

The Death Penalty,
by

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The Death Penalty.

The Marguerite Beccaria published in 1767 his famous essay on "Crimes and Punishments" in which he argued so powerfully against the justice and expediency of punishment by death that the Grand Duke of Tuscany was induced by reading the essay to abolish that mode of punishment in his dominion. Ever since that time it has been a question much discussed and of considerable interest though but little written work can be found upon it. A brief review of the historical status of this punishment may assist, to some extent, in forming true conclusions as to its comparative value.

As a penalty for certain crimes death has from remotest time been affixed. The first impulse of a savage when he considered himself in any way wronged or hindered by another would be to deprive this enemy of his life, thus obtaining his revenge or clearing the obstruction from his path. The origin of this penalty as an established law cannot of course be traced any farther back than the time of Noah who according to the Bible received that often quoted but little understood communication, "Whoso sheddeth man's blood, by man shall his blood be shed." This

is given as part of the old Hebrew law and although almost all other parts have long ago been disregarded this one is clung to with a tenacity worthy of a better cause. The Jews however did not make murder the only crime punishable by death, their capital offenders being numbered by the score.

Coming to far more recent times we find that in England as late as 1750 the number of crimes punishable by death was over one hundred and sixty; and among these were several which in manner of execution were as revolting as any thing which Jew or Roman ever invented. If the severity of the punishment were an important point the penalties of this time should have been wonderfully productive of good. Bowels and heart removed while alive, the body quartered and burned and the ashes scattered to the four winds, would we believe make the most enthusiastic supporter of this penalty stop a moment to consider.

At the present time we are pleased to know that the civilized portions of our race have made great progress in the direction away from the law of blood for blood, or more truly blood for any thing, and toward a state of society in which the law will set an example of respect for human life which shall have a greater preventive effect against murder than the fear of death could ever stimulate. Today in United States death is the penalty pronounced for wilful murder in all but three states

namely Rhode Island, Michigan and Wisconsin and further, and we believe it would surprise many good people in not a few of the states other crimes are atoned for by death. In Louisiana we find rape, assault with intent to kill, administering poison and burglary as capital offenses; in North Carolina and Delaware, rape, arson, and robbery; in Alabama rape, arson and burglary; in Georgia rape, arson and mayhem; in Missouri rape and perjury; in Virginia, West Virginia, South Carolina and Mississippi rape and arson; in Florida, Kentucky Tennessee Texas and Arkansas rape; in Maryland any kind of arson; and in Montana arson of a dwelling by night.

Now it is interesting to note that while not only murder but rape, arson, burglary and mayhem are punishable by death in different states of the Union, there are several European countries who have entirely removed this penalty from their criminal code. Even in Russia capital punishment, for any crime except treason, has been abandoned for over a century. In 1874 it was abolished in Switzerland but in 1879 permission to restore it was granted the cantons but up to 1890 not one had done so. Portugal abolished the death penalty in 1867 Holland in 1870 and Italy in 1889.

William Telford of the Howard Association of London shows conclusively that in almost all these countries the penalty had entirely ceased to be effective in any years

before it was really taken from the statute books and that it is the general testimony that there has been at least no increase in the number of murders since its repeal.

In arguing the capital punishment question from any point of view, the right to inflict death must be acknowledged to exist; but it must be in defense of either individual or social life and even then we claim it is limited to the case in which no other alternative remains to prevent the threatened destruction. The balance is almost equally weighted when it is a case of give life or take life but the invariable tendency is to dip toward the defender.

The whole cause, or excuse, for the punishment of a criminal in a civilized country is contained under two heads: first it is intended to make impossible the commission of further crimes by this individual and second to deter others who might be so inclined from the commission of like crimes. The first of these is we admit effectually fulfilled by the execution of the criminal. Were the jury perfect in understanding and no innocent person ever convicted; were there any unobjectionable method of performing the execution; were each of the deeds thus punished worthy of equal punishment; were there no insane criminals; and were there no better way of assuring ourselves that

the deed would never be repeated; then this would indeed be the only rational way to deal with such persons.

Let us consider briefly some of these points. Is a jury ever perfect? Shakespeare was speaking on this point when he wrote,

"The jury passing on the prisoner's life
May in the sworn twelve have a thief or two
Guiltier than him they try"

Who, when a case has been finished and the jury discharged, can with the least degree of certainty predict as to what the verdict will be? When guilt could be expected and the extenuating circumstances are many the severest verdict will often be returned; and when acquittal might be looked for in the first degree is pronounced.

Judge Thomas of the District Court once said, "I believe it is fair to say that not one out of twenty of jury verdicts are founded entirely upon the testimony and the judge's charge." Church sentiment, Gent-Society influence, political considerations, powerful friends, ready money and newspaper talk are powers beyond justice which far too often intervene to ever allow the jury system to become the instrument of justice which it should be when acting upon the lives of human beings. Call to mind the Taylor case of this last winter. Almost no one expected other than a verdict of guilty. The newspapers had the prisoner convicted

almost as soon as they were caught yet five of the jury-
-men did not see cause sufficient to convict. Lafayette
struck a fair note in saying, "I shall ask for the
abolition of the death penalty until I have the infallibility of
human nature demonstrated to me."

