

ON

# DEATH PUNISHMENTS:

A PAPER READ BEFORE

THE DUBLIN STATISTICAL SOCIETY,

BY

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THIS society was established in November, 1847, for the purpose of promoting the study of Statistical and Economical Science. The meetings are held on the third Monday in each month, from November till June, inclusive, at 8, P. M. The business is transacted by members reading written communications on subjects of Statistical and Economical Science. No communication is read unless two members of the council certify that they consider it in accordance with the rules and objects of the society. The reading of each paper, unless by express permission of the council previously obtained, is limited to half an hour.

Applications for leave to read papers should be made to the secretaries at least a *week* previously to the meeting.

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The subscription to the society is one pound entrance, and *ten shillings* per annum.

*On Death Punishment.* By James Haughton, Esq.

THE many public executions which have taken place in these kingdoms, within a short and recent period of time, have forcibly drawn renewed public attention to the subject of capital punishment. This subject is acknowledged by all to be one of deep importance; and, like every important question which deeply touches the feelings, and exercises the judgment of men, it is the cause of great difference of opinion. This is not to be wondered at; it would be surprising, indeed, if it were otherwise; and, if the life of man were not at stake, the delay incident to such difference of opinion would not be much cause of regret. For it is by the collision of sentiment, and the attrition of men's minds, one against the other, that true principles of action are discovered and laid down. To make such principles our own, and to engraft them on the practice of our lives is no hasty work; time to elicit opinion, time to fix truth in the public mind, so that it shall bring forth good fruit, is a necessary element in all our social changes, if we would make those changes improvements, and lastingly available in the promotion of human happiness. I do not, therefore, deplore the occupation of time, to any extent that may be necessary, in satisfying the public mind as to the real value of proposed amendments in the customs and practices of society. On the other hand, however, the friends of reform should be careful that no indecision, or want of perseverance on their part, should give a sanction to unnecessary delay in the accomplishment of such alterations, from time to time, in these customs and practices, as man's increasing knowledge, advancing civilization, or purer and more enlightened views of the Divine government demand.

Upon this question of capital punishment, it does seem to me that there is amongst those in this land, who favour its entire abolition, a want of that zeal and activity which so great a work calls for at their hands. I am of opinion that the public mind has been permitted to stagnate too much upon this great question of human duty and human responsibility. While we are sleeping, criminals are being constantly hurried out of existence; and instead of being ever wide awake, and actively engaged in taking the film off men's minds—a film which is woven by prejudice in favour of ancient usages, and by erroneous views of our duty to God and our fellow man—we are only aroused to energetic action when some

horrible event takes place ; and that we hear the indignant cry of outraged humanity ringing in our ears, and telling us that there is a chord in man's inmost soul which is attuned to humanity, and which cannot vibrate in harmony when the gallows strikes the key.

It seems to me that, when a great principle is at stake, we should not wait for extraordinary occurrences to prompt us to labour for its fulfilment ; but, that the value of the object itself should be a never-ceasing motive for action.

Our Society was founded for the purpose of "promoting the study of statistical and economical science," and, attracting public attention to the value of acquiring, through these means, a correct knowledge of sound principles of action ; with a view of making such principles available for the promotion of human happiness. In a word, our object is to do as much good as we possibly can, on the principles of our association, leaving a reasonable latitude for digression to our members ; still expecting from them such an adherence to our specific objects, as that all the papers read before the Society shall be mainly conducive to these objects. I have endeavoured to keep this idea in view, and I believe I may say for the Council of the Society, that they are most desirous to receive papers from such members of the general body as may be disposed to aid, in that way, the useful ends we all have in view.

Believing that the entire abolition of death punishment would be advantageous to society, I am induced to bring the question before you, in order that it may receive ample discussion at your hands ; and, in this way, add to that increasing volume of public opinion, which will, I expect, at no distant day, erase from our statute-book this relic of a barbarous age. The statistics which I mean to lay before you will, I expect, carry your judgment with me.

