

106

STATE OF RHODE ISLAND,

In General Assembly, January 23d, 1852:

REPORT

106

OF THE

COMMITTEE ON EDUCATION,

IN THE SENATE, ON THE SUBJECT OF

CAPITAL PUNISHMENT,



PROVIDENCE:  
PRINTED BY ALBERT C. GREENE.

## REPORT.

---

The Committee to whom the petition of Stephen Cahoon and others for the abolition of Capital Punishment was referred, have considered the subject matter of the petition, with all the attention which the limited time of the session warrants; if not with that care which the importance of the subject demands. The petition contains two distinct prayers, both of which are deemed, by your Committee, german to each other, and which ought to be considered in connection. First, the abolition of the death penalty, and, secondly, increased certainty that the punishment annexed to the commission of crime shall be awarded. Your Committee respectfully submit to the consideration of the Honorable Senate, the following facts in relation to this subject.

They consist principally of extracts from authors, who have made the prevention of crime a study, and legislative reports to which reference may be had.

“ Seventy-five years ago, the celebrated Sir William Blackstone wrote—‘ So dreadful a list (of capital punishments,) instead of diminishing, increases the number of offenders. The injured, through compassion, will often forbear to prosecute.—Juries, through compassion, will sometimes forget their oaths, and either acquit the guilty, or mitigate the nature of the offence. And judges, through compassion, will respite one half the convicts, and recommend them to the royal mercy.—Among so many chances of escaping, the needy and hardened offender overlooks the multitude that suffer. He boldly engages in some desperate attempt to relieve his wants, or to supply his vices, and if unexpectedly the hand of justice overtakes him, he deems himself peculiarly unfortunate in falling at last a sacrifice to those laws, which long impunity had taught him to contemn.’

Such is the testimony borne by this great and learned judge, to the evil of sanguinary laws, and the temptation which they throw in the way to commit, what he elsewhere calls 'pious perjuries.'"

---

"Observe the juryman in a blue coat," said one of the judges at the Old Bailey to NJudge ares, "Do you see him?" "Yes." "Well, there will be no convictions of death to-day." And the observation was confirmed by the fact!—*Bentham*.

---

"In 1832, an alteration in the penal law of France, empowered juries to state in their verdicts of guilty, that the crime was committed under extenuating circumstances. When this is done in capital cases, the punishment is commuted to some milder penalty. Now mark the result. In 1834, one hundred and eleven, out of one hundred and thirty-six, more than four-fifths of the verdicts of guilty in capital indictments, had the qualifying clause in them, which saves the offender's life.—*London Morning Herald*."

---

"O'Sullivan writes from 4. Dallas Rep., a case which occurred in Philadelphia, of a boy who was tried for arson, then a capital crime, and acquitted; but being then tried for a misdemeanor, on the same facts and evidence, was found guilty."

---

"After the trial of Burrell for arson, in the County of Middlesex, Mass., in the year 1834, (which ended in a verdict of acquittal,) several other persons being about to be put upon trial for the same offence, the Attorney General moved for leave to strike from the indictment those counts in it, which charged the prisoners with a capital crime. To this the *counsellors for the prisoners objected*.—(*Report on Capital Punishment in the Senate of Mass., 1846, p. 20.*) The motion was allowed; but the fact that they preferred a trial, which, had it resulted unfavorably might have cost them their lives, rather than to take their chance in one in which, if convicted, the worst

that could have happened would be imprisonment, speaks volumes of warning to those whose duty it is, to provide for the security of society by the punishment of crimes."

---

"The Common Council of London, passed the following resolutions at Guildhall:—

*Resolved*, That some jurymen are deterred from a strict discharge of their duty, and acquit guilt, or mitigate the offence so as not to subject the offender to the punishment of death,

*Resolved*, That this determination of juries to oppose the severe enactment of our laws, is of daily occurrence.—*Gould's Report*."

---

"In 1833, Lord Suffield stated in the House of Lords, that he held in his hand a list of five hundred and fifty-five perjured verdicts, delivered before one Court in London during fifteen years, from 1814, for the single offence of stealing from dwellings; the value stolen being in all these cases sworn above forty shillings, (the amount made capital,) but the verdicts returned being to the value of thirty-nine shillings only."

---

"Hon. James T. Austin, Attorney General of Massachusetts, in his report to the Legislature in 1842 says: 'It does not belong to me to enter into an argument that is nearly exhausted, but I deem it within my province, in this connection, respectfully to submit to the Legislature an humble opinion—that in the present state of society it is no longer an abstract question, whether capital punishment is right, but whether it be practicable; and that there is good reason to believe that the punishment for crime would more certainly follow the commission, if the Legislature should further abrogate the penalty of death. As the law now stands in this respect, its efficacy is mostly in its threatenings; but the terror of trial is diminishing, and the culprit finds his impunity in the severity which it denounces.'"

---

Lord Suffield, said, "It deserved remark, that when the

Legislature raised the Capital indictment to five pounds, (from 30 shillings,) in June 1827 the juries at the same time raised the verdicts to 4 pounds 19 shillings; thus still keeping it low enough to save the offenders life.

---

“ In the same debate Lord Nugent complained ” that his right hand friend (Sir G. Grey) had omitted to notice the fact that the great majority of judges had given an opinion in favor of the remission of capital punishment. *Prisoner's Friend*, 1819, pages 482 and 483.

---

In his “ defence of capital punishment ” George B. Cheever, says, that “ In the State of New York the average length of time spent in prison by those criminals who have been sentenced to imprisonment for life has been six years ! ”

---

In “ *O'Sullivan's report* ” to the legislature of New York in 1841, it is stated “ that out of 23,700 persons who were convicted of crimes of various grades, made capital by the laws of England, from the year 1813 to 1833, not more than nine hundred and thirty-three, were actually executed :—presenting the remarkable spectacle of about twenty-five convicts reprieved from the gallows, for every one actually executed.”

---

“ Mercer was released and applauded in Philadelphia, for murdering the seducer of his sister : Eager was condemned and hanged in New York, for murdering the seducer of his wife ; and the difference between them was, that Mercer was conscious and proud of the act—Eager was intoxicated, and bitterly repented.

---

“ The acquittals on capital charges in England and Wales, during seven years, ending in 1831, were twenty-eight, out of every hundred commitments. On charges not capital, eighteen, or more than a third less. In London and Middlesex, during the same period, the acquittals on capital charges were forty-four, out of a hundred commitments—on not capital,

twenty, or less than half as many. The executions in all England and Wales, was only five out of a hundred convictions,—in London and Middlesex, ten out of a hundred. Hence, doubtless, the greater difficulty to convict in the latter, than in the former.”—*Wrightson's Tables*.

---

Tables carefully compiled by the Clerk of the Court of Oyer and Terminer, for the city and county of Philadelphia, show, that of one hundred and eleven capitally charged, only ten were capitally convicted—seventy-two were acquitted, and twenty-nine were convicted of a crime not capital. But of five hundred charged not capitally, three hundred and forty-four were convicted, and only one hundred and fifty-six acquitted. The time comprised in these tables is from 1795 to 1845.

---

“Buffalo Bill,” a noted desperado, at the West, just before his death, in the Spring of 1845, confessed a murder of which he had been acquitted. He stated also that one Mr. Lean, who aided in the murder, was acquitted at a new trial granted after he had been once convicted.—“*Thoughts on the Death Penalty*.”

---

A speech in Parliament by William Ewart, in 1832, states that in 1831, the capital sentences in England were one thousand six hundred and one. The executions, fifty-two—only one in nearly *thirty-one* sentences. For crime affecting property, sentences, eleven hundred and eight—executions, twenty-three, or but one in *forty-eight*. For all other crimes, including murders, four hundred and ninety-three sentences and twenty-nine executions, being even for this class of offences, only one in *seventeen*.

---

William Bradford, formerly Attorney General of Pennsylvania, states, that two men convicted in Pennsylvania, one of robbery, and the other of burglary, were permitted to choose between the sentence of the old law, which was death—and

that of the new just enacted—which was imprisonment for life. They chose the former—taking the risk of death, with the chance of pardon, rather than the *greater certainty* of the other penalty. One was pardoned, the other executed.

