The Death Penalty

by

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The Death Penalty. Some considerations against it.

Introduction.

Beginning of agitation against capital punishment.

1. Historical record of the penalty.
   Origin. Savage and Biblical.
   Extent in eighteenth Century.

2. Extent at present time in United States.
3. Countries in Europe which have abolished it.
   Good results from this action.

Argument against.

Reasons two-fold, for punishing criminals.

1. As relating to the individual criminal.
   2. Impropert jurors. Punishment of innocent.
   3. Manner of execution.
   4. No means of graduating the punishment.
   5. Punishing the insane.
   6. A substitute for the death penalty.

1. As relating to future criminals.
   Fear of death has but little preventative effect.
   2. Percent per population of murders increasing.
   3. Difficulty in convicting. Prompt to murder.
   4. Evil example set by the law.

Conclusions.

Make detection and conviction certain.

Follow dictates of our better moral sense.
The Death Penalty.

The Marquess Baccarai published in 1767 his famous essay on "Cruises 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 on so that no 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 earliest time been applied. The first instance of a savage whom 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, "Whose sheddeth man's blood, by man shall his blood be shed." This
is given as part of the old tribal law and although almost all other parts have long ago been disregarded this one is cling to with a tenacity worthy of a better cause. The Jews however did not make murder the only crime punishable by death, their capital offenses being numbered by the score.

Coming to our more recent times we find that in England as late as 1780 the number of crimes punishable by death was over one-half and sixty and among these were several which in manner or execution were as revolting as anything which Jews or Romans ever invented. If the severity of the punishment were an important point the punishments 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's 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 perfect for human life which shall have a great preventive effect against murder than the fear of death could ever stimulate. Today in United States death is the penalty pronounced for willful murder in all but three states.
namely Rhode Island, Michigan and Wisconsin and further, and we believe it would surprise many good people if
not a few of the states other crimes are abounded 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 Wisconsin rape
and burglary; in Virginia, West Virginia, South Carolina
and Mississippi rape and arson; in Florida, Kentucky,
Tennessee rape and Arkansas rape; in Maryland any kind
of arson; and in Montana arson of 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 1879 not
one had done so. Portugal abolished the death penalty
in 1867, Holland in 1870 and Italy in 1889.

William Tellers of the Howard Association of London
shows conclusively that in almost all these countries the
penalty had entirely ceased to be effective many years.
before it was not taken from the statute book 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 giving life or taking life but the invariable tendency is to shift toward the defender.

The whole case, 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 prostrate in understanding and no innocent person ever convicted; were there any objectionable method of performing the execution; were each of the birds thus punished worthy of equal punishment; were there no excuse 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 their 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 thing or two
And within their knowledge to say they will not know, who, when a man has been punished and the jury harnessed, can with the least degree of certainty predict as to what the verdict will be? When leniency could be expected and the estimating circumstancers are many the jurors would it will often be returned; and when acquittal might be looked upon in the first degree is pronounced.

Judge Thomas in the District Court once said, "I believe it is fair to say that not one out of twenty jury verdicts are founded entirely upon the Examiners and the judge's charge. Church arisitocrats, Brent-Society influence, political considerations, powerful friends, ready money and newspaper talk are powers beyond justice which far too often influence 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 news-papers 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 true 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 is the meaning of execution? In olden times
people were to have been more logical than now and
concluded that if it were beneficial to have a severe
penalty making it more severe would increase the
benefit. Haste all manner of torture was administered
before the execution. But now civilization has so far
noted the better logic that instead of employing the
most horrible mode of death imaginable, executions
are performed in ways more suited to our refined
moral sense. 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.
Drowning and electrocuting are both apt to fail in the
act from bruising wounds and as for us we still go on,

"Conforming to the Modern plan,
The newly colored marvel of man
Not by the lasso and the sword
But by the Bible and the cord."

It is no wonder that the executioner is revered as a man
almost without the pale of society for men ask: Which is
the worse the murderer who killed whom in the frenzy?"
sweeping or jealousy or the second murder, and as such he is considered by law in Spain, who does this deed simply for money and that such a trifling amount?

Is their justice in punishing all offenders in the same way? Who thinks that all of them the first degree murder is an equal crime? 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 tending toward him centuries before he appeared; a result over which his own free will and his own world have but a modifying influence."

Who shall judge as to the sanity of the prisoner? It is but fair that the best expert are quite fallible in this regard. Kelly Bly while reporting for a New York paper quoted madness as clearly that she passed the examination and was admitted to the mad house when she kept up the rear several days.

Cannot we substitute life sentences 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 one great way of preventing the crime is cast aside. Instead of this, he should be kept and studied, his pathological state 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 sin, we should not be following a wise course. Is the unworn mere right or knowledge of punishment in any way useful but brutalizing to all those remotely concerned in it.

We must argue that the death penalty does not act as a powerful preventative of murder. As this Bacon once wrote, "There is no passion in the mind of man but it makes and madders the fear of death. Brough triumphant, yet death, love, aught; love apertineth to it, and grief parteth 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 humanity, it would say, "Powerful as I am, I have not deprived any human of this greatest of his inalienable rights," the murderer for him an life would necessarily be vastly immoral.

It is hard to estimate why a thing does not happen, and arguing from premises that are simply swinging around a circle of negative proposition. But when as we can in this case, we can start with a certain correlative 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 Mr. 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 murder and the growing inhumanity of human life are subjects of general concern.
and call for consideration as to the cause and remedy. The columns of the daily papers swarm with accounts of most atrocious crimes in taking human life. The murder of today is bold and defiant. How we find on the first day page 7 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 deters a fifth of the offenses which it punishes, would long in this have been extinguished instead of, as he admits, being on the increase.

The advancement in this line has ever been toward less severe and more humane punishment, punishment which does not shock the moral sense of all right-minded people who witness those. The power of a punishment to deter from a crime, it is generally admitted, is more in the certainty of conviction than in the severity of the punishment. Knowing that he risks a severe penalty, in no way changes the desire which possesses him to murder, but only sets his mind to work devising some way to avoid detection. Can he ever convince himself that escape is possible the punishment is of no further value. Reliance on the jurors' dislike to finding guilty of a capital offense is not his chief bulwark.

Statistics show that but a very small proportion of those accused of murder in the first degree, in states where the
punishable by death, are found guilty. A jury will try as
Max B'Pell claims "to find exculpatory circumstances to avoid
condemning a fellow creature to the guillotine." It is dictum
who tells us a jury has been twice in a jury case found
a six-pound note to be worth but thirty-nine shillings so
as not to bring the offender under capital punishment. For
like reasons your remarks 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 murder to the population is increasing;
but still the many cry, "Hang him! Hang him!"

Make conversation certain, the punishment not irre-
coverable and destruction sure and then the most infatuated
man will take a second thought on the conquest, the
bird, 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
morderer is often punished, the last is always as.
For after catching the hound 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 captive family he could do no more than
hold him in safe keeping.

We have not space to enumerate many of the so-called sentimental reasons urged against this penalty. The horrors of making a misstained soul before the final judgment throne, the uncertain mental agony suffered during the trial and after sentence is passed, the

doom of an everlasting device hated, all predating mutually ag await time long established but barbarous custom. Note

in conclusion the brave words of our liberty loving

port Whittier,

"A never yet upon this soil,

Of the misstained but blameless soul,

Both heaven inscribed 'Despair',

Cast not the clouded gem away,

O much not the time but living ray,

My brother, man, man!

With that deep voice that from the skies

Forbade the patriarch's sacrifice,

God's angel cries, 'Forbear!'"