I am aware that very many intelligent and good men still hold to the opinion, that the safety of society demands the violent death of the murderer. It shall be my object to prove that this is an erroneous idea, and that the "safety of society" will be best secured by the adoption of a contrary course—by a resort to the law of kindness, instead of carrying out those abstract notions of full justice, or vengeance, which have been handed down to us by preceding generations.

To establish my proposition, I shall bring before you statistics, drawn from undoubted sources, which prove that the amelioration of our criminal law, in relation to crimes of a lesser order than murder, but for which death punishment was formerly the penalty, has been attended with good results ; and I shall also prove my case by a reference to the practice of other states, wherein the abolition of death punishment has in no degree endangered the "safety of society."

In relation to the statistics of the question, I find the following facts. In the reign of George III. 160 offences were punishable

with death; these included sheep-stealing, robbery, forgery, burglary, horse-stealing, &c. In those days it was considered that the "safety of society" required the death of all persons guilty of these crimes; but the law has been altered, and death is no longer the punishment inflicted. Indeed, wilful murder and high treason may now be considered as the sole capital offences. What has been the consequence of this amelioration of our criminal law? Has society been in any way injured thereby? Parliamentary returns exhibit an exactly contrary result.

In the Rev. Mr. Pyne's "Plea for the Abolition of Capital Punishments," the following results, extracted from parliamentary official returns, down to the end of the year 1838, will be found:—

For horse-stealing, there were executed in the nine years ending December, 1829, 46 criminals; the number of committals being 1,626. In the next nine years, ending 1838, no executions for this crime took place, and the committals were reduced to 1,565.

For burglary and house-breaking (in reference to which Lord Wynford said, that if the capital penalty were repealed, "we should all be murdered in our beds"), there were executed in the six years ending December, 1832, 56 persons; and the committals, during the same period, were 5,199. In the next six years, ending December, 1838, there were but three executions for these offences, and the committals fell to 4,621.

For forgery—a crime which some mercantile men would still visit with the extreme punishment of the law—in the ten years ending December, 1829, 64 criminals were executed, and 746 committed. In the next ten years there were none executed, and the committals were 731.

I might readily multiply facts of a like nature with the foregoing. Indeed, I believe that in no single instance in which death punishment has been repealed, for any crime, in any country, have any other results been realised.

By a Parliamentary return, under date 14th May, 1846, I find the following facts stated in reference to seventeen crimes, which are therein enumerated:—

During the five years ending with the last year of an execution, there were committed 7,726 individuals, of whom 196 were executed. During the five years immediately following, and wherein capital punishment was not resorted to, the committals had fallen to 7,120.

The committals for burglary and house-breaking, for five years, ending with 1832, were 4,327; and the executions 46. During the following five years, the executions were three; and the committals had fallen to 3,734.

Here are indisputable statistics, (I could, without difficulty, add to the catalogue, but the recital would only weary you, and add nothing to the cogency of my argument) and they all prove, I should say, to the satisfaction of every candid inquirer, that the "safety of society," instead of being endangered by a resort to

a milder treatment of criminals than was the policy of our forefathers, is placed on a more secure foundation, so that it may be reasonably inferred that an application of the milder, in place of the sterner rule, even in the case of deliberate murder, would be attended by a like happy exemption from danger.

Lest any should say that the decrease of crime, as evidenced by the foregoing returns, has been caused by a better system of police deterring men from the commission of crime, I regret being obliged to disabuse their minds of that idea; for it appears to be distinctly shown in the official records—the Home Office Annual Returns—from which some of the foregoing statistics are procured, that crimes of all inferior grades were considerably increased in number, during the very periods when the crimes for which the capital penalty was repealed grew less frequent, after the mitigation of the punishment.

Some may doubt the force of my conclusions, and allege that it is contrary to common sense to suppose that men will be more effectually deterred from the commission of great crimes by milder than by severe punishments. They overlook, however, the consideration that the certainty of punishment has a greater effect than its severity in deterring from the commission of crime. Facts are in support of my argument, while false theory alone is the basis on which contrary views are founded.