But what of the means of execution? In olden times
people seem to have been more logical than now and
considered that if it were beneficial to have a severe
penalty, making it more severe would increase the
benefit. Hence all manner of torture was administered
before the execution. But now civilization has so far
got the better of logic that instead of employing the
most horrible mode of death imaginable, executions
are performed in ways more suited to our refined
moral sensus. Beheading is a sure method but the
fearful contortions of the face and the body after the
blow has fallen leave no doubt that the pain is awful.
Garroting and electrocuting are both apt to fail in the
act from bungling work and as for us we still go on,
"Conforming, on the Moslem plan,
The wretched colored mind of man
Not by the Koran and the sword
But by the Bible and the cord"

It is no wonder that the executioner is viewed as a man
almost without the pale of society for men ask; which is
the worse the murderer who killed when in the frenzy of

revenge or jealousy or the second murderer, and as such he is considered by law in Spain, who does the deed simply for money and that such a trifling amount?

Is there justice in punishing all offenders in the same way? Who thinks that all of even the first degree murderers are equal criminals? For to be truly just we must consider the antecedents of each criminal. Richard White Grant said, "Man is a result, a result of forces which were trending toward him centuries before he appeared; a result over which his own free-will and his own work have but a modifying influence."

Who shall judge as to the sanity of the prisoner? It has been proven that the best experts are quite fallible in this regard. Kelly Bly while reporting for a New York paper feigned madness so cleverly that she passed the examination and was admitted to the mad house where she kept up the ruse several days.

Cannot we substitute life sentence without power of pardon, except in case of new evidence, for capital punishment and be benefited by the change. This would as assuredly put the offender as well out of the way of doing further harm to society as his death. And by killing the murderer our great way of punishing the crime is cast aside. If instead of this he should be kept and studied, his psychological status carefully noted, the emotions which prompted the deed impartially considered and then acting upon this information

take steps, not of revenge on the past wrong done, but to prevent the future one, we should be following a wiser course. Is the uncommon sight or knowledge of execution in any way ought but brutalizing to all even remotely concerned in it?

We must argue that the death penalty does not act as a powerful preventative of murder. Of this Bacon once wrote, "There is no passion in the mind of man but it masters and masters the fear of death. Bravery triumphs over death, love slight, honor aspires to it, and grief flirts to it." If the law instead of setting the example of taking life would instill into the citizen a greater regard for it by maintaining its sanctity inviolate; if instead of murdering it would say "Powerful as I am I dare not deprive any human of this greatest of his inalienable rights", the horror for human life would necessarily be vastly increased.

It is hard to estimate why a thing does not happen and arguing from premises of that sort is simply swinging around a circle of negative propositions. But when, as we can in this case, we can start with a certain crime rate it is fair to claim that an efficient preventative punishment should lower that rate in proportion to the population. Now a late work by Bro. Spaulding of York Pa. opens with the following words being a book written in favor of the old law of blood; "The alarming increase of murders and the growing insensibility of human life are subjects of general comment

and call for consideration as to the cause and remedy. The columns of the daily papers brim with accounts of most atrocious crimes in taking human life. The murderer of today is bold and defiant. Here we find on the first day page of what is considered a strong argument on that side an admission that the law of blood which has been in effect for ages is a failure, for if capital punishment deserved a tittle of the praise which it has so long received the crimes which it punishes would long ere this have been exterminated instead of, as he admits, being on the increase.

The advancement in this line has ever been toward less severe and more humane punishments, punishments which do not shock the moral sense of all right minded people who witness them. The power of a punishment to deter from a crime, it is generally admitted, lies more in the certainty of conviction than in the severity of the penalty. Knowing that he risks a severe penalty in no way changes the desire which possesses him to murder; but only sets his brain to work devising some way to avoid detection. Can he ever convince himself that escape is possible the punishment is of no farther value. Reluctance on the jurors dislike to finding guilty of a capital offender is one of his chief bulwarks.

Statistics show that but a very small proportion of those accused of murder in the first degree, in states where it is

punishable by death, are found guilty. A jury will try as
 Max B'Roll claims "to find extenuating circumstances to avoid
 sending a fellow creature to the gallows". It is Dickens
 who tells of a jury he knew who in a forgery case found
 a ten-pound note to worth but thirty-nine shillings so
 as not to bring the offender under capital punishment. For
 like reasons jurymen often argue that since some eminent
 doctor has said that all men are more or less mad the
 prisoner must be mad and therefore found not guilty.

Murders are perpetrated at the very foot of the gallows:
 the percent of murders to the population is increasing:
 but still the many cry Hang him! Hang him!

Make conviction certain, the punishment not irre-
 coverable and detection sure and then the most infuriated
 man will take a second thought - he commits the
 deed, and the killer for money will assuredly be restrained.
 "The law that dips its finger in blood to write the com-
 mandment, 'Thou shalt not kill' is simply a legal
 transgression of the precept itself" and while the first
 murder is often premeditated the last is always so.
 For after catching binding and guarding its victim the
 law deliberately sets about to kill him. What would
 such action from an individual be accounted? Even
 if it were known that on being given his liberty
 the criminal would endeavor to kill some member
 of the captors family he could do no more than

hold him in safe keeping.

We have not space to even mention many of the so called sentimental reasons urged against this penalty. The horror of rushing a sin stained soul before the final judgment throne, the untold mental agonies suffered during the trial and after sentence is passed, the terror of an everlasting divine hatred, all plead eloquently against this long established but barbarous custom. Note in conclusion the brave words of our liberty loving poet Whittier,

"O never yet upon the scroll,
Of the sin stained but penitent soul,
Hath heaven inscribed 'Despair',
Cast not the clouded gem away,
Quench not the dim but living ray,
My brother, man, beware!
With that deep voice that from the skies
Forbade the patriarch's sacrifice
God's angel cries 'Forbear'."