Livingston has laid down as one of the postulates of his famous code, “The law should never command more than it can enforce, therefore, whenever from public opinion or any other cause a penal law cannot be carried into execution, it should be repealed.”

---

‘Of the 111 persons charged with murder in Philadelphia, (before alluded too) only ten, as we have already seen were capitally convicted—three of these were pardoned, two died before sentence, and only five were executed, being but *one in twenty-two* of the indicted.’

Since 1825 the charges of murder have been seventy-seven—Capital Convictions eight,—Executions only three,—about one in twenty-six of the charges—making the chances of escape nearly twenty-five to one after indictment, and five to three after conviction,—and for white offenders the prospect of impunity is still greater. In fifty years from 1795, of six white persons capitally convicted, only two were put to death, making the chances to escape after conviction, two to one, or without reckoning upon one man who died before sentence, three to two.—‘*Thoughts on the Death Penalty.*’

---

O’ Sullivan, states that in a capital case in New York, that ten jurors were excused on the plea of conscience. At the trial of a murder in Chester, Pa., in 1845, “seventeen of our most intelligent citizens,” says the county paper, avowed the same scruples. In the case of Andrew Kleim, tried about the same time in New York City, for arson and murder, after the pannel was exhausted, it was necessary to summon talesmen, and near a whole day was spent in filling up the jury. So too in the case of Nicholas Gordon, in Rhode Island, and Mc’ Curry, in Maryland, the same kind of difficulty was experienced.

*Popular Effect of Capital Punishment, &c.*

"It is not by the fear of death," says an eminent English judge, Sir William Grant, "but by exciting in the community a sentiment of horror against any particular crime, that we can hope to deter offenders from committing it."

Of one hundred and eighty-seven convicts under sentence of death, questioned by T. Roberts, a clergyman of Bristol, England, one hundred and sixty four had attended executions. A London magistrate testified before a Parliamentary Committee, that the day after, one Wheller was put to death in London for passing forged notes, a woman with whom he had been living, took a quantity of forged notes from the very room where his body lay, and delivered them to her associates for circulation. A widow, whose husband had been just executed for issuing forged notes, was in the act of taking from under his body and selling to an associate some of the paper, which he had been hanged for circulating. When an alarm was given of the approach of the Police, she had but time, before their entrance to hide the notes in the mouth of the corpse, where they were found by the officers.

"Crimes of violence and execution are both rare in Scotland, but on the 18th of October, 1837, one William Perrie was hung at Paisley, and a number of murderous assaults followed almost immediately in their neighborhood."

R. Rantoul's report to the Legislature of Massachusetts, in 1836, mentions the brother of a man, hung in 1825, at Worcester, for rape, who shortly after attempted to commit the same offence, and that very lately in Ohio, on the day when a man was executed for the murder of his wife, under circumstances of particular cruelty, another man near the place of execution, murdered his wife in the same manner."

A short time previous to the execution of Peter Robinson, at New Brunswick, for the murder of Suydam, he said, "I

can't realize anything as very dreadful about dying, only I should like to have a band of music, the big field, and twenty thousand spectators."

---

In the case of the execution of Stephen M. Clarke, only 17 years of age, for setting fire to a building in Newburyport, it was found necessary to force him from his cell, and drag him to the scaffold, amidst a parade of soldiers and martial music.—*Spear's Capital Punishment.*

---

It was shown at a general meeting of the Howard Society, Dublin, in 1832, that Mary Jones was executed at the time when press warrants were issued on the alarm about the Falkland Islands. The woman's husband was pressed, their goods seized for some debts of his, and she, with two small children, turned into the streets a begging. She was remarkably handsome and but 19 years of age. She went to a linen draper's shop, and took some coarse linen off the counter and slipped it under her cloak—the shop man saw her, and she laid it down. For this she was hanged. Her defence was, she had lived in credit and wanted for nothing, till a press gang came and stole her husband from her,—but since then, she had no bed to lie on, nothing to give her children to eat, and they were almost naked, and perhaps she might have done something wrong, for she hardly knew what she did. The parish officers testified to the truth of this story, but it was without avail. When brought to receive sentence, she behaved in so frantic a manner, as proved her mind to be in a distracted and desponding state, and the child was sucking at her breast when she set out for the gallows.

---

"On the third of January, 1845, Thomas Barrett, was hung in Worcester, Mass., for rape and murder. On the 14th, another murder was committed within a few rods of the gallows, and not long after, a rape, in the same county, and not far from Worcester. About the middle of March, two cases of manslaughter occurred in the neighboring county of Plymouth, less than a day's travel from Worcester, and a murder about

the first of April, within half a day's travel of that place. Six weeks later, a murder was committed at New Bedford, Mass., making, in a little more than four months, no less than four capital offences, and two cases of homicide, not capital, all within less than a day's journey of the last execution. Two more homicides followed in Worcester county, in course of the summer."—*Author on Capital Punishment.*

---

On the 18th of April, 1845, Samuel Zephon was put to death in Moyamensing district, Philadelphia, for murder. In that same district, a man was murdered the next day; and an infant child, before a week had passed. "The district instead of being awe-struck and solemnized," says a Philadelphia paper, "was, for several days afterwards, converted into a pandemonium. The spirit of violence and ruffianism was never so rife. For several days, that district was the theatre of almost incessant fighting, in which a number of persons were severely injured, and the lives of many others, jeopardized. On the 25th of May, one of the most horrible murders on record in our country, was perpetrated at West Chester, less than twenty-five miles from Philadelphia. On the 5th of June, another murder was committed in Philadelphia, followed immediately by the suicide of the murderer—making, in just seven weeks, four murders and one suicide, all but one within a half hour's walk of where Zephon suffered to deter men from crime.—These executions, all but one, were private.—*Thoughts on Death Penalty.*

---

E. Gibbon Wakefield says, "When I entered Newgate, I had not a doubt of the efficacy of public executions as deterring from crime. By degrees, I came firmly to believe just the contrary. Newgate is the very best place in which to form a sound opinion on the subject; that is my opinion, deduced from all the facts of the case."

---

"One of the jury that tried and convicted Dr. Dodd, was executed on the same gallows, (Tyburn,) for the same offence.

(forgery,) within two years afterward. And so too, it is said of Mr. Fauntleroy, the celebrated banker, who was executed for the same crime, that the idea of committing it first entered his mind, while returning home from an execution which he had witnessed, while passing one morning along the street in front of Newgate. 'A man,' says Mr. E. G. Wakefield; 'of great mental powers and superior education, who was acquitted of a charge of forgery assured me, that the first idea of committing forgery occurred to him, at the moment he was accidentally witnessing the execution of Fauntleroy.'—*Capital Punishment by C. Spear.*

---

"Levi Kelly, a man said to be of good morals, went from Otsego to Albany, for the express purpose of seeing Strang the murderer hung; in less than a fortnight afterwards, Kelly shot one Spofford through the heart, for which he was tried and executed. On the day on which Kelly was hung, a man by the name of Cooke, who was present at the execution, committed suicide by hanging."—*Spears' Capital Punishment.*

---

"O'Sullivan says, 'Two or three days after the execution of Leadings, a fine boy, of about sixteen years of age, the delight of highly respectable and estimable parents, hung himself from the banisters of the stairs, in his father's house in Albany.'"

---

"Wo to society," exclaims Lepellitier, in his report to the National Assembly, 'if in that multitude which gazes eagerly on an execution, is found one of those beings predisposed to crime by the perverseness of his propensities, his instinct, like that of the wild beast, awaits perhaps only the sight of blood, to awake; and already his heart is hardened to murder, the moment he is quitting the spot, wet with the blood which the sword of the law has shed!'"

---

"Every execution," says Dr. Lushington, in Parliament, "brings an additional candidate for the hangman."

“Governor Seymour, in a Message to the Legislature of Connecticut, after pertinent remarks on the subject of capital punishment says, ‘I submit to the Legislature whether the time has not come, when we should blot from our statute book that relic of a barbarous age, and substitute instead thereof, imprisonment for life.’”—*Prisoner’s Friend*, 1850, p. 477.