I apprehend the true solution of this apparent anomaly will be found in the existence of a morbid feeling in many minds, which stimulates to the performance of acts that are punished in a manner that, though severe, makes their perpetrators objects of notoriety. At all events, whatever may be the cause, we find, from the history of man in all ages, and in different countries, that the infliction of death punishment, attended, as it has necessarily been, with the excitement of an interest in the criminal, has had a tendency to call into activity this morbid feeling, and to place the lives and property of men in jeopardy, instead of affording them adequate security.

The death penalty is still resorted to in these countries in cases of wilful murder; so that some may say that in this case my argument falls to the ground for want of proof—that, but for the severity of our law, we might have many horrible murders committed, accompanied with even more revolting circumstances than those which now occur.

It is difficult to meet such reasoners as these; indeed they would be more correctly designated opposers than reasoners. The analogy of other cases weighs nothing with them; they refuse to open their minds to the value of the evidence they afford; they even incline to doubt facts which are undeniable. The ameliorations of our criminal law, which have produced such blessed results, were opposed by similar reasoners, and exactly on similar grounds—the “safety of society;” and they yet contend against the relinquishment of the gallows, on the alleged, but, as I conceive, oft-

refuted ground, that it would be unsafe to try the experiment in relation to the crime of murder.

It is true, *our* legislators have not permitted us to prove that, in the case of murder, as well as in that of all other crimes, it would be a surer guarantee of life to substitute other means than legalised life-taking for our protection. Yet we are not left without good evidence in support of the safety of the abolition of death punishment, even in the case of murderers.

Other countries have gone beyond England in the career of benevolent and wise because benevolent, legislation; and the result, with them, has fully sustained the principles I am contending for. Belgium abolished death punishment altogether; and the facts, in that country, are of a peculiar interest, as they prove the correctness of all the opinions held by the advocates of the abolition of death punishment in these countries. Belgium has returned to the gallows as a protection of life and property, and the result has been, as might have been predicted, increased danger to both.

The following statistics are taken from official returns:— During the five years ending with 1829, 22 persons were executed out of 34 convicted of murder; whilst during the five years ending with 1834, none were executed, and only 20 were convicted of the same offence. In 1835, death punishment was again resorted to, to allay the fears of some who, in defiance of plain proof to the contrary, alleged its necessity. In that year two criminals were executed, and between 1836 and 1839 two more were executed—and what followed? Capital condemnations, which in five years, from 1830 to 1834, when there were no executions, were 64 in number, rose in the five years from 1835 to 1839, when there were 4 executions, to 80; or, in other words, increased just 25 per cent. In this instance of mis-legislation—of a going back towards barbarism, instead of making progress towards a higher civilisation—we find that the revengeful feelings of our nature were stimulated into dangerous activity.

In France and in Prussia, where a comparatively mild administration of this penal law prevails, the results anticipated are experienced. As the death punishment was relaxed in these countries, the committals for murder steadily decreased. The result, as exhibited by the returns, is, that while executions were diminished by two-thirds, the crime decreased one-third.

In Tuscany, too, where death punishment was for a length of time entirely discontinued, the reigning grand-duke declared, after an experience of twenty-three years, that the alteration, “instead of increasing the number of crimes, considerably diminished the smaller ones, and rendered those of an atrocious nature very rare.”

Under the ascendancy of Napoleon, who was a man of violence, and appears to have had no faith in any law except the law of violence, death punishments were re-enacted; and were followed by an increase in the number of atrocious crimes.

Again, let us view the effect of the principles I am now advocating, when carried into operation in India by Sir James Mackin-

tosh, who says, in a charge delivered at Bombay in 1811, "Two hundred thousand men have been governed for the last seven years without capital punishment, and without any increase of crime." "Add to these," says Mr. Pyne, "the well-known facts, that delinquencies in the army and navy were of much more frequent occurrences when death was the award of each breach of duty, than they are now, when a milder system prevails."

For the foregoing statistics I am indebted to an admirable pamphlet, by Frederick Rowton, Esq., entitled, "The Punishment of Death Reviewed," which I would strongly recommend to all who hear me. It treats the subject in a masterly manner, and proves to demonstration that the "safety of society" would be best secured by the entire abandonment of capital punishment.

