they should be cleansed of the filth that is liable to collect in them. Will these gentlemen volunteer their services? or will they condemn the scavenger's business as inhuman and unnatural?

A petition was some time since got up in one of the States, as we understand, and numerous signed by the leading abolitionists, praying the Legislature to compel the clergy, who were in favor of capital punishment, to perform the office of executioners. This argument is, of course irrefragable; it is useless to reason against a practical joke.

These gentlemen complain lustily that their opponents appeal to the *odium theologicum*! Yet you will sometimes find their beautiful alliterative exclamation: "THE GALLOWES AND THE GOSPEL," "THE GALLOWES AND THE GOSPEL," placarded as the running title of entire articles; and sometimes interspersed in italics or capitals, as the most attractive ornament of successive paragraphs. This sounds to us very like an appeal to some "*odium*." If it is not the "*odium theologicum*" it wants a technical name. What shall it be? The "*odium evangelicum*?" It may be thought this musical paronomasia of theirs contains some latent argument. If so, we would suggest that the argument might be considerably varied and extended by the exercise of a little verbal ingenuity. We might say, for example, "The Bailiff and the Bible! The Testament and the Turnkey! The Prison and the Parson! Jesus and Jails! Our Saviour a Sheriff!! We might extend this principle of demonstration to other departments, and exclaim, for instance, Devotion and a Demagogue! or, Philanthropy and Politics! But, for ourselves, not having the honor to be enrolled in the clerical profession, we are neither hit nor hurt by such arguments, and therefore do not retort them.

whether real or apparent—all, so far as we know, which can plausibly claim a right to the honor of being answered.

In entering now upon the question of expediency we might fairly take for granted that the question of *right* was absolutely settled; that the right of inflicting capital punishment was positively established. But we need not assume so much as that. All that we need take for granted, and so much we shall take for granted, is that the punishment in question is neither shown to be wrong, nor to be obligatory. And we shall therefore recognize no arguments, as of any validity, on this question of expediency, which are based directly or indirectly upon the assumption that it is wrong, inhuman or unchristian. We shall give heed to no insinuations of injustice or barbarity; no aspersions of revenge or malice; no hard names of any kind. Nor, on the other hand, shall we allow any assumption of its being an *absolute duty* imposed by the direct revelations of God's word.

The question on which we enter is purely a practical question—a business matter, to be settled by business men on business principles, disturbed by no foregone conclusions, no pious scruples, no ultra-philanthropic speculations. We here demand an open field. The question which we have just left is a matter of theory; the question on which we enter is a matter of fact. Its decision therefore may fluctuate from day to day, and may always leave room for a great diversity of honest and reasonable opinion.

Our position here is, that, for the crime of murder,—when the guilt is unquestionably established,—it is expedient to inflict the just penalty of death, in order to the general protection and security of human life. In other cases there are other ends of punishment; but this is the only end worth mentioning in this case. And is it not end enough? What higher or more imperative object can be proposed, in the enactment of penal laws, than the protection and security of human life.<sup>1</sup>

<sup>1</sup> Some of our great modern reformers, who seem to think themselves wiser than either man or his Maker, maintain that the protection of society, determent from crime, are no legitimate objects of punishment. *One man*, say they, *ought not to be punished for the good of others*. Thus they would resolve all legitimate punishment into chastisement, and their reforms would reach much farther than the abolition of capital penalties. But that *the determent of others from the commission of crimes is the great end of punishment*, is recognized by Moses. His language is, that *others may hear and fear and shun the like crimes*. Dent. 17: 13 and 19: 20. It is recognized by the apostle Paul, who says, "Them that sin rebuke before all, *that others also may fear*." 1 Tim. 5: 20. It is recognized by the apostles Peter and Jude, both of whom declare that Sodom and

Does this penalty tend to the accomplishment of that object better than any other means? We think that it does. Our reasons for this opinion are; 1st, That no other form of punishment is fitted to produce upon the mind of the community so salutary a dread and such an effectual horror of the crime of murder,—this is a fact of general consciousness; 2d, That no other punishment can furnish so good a security against frequent resorts to

Gomorrh were doomed to destruction “as an ensample to those that after should live ungodly.” 2 Pet. 2: 6. Jude 7. It is recognized by every penal code that was ever invented. Cicero thus expresses the spirit of the Roman law: *ut poena ad paucos, metus ad omnes perveniat.*—Pro Cluentio 46. It is recognized by the common law of England and by the common sense of mankind. Even Beccaria recognizes it in the fullest manner. “Qual è il fine politico delle pene? Il terrore degli altri nomini.” “Il fine delle pene non è altro che d’impedire il reo dal far nuovi danni ai suoi cittadini, e di rimuovere gli altri dal farne uguali. Quelle pene dunque e quel metodo d’infiggerle deve esser prescelto, che, serbata la proporzione, farà una impressione più efficace e più durevole sugli animi degli uomini, e la meno tormentosa sul corpo del reo.”—De’ delitti, etc. Sezz. 16 and 12.

“That profound and learned critic of Göttingen” states the case thus. “The essential purpose of punishments is no other than what is usually expressed in indictments and sentences, viz. to serve as an example to others. And though those who have nothing to do with punishments, and who philosophize in corners without any experience, have, out of those treasures of thoughts, which they denominate philosophy, and in their zeal for the improvement of theology and criminal jurisprudence, brought forward this proposition, that all punishments should have amendment for their object; still the proposition above mentioned, that punishments are meant as an example to others, is so evident, that no man who has to administer justice, can mistake it.” One is surprised to find that Michaelis wrote the following passage so long ago as 1775.

“The doctrine, that the amendment of delinquents is the end of all punishments, which runs counter to the principles of every system of human jurisprudence hitherto framed, has not found, in Germany, so much patronage among lawyers, (because they have so many different punishments before their eyes, which have no such object in view, and yet are necessary,) as among a certain set of theologians, of a new way of thinking, because they have found it useful in combating the doctrine of the eternity of hell-torments. With these theologians, however, I have here nothing to do. They are, indeed, rather too irritable, and too much of a persecuting spirit for me; much more so, at any rate, than the most strictly orthodox divines of the preceding age; of whose persecuting spirit, however, they loudly complain; just like the fat Englishman, who, in a crowd, within a small apartment, took up four times as much room as any other person, and yet growled horribly, on account of the people squeezing him so closely, while yet every one of them required such a wide space for himself.”—Essay on Punishments. Appendix to Mos. Recht. Vol. IV. pp. 371 and 458.

How wonderfully permanent are the traits of national — and of some other — characters!

"Lynch-law," and methods of popular and private vengeance ; and 3d, The good effects of this penalty as shown by the results of statistical comparison.

As to the first point of appeal. We do not refer exclusively or particularly to the seared consciousness of a few hardened villains—though we have no doubt that if that could be fairly reached, it would be found, in a vast majority of cases, strongly in our favor—but we refer to the common, natural consciousness of mankind, the ordinary, pervading feeling of the community. Our aim looks beyond mere temporary expedients. The great object, as we understand it, should be, not so much to deter a few hardened villains from committing murder, as to prevent others from becoming so depraved and reckless as to be capable of its commission.