“M. Giraud lately presented a most valuable paper to the French Academy of Moral and Political Sciences, in which was shown that, ‘taking the whole number of persons accused before the French tribunals in 1845, 1846 and 1847, he demonstrated that 52 per cent. of the whole, could neither read nor write, one third could read very imperfectly, and only three in a hundred had received a good education in the schools; and of the 7,309 criminals, condemned in the same time, 4,331 could neither read nor write, 2,188 could read very imperfectly, 719 could both read and write, and only 120 could be considered educated persons. The statistics of the Houses of Correction show similar results.’”—*Prisoner’s Friend*, vol. 2, p. 501.

“In England, it is customary for people to go from all parts of the country, to what is there called a ‘*Hanging Fair*.’”—*Prisoner’s Friend*, 1850, p. 511.

“On Friday night of the day that John Lechler was executed in Lancaster, Pennsylvania, 28 persons were committed to prison in the town, for divers offences, such as murder, larceny, assault and battery, &c.”—*Prisoner’s Friend*, 1850, p. 509.

“Very lately, in the State of Ohio, says Mr. Rantoul, in his report of 1836, ‘on the day on which a man was executed for the murder of his wife, under circumstances of particular cruelty, another man, near the place of execution, murdered his wife in the same manner. And this is by no means the only instance where the crime seems to have been directly suggested by the punishment intended to prevent it.’”

“ Conrad Vinter, a young German, not long since hanged in Maryland, had been a witness of several, if not all the executions that had occurred in the vicinity for many years.”—*Prisoner's Friend*, 1850, p. 31.

“ During the reign of Henry VIII. in England, 72,000 criminals were executed, being at the rate of 2,000 every year; and yet crimes increased under his administration.”—*Prisoner's Friend*, p. 149, vol. 2.

“ On the evening of the same day that John Lechler was executed in Lancaster, Penn., one Wilson, who witnessed the execution, met one Burns, and stabbed him mortally. He had the same chains put on him, which had scarcely been laid off long enough by Lechler to get cold.”—*Prisoner's Friend*, vol. 2, p. 149.

“ The schoolmaster in Newgate, in England says, ‘ He has seen his pupils, before the bodies of criminals were taken down from the scaffold, play the scene over again, one acting the convict, the other the hangman!’ The celebrated Volney, just after the French Revolution, when blood run down the streets like a river, relates that he was powerfully affected by seeing crowds of children in different parts of France, amusing themselves with cutting off the heads of cats and chickens, to supply the place of executions which had become less frequent.”—*Prisoner's Friend*, 1850, p. 150.

“ Away with this cruelty from the State!” exclaims Cicero, the great Roman orator. “ Allow it not, O Judges, to prevail any longer in the Commonwealth! It hath not only the fatal effect of cutting off so many of your fellow men in a most atrocious manner, but it hath even banished from men of the mildest disposition, the sentiment of mercy, by the familiar practice of slaughter.”—*Prisoner's Friend*, 1850, p. 150.

“ Henry IV. of France, sent his physician to question a

Captain Montaguac, who escaped hanging temporarily, by the breaking of the cord. Upon mention being made to him of pardon, he answered coldly, it was not worth the asking."—*Prisoner's Friend*.

---

"Away with the executioner and the execution, and the very name of its engine, not merely from the limbs, but from the very thoughts, the eyes, the ears of Roman citizens. For not alone the occurrence and the endurance of all these things, but also the liability, the apprehension, even the mere mention of them, are unworthy of a Roman citizen and a free man."—*Cicero*.

---

"During the early years of the reign of Louis Phillippe, in France, conspiracies to take his life were of continual occurrence, and the intended assassin was invariably punished with death; at length, a more merciful plan was adopted. The criminal was only condemned to imprisonment. From that time, attempts to cut off the King's life, totally ceased. What force could not do, was accomplished by gentleness."

---

Beccaria, in the twenty-sixth chapter of his work on Crimes and Punishment, says, "If punishments are very severe, men are naturally led to the perpetration of other crimes to avoid the punishment due to the first. The countries and crimes most notorious for severity of punishments, were always those in which the most bloody and inhuman actions, and the most atrocious crimes were committed, for the hand of the legislator and the assassin were directed by the same spirit of ferocity, which, on the throne dictated laws of iron to slaves and savages, and in private, instigated the subject to sacrifice one tyrant to make room for another."—*Prisoner's Friend*, 1850, page 362.

---

Dymond, in his inimitable Essays on the principles of morality, quotes from Irving's orations, "There are no practical despisers of death, like those who touch, and taste and handle death daily, by daily committing capital offences. They

make a jest of death in all its forms, and all its terrors are in their mouths a scorn. Profligate criminals, such as common thieves and highwaymen, have always been accustomed to look upon the gibbet, as a lot very likely to fall to them. When it does fall to them, therefore, they consider themselves only as not quite so lucky as some of their companions, and submit to their fortune without any other uneasiness than what may arise from the fear of death—a fear which even by such worthless wretches, we frequently see, can be so easily and so very completely conquered.” “A man,” (continues Dymond,) “sometime ago was executed for uttering forged bank notes, and the body was delivered to his friends. What was the effect of the example upon them? Why, with the corpse lying on the bed before them, they were themselves seized in the act of again uttering forged bank notes.

---

“By every execution, you weaken one of the strongest safeguards which nature has provided against the crime of murder. What could induce the child to butcher the lamb—he who has never witnessed a violent death, needs no law to prevent his committing the crime of murder, however weak may be his moral restraints.

But practice soon changes all this, and causes us to witness the slaughter of a brute, or of even a human being, without a shudder; nay, more, it is with our intellectual taste, as with those of the senses. Whatever produces strong excitement, however unpleasant at first, becomes by use not only agreeable, but indispensable. He who has fainted at the sight of human blood, becomes the callous surgeon, to whom the mangling of the human frame is almost necessary for his happiness, or he seeks the battle field as the only place, where he can sufficiently gratify his acquired propensity for carnage, or demoralized and depraved, he becomes the murderer from inclination, and feels a horrid pleasure in the very destruction of human life. The Roman Emperor (Nero,) who first wept at the necessity of signing a death warrant, became by custom, the monster, whose appetite for destruction increasing by what

it fed upon, and becoming at length insatiable, prompted him to wish that the Roman people had but one neck, that he might slaughter them all at one blow. Let the laws beware how they aid in the creation of this vitiated, this diabolical appetite.”—

*Charles Mason.*

We have probably all read in the newspapers of a recent conviction of a murderer in one of the United States, who confessed that his only object in killing his victim, was to witness his death struggles, having acquired a taste for such horrid spectacles, from having been engaged in the Mexican war.

Bentham says, “If the legislator be desirous to inspire humanity among the citizens, let him set the example—let him show the utmost respect for the life of man. Sanguinary laws have a tendency to render man cruel, either by fear, insitiation, or revenge. But laws dictated by mildness, humanize the manners of a nation and the spirit of government.”

Cook, the murderer, in his confession, said, “hearing her utter these words, I at once judged it were better to be hung, than imprisoned, and determined to kill her.”—*O’ Sullivan’s Reports.*

“Leddings, the murderer, preferred to be hung to even a seven years imprisonment.”—*Gould’s Report.*

“Your committee have repeatedly conversed with murderers in prison, and they have uniformly assured us, that they committed the deed of blood under the impulse of motives so strong as to over-master all thoughts of punishment.”—*Gould’s Report to the New York Legislature.*

#### THE INNOCENT ARE OFTEN CONVICTED.

“At one session,” says Dymond, “we believe not less than six persons were hanged, of whom it was afterwards discovered, that they were entirely innocent.”

A deplorable instance is given by Dr. Smallet, "rape and murder were perpetrated upon an unfortunate woman, in the neighborhood of London, and an innocent man suffered death for the complicated outrage, while the real criminals assisted at his execution, heard him appeal to Heaven for his innocence, and, in the character of friends, embraced him while he stood on the brink of eternity."