Without at all referring to the moral and religious aspects of the question, it does seem to me extraordinary that, in the face of the most incontestible evidence in proof of the fallacy of a resort to violence for the prevention of murder, intelligent men are yet to be found who advocate its necessity. The solid reasoning, sustained by statistics and experience, is all on the side of mercy, and yet men still advocate and pursue the vengeful course. It is true, they endeavour to conceal from themselves that revenge forms any part of their feeling towards the criminal. When pressed on the subject, they repudiate this idea most strongly; and yet it seems to me that the system rests altogether on that feeling.

It will be said that the act is done by government, and that government can feel no revenge. But government is made up of individual men, and however these may delude themselves into the belief that, in their collective capacity, they only take into consideration the good of the community, the facts of the case prove that other feelings must operate in their minds; as, if they judged intelligently and dispassionately, they would be forced to the conclusion, that the course pursued hitherto has been a wrong one, and they would move in a better direction.

It is clear to the apprehension of all, that death punishment has not secured society from the crime—the most horrible crime—of deliberate murder. This, our opponents all admit; but they support the law of capital punishment on the negative argument, that but for it, that crime would be much more frequent; rejecting altogether the positive evidence of its hurtful tendencies, brought forward by the friends of the abolition of the death penalty.

I find in the "Transactions of the Dublin Philosophical Society for 1843," an abstract from an essay on capital punishment by Professor Hancock, in which he urges the importance of an examination into the propriety of inflicting capital punishment; since, as Blackstone remarks, vol. iv., page 3:—"Criminal law should be founded on principles that are permanent, universal, always conformable to the dictates of truth and justice, the feelings of humanity and the indelible rights of mankind."

It requires no argument to prove that death punishment is not



conformable to those principles, and that therefore, if we assume them to be correct, all such punishments should be abandoned. So long as human judgment shall be found fallible, some or all of those principles are outraged when we take the life of man. The "feelings of humanity," or some kindred sensations in the minds of jurors, have frequently—I might almost say universally, of late years—tended to render the punishment of our greatest criminals a matter of so much uncertainty, that there is good reason for supposing murderers are not unfrequently influenced by that consideration, when balancing the amount of chances in their minds, before giving way to their revengeful feelings. It often happens that jurors cannot bring their minds to be in any degree instrumental in the infliction of an irremediable punishment. For my own part, I conceive that a full justification of such a course is to be found in the fact, that innocent men have been found guilty and executed, the evidence of whose guilt was apparently so clearly set forth, that no man could have reasonable doubts on the subject. This is one of the grounds on which I contend that death punishment must ever render the conviction of the accused a matter of greater uncertainty, than in cases where that extreme penalty is not present to the minds of the jurors. I would not convey the idea that jurors should not in all cases weigh well the evidence which comes before them; but it is a fact, which we may not set aside in the consideration of this question, that the irremediable punishment of death is one which many men will not consent to inflict upon any human testimony; which proves the uncertainty of any punishment for the crime of murder.

Professor Hancock maintained, in the essay referred to, that the "justice of inflicting death depended upon its expediency; that is, upon the decision of the question, whether it is the most effectual punishment for preventing certain crimes." Without entering at large into this view of the question, I think I have proved, in previous portions of this paper, that such punishment cannot, according to the learned Professor's definition, be just, seeing that it is never expedient; inasmuch as there is sound reason for believing that it tends to increase, and not to diminish, the crime of murder. Indeed, this may be taken as a fact proved by some of the statistics I have given herein.

Before quitting the abstract of Professor Hancock's essay, there is one other point alluded to in it, to which I would shortly refer. He noticed the objection which is frequently made to the abolition of death punishment, derived from the text in Scripture, "Whoso sheddeth man's blood, by man shall his blood be shed;" which he answered, as the Archbishop of Dublin did in one of his lectures on political economy, in reply to a similar objection to the reception of that science, "that Scripture was intended to reveal to us religious truths, and was not given to teach us a complete system of jurisprudence, any more than other sciences; and, farther, that

this passage should be interpreted as teaching the sacred inviolability of human life, and commanding what was, in the state of mankind at the time it was revealed, the most expedient, and therefore the justest punishment for murder; but in applying it to the present state of society, it must be understood as commanding us to inflict whatever punishment we can discover to be most effectual in preventing murder—*i. e.*, to be the most expedient.”