We have in view a gradual, permanent, universal, educating influence ; an influence, therefore, which is not *immediately* terminated by the abolition of the punishment, nor could it be immediately restored by the restoration of the punishment after it had been once abolished. This silent, educating influence of penal law we consider by far the most important of all the influences which such laws can exert.

Let us not be supposed, however, to think that the influence of penal laws is the only or the greatest restraining influence in society. Far from it. There are many other influences of far greater power and efficiency. Still, neither in the case of murder nor of other crimes, can we, consistently with the highest welfare of society, dispense with this other and added influence of penal laws and penal inflictions ; and this is an influence, taken all in all, by no means to be despised as comparatively inconsiderable. That was a sound sentiment of Blackstone, which we have already quoted in another connection, " When men see no difference made in the nature and gradations of punishment, the generality will be led to conclude there is no distinction in the guilt." Here the educating power of the law upon the mass of society is distinctly recognized. And indeed this silent influence of the law in all departments not only in determining the public conduct, but in moulding the public conscience, is greater than is always supposed. A statute of limitations, for example, to the coercive aid of the law in the collection of debts, is doubtless expedient ; yet, though it is manifestly no limitation to the moral obligation of payment, how many, who would take fire at being thought anything less than honest and upright men, do neverthe-

less feel, more or less consciously, that when the statutory limitation is passed, their obligation is somewhat diminished?

If other crimes, therefore, are punished with the same penalty as murder, they gradually come to be considered as not differing much in enormity; and this effect follows as much when capital punishment is inflicted for murder and other crimes indifferently; as when, that punishment being abolished, imprisonment is awarded to all alike. In the former case human life is cheapened by the needless frequency of executions; in the latter case, by the trifling rate at which it seems to be estimated; and in both, by the withdrawal of all legal motive to abstain from murder after the commission of other crimes, and sometimes it may be, by the additional motive furnished for the commission of murder in order the better to conceal the antecedent capital offence.

We would have a horror inculcated for the crime of murder different in kind from the horror that may be felt for other crimes. The incomparable and unapproachable value of that which is at stake and is to be protected—the safety and sanctity of human life—demands it. But this peculiar, salutary horror is not to be infused, by a difference of a few years in the term of imprisonment. In proof that the penalty of death is fitted to infuse this horror of murder into the generality of human minds, we have appealed to the common consciousness of mankind; and we might appeal to the whole style and drift of the argument of our opponents on the subject of right, to show that they too share in that ordinary consciousness.

But they meet us with cases of men who have laughed and danced and sung and committed all manner of levities upon the scaffold. There may have been a few, a very few, such cases. But what do they prove? If it be supposed that men of ordinary mental habits will be led in reflecting upon such a scene to say to themselves: "Well, if a course of iniquity can so revolutionize all the natural and moral elements of a man's mind, rendering him so conscience-seared, desperate and demoralized, that, all reeking with the guilt of murder, he can come to enact such a scene upon the very scaffold; then I see no great objection to entering upon a course of crime which will probably lead to the commission of murder and to just such a fearless, hopeless, happy gallows-death;"—if an ordinary man could be supposed to reason thus, then such a case might be urged against our present position; otherwise not. We think he must be already an almost hopelessly hardened wretch who could harbor for a moment

such a course of reflections. And according to our notions and feelings, no case of execution could read to the community generally a more awful and effectual lesson for inspiring an habitual horror of murder and of that course of criminal passions and practices which leads to its commission, than just such an execution as the objector has described.

But it is commonly said and urged with great vehemence by the abolitionists that, "by the execution of the murderer, the civil government sets public example of the commission of the very crime it punishes, cheapens human life, and brutalizes the moral sense of the community." All this may seem very plausible to the consciousness of the abolitionist himself, who holds or professes to hold that capital punishment is legalized murder; but we shall not by any means allow him to take that point for granted here, having already fully discussed it under the head of the *right* to inflict the penalty of death. And unless that be granted, we really see no great force in the objection here, simply because it ceases to have any claims to truth. As to brutalizing the moral sense of the community; this, like many other things now very emphatically repeated by the abolitionists, is a mere echo of a phrase and a sentiment which were very appropriate to the habit which once existed in England of inflicting capital punishment for almost every and any trivial offence. But when that punishment is inflicted only for murder, how that can be said to be a brutalizing of the moral sense of the community which is in fact the most public, emphatic and solemn expression of the detestation and horror which the community feel for the crime of murder, surpasses the acuteness of our vision and the limits of our comprehension to perceive. We will not allude to what irreverent, if not blasphemous, conclusions this objection would lead as applied to the Divinely ordained Mosaic code—that might lead back to the Scripture argument again; but we will say that, on this theory of moral influences, it is hard to understand how, with the almost universal infliction of capital punishment for murder, the world has ever reached its present refined state—a state so refined that on this very ground some have been led to think, with some plausibility, that it might afford now to dispense with capital punishment altogether.

But before dismissing this point, we will add, that if the abolitionists have anywhere, in any State, so far succeeded in perverting and corrupting public sentiment, that, as a matter of fact, the people do generally regard capital punishment as legalized mur-

der; then by all means they had better abolish it. Whatsoever is not of faith, though it be but simply eating a piece of meat, is *sin*.

But it is said in corroboration of the force of their objection above urged, that murders and other crimes are sometimes committed in sight of the gallows, and that villains consider public executions as their great holydays. We think there is much truth in this which deserves consideration; but nothing which properly militates at all against our position. Great popular gatherings always furnish opportunities and occasions for thefts and acts of violence. The sort of people who are most likely to be drawn together at a public execution are the very people most likely to intend or be tempted to commit those crimes. Those people who desire to witness a public execution are precisely the people whom such a spectacle cannot profit. Let executions then be comparatively private. To say that thus we give up the whole principle of their preventive, deterring power, is entirely to mistake the mode in which this or any other punishment operates to deter from crime. The existence of the law, its known existence as a stern, practical fact, must instil, as nothing else in the way of punishment could so effectually do, an habitual, pervading horror of the crime for which such a dreadful punishment is inflicted. The fear of death is by no means ordinarily increased, by being brought close to us. The contrary is the merciful ordination of Providence. The imagination is vastly more efficient here than vision. Does imprisonment lose its preventive efficacy because the prison walls are made of stone and not of glass?

As to another form which is sometimes given to this objection, viz. that hardened wretches have been known to say when convicted for murder, that they did not see "why the government should wish to monopolize the liberty of killing," or sentiments to that effect; we answer that we believe it would be hard to find a case in which a murderer was known really to *have acted* upon any such principle; and to quote the absurd and reckless bravadoes with which some abandoned wretch has attempted to bolster up his courage and smother his conscience in the immediate prospect of the gallows, is a sorry sort of argument to introduce into a serious discussion.

But although the abolitionists, in discussing the question of right, are wont to descant upon the tremendous severity of the penalty of death,—so great and dreadful, they say, as to transcend the sphere of human justice and all the rights of civil society,—

though they charge it as cruel, savage, barbarous beyond measure; if not as absolutely unjust, at least as utterly inhuman and unchristian, *inconsistent with the spirit of forbearance, forgiveness and compassion which characterize the gospel*; yet, when they come to the question of expediency, to consider the influence of punishment as deterring others from the commission of crime, they take great pains to set forth the horrors of that imprisonment which they propose as a most efficient substitute; they depict it in the most gloomy colors, as being incalculably more severe, awful, frightful, than death itself,—and doubtless it needs all their powers of painting and rhetoric to make men believe it; in short, they seem perfectly willing to harrow up a Christian's heart to the very core by the imagination of the appalling sufferings they would have inflicted on the convict.