---

In Dublin, 1728, a surgeon of note, was found alone in the house with his maid servant, who had just been murdered, and he himself was bloody,—he was tried and convicted—protesting his entire innocence, but was executed. A few years afterwards the actual murderer confessed to a friend that he had entered the surgeon's house, for robbery, when no one but the girl was there, and being stopped by her as the gentleman returned, killed her and fled.

---

"The case of Dr. Hamilton, of Kentucky, some 25 years ago, made a deep impression. Dr. Saunderson was found murdered in a cross road with Dr. Hamilton's pistols lying by him. The latter of course was arrested, tried and executed: in three months, two robbers confessed on the gallows, that they first stole Dr. Hamilton's pistols, and then committed the deed."

---

In a speech in Exeter Hall, in 1832, O'Connell says, "I myself defended three brothers of the name of Cummings; within the last ten years, they were indicted for murder. I sat at my window as they passed by, after sentence of death had been pronounced; their mother was there, and she, armed with the strength of affection, broke through the guard. I saw her clasp her eldest son, who was but 22 years of age—I saw her hang on her second who was not 20—I saw her faint, when she clung to the neck of her youngest boy, who was but 18, and I ask what recompense can be made for such agony,—they were executed, *and they were innocent.*"

“ One of her best sons and one competent to judge, Sir James Macintosh, showed, by careful returns, that when capital punishments were very frequent in England, the average had for many years been at the rate of one person executed every three years, whose innocence had afterwards been satisfactorily established. A Committee who have since followed up the enquiry there, have found more than an hundred—a late account says an hundred and fifty cases.”

---

“ There have been cases, says O’Sullivan, in his report to the Legislature of New York, in 1841, in which groans have been heard in the apartment of crime, which have attracted the steps of those on whose testimony the case has turned.— When on proceeding to the spot, they have found a man bending over the murdered body,—a lantern in the left hand, and the knife yet dripping with the warm current, in the blood-stained right, with horror stricken countenance, and lips which in the presence of the dead, seemed to refuse to deny the crime, in the very act of which he is thus surprised, yet the man has been, many years after, when his memory alone could be benefitted by the discovery, ascertained not to have been the murderer. There have been cases in which a father has been found murdered in an out house, the only person at home being a son, sworn by a sister to have been dissolute and undutiful, and anxious for the death of his father, and succession to the family property, when the track of his shoes in the snow is found from the house to the spot of the murder, and the hammer with which it was committed (known as his own) found in a search in a corner of one of his private drawers, with the bloody evidence of the deed only imperfectly effaced from it, and yet the son has been innocent. The sister years after, on her death bed, confessing herself the fratricide as well as the paricide. There have been cases in which two men have been seen fighting in a field, an old enmity existing between them, the one found dead, killed by a stroke from a pitch-fork known as belonging to the other, and which the other had been carrying, the pitch-fork lying by the side of

the murdered man, and yet its owner has been afterwards found not to have been the author of the murder of which it had been the instrument,—the true murderer sitting on the jury that tried him.”

---

“The celebrated O’Connell, says he knew “a gentleman who had forsaken society, and threw himself into a mountain lodge, abandoning the intercourse of men, and wandering about like a troubled spirit, a willing outlaw, and an outcast from the social state. He learned that it originated in these circumstances: Two men got into his bed room at night, and robbed him, but did not treat him with any brutality. He prosecuted two brothers for the crime, and they, being unprepared with any defence, from a consciousness of their innocence, were convicted and executed. Not a fortnight after they had been laid in the grave, in the presence of their father, and amidst the tears of their broken hearted mother, the gentleman discovered his total mistake.”—*Spear’s Capital Punishment*.

---

“A recent case now going the rounds of the papers, where a man named Hicks was executed in Monticello, Miss., and afterwards proved innocent, is a fresh proof of the danger of taking the life of innocent persons under the law. If time and space would permit, a *volume* might be filled with similar cases.”—*Baker’s Report to the New York Legislature, 1851*.

---

Margaret Houghtaling was hanged in Columbia county, N. Y., for the murder of a child. Fifteen years afterwards, a woman, on her death bed, sent for a clergyman, and confessed to him that she was the murderess of the child, and described the means she made use of to throw suspicion on Margaret Houghtaling, and to procure her conviction.—*Gould’s Report*.

---

In May, 1834, Charles Boyington, a young man, was sentenced at Mobile, for the murder of Nathaniel Frost. B. F. Porter, in an argument before the House of Representatives,

Alabama, on abolishing capital punishment, says, "When brought upon the platform, from which he was soon to be launched into eternity, he began to read his address, and continued to read, until warned by the Sheriff that his hour approached. Still he read. At the last moment, he was told that the work of death must proceed. The self-possession which till that time, seemed to declare that he was indifferent to his fate, forsook him. As the Sheriff commenced the awful preparation, the countenance, lately beaming with intelligence and youth, became a mirror of the dreadful storm of wild passions, raging within his bosom. Hope fled despairing from his face, and left it cold and death-like. In convulsive agony, he springs from the gallows into the midst of the astonished crowd, and, in a voice startling as the mariner's shriek as he sinks into the stormy sea, cries, 'mercy!' 'mercy!' The officers seized him quick, struggling with the death-like grasp. They bear him back—the fatal cord is attached—a few agonizing struggles, and he is gone. Oh! — was it ever designed, that the peace of society should be built up on such ruin as this."

"It was afterwards clearly proved that Boyington was entirely innocent, and the suspicious circumstances that led to his conviction, fully explained."—*Gould's Reports*.

"Some years since, Stephen and Jesse Boon, two brothers, were convicted in Vermont, for the murder of Russell Colvin, on what seemed to be the strongest possible testimony of their guilt. The sentence of death was commuted in the case of Jesse, to imprisonment for life, but Stephen was left for execution. In an interview with Mr. Haynes, a clergyman, he said, 'Mr. Haynes, I see no way but I must die, every thing works against me, but I am an innocent man. This you will know after I am dead.' Bursting into tears, he said, 'What will become of my poor wife and children—they are in needy circumstances, and I love them better than life.' He continued, 'I don't want to die, I wish they would let me live some-time longer, even in this situation,' (he was then heavily chain-

ed to the floor,) 'perhaps something will take place that may convince people that I am innocent.'

Through the instrumentality of a Mr. Chadwick, and a clergyman of Manchester, Colvin, who had wandered to and resided for sometime in the neighborhood of that place, was discovered, and he returned to his former place of residence, in time to save from hanging the man who had been condemned as his murderer."—*Gould's Report to the New York Legislature.*

---

A father and daughter have been over heard in violent dispute. The former goes out and locks the door behind him, groans issue from the room, with the exclamation, 'cruel father, thou art the cause of my death.' The daughter found stabbed and dying, signifies, by a sign, that her father is the cause. He returns, betrays every sign of guilt, and is hung. A year afterwards, a letter is found, in her own hand-writing, declaring her determination to kill herself, because her father forbade her marrying as she wished; and the public authorities, to atone for the error, wave colors over his grave, in token of his innocence.—*North American Review.*

---

"Gentlemen," said Lafayette, in the French Chamber of Deputies, in 1830, "I shall ask for the abolition of capital punishment, until I have the infallibility of human judgment proved to me."

---

Similar instances of erroneous convictions as those we have adduced, might be multiplied without number, and in no country on earth probably, are they more liable to occur, than in these United States of America, from the migratory character of our population. The individual who has lived from infancy amidst thousands, in whose eyes his unblemished good character has become firmly established, is protected by a shield, too potent to be borne down, except by the most incontestible testimony; whilst the friendless stranger, who is cast on our shores, penniless and helpless, ignorant of our lan-

guage, our habits and our laws, though his character may be as faultless as the best, is protected by no such safeguard ; but is liable, at any moment, to become the victim of suspicious circumstances, or to fall a prey to the machinations of guilty conspirators. By an absurd and most dangerous popular error, the very confusion and sensibility he manifests, upon being charged with crime in his helpless condition, may be made to contribute to his conviction, rather than to help to prove, as it should, his innocence. As well might the blushing disorder of a virtuous woman, suspected of impurity, be ascribed to the promptings of guilty shame ; or the stolid indifference or defiant glance with which abandoned lewdness meets the charge, be interpreted as proof of conscious virtue.

