

1892

# Capital Punishment

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T H E S I S.

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C A P I T A L P U N I S H M E N T.

By

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1892.



## C O N T E N T S.

Introduction.

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"I have seen,  
When after execution, judgment hath  
Repented o'er his doom."

Measure for Measure.

--- Act. 2. Scene 2.

"A deep reverence for human life is worth more than  
a thousand executions."

--- John Bright.

"I shall persist in demanding the abolition of the death  
penalty until I have fallibility of the human judgment demon-  
strated to me."

--- La Fayette.

"The countries and times most notorious for severity of  
punishment were always those in which the most bloody and in-  
human crimes were committed."

--- Beccaria.

"We must punish crime without imitating it; the punish-  
ment of death is rarely anything more than a useless barbarity"

--- Boree.

"The state teaches men to kill; if we destroy the gallows  
we carry one of the strong outposts of the evil."

--- Parker.

"The laws of the Roman Kings and the Decemviri were full  
of cruel punishments. The Portian Law which exempted all  
citizens from sentence to death, silently abrogated them all.  
In this period the Republic flourished; under the Emperors  
severe punishments were revived, and then the Empire fell."

--- Blackstone.

"O nomen dulce libertatis. O jus eximium nostrae civita-  
tis. O lex Porcia."

--- Cicero.

## C A P I T A L P U N I S H M E N T

The necessity and the lawfulness of capital punishment is one of the most solemn and important questions that can come before the people of a State. Although but few stand in the position of the criminal, yet the whole of society is influence by the character of the Penal Code, and the manner of its administration.

The employment of the death penalty as a feature of Penal Codes, and as a means of punishment, has been universal. We find it among all peoples and in all ages. The principle of demanding an eye for an eye, a tooth for a tooth, and a life for a life, embodies the primitive idea of justice the worldover. The rack and the wheel, now