They may be sincere in all this. But if so, they must give up their claims to superlative kindness and compassion for the criminal; they must abandon their high-flown phrases about the meekness and benevolence of the gospel. Diderot, who believes with them in the superior efficacy of imprisonment (or slavery) as a punishment, honestly confesses this. In commenting upon Beccaria's picture of the horrors of imprisonment, he holds the following language: "So I think, and one cannot fail to be struck with the author's reasons. But I observe that *he renounces, and rightly, his favorite principle of gentleness and humanity towards the criminal. 'Despair terminates not his woes amidst chains and stripes and iron grates, but only begins them.'* This picture is more terrible than that of the wheel, and the punishment which it portrays is in substance more cruel than the most barbarous death."—Note 54 to Beccaria.

"An eloquent writer," quoted with approbation in Mr. O'Sullivan's Report, makes a similar confession. "Indeed we make no doubt," says he, "that the *ennuï*, the repining at imprisonment in a solitary cell would prove *torture more exquisite than all the deaths invented by a Dionysius, a Perillus, a Domitian, or a Nero.*"<sup>1</sup>

<sup>1</sup> If it be said that it is not the external restraint, privation, toil or suffering, which is insisted on as constituting the terrors of imprisonment; but the internal anguish, the upbraidings of the mind, the corrodings of remorse and conscious guilt; we answer that this last is a sort of punishment—most awful indeed—but which you can neither *inflict* nor *remit*, however much you may desire it, whether in this world or the world to come. You need not imprison the murderer in order to bring this punishment upon him in full measure. He must infallibly meet it some time or other. If this is your only ground for imprisonment, therefore, you will not stand on it long. You will soon propose to

But the trouble is, you cannot make men, bad men, believe it. The less of conscience, the less of thought, the less of human sympathies a man has, the less will be to him the horrors of such an imprisonment. Yet such are the men who are to be restrained by it. To say that men, bad men, fear imprisonment of any kind (unless connected with severe *bodily torture*, and we do not understand this to be recommended) more than death, is simply false. One swallow does not make a summer; an exception does not disprove a rule. That an ignominious death is the most fearful of all punishments to any and every *class* of men, is a fact too notorious to allow us to waste time in proving it.

But suppose the fact were otherwise, and suppose you could make men generally believe in all that is said of the transcendent horrors of imprisonment; what would then become of the application of another of the pet principles of the abolitionists, *viz.* that the efficiency of penalties depends more on their *certainly* than on their *severity*, and that their *certainly* is practically in the inverse ratio of their *severity*? If the great practical objection to capital punishment now is that juries are unwilling to find a man guilty, even with the clearest evidence, because of the dreadful severity of the punishment; will they be more ready to bring in such a verdict when you have fairly convinced them that the punishment you have substituted is incomparably more severe and terrific? The truth is, you cannot convince them of it; you cannot make common sense men believe it, and you know you cannot.

But, say the abolitionists, "When the law regards and treats the substitution of perpetual laborious imprisonment as a merciful commutation of the higher penalty of death, the public will generally do the same; [undoubtedly, and so they would, let the law do as it might;] while the former, if standing at the head of the scale of punishments, as the highest and worst, would strike a greater real terror, and operate as a more powerful preventive restraint, than the latter."<sup>1</sup> We suppose we ought to be convinced by reasoning so cogent; but we cannot help asking, what would be the effect on public opinion, if, imprisonment being declared by law the highest penalty, *death were declared a subordinate* punishment, and inflicted for inferior crimes? Would men come to think it to be really so? Opinion and imagination doubt-

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leave murderers to be punished by God and their own consciences in the natural way, without any presumptuous interference of human laws and penalties.

<sup>1</sup> O'Sullivan's Report, p. 110.

less have great influence over us ; but there are some things too hard for them. But, imprisonment being *really* the severer punishment of the two, how happens it that it never occurred to any people, to any legislator, or jurist or man of common sense, to adjust a scale of punishments, in which imprisonment should hold the highest and death a subordinate place ? If, on the other hand, the penalty of death be not introduced into the scale at all, and imprisonment is made the highest penalty, what will you have as the next below it?—and the next?—and the next ? Why, imprisonment forsooth : and so the argument tumbles down on the other side. What new principle of determent, pray, do you introduce into your scale by this ingenious device ? Have we not imprisonment as a penalty now, with all its horrors be they more or less, perpetual imprisonment, imprisonment at hard labor ? How do you propose to make it a higher punishment than it is ? By simply cutting off all that is above it ? That is like making a man taller by cutting off his head. What would be the effect of cutting him down still more ? Would the same rule hold ?

We confess that, for ourselves, we had been accustomed to suppose, not that men feared death most of all punishments, *because*, by a fortuitous concurrence of accidents, human laws had almost universally assigned it as their highest sanction ; but rather that wise and prudent legislators had selected it as the highest sanction of human laws, *because* mankind naturally dreaded it most. But suppose imprisonment can be made, in reality, a severer punishment than death ;—the abolitionists insist upon it, and we are ready freely and fully to admit it ;—still we utterly deny that the generality of mankind can be made to *fear* it more than death. The natural instincts of the human mind are too strong for the refinements of pretended philosophy. Here is the precise point where the argument pinches. Imprisonment (such as the abolitionists have proposed) is the *more cruel* but *less terrible* punishment ; death is the *more terrible* but *less cruel*. If, then, the design of penal laws is, not to take vengeance or inflict wanton cruelty on the offender, but to deter others from offending ; which of the two shall be inflicted ? Will you enact the severer penalty which will deter men less, or the milder penalty which will deter them more ? We do not ask here, which is the more merciful and Christian, but which is the wiser and more expedient course ? Let the abolitionists be consistent and adhere to something throughout. We protest against that Protean style of argumentation, by which, when the question of right is under dis-

cussion, they declaim against the "death-penalty" for its vindictive and unchristian cruelty; and again, when the question of expediency is under discussion, they cry it down because it is not half so severe or cruel as another punishment which they propose as its more efficient substitute. Some of them, it is true, make a lame effort to save their consistency at this point, by affirming that imprisonment is the more *severe*, but death the more *cruel* punishment. Thus the whole fabric of an elaborate argument, on a great practical, common sense question, is made to rest upon the narrow basis of a nice verbal distinction. But such an insignificant basis can no more support it than the Hindoo's tortoise could support the world. Diderot, as will be seen above, was aware of no such nice distinction of words. Nor do the very writers who make it adhere to it any longer than they have in mind the momentary purpose for which it was invented. It is a distinction which in itself is hardly worth making; and when made, their application of it to the case in hand is a mere assumption, whose legitimacy we totally deny. It should rather have been said that death is the *more severe* and imprisonment the *more cruel* punishment.