Premeditated and deliberate murder is so abhorrent to the instinctive feelings of human nature, that it is not probable that it is committed in a majority of cases, excepting under the influence of some fixed or temporary hallucination of the mind. So prevalent is now this idea, that we all know it has become the most common ground of acquittal of murderers by juries. In corroboration of this view, we will quote from "Gould's Report of the Committee on Capital Punishment, made to the New York Legislature in 1847," the following statements :

"One of the Committee, on visiting the State's prison of Massachusetts, found seven murderers, whose sentences had been commuted to imprisonment for life. He asked the excellent warden of that institution, what character they bore. He replied, 'That as a class, the very best men in it; that they were kind, amiable and obliging.' He asked if they were uniformly so. He replied, 'That they were all liable to periodical outbreaks, during which, they were violent, impulsive and irascible.'"

"He then related the following incident, as an example illustrative of the whole class of cases; a large powerful man was standing near us, who, a few days before, had suddenly knocked down a fellow prisoner who was working by his side. He was instantly seized by the officers in charge, and taken

before the warden. He was asked why he had violated the rules of the prison, he replied, that he exceedingly regretted that he had been compelled to do so, but that the prisoner had insulted him so grossly, by word and gesture, that he preferred the severest punishment rather than relinquish his revenge. The alleged insults were denied by the prisoner who was assaulted, and by the officers who were present at the transaction; but the culprit steadily persisted in the truth of his story. After a few days, he came to the warden, and voluntarily begged his pardon for the outrage, stating he now knew that the man had done nothing to him, and he could not tell what had put it into his head to suppose that he had insulted him. Similar hallucinations sometimes affected the others; and the experience of keepers of prisons in our own State, is similar to that of the warden of Massachusetts prison, in relation to murderers, whose sentences have been commuted."

---

To shew the practical results of abolition of the Death Penalty, we have made the following extracts from various publications, the truth of which, may readily be ascertained, by referring to history and to facts:—

Whilst Rome was a Republic, the infliction of the punishment of death was expressly forbidden by the famous Percian Law, passed in the 454th year of Rome. Montesquiere, Gibbon, and Blackstone, speak of the good effect. The first says "the republic was not the worse regulated, and no injury was done to the police." "The law, abolishing capital punishment continued in force two and a half centuries, during which period, Blackstone says:—"the republic flourished under the Emperor's severe punishments, were revived, and then the empire fell."

---

"The penalty of death was abolished in Russia in 1741, by the Empress Elizabeth, (daughter of Peter the Great,) and so satisfactory were its effects, that upon coming to the throne in 1762, her successor Catharine, engrafted it in her code of laws; and it has been continued in force ever since, excepting in the case of a notorious brigand chief, who had long defied the gov-

ernment under Catharine, and more recently at the commencement of the reign of Nicholas, to suppress an alarming rebellion when five of the thirty leading nobles were put to death rather as a political than a judicial measure. The Count de Segur on his return from his embassy at St. Petersburg, in a letter published in the *Moniteur*, in June, 1791, declared that Russia, under the operation of this law, was one of the countries in which the least number of murders were committed, adding that Catharine had several times said to him, "We must punish crime without imitating it, the punishment of death is rarely any thing but a useless barbarity." It is said that the Russian representatives to the government of the United States, have borne a similar testimony, and stated that all the intelligent public opinion in Russia, is perfectly settled on this subject, no one thinking of returning to the death penalty."

"In a volume of travels in Kamschatka, in Siberia, published in 1830, (after ninety years had elapsed from the abolition of the death penalty,) by Peter Dobell, councillor of State in Russia, the superiority of confinement and hard-labor over the fear of death as a preventive of crime, is inferred from the example of those countries which have tried the system, and countries of a longer civilization, are bidden to "blush, that Russia, should teach you the celestial principle of reforming depraved morals, not by the sanguinary execution of inexorable justice, but by the mild and divine precepts of heavenly mercy!"

George M. Dallas, late American Minister at the Russian Court, says, that "none with whom he conversed, ever dreamed of going back to the old system. The laws," he adds, "are of the mildest character; and their effects are seen in the character of the people. Barbarous as they were before the mitigation of their penal code, its mildness has wrought such a change, that they are now among the mildest and most peaceable people he has ever seen."

In the "instructions," under which the code was framed, Catharine says, "Experience proves that the frequent repetition of capital punishment, never made men better. If, therefore, I can shew that in the ordinary state of society, the death

of a citizen is neither useful nor necessary, I shall have pleaded the cause of humanity with success." She affirms in the same "instructions," that "while the laws bear peaceful sway under a form of government approved by the united voice of the nation, there can be no necessity for taking the life of a citizen, such an act being needful *only* in times of revolution or anarchy, when disorder and confusion usurp the place of laws." "The Russian empire is the largest in the world in area, and contains more than sixty millions of people."

---

Tuscany is a sovereign State in Italy, of about the same area of the State of Massachusetts, but more than twice as populous. "In 1765 its Grand Duke Leopold, influenced by the enlightened councils of Beccaria, ordained the following decree."

*"We have resolved to abolish, and by the present law do abolish, forever, the punishment of death, which shall not be inflicted on any criminal present or refusing to appear, or even confessing his crime, or being convicted of any of those crimes, which in the laws prior to those we now promulgate—and which we will have to be absolutely and entirely abolished, were styled capital."*

"After the experiment had been successfully tried to the satisfaction of Leopold, he says: "With the utmost satisfaction to our paternal feelings, we have at length perceived that the mitigation of punishment, joined to a most scrupulous attention to prevent crimes, and also a great despatch in trials, together with a certainty of punishment to real delinquents, has, instead of increasing the number of crimes, considerably diminished that of smaller ones and rendered those of an atrocious nature very rare."

A report to the French Chamber of Deputies in 1830, by M. Beringer, alluding to this subject, says: "The mildness of the penal legislation (in Tuscany,) had so improved the character of the people, that there was a time when the prisons of the Grand Duchy were entirely empty." Edward Livingston (author of the famous code,) states, on the authority

of a gentleman who resided five years in Pisa, a Tuscan city, that "only five murders had been perpetrated in the Grand Duchy in twenty years since its abolition." He adds, that in the neighboring city of Rome, where "the manners, principles and religion of the inhabitants are the same, and where death inflicted with great pomp and parade is the penalty for murder, sixty murders were committed in three months in the city and vicinity."

C. Burleigh, (author of "Thoughts on the Death penalty,") estimates that "in proportion to population, murders were in New Hampshire, 80 times, in Pennsylvania, 120 times, and in New York city and vicinity, 300 times as numerous as they were in Tuscany."

The Marquis of Pastoret, Vice President of the French Chamber of Peers says: "The happy effect of abolishing the death penalty in Tuscany, was a fact so fully recognized when he wrote (in 1790,) that he could not think of seeking means of proving what no one thought of disputing. While he lived in that country, he often heard the people praise the mildness of their laws, and the efficacious influence it had in diminishing the number of crimes."

"Count Sellon of Geneva remarks upon this statement, and says "that it corresponds with those of all the travellers who go abroad to acquire knowledge, and is confirmed by Professor Pictet, in his letters from Florence. M. Berlinghieri, late Minister of Tuscany at Paris, says that the humanity of Leopold's penal legislation, was attended with the most satisfactory results, (and) that crimes were much more rare during that period than either *before or after*. Carmignani, a distinguished professor of criminal law at Pisa, Benjamin Franklin, Rush, and others, bear the same testimony."

"Professor Carmignani states that the re-establishment of Capital Punishment in Tuscany was chiefly through the power of the absolute will of Bonaparte, in opposition to the wishes of all the magistrates, to the views of all the enlightened jurists of the country, and to all the evidence which their recent experience had afforded." "The motives which governed

Napoleon's action in the case was revealed in a work published some years ago by his brother Louis. When Emperor of France, he had offered the sovereignty of Tuscany to Louis, who thereupon asked permission to govern its internal affairs in his own way, leaving its exterior relations to the Emperor. His answer was "in the interior as in the exterior, all belonging to me must follow my orders. The interest of France is the point to which every thing must tend, codes, taxes and conscriptions, everything in your kingdom must be to the profit of mine. If I allowed you to make Tuscany happy and tranquil, all travellers from France would envy it."