In the above passage, with one exception, I entirely concur. I think it not only an ingenious, but an exceedingly beautiful interpretation, of that much used, may I not be permitted to say, much abused text? The exception is, that I do not believe the death penalty was ever expedient; but I will not urge this topic, as it would be unsuitable in our society. The Archbishop of Dublin, in his second lecture on the subject alluded to, uses the following words:—“That political economy should have been complained of as hostile to religion will probably be regarded, a century hence, (should the fact then be on record) with the same wonder, almost approaching to incredulity, with which we of the present day hear of men’s having sincerely opposed, on religious grounds, the Copernican system. But, till the advocates of Christianity shall have become universally much better acquainted with the true character of their religion, than they have ever yet been universally, we must always expect that every branch of study, every scientific theory, that is brought into notice, will be assailed on religious grounds, by those who have either not studied the subject, or who are incompetent judges of it; or, again, who, in addressing themselves to such persons as are so circumstanced, wish to excite and take advantage of the ignorant.”

I gladly avail myself of these enlightened sentiments of that eminent man, and I apply them to the subject I have now in hand, in the fullest confidence that men will yet, in this light look, upon the present opinion of many, in relation to scriptural declarations upon the subject of death punishment.

There is one other point, in relation to the question of capital punishment, to which I should like to draw your attention, but my time warns me that I must but just allude to it. It is to me matter of deep astonishment, how men, who believe in an eternity of punishment so severe that we have no words in which to convey an adequate idea of its horrors, are found to be the advocates of hastening their guilty brethren out of life, and away from the possibility of repentance; for they say that “there is no repentance in the grave.” This point is of deep importance in relation to the question at issue, and should be taken into serious consideration by all who have any doubts about the propriety and expediency of abolishing capital punishment.

I commend this great question to your warmest feelings and to your soundest judgment, and from both I confidently anticipate a favourable verdict.

Since I wrote the foregoing lines, the following evidence of the inefficacy of death punishment for securing the safety of society has been placed in my hands ; it is taken from the charge of Judge Wightman to the Grand Jury at Liverpool, on the 10th of December last, in which he stated as follows :—

“ It is not above four calendar months since the assizes was held, and there was a general goal delivery in this county ; and there is now an accumulation, in that comparatively short period, of no less than eighty-seven prisoners for trial, rendering the special commission under which we are now assembled absolutely necessary, although it imposes on you, and the county generally, an additional duty. I am sorry to find, that not only is the calendar in point of numbers great, but that the crimes with which many of the prisoners are charged are of a very serious character. There are no fewer than seven distinct cases in which the crime of wilful murder is charged, and seven in which the charge is manslaughter, making fourteen distinct cases of homicide.”

Is it not clear, from the foregoing statement, that death punishment is not a deterrent from the crime of murder, and that it affords no adequate safety to society ? The scaffold has reeked with blood in these lands during the past year, and yet we find that murder is rife amongst us notwithstanding. To what cause does Judge Wightman attribute this recklessness of human life on the part of the people ? Here are his own words, and to a great extent they give us a true solution of the question :—“ In almost all the cases, (the Judge refers to the entire eighty-seven cases, almost all of which were cases of violence) the violence exhibited appears to be the result of mere intemperance, operating on minds wholly unaccustomed to forbearance or moral restraint, yielding to every impulse of their wicked feelings when exasperated.”

Of these eighty-seven prisoners, 25 could neither read nor write ; 31 can read and write imperfectly ; 15 can only read, &c. ; 3 can read and write in a superior manner ; 13, not given any account of.

Gentlemen, intemperance and ignorance are the great promoters of crime. So long as these predisposing causes are allowed to exist, so long will the statistics of murder fearfully attest the inefficacy of the scaffold as a deterrent from crime.