But you say, we have perpetual imprisonment in our statute book indeed, but it is rarely if ever inflicted; and you propose to secure its perpetuity in this case by a constitutional provision. "This is something;" but, alas, constitutions are easily changed. A little "log-rolling" will carry almost any measure. Let a convict have a few hundred friends, let him have wealthy and influential connections, and it would be strange if they could not form a party of a few thousand voters pledged to insist upon his enlargement. And it would be strange if, *in time*, in the course of five, ten, or twenty years, they should not find an opportunity when, parties being nearly equally divided and party feeling being strong, they might sell their votes on their own conditions. Witness the results of the late elections in New York and Delaware, results which should cause every friend of good order and equal laws to tremble.

But, besides all this, public opinion would not sustain such a punishment as is proposed. Convicts imprisoned for life, would still be, as they always have been, enlarged, on an average, in about six or eight years. One generation will not consent to be the jailors and executioners for their predecessors. They will not consent to inflict or even to witness punishment—"horrible" punishment, intense suffering; when the crime has long since been

forgotten. Their humane sympathies must and will operate without any check.

You may pretend that imprisonment is as terrific a punishment as you please; men who are tempted to commit crime will know all the contingencies, above referred to, and many others still more obvious, tending to show it to be highly improbable that they would have to spend a very long life in prison; they will count upon these contingencies; and you cannot help it.

We shall despatch in few words our second head of argument in defence of the expediency of capital punishment—the fact, namely, that it is the best security against the exercise of private revenge.

We take it for granted that capital punishment is not shown to be wrong; if private revenge is not wrong under the gospel, it is at least inexpedient in well-regulated society. As a matter of expediency, it cannot be questioned that the calm, cautious, impartial, inflexible; the stern yet merciful, infliction of public justice is vastly to be preferred to the precipitate, reckless, cruel, often misguided executions of individual vengeance.

Political institutions must be conformed to the actual state of society; they must deal with men as they are, not as they ought to be. Now there is a great deal of *hardness of heart* yet in the world. There is no people on earth who are all perfect Christians. There never has been and is not likely soon to be such a people. No Utopias or Platonic republics have yet been realized. And those laws are unwise, to say the least, which are based on an assumed perfect state of society, which nowhere exists. When that state is reached we will agree to abolish not only capital but all other punishments.

The abolitionists appeal to public opinion, to the conscientious scruples of jurors to show that capital punishment is inexpedient. We appeal to public opinion, to the settled conviction and feeling of the great mass of mankind, and of our own community, that death is the appropriate and only appropriate penalty for outrageous murder, to show that that penalty is expedient. Abolish it, and sooner or later you will have the ancient Gôel reëstablished with all his vindictive violence, with all his rights and with all their abuse. Abolish it, and though the face of society may now be calm and unruffled, the time is not distant when some atrocious assassination will call forth an uncontrollable burst of popular fury, there will be a tumultuous resort “to Lynch law,” and it would not be surprising if some of our tender-hearted reformers,

who now make such a fuss about the hangman, should be among the foremost in executing the violent behests of the mob. The case of Merton of Philadelphia shows what evil consequences naturally ensue when the law leaves an outrage without any (or, what is the same thing in principle and in practice, *without any adequate*) punishment. A man of Merton's spirit, when wronged, will take the vengeance into his own hands; and, what is worse, will be sustained in so doing, by the acclamations of a sympathizing community. But we will not dwell upon this point, because it may be said to be mere theory and surmises, which, according to the abolitionists, are disproved by *facts*. Let us turn then, finally, to the consideration of their facts and statistical arguments.

They assert that "wherever and whenever the abolition of the punishment of death has been tried, it has uniformly been followed by the happiest results;" while, on the other hand, they charge that "capital punishment has been tried and failed; that it is useless and worse than useless; that it has not accomplished but rather defeated the purposes for which it was designed." Thus they voluntarily take upon themselves the burden of proof; as, in fairness, they, as abolitionists, ought to do.

In support of their first position, they allege three principal instances; the Roman, Russian and Tuscan—instances which have been urged and answered by the abolitionists and their opponents, hundreds of times, probably, within the last fifty years. They are urged still, as if they were entirely new; and, however threadbare, they have a prescriptive right to a place in the present discussion.

In regard to the case of Tuscany we freely confess we know of nothing new. The abolition of capital punishments there, for some twenty years about the close of the last century, is said by the abolitionists to have been accompanied with the happiest effects; their opponents demur. The statistics of the case we have never seen. For aught we know, they might have some weight in favor of abolition. We have repeatedly seen general assertions, but we have never seen the proofs. At all events, if our view of the gradual, educating influence of penal law be correct, the results of so short and limited an experiment could not prove anything very conclusively against the expediency of this penalty. And finally we may fairly ask why the present grand duke, who is known to be a most amiable and liberal-minded prince, and among the most popular in Europe, has not ere this reenacted the abolition which is said to have been productive of such happy

consequences? Surely he knows as much about those happy consequences as the gentlemen on this side of the Atlantic.

The Russian and Roman cases were strongly urged by Blackstone against the indiscriminate infliction of the punishment of death; but lay in his clear mind in perfect consistency with maintaining both the right and the expediency of capital punishment for murder.

As to the case of Russia we do not know that much more than general statements and opinions have been given; chiefly derived from the casual observations of Count Ségur and his conversations with the Czarina herself. It seems that capital punishment has never been entirely abolished in Russia. It is still inflicted occasionally at the express command of the emperor.

In despotisms, where the government and the people feel themselves to be distinct parties, a mitigation of penalties may be received by the latter as a boon. But with us the case is different. The government—it is the people.

But we ask the abolitionists whether they have examined the details of Russian criminal law, and especially whether they have ascertained and considered the character of the penalties substituted there for capital punishment; and whether, after such inquiry, they are ready and willing to make the same substitutions among us? There are, undoubtedly, punishments worse than death;—barbarous, excruciating, protracted tortures; inquisitorial practices; punishments, which, even if they could be imagined expedient, find no shadow of recognition or authority in the word of God, and are utterly abhorrent to the natural instincts and common voice of humanity. What do they think of being starved in Siberian cold, and tortured *ad libitum* by the knout? And how long will they quote from an empress of Russia, with the greatest devotion, the sentiment: "We must punish crime without imitating it; the punishment of death is rarely anything but a senseless barbarity;" when it is remembered that those are the words of the reckless and shameless adulteress Catharine, who reigned by right of having murdered her husband?<sup>1</sup>—truly, just the most natural origin in the world for the Gospel of abolishing the Gallows!

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<sup>1</sup> "To remove every obstacle, prince Iwan, an inoffensive youth was also secretly cut off. The bloody capture of Ismael and the partition of Poland must excite indignation against her conduct, as proceeding from the same corrupted heart which waded to the throne over the carcass of a murdered husband."—*Lemprière*.

As to Rome. The Porcian law is said to have abolished capital punishment, to have been enacted A. U. C. 454, and to have continued in force 250 years. "In this period the republic flourished; under the emperors severe punishments were revived, and the empire fell"

Let us observe the facts more narrowly. In the first place, the date<sup>1</sup> of the Porcian law seems to be placed just 100 years too

<sup>1</sup> Montesquieu, and a multitude more who have copied him, place the date of the Porcian law A. U. C. 454. Adam, in his Index to the Roman Laws, gives the same date, and says it was passed by P. Porcius Lacca, a tribune.—Antiquities, p. 215.