"C. H. Wilkison who had resided in France, speaking of the edict for the abolition of capital punishment in Tuscany, says: I believe "to this may fairly be attributed the comparative rarity of the crime of murder in the Tuscan dominions to the dreadful destruction of life in the other Italian and Neapolitan territories."

---

### BOMBAY.

Sir James Mackintosh, Governor of Bombay, in his farewell charge to the Grand Jury of the Supreme Court at Bombay, July 20, 1811, presents the following facts.

"Since my arrival here in May 1804, the punishment of death has not been inflicted by this court. Now the population subject to our jurisdiction, either locally or personally cannot be less than two hundred thousand persons. Whether any evil consequence has yet arisen from so unusual (and in British dominions unexampled,) a circumstance, as a disuse of capital punishment for so long a period as seven years, or among a population so considerable, is a question which you are entitled to ask, and to which I have the means of affording you a satisfactory answer.

From May 1756 to May 1763, (seven years,) the capital convictions amounted to 141, and the executions were 47. The annual average of persons who suffered death was almost seven, and the annual average of capital crimes ascertained to have been perpetrated was nearly twenty.

From May 1804 to May 1811, there have been one hundred and nine capital convictions. The annual average therefore of capital crimes legally proved to have been perpetrated during that period is between 15 and 16. During this period there has been no capital execution.

\* \* \* \* \*

From May 1797 to May 1804, there were 18 convictions for murder of which I omit two as of a very particular kind. In that period there were 13 capital executions.

From May 1804 to 1811, there were six convictions for murder, omitting one which was considered by the Jury as in substance a case of manslaughter with some aggravation. The murders in the former period, were, therefore, very nearly as three to one to those in the latter—in which no capital punishment was inflicted.

This small experiment has therefore been made without any diminution of the security of the lives and property of men.—Two hundred thousand men have been governed for seven years, without a capital punishment and without any increase of crime. If any experience has been acquired, it has been safely and innocently gained.—*Punishment of Death by Thomas Wrightson, page 55, London, 1837.*

---

Howard says in his work on Prisons, that the adoption of a milder penalty than death, for child murder in Denmark “had greatly diminished the frequency of the crime.”

---

“In 1812, Capt. Marryatt said in the House of Commons, that when he was in Amsterdam, in 1802, but two persons had been capitally punished there for many years, imprisonment and hard labor had been substituted with most beneficial consequences.”

---

“Capital punishment was virtually abolished in Belgium in 1829, by a fixed commutation for all capital offences, to imprisonment or hard labor. Joseph Hume stated in Parliament in 1837 that he learned from the superintendent of a pris-

on, in which were a large number of capital convicts, that 'from his experience,' this measure tended greatly to soften the disposition of the mass of the people."

---

"Edward Ducpetiaux Inspector General of the prisons in Belgium, shows in the statistics of the 'death penalty,' that the yearly average of murders in 19 years ending with 1814 with 28 executions a year, was 21, in the next 15 years, with less than 5 executions a year, not quite 8, and in the five ending with 1834 with *no executions, only four.*" The tables also show the singular fact that the three years in which the most murders occurred, were respectively preceded by those in which were the greatest number of executions.

---

"Our first number, (*says the Prisoner's Friend*, Sept. 1848,) will contain one of the most important facts that has ever yet occurred in the history of the death penalty. It is the great fact that all Germany is now awake on the subject, and the decree has gone forth of the entire abolition of the death penalty in all cases except in sentences by court martial, during the sittings of the German Federal Assembly at Frankfort, the subject of capital punishment was discussed, and the result was as above stated. This is important as the expression of opinion of the German race."

"Prussia has already adopted a similar measure, except in martial law and high treason, by a vote of 294 against 37."

"Corporal punishment was also prohibited by the same vote. The division was 288 against 146."

---

## ENGLAND.

"Lord Holland in his protest, alludes to the abrogation of the penalty of death in several countries, and for a variety of crimes, within the seventy years preceding and says, 'In no one instance does it appear to have been followed by any increased frequency of the crime. The laws have generally been invigorated by such wholesome relaxation.' It ap-

pears from official returns in England, cited in Parliament by Lord Suffield in 1834, that during three years, ending in 1833, the prosecutions for cases that ceased in 1830 to be capital, exceeded by but two per cent. those of three years, ending in 1829; while for those still capital, the increase was 44 per cent., although there is reason to believe that many more of the latter class than of the former were unprosecuted. Indeed J. Harmer, an experienced criminal lawyer in London, testified in 1830, that of those crimes against property which were punished with death, 'The cases prosecuted bore no proportion to those in which no prosecution took place.' It is therefore highly probable, as Lord Suffield inferred, that the change produced 'a decrease of the actual perpetration of crime,' while those still capital rapidly increased."

Thomas Fowell Buxton stated in his speech in the British House of Commons in 1819, on the bill to amend the criminal code, that 6,000 persons were condemned in one year to death, under the statutes passed in the last century. From 1750, the time which Blackstone wrote, to 1819, the number of offences punishable with death, had increased by British legislation, from 160 to 230. From 1819 to 1848, the number had decreased from 230 to 16.

The celebrated William Allen, whose opinions were highly valued by the greatest monarchs and most distinguished men in Europe and the world, says, "In the year 1821 there were 114 executions in England and Wales. In 1828, the number was reduced to 59; in 1836 to 17; and in 1838 it was only 6."

That this change has been effected without diminishing in the slightest degree, the security of the persons and properties of man, is a matter of the clearest evidence; the evidence of actual experience, which cannot be disputed or falsified. The Government returns prove that there have been fewer highway robberies in the last five years, with 5 executions, than in the preceding five with 36 *executions*. That there have been fewer acts of burglary and housebreaking in the last six years, with only three executions, than in the preceding six years, when 56 persons *suffered death* for those crimes; that there has been

less horse stealing in the last nine years, *without any execution*, than in the preceding nine years, during which, for that offence alone, 46 convicts were sent to the scaffold. \* \* \* There have been fewer commitments for murder in the last three years, when the executions for that crime were 21, or 7 annually, than in the three years preceding, when the executions were 39, or 13 annually. Similar results have followed the partial disuse of the punishment of death in France and Prussia, and in Belgium, the discontinuance of the capital penalty, during five successive years, ending with 1834, was accompanied with a diminution of the number of murders. Thus experience proves, that in order to render the laws against crime *reformatory*, they must cease to be *revengeful*.

The London Society for the diffusion of information on the subject of capital punishment, publish tables, showing that a period of time when the death penalty existed, showed for seven crimes, 241 executions, and 10,410 committals.

Second period, when the death penalty was removed, or greatly mitigated, show 13 executions, and 9,388 committals.

Offences for which the penalty of death was abolished in 1832 and 1833:

3 years ending 1829,	96 executions,	4,622 committals.
“ 1832,	23 “	4,724 “
“ 1835,	2 “	4,292 “

Same period, offences not capital:

1829,	- - - - -	46,833.
1832,	- - - - -	51,623.
1835,	- - - - -	51,701.

Same period, for offences still capital and punished with death:

3 years ending 1829,	108 executions,	1705 committals.
“ 1832,	120 “	2236 “
“ 1835,	102 “	2247 “

A writer in the *Prisoner's Friend*, states that in six years, ending with 1833, when house breaking ceased to be capital in England and Wales, there were 5,104 committals for bur-

glary and house breaking, and 47 executions. For six years, ending with 1839, there were 4,735 committed, and 2 executed.

[Similar tables and illustrations are published without number.]

---

#### UNITED STATES.

Ormond H. Dutton, in a debate in 1849, in Boston, on capital punishment, said, "In the Old Colony Laws of Massachusetts, chapter 18, section 2, you will find this law: 'If any man or woman be a witch, that is, hath or consulteth with a familiar spirit, they shall be put to death,' founded on Exodus, Leviticus and Deuteronomy. Again, section 14, 'If a man have a stubborn and rebellious son, sixteen years of age,' &c., 'he shall be put to death,' founded on Deuteronomy. In accordance with the first of these laws, eighteen persons were hung, and one pressed to death between two platforms in such a manner that he lived in the most extreme agony for forty-eight hours."

---

"In Tennessee and Louisiana, the whole matter of Capital Punishment, for any crime, rests with the Jury. In Wisconsin, its abolition was negatived by a single vote.—*Prisoner's Friend*.

---

"Fifteen States have passed laws removing the gallows from the highway to the jail yard."—*Prisoner's Friend*.

---

"Vermont has a law that one year must elapse between the sentence of death and execution, and finding that no execution took place under that law, ordered that the Governor should appoint the time within three months after the expiration of that year."

"Maine, also, has a provision, that one year must elapse, and has left it optional with the Governor, after the expiration of the year. Hence, there has been a man, (Thorn,) under sentence of death now for more than seven years, yet no Governor orders his execution. He is at work in the State prison, and will probably die a natural death."—*Prisoner's Friend*.

In 1849, the Inspectors of the Eastern Penitentiary, in Philadelphia, which is on the solitary confinement plan, in their annual report, "urge upon the Legislature, the great need of a State Asylum for the Insane, and such legislation as may relieve the Penitentiary of prisoners, whose secure custody is required by the public necessity, and who are sent to this prison, because no other institution exists, in which a like security can be afforded." Hence, perhaps, the popular sentiment that solitary imprisonment produces insanity, may be in part accounted for.

"The following bill has passed the legislature of Louisiana and become a law, it is the entering wedge for the total repeal of the death penalty, and shews that the labors of her illustrious legislator, Edward Livingston, were not in vain."

1st. Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly, convened, "that in all cases where the punishment denounced by law is death, it shall be lawful for the jury to qualify their verdict by adding thereto "without capital punishment."

2. Be it further enacted, &c., That whenever the jury shall render a verdict qualified as aforesaid—the person convicted shall only be sentenced to hard labor for life in the State penitentiary, (Assembly No. 95.)

#### MICHIGAN.

Capital Punishment was abolished in this State in 1846, by the following vote :

Senate,	12 yeas,	4 nays,
House,	21 yeas,	14 nays.
	<u>33</u>	<u>18</u>

*Prisoner's Friend*, page 184, vol. 1.

#### LETTER FROM THE GOVERNOR OF MICHIGAN.

Detroit, Feb. 13th 1847.

HON. JOHN STAUNTON GOULD.

Dear Sir.—Yours of the 2d inst., came to my hand this day. In a general revision of the statute laws of this State, passed

by the Legislature last winter, capital punishments were abolished, and solitary imprisonment at hard labor for life in the State prison substituted. This revision does not go into operation until the first day of March next. The practical operation of the system has not therefore yet been exhibited. Petitions have been presented to the Legislature, at the present session, praying for a change in the law, so as to restore the former provision on this subject, but the committee to whom they were referred have reported adversely to the change.

No execution has in fact taken place in this State for at least fifteen years last past, some three or four criminals were during that time sentenced to be hung, but the punishment was commuted by the Governor.

Very truly and respectfully &c.,

ALPHEUS FELCH.

“ Office of the Secretary of State, }  
Lansing, Michigan, May 6, 1850. } ”

ALFRED GIBBS CAMPBELL, Esq.,

DEAR SIR.—Your favor of the 11th inst., is before me, you desire to ascertain whether our State has returned to the practice of the death penalty, also my opinion as to the general sentiment of our State, with our present experience on the subject.

In reply, I would state that our State has not returned to the practice of the death penalty. It was repealed at the time of the revision of our statutes in 1846. There has been but one attempt to revive the law, that was in 1848, I think, and it signally failed. On examination of the journal I cannot find that the question was ever brought to a vote in either house.

In reply to your second interrogatory, I have no hesitation in giving it as my opinion that the general sentiment of our State is beyond all question nearly unanimous in favor of our present laws on that subject. Indeed, in the whole range of my acquaintance, I do not know one individual in favor of a return to their practice. I am certain I have heard no one express himself in favor of such a change. I am not aware of there being any statistics on file in this office bearing upon this

question. By coincidence merely, there were committed in Wayne County, within two years, from the revision four murders. The Grand Jury of that county memorialized the Legislature in favor of a repeal. Counter memorials shewed most conclusively that the increase of capital crime, startling indeed as it was, could not have had any connection with the change in the law as in three out of the four cases certainly knew not of the change, since that time there certainly has been no *increase* of capital crime.

Very respectfully yours,

C. H. TAYLOR, *Secretary of State.*

Extracts from Reply of C. N. Taylor, Secretary of State, of Michigan to Hon. George E. Baker, Chairman of Committee, on Capital Punishment for the Legislature of State of New York.

Office of Secretary of State, }  
Lansing, Michigan March 5, 1851. }

SIR:—"In reply to your communication of the 5th. ult., I submit the following answer to the question therein propounded.

*1st. Question.*—How long since capital punishment was abolished in your State?

*Answer.*—"It was abolished in the season of 1846, which took effect the first of March, 1847."

*2nd. Question.*—How many convictions of murder have occurred since the death penalty was abolished?

*Answer.*—"In 1847, 1 for manslaughter,

1848, 1 for murder in the first degree,

" 1 " second degree,

1849, 1 " first degree,

" 2 " second degree,

1850, no conviction for murder or manslaughter.

ter.

The foregoing dates were taken from the official report of the State prison agent, on file in this office."

*3d. Question.*—Have you any evidence that the persons so convicted were in any wise influenced by the present provisions of your laws?

*Answer.*—"I have none on file; I will add however, that I am assured by the present Attorney General of our State, who as prosecuting attorney for the county of Waine, prosecuted to conviction, four of the cases named in the foregoing list, for 1848 and 1849; (three of them for murder in the first degree, and one in the second;) that three of them viz: Anderson, Marsh, and Rademacher, it was clearly shown at the time—were not aware of the change in the penalty when they committed their crimes, and it was highly improbable that the other (Bellington) knew that the death penalty had been abolished. Of the other cases reported, I have no means of ascertaining whether they were, or were not, knowing to the change referred to in our laws."

By a table and explanation, the Secretary also shows that for the six years preceding the change of law, upon the average one indictment was found for murder annually, to each 70,500 of population, and for the last four years, one indictment annually for every 75,200.

Although these results slightly favor the supposition that the abrogation of the death penalty lessens crime, it will be readily perceived that the law of Michigan affords very unsatisfactory testimony in this way, for the reason that the population of that State is so migratory and transient that it is not probable that a large proportion of criminals who transgress her laws are aware of the fact that the death penalty has been removed, as in the cases stated by the Secretary, and which, so far as they are concerned, go to prove the direct opposite of what the advocates of the death penalty contend for, as they were committed by men under the belief that the death penalty still existed in Michigan, although as stated before in the Governor's letter to Mr. Gould. The law had not been put in force for the last 15 years, and consequently it is not to be supposed that criminals would stand much in awe of its application, although its threatenings might have a tendency to excite their revengeful propensities. Nor is our own State barren of facts pointing in the same direction.

In 1795, both capital and corporal punishment were abolish-

ed in Rhode Island, by Act of Assembly, but both punishments were re-enacted January, 1798, when a general revision of the laws were made.—*p. 181, Annals of Providence.*

From March, 1795, to September, 1798, no record appears of any criminal indictment in the records of the Supreme Court for the County of Providence.

September, 1798, there is the record of the indictment of Hopkins Hudson, for murder, who appears to have been sentenced to be hung; the only indictment for that or the previous Term of Court.

In January, 1844, capital punishment was abrogated in Rhode Island, excepting for the crimes of murder and arson, (the latter left discretionary with the Court.)

From September, 1829, to September, 1843, inclusive, the records of the Supreme Court exhibit for the County of Providence :

16 indictments for murder, and 5 convictions.
1       "        arson,        "   0       "
16 indictments for all other of-
fences then capital,        5       "

—  
33 capital indictments. Total 10 convictions.