In an Index to the Roman Laws contained in the Bipont Ed. of Cicero's Works, Vol. 3, p. 42, this Porcian law is said to have been enacted by *M. Porcius Cato, tribune, anno DCLIV.*

All the original authorities referred to on either side are Liv. X. 9. Cic. pro Rabin. 3. 4. Ver. V. 63. Sallust. Cat. 51. Cicero and Sallust make no allusion to the date of the law. The whole burden, therefore, falls upon Livy. His words are as follows: Eodem anno [452 v. 453] M. Valerius Cos. *de provocations legem tulit diligentius sanctam; tertio ea tum post reges exactos lata est; semper a familia eadem; causam renovandae saepius haud aliam fuisse reor, quam quod plus paucorum opes quam libertas plebis poterant. Porcia tamen lex sola pro tergo civium lata videtur quod gravi poena, si quis verberasset, necasset civem Romanum sanxit.* Valeria lex, cum eum qui provocasset virgis caedi, securique necari vetuisset, si quis adversus ea fecisset, nihil ultra quam improbe factum adjecit; id (QUI TUNC FUDOR HOMINUM ERAT) visum, credo vinculum satis validum legis, nunc vix serio ita minetur quisquam." Here is manifestly a mere incidental mention of the Porcian law, as being known in Livy's time, and no proof whatever of its date or author. Nor does Livy elsewhere, so far as we can find, give any further account of it. But, about the year 554, he mentions M. [not P.] Porcius Lacca as tribune of the people, and M. Porcius Cato as aedile and praetor.—Liv. xxxii. 7. As this is certainly the age of Porcius Cato and as no other Porcius Lacca is anywhere mentioned by Livy, this is probably the true date of the Porcian law—that is to say, 100 years later than Montesquieu and others have placed it.

Dr. Arnold, in his learned and critical history of Rome, makes no mention of the Porcian law. And this is natural; for of the period from 550 to 650 he gives but a meagre sketch, to connect the earlier and later portions of his history. In the former and more elaborate work, however, after mentioning the passage of the Ogulnian bill, anno 452 vel 453, he adds: "In the same year M. Valerius re-enacted for the third time the famous law which bore the name of his family, and which was, in fact, the Roman law of trial by jury, as it permitted every citizen to appeal from the sentence of a magistrate in capital cases to the judgment of his country."—Vol. I. p. 535, Am. Ed. This Valerian law also expressly provided that whoever should aim to become king *should be punished with instant death.* Vol. II. p. 38, Arnold adds that "the years which followed the passing of the Ogulnian law are politically almost a blank; they present no new law."

Before concluding this note, we cannot forbear commending to the serious

soon. For the evidence on this point, we refer the curious reader to the note. In the second place, this law was introduced not as a matter of criminal jurisprudence, but rather as a popular and political measure, intended to protect the plebeians from the capricious violence of patrician magistrates. This was its democratic side. It had also an aristocratic side. It was a law for the protection of a privileged class. It never applied to the Latins, to slaves, or to the non-citizen classes, who oftentimes constituted the far greater portion of the inhabitants of Rome. Even in the case of Roman citizens, it was scarcely in force except with-

attention of our readers the following reflections of Dr. Arnold on the execution of the Catilinarian conspirators. "On no occasion," says he, "were the faults of the Roman constitution more mischievously displayed than in these proceedings. So ill framed were the laws, that the worst criminals could not legally receive that punishment which our natural sense of justice, no less than the maxims of state policy, declares to be the only adequate chastisement of the worst kinds of wickedness. Thus, although justice and the public safety alike demanded the execution of the conspirators, yet these claims could only be satisfied by an assumption on the part of the senate of a power to dispense with the laws, and by another appeal to abstract principles in order to justify a departure from the ordinances of the existing constitution. The advantage thus offered to a popular leader was not lost upon Caesar; he had now obtained a point on which the *sincere but ill-judging friends of liberty might be induced to sympathize with the vilest supporters of sedition*, and which might effectually terminate that short-lived harmony between honest men of all parties, which had been produced by the first discovery of the conspiracy. It mattered nothing that no traces of a sanguinary or tyrannical spirit were to be found in Cicero's proceedings; that after the execution of five persons, all guilty of the most heinous crime on the clearest evidence, the justice of the government was satisfied. Caesar's ambition required that he should excite the resentment of the people against the senate; and here, as on every other occasion, he sacrificed to it the welfare of his country."—Later Rom. Commonwealth, Vol. I. p. 331.

Cato Minor, grandson of M. Porcius Cato the great censor, himself proverbially distinguished for probity, truth and patriotism, strongly advised the capital execution of the conspirators: Julius Caesar made a strong argument against it; one of the strongest and best, as reported in Sallust, that the abolitionists can find. Such were Julius Caesar's conscientious scruples and bowels of compassion, that he could not bear to have five murderous traitors put to death for the safety of his country; though he was ready to sacrifice no less than a million of innocent lives to his unhallowed lust of personal power!

We trust our modern abolitionists are not generally possessed with the spirit of a Catharine II. and a Julius Caesar. But we fear some of them would have voted for the banishment of Cicero; and, if they had the opportunity, would petition to have Dr. Arnold appointed hangman, as an insult for his honest approbation of Cato's opinions. No character is more suspicious than that of the political "*philanthropist*."

in the walls of the city. It was often violated both by the people and their magistrates. Add to all these facts that the times antecedent and immediately subsequent to its enactment were the most virtuous times of the Roman State. *Qui tunc pudor hominum erat!* exclaims Livy. The severe laws of the twelve tables had educated a race of men of sterner and stricter morality, of more solid and masculine virtue, than the world has elsewhere seen. This boasted law was introduced; the State continued to flourish externally; but morals and virtue went on decaying, till the privileged descendants of those same noble old Romans had sunk to a depth of corruption and moral degradation which we find described in its true and appalling colors in the first chapter of St. Paul's Epistle to the Romans;—an abyss and a loathsomeness of moral pollution from which, not only not the now necessary restoration of capital punishment, but not even the introduction of Christianity itself, could save them. The insinuation that the restoration of this penalty was the cause of the very degradation which it failed to remedy is on a par with Gibbon's insinuation that the Decline and Fall of the Roman Empire were owing to the introduction of Christianity. The abolitionists are welcome to all the strength they can get from the example of the ancient Romans.<sup>1</sup>

From statistical tables of the results of the criminal administration of various countries, they undertake to prove that "the frequency of executions has constantly occasioned a corresponding frequency in the commission of capital crimes; and a diminution in the number of executions has constantly occasioned a corresponding diminution in the frequency of murders and of all crimes formerly punished capitally."

Now we might reasonably set aside all such argumentation as being a most palpable and, coming as it does from intelligent men, a most amazing invasion or perversion of the relation of cause and effect. We might say, the frequency of crimes has not been owing to the frequency of executions, but the frequency of executions has been owing to the frequency of crimes; and so in the case of the alleged corresponding diminution. This is manifestly true when identical times are taken. And if the immedi-

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<sup>1</sup> As to the experiment of Sir James Mackintosh in India, it is enough to say that his successors, wise and practical men as well as he, have not seen fit to follow it up. The probability is, that Mackintosh reaped the harvest which his predecessors had sown; and his successors have been obliged to return to the sowing again.

ately subsequent years are taken in each of the cases, it does not much affect the soundness of their reasoning, for *moral* effects do not so suddenly follow from *external* causes. And finally, when they take long periods for comparison,—as they rarely do with a fair statement of the premises, i. e. without mixing up the executions for all offences capital in one time and place with the executions for murder only in another time and place,—we say, when they take long periods for comparison, they seem to forget the natural result of increasing civilization accompanied with the elevation and increasing comfort of the masses, and ascribe everything to the simple effect of the penal administration.

We might further object that, strange as it may seem, statistics are easily made the most deceptive basis for argument, that can possibly be invented. Let a man pick and pack his facts to suit himself and he can prove from statistics anything he pleases.

But, for the sake of argument, we will waive both these objections. We will admit, since our opponents are pleased to assume it, that the whole effect, in the phenomena of crime, whatever it be, is to be ascribed to the actual administration of the penal law; and we will take their own selection of statistical tables just as they have given them to us. Even then we think we can show, that their own facts not only do not establish their conclusions, but fairly considered, do unanswerably refute them.

In order to restrain this inquiry within reasonable limits, we shall take from among the multitude of statistical statements and reports which they have published, six letters of the Hon. Robert Rantoul, jr. addressed in February, 1846, to the governor and legislature of Massachusetts. Considering Mr. Rantoul's high character and standing as a lawyer and a gentleman, and the fact that he has shown a larger and more devoted interest in this subject than perhaps any other man in New England, we presume the selection will not be objected to. If anywhere we can find a strong case made out for the abolitionists we may expect to find it here.

But even while confining ourselves to Mr. Rantoul's documents we shall be obliged to content ourselves with noting but few of the many cases in which his facts point directly against him.

In his third letter he instances the case of Belgium, where capital punishment was abolished in 1829, and his statistics extend to 1834. We might fairly set this case entirely aside, inasmuch as Mr. Ernst, the Belgian minister of justice, who may be assumed to know something about the matter, in his official report for 1835,

declared himself against the expediency of the abolition judged by its practical results. It is true the abolitionists disputed his views and inferences; still we might fairly reject the case as remaining yet *sub lite*. But let us take Mr. Rantoul's facts as he presents them.

His tables extend over a space of thirty-nine years, from 1795 to 1834. If we divide this time into periods of ten years each, (nine years for the first period,) it will appear by these tables that, taking Belgium exclusive of Limbourg and Luxembourg, the average annual convictions for all capital crimes, in passing from the first period to the second, diminishes 111 per cent.; in passing from the second period to the third, it diminishes 100 per cent.; and in passing from the third period to the last, it *remains without any diminution at all*, exactly stationary. In the midst of this last period capital punishment was abolished; in the first period it was executed with the greatest rigor. And if we confine one side of our comparison exclusively to the period subsequent to the abolition, and select the last of the five years, (which is perfectly fair on Mr. Rantoul's own principles of reasoning,) we find that the number of capital convictions in 1834 compared with the annual average during the fifteen years next preceding the abolition was as 23 to 13.7; compared with the average for the first four years subsequent to the abolition, it was as 23 to 9, and within the same time the annual average of murders had increased from 3.2 to 7. How much has abolition protected the sanctity of human life, according to all this?

But it is boldly asserted that the most gratifying result of the gradual and constant diminution of crime during the thirty-nine years preceding 1834, which the table covers, was owing to the diminished frequency of executions; and the case is put thus: "After the period ending 1799, the [annual average of] executions *increase* thirteen, the [annual average of the] convictions for murder *increase* four. In all the following periods they [both averages] *decrease*."

Now let us look the facts straight in the face. During the five years immediately subsequent to 1799, there was a great *increase* in the severity of the criminal administration and an *accompanying increase* in the frequency of murders. This is just what we should expect. But as men do not commit crimes because they have themselves been hung for it, but rather are hung because they have committed the crimes; if we would not totally pervert the relation of cause and effect, we should look to a subsequent

period—to the next five years, if you please—for the consequences of this increase of severity. And what do we find? Why, we find that in the next five years the annual average of convictions for all capital offences fall off from seventy-one to thirty; and for murder, from thirty to sixteen! From which it would appear that, on the very basis of reasoning assumed by our opponents, the execution of thirteen felons per annum during one five years, saved the lives of fourteen innocent persons per annum during the next five years. And what is more, deterred fourteen miserable men each year from bringing upon their souls the unutterable guilt of imbruing their hands in the blood of their fellow creatures. And even this makes the case too favorable for the abolitionists, for at least one third, (and probably one half,) of the executions, during that period of great severity, were for other crimes than murder. Such was the aspect of facts in 1809. Now a principle of reasoning that was good in 1834 was equally good in 1809; and suppose we planted ourselves at this last date, we ask if the beneficial, protective effects of capital punishment are not fully demonstrated—we mean, on our adversaries' own principles? So much for the experiment in Belgium.

In his fourth letter, Mr. Rantoul takes up the case of Massachusetts, and finds that in a period of sixty-five years from 1780 to 1845, sixty *per cent.* of all the convicts for capital crimes have been executed; and this he denominates “a stern and unrelenting rigor not elsewhere known in Christendom.” It will be remembered that other abolitionists complain of the remission of the penalty in any case, if it is inflicted at all, calling such remissions “caprice, injustice, bold and cruel mockery.”<sup>1</sup> But what is one man's food is another's poison. It would seem impossible to satisfy all demands. We will follow Mr. Rantoul.

“In Massachusetts,” says he, with less executive clemency than in any other State or nation of which I have read, for the nineteenth century, murder seems to have increased. For if we divide our period of sixty-five years into three periods of twenty years each, and place by itself the last period of five years, we have the following result.

|                   |                      |    |              |
|-------------------|----------------------|----|--------------|
| From 1780 to 1800 | convicted for murder | 7  | in 20 years. |
| “ 1800 “ 1820     | “ “                  | 12 | “ “          |
| “ 1820 “ 1840     | “ “                  | 13 | “ “          |
| “ 1840 “ 1845     | “ “                  | 5  | “ 5 years    |
|                   | or the rate of       | 20 | “ 20 years.” |

<sup>1</sup> See North American Review.

"Convictions then," he adds, "are about *three times as frequent* as they were fifty years ago."

So far Mr. Rantoul. He seems to have forgotten that he has made his period actually consist of eighty instead of sixty-five years. But let us follow him quietly. He says murders have nearly trebled. But if you take the comparative population at the dates compared, (and it must be remembered he stops his average not at 1845 but at 1860,) *that* also will have more than trebled; and after all that can be said about temperance reformation and so on, it can hardly be supposed that the strictness or general prevalence of virtue and morality has increased in Massachusetts in the last sixty-five years. But we omit this. In order to obtain his result he has averaged the last five years over fifteen years to come, thus dooming fifteen poor fellows yet unknown, to commit murder in Massachusetts before the year of grace 1860. This seems to us, to use a homely proverb, counting his chickens before they are hatched. We suppose it will be admitted that if such averaging is fair for *one* period of twenty years it is equally fair for *another*. Let us try it, by the aid of another table he has furnished in which the whole period is divided into lustra.

We find that from 1825 to 1830, there were six convictions for murder, which would give an average, for the period of twenty years from 1820 to 1840 of twenty-four murders;—the actual number was thirteen. We find also that from 1795 to 1800, there were no convictions for murder at all—what average would this give for the next fifteen or even 100 years? And suppose in the year 1800 some excellent philanthropist had proposed to introduce into Massachusetts the abolition of capital punishment, which had already been enacted in Tuscany and, as is said, with the happiest results; and suppose some defender of capital punishment, in that same year 1800, reasoning on Mr. Rantoul's principles of statistical comparison, had undertaken to show that capital punishment had already succeeded to absolute perfection in repressing the crime of murder, not a solitary instance of conviction for that crime having occurred within the last five years? And suppose the abolitionist had replied: "Nay, but on the contrary, the facts demonstrate the truth of my theory; for you see, as soon as you stopped your executions entirely, murders ceased entirely. There are no murders because there are no executions;"<sup>1</sup> then we should have had one of Mr. Rantoul's principles

<sup>1</sup> There was *one* execution, of a convict of the former period; so that our abolitionist is not *exactly* right with his facts. But that is nothing strange.

of statistical reasoning arrayed against the other. Which should have prevailed one can hardly say. If either mode of reasoning is good for anything now, it was worth just as much then. This is not all. This very period of five years in which no convictions occurred, Mr. Rantoul is very careful to pack into his first period, so as to get the fewest number of murders possible in that to compare with the greatest number possible in the last period. What would have been the result of his comparison if he had taken his starting point five, ten, or fifteen years sooner, we are unable to tell.

But taking the fifty years preceding 1846, and dividing it into two periods of twenty-five years, thus throwing into the first period the five years in which there were the least number of convictions, viz. none at all, and into the last period the five years in which there were the greatest number of convictions which these tables assign to any period of five years; we have the following result.

From 1795 to 1820, convictions for murder 14 in 25 years.

" 1820 " 1845, " " 18 " "

The increase of population from 1810 to 1835, was about 43 per cent.; the increase of convictions for murder was only 28½ per cent. And this seems to us the most favorable comparison to Mr. Rantoul's side which can fairly be instituted on the basis of his own tables.

If, however, we begin with the "nineteenth century," as he seems to propose, and take full periods of twenty years, the result is,

From 1800 to 1820, convictions for murder 12 in 20 years.

" 1820 " 1840, " " 13 " "

The increase of population was about 30 per cent.; the increase of murders about 8 per cent.

So much for the effect of the unparalleled, barbarous and unchristian severity of penal inflictions in Massachusetts, in increasing the frequency of murders; as appears by comparing Massachusetts with herself at successive periods of her history. The increase of population was an element in the comparison which Mr. Rantoul found it very convenient to ignore altogether.

But he is not content with comparing Massachusetts with herself, he points to her unrelenting rigor in executing 60 per cent. of her convicts; while England, whose government he thinks he has a right "justly to denounce as sanguinary," in a period of twenty-one years, from 1813 to 1834, executed but 31 per cent.

of her convicts for murder. But of what consequence is it for him to prove that Massachusetts is more severe, (or more cruel if you please,) unless he proves that that severity fails to prevent the commission of crime? Let us look to this material point. We take his own premises and carry them out to their results.

By referring to tables of population which are in every body's hands, it will appear, that, for the period of twenty-one years here instanced, there was in England, on an average, one murder for less than every 15,000 inhabitants; while for twenty years, ending in 1835, in Massachusetts, there was but one murder for every 45,000 inhabitants. From which it appears that the ratio of murders to the population, in England, was about three times as great as in Massachusetts at the same period. In other words, the stern severity with which Massachusetts has ever been accustomed to administer her penal laws, has saved two innocent men from the hand of the assassin for every murderer who has been executed. And, what is more again, has prevented two other men from committing this horrible crime.

But if the comparison with England, though proffered by Mr. Rantoul himself, be thought in any degree unfair, on account of the sanguinary character of her code at the time referred to; then take the comparison with Belgium, whose lenity is so much boasted of; and what is the result? For twenty years, ending in 1834, Mr. Rantoul states that the executions in Belgium were but 27 *per cent.* of the convictions. But it appears by his tables that the number of convictions for murder in that time was 134; in Massachusetts for twenty years, ending in 1835, the convictions for murder were only twelve. That is to say, under the boasted lenity of Belgium, there was one murder to every 30,000 inhabitants, while under the barbarous severity of Massachusetts there was one murder to every 45,000 inhabitants; in other words, the habitual rigor of Massachusetts diminished the number of murders 50 *per cent.*

So much for the statistical proof that punishment increases crime, and that the surest way to get rid of crime is to dismiss the criminals with impunity, or at least, not to treat them very harshly. And let it be again observed, we have taken the very issue offered by our opponents, and tried it according to their own principles of evidence, and by cross-questioning their own witnesses. We leave our readers to judge of the result.

We have hitherto considered the statistical argument exclusively in its bearing upon the crime of murder. The abolitionists

have strongly asserted and fully committed themselves to the doctrine that the abrogation of the penalty of death for other crimes (besides murder) for which it had been before inflicted, has operated not only to the diminution of murders, for which it continued to be inflicted, but also of those very crimes for which it had been abolished. Now, although we have not the least particle of sympathy for that most abominable system of English legislation contrived by the rich in contempt of the poor, by which the poor were first cut off from all honest means of subsistence, and then strung up like dogs if they dared lay hands on anything to satisfy the cravings of nature : though we have no sympathy with any laws which inflict the penalty of death for mere infringements of the right of property ; yet that any man should steal simply because he is in danger of being hung for it ; while it is what these reasoners seem to assume, is what we find it exceedingly difficult to understand or believe.<sup>1</sup> But that fewer murders should be committed after capital punishment has been abolished for other offences not attended with violence, than were committed before, is what we can easily conceive, and what, so far from showing the want of preventive efficacy in this punishment, decidedly and unanswerably establishes it.

When, for example, the punishment of death for highway robbery, committed without violence, was abolished and reserved for murder only ; it was found that the number of murders sensibly decreased ; for the plain reason that the robber could now pursue his trade without running the risk of being hung, provided he abstained from committing murder. Whereas, before, he often preferred to murder those whom he robbed, perhaps because it might increase the probability of concealment.<sup>2</sup> At all events his moral sense, his horror of murder, was not sufficient to prevent his adding this crime to the other. But, after the change in the law, his exposure to death as an additional punishment did prevent the additional crime ; and that, although the temptation to commit it, as a means of diminishing the probability of discovery

<sup>1</sup> If they explain by saying that thieves count on the probability of escaping all punishment when the penalty is too severe ; we answer, that their assertion here controverted is that the number of *convictions* is greater when the punishment is capital, than after it is changed.

<sup>2</sup> "A la Chine, les voleurs cruels sont coupés en morceaux, les autres non : cette différence fait que l'on y vole, mais que l'on n'y assassine pas."

"En Moscovie où la peine des voleurs et celle des assassins sont les mêmes, on assassine toujours. Les morts, y dit-on ne racontent rien." *Esprit des Loix*, Liv. 6. ch. 16.

for the other crime, remained the same as before. We point to this fact as a perfect, practical demonstration of the preventive power of capital punishment. Yet the abolitionists appeal to this very fact as being in their favor, showing, say they, that in proportion as you have restrained the application of capital punishment, *murders* have diminished. We trust there are few unprejudiced minds which cannot see the absurdity of such an appeal.

But, notwithstanding all *a priori* reasoning to the contrary, they insist upon it as a matter of fact, that, in England for example, where capital punishment has been abolished for most other crimes besides murder, the frequency of these very crimes has diminished as well as that of murder—that men have not only ceased to murder when they rob, but have also ceased to rob, now that there is no danger of being hung for it. Mr. Rantoul enters at length into the demonstration of this point; but as we have access to statistics of equal authority with his, and much more to our purpose, we shall not follow his lead any further.

We extract the following from the *London Law Magazine* for August, 1846; and we venture to say no higher English authority can be found; besides it will be seen the facts are from official returns.

“We proved, say they, (in a former number,) by the extracts from the Home Office returns that the modern repeal of penal acts imposing capital punishments had, in each case, been followed by an enormous increase of the crimes previously punished by death; and, in order that there might be no sort of doubt left in rational minds on the subject, no peg whereon to hang cavil or criticism and escape the plain inference of the facts, we gave the annual amount of committals for these very crimes, through a period of no less than ten years, beginning in 1835, three years before the abolition took place and extending down to the then last published returns for 1844.”

“The result of these tables was conclusive. In comparing the crimes committed before and after the abolition, we took care to avoid laying stress on the years immediately following the change in the law, for the obvious reason, that the real effects of such changes never immediately follow them. It takes some time for a new law to become known and to develop its results. We therefore compared the three last years preceding the change of the law in 1837 with the three last years of which the results were known. Thus compared the returns of committals showed an increase in attempts to murder, stabbing, etc. of 98 per cent.;

in burglaries, 115 per cent; in robberies, 33 per cent.; in arsons, 124 per cent.; in rapes, 102 per cent.; comparing in this last instance the offences preceding 1841, when that law was altered."

"This precise classification was quite immaterial to the general fact of a large and fearful increase of these sanguinary and fiendish crimes."

The writer then gives a comparative table, including the year 1845, in which year it seems there was a marked diminution in England of crimes of all sorts and however punished—and this fact, by the way, is directly in the teeth of Mr. Rantoul's main argument in his 6th letter.

According to this table of the returns of the Home Office, comparing the period of five years ending 1840 with the period ending 1845, attempts to murder, stabbing, etc. had increased more than 37 per cent.; burglaries, more than 50 per cent.; robberies, more than 26 per cent.; setting fire to dwellings, etc., more than 119 per cent.; rape, etc., 81 per cent.

"Here is an increase of 45 per cent. at any rate in these crimes, of which nearly all ceased to be punished capitally during the five years ending in 1840. It is useless to struggle with these facts. Any blockhead or quibbler may distort or garble; but, fairly stated, the fact is, that the practical result of the abolition of capital punishment has been an immense increase of crime; and it is no sort of answer to say that in 1845 these crimes were less in number than in 1844. Granted that they were, but so were all other crimes. No one held or holds that crimes once punished capitally are incapable of the fluctuations incidental to crime at large. Besides, staticians and statesmen, if they deserve either designation, deal with periods of years and not with isolated years, which are obviously insufficient to mark the phases of social condition. As well may we measure the ebb or flow of the tide by the comparative height of successive waves."

"This result is not confined to any one single class of offences, but with slight variations extended to the whole number of those which ceased to be punished capitally; whilst the same increase did not take place in other classes of offence to which capital punishment still attached; as, for instance, in the case of murder, attempts to murder attended with dangerous injuries, both capitally punishable (in England) and some others; in which, though there has been some increase since 1837, it has been no more than proportioned to the general increase of crime, and bears no comparison to the enormous increase of those crimes which have

ceased to be capitally punished; thus bringing the effect home to at least one of its causes."

"No statistical chicanery, no legerdemain of partial and defective returns, no picking out of particular years by charlatan philanthropists, can gainsay the conclusive evidence of these great facts. Isolated offences and particular years may indeed be so packed in groups as to vary and possibly, in some instances, to change the result; but all statistics are susceptible of similar jugglery, and the honest inquirer will have no difficulty in detecting the *ruse*, and ascertaining the real result of the entire facts. The annual tables published by the Home Office, and collected by Mr. Redgrave, ought always to be consulted by any one who really desires to fathom the subject. Any reference to picked figures which evades the evidence of the whole returns for the ten years is not trustworthy."

"We have already shown that no confidence is due to the statistics of the abolitionists, who have been sufficiently unwary to commit themselves to the absurd statements that the offences in question have diminished. However innocently many of them may have been duped, the imprudence of such an advocacy is fatal to its influence on the minds of all reflecting men."

We here close our argument. And we conclude this long Article with a simple allusion to one particular practical consideration, which properly has no bearing upon the general argument either of right or expediency—we mean as to what action may be required of a legislature in a given state of public opinion. If the moral sense of the community; (however sound or perverted it matters not);—if the moral sense of the community be, as a matter of fact, opposed to the infliction of capital punishment for murder; if juries can scarcely be found to try such cases, and judges to pronounce such sentences; then we say decidedly, let the legislature abolish capital punishment. But let this state of facts be first fairly ascertained, and not assumed simply because the abolitionists make a great deal more noise about the matter than the approvers of the law as it is. We have felt bound to take our stand not against such legislative action in such a state of the premises; but against those influences which are so industriously at work to produce such a state of the premises. Our appeal is not to the legislature, but to the people themselves.

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## NOTE

## TO THE ARTICLE ON MACHIAVELLI IN THE LAST VOLUME.

We beg leave here to correct a mistake which occurs on page 138, Vol. III. In a passage quoted from Machiavelli, he is made to say, "Upon a thorough examination of Borgia's conduct I see nothing worthy of political reprehension." The word "political," is not found in the original; and, though we thought, and still think, it manifestly implied by the context, yet it is but justice to ourselves to say that, in our original draught, we had placed the word *in brackets*. The brackets were accidentally omitted either in our copy for the press, or by a typographical oversight. We make this explanation because there is nothing in authorship of which we have a greater horror than of falsified or garbled quotations.

*Bowdoin College, March, 1847.*

## ARTICLE III.

THE SPIRIT OF PROPHECY IN RELATION TO THE FUTURE  
CONDITION OF THE JEWS.

By Rev. Luther F. Dimmick, Newburyport, Mass.—[Concluded from No. XIV. p. 369.]

## EZEKIEL.

Ezekiel was partly contemporaneous with Jeremiah, though a little later. He flourished, according to the usual reckoning, from B. C. 595—574, a period of twenty-one years. He perhaps lived beyond the latter date.

Ezekiel exercised his office in Chaldea, "among the captives by the river of Chebar," (1: 1). He seems to have been carried away with the *second* company of captives, connected with Jeremiah, (Jer. 34: 1. comp. Ezek. 1: 2). Most of the people, therefore, remained at Jerusalem, and in Judea, several years longer, of whom he makes frequent mention.

Ezekiel began his ministry also by declaring the wickedness of the people, and denouncing still further judgments against them. "A rebellious nation," he called them; "impudent children;"