From March, 1844 to September 1851, inclusive, the same records show :

7 indictments for murder, and 2 convictions.
2       "        arson        1       "
20 *indictments for all other
offences, capital previous
to 1844.                   14 convictions.

Population of Providence County, by United States' census returns:

1820,	-	-	-	-	-	-	35,538
1830,	-	-	-	-	-	-	47,014
1840,	-	-	-	-	-	-	58,078
1850,	-	-	-	-	-	-	87,528

\* Six of these indictments were for burglary, found at our Term of Court, March, 1849.

The following are extracts from a very able report on the subject of Capital Punishment, made to the General Assembly of Rhode-Island, in 1838, by the Honorable William R. Staples, and the late Samuel Y. Atwell, Esq. :—

“Such punishments (capital) are considered peculiarly appropriate for murder and petit treason. This we apprehend arises from a mistaken idea of the designs of punishments.—Society has no revenge to seek against its delinquent members. The State deals out no vengeance to those who offend against its laws. Penal laws always look to the future. The State requires obedience to its laws by the sanction of punishments for the good of the whole—the end in view is the prevention of crime—the sole object of punishment is to deter others from offending against the laws. Admit that death is the appropriate and the only appropriate punishment for murder; that life should be taken for life, and the law of retaliation ought to be re-established. An eye for an eye, and a tooth for a tooth, would constitute our whole penal code. \* \* \*

The strongest argument against capital punishment, and the one most frequently resorted to, is, that it is a great innovation in criminal jurisprudence. To this, it might be answered, if those punishments have been in use ever since society has been formed, and have not been found sufficient to repress crime, it is time some other system was tried. \* \* \*

What possible evil can result from trying the experiment in this State? It will always be in the power of the General Assembly to repeal it, and it ill becomes a Rhode-Island man to yield to an argument of innovation. Up to the settlement of this colony, civil government had ever claimed the right to regulate the religious faith of its citizens. Only a single voice had been raised against it, in the whole human family—that was the voice of the founder of this State. The cry of innovation was raised against him. Dreadful scenes of anarchy and confusion—irreligion and immorality—were conjured up as the inevitable consequences of religious liberty. \* \* \* Yet, being convinced that ‘a most flourishing civil State may stand and best be maintained with a full liberty and religious

concernments, against the concurrent practice of the whole world the experiment was commenced. \* \* Two hundred years have passed, and the experiment has succeeded—gloriously succeeded.

We appeal now to the legislature of Rhode-Island to try another experiment—one which is approved by the philosophy of Franklin—the philanthropy of a Rush, and the research of a Livingston. \* \* By adopting it before any of her sister States, Rhode-Island will show that she still possesses that independence of feeling, sentiment, and action which characterized her first settlers—and will regain that proud pre-eminence among them, which she only lost by their imitating her example.”

---

“Laws,” (says Benjamin Franklin,) “which inflict death for murder, are, in my opinion, as unchristian as those which tolerate or justify revenge.”

---

“In my early visits to Newgate, I had formed no opinion upon capital punishment, but my intercourse with the prisoners led to a decided conviction of their evil tendency.—*Elizabeth Fry*.”

---

“History shows that what is called exemplary punishment, cannot boast of great efficiency. Crime thrives under severe penalties—thrives on the blood of offenders. The frequent exhibition of such punishment hardens a people’s heart, and produces defiance and reaction in the guilty.—*Channing*.”

---

The celebrated Edward Livingston says, “I had once a conversation with an exalted magistrate, a man of high attainments and great liberality, on the abolition of capital punishment. He acceded to the propriety of the measure, in all cases but murder, because of the difficulty of keeping the offender, and the severity of solitary confinement, which was proposed to be substituted. But when these two objections were, as I thought satisfactorily answered, he replied by one of the exclamations and in the text, (‘The murderer deserves death, &c.’)

and added very frankly, 'I must confess that there is some little feeling of *revenge* at the bottom of my opinion on this subject.' If all reasoners were equally candid, there would be less difficulty in establishing true doctrines.

---

Montesquieu says, "Every act of punishment not demanded by absolute necessity, is tyranny."

---

"Since 1810, more than fourteen hundred human beings have been executed in England and Wales, for crimes which have now ceased to be capital. For no one of these crimes was the death penalty repealed, until facts were known and published sufficient to establish by a perfect demonstration, that that specific crime was rendered more frequent by the then existing state of the law.

In all these changes, the beneficial effects expected and predicted have been realized, and more than realized. In *no case* have the evils apprehended by those who despise the teachings of experience followed the reform."—*R. Rantoul, Jr.*

---

"When one casts his eye upon the history of crime and punishment in modern Europe, the phenomenon which first attracts his notice, is the prodigality with which the death penalty was formerly dispensed, and the prodigious advance which a milder system of repressive policy has made, during the eighteenth and the first quarter of the nineteenth centuries, and still more remarkably during the last twenty years. As this mitigation of punishment has been tried in ever part of Christendom, if any evil consequences had followed from it, some one would have been able to point them out, and to tell us when, where, how and how long the mischief manifested itself. Yet among more than two hundred authors upon this subject, whose writings I have examined, I have never found but two who have seriously attempted to exhibit the evils which these successive meliorations of the law must have occasioned, if *those wise men* against whose indignant remonstrances these changes were effected, were right in their prognostications.—

The two champions of blood were the authors of 'Hanging not punishment enough,' published in 1701, and 'Thoughts on Executive Justice,' published in 1785; both which works are now reprinted and distributed by the *opponents* of the death penalty, to show the absurdities into which men of great learning and talents are forced, when they attempt to vindicate the operation of the gallows."—*R. Rantoul, Jr., Letters on the Death Penalty.*

---

The following letter received by Mr. T. R. H., a gentleman deeply interested in the subject under consideration, and to whose untiring labors the Committee are under obligations for the collection of most of the facts here submitted, is deemed worthy of a place in this report, as showing the growing disinclination, in community, to inflict the death penalty :

PROVIDENCE, Jan'y 22, 1852.

DEAR SIR,—In answer to your inquiry, what proportion of the whole number of Jurors called in capital cases, are excused from serving from conscientious scruples in finding a verdict of guilty? I can only say, that I have, in most cases, kept memoranda of the number, and oftentimes of the names, of those set aside for that cause. As I have not the memoranda by me, I cannot now refer to them. I, therefore, cannot state with exactness. In the last capital case, 20 were set aside for that cause, out of some 55 called. This proportion is larger than usual.

I think, upon the average, the proportion has been, from one quarter to one third of the whole number.

Very truly, yours,

GEO. A. BRAYTON.

---

Your Committee, after a careful consideration of the foregoing facts and opinions, have deliberately come to the conclusion, that the spirit of the age in which we live, the sublime principles of Christianity, as well as the ends of Justice, demand the abolition of death as a penalty for crime.

Under this conviction, your Committee unanimously recommend the passage of the accompanying Act.

Respectfully submitted.

ARIEL BALLOU, HAZARD KNOWLES. WM. C. CHAPIN, WILLIAM P. BALL,	}	<i>Committee of Education.</i>
--	---	------------------------------------

---

AN ACT to Abolish Capital Punishment, and to provide for the more effectual Punishment of Crime:—

*It is Enacted by the General Assembly as follows :*

*Section 1.*—The Punishment of Death is hereby abolished.

*Section 2.*—Any person convicted of any crime, punishable with death by the laws now in force in this State, shall be confined in the State's Prison, at labor, for the period of his or her natural life.

*Section 3.*—On the conviction of any person for a crime now punishable, by law, with death, he or she, shall, thereupon, with respect to all rights of property, to the bond of matrimony, and all civil rights and relations of whatever nature, be deemed to be dead in all respects, as if his natural death had taken place at the time of such conviction.

*Section 4.*—Hereafter, no person convicted of any crime, now punishable with death, or other crime for which the punishment is now, by law, imprisonment for a term of not less than five years, shall be pardoned or released from prison, except by a concurrent, recorded vote of three-fourths of all the members elected to each House of the General Assembly; and so much of any Act as is inconsistent herewith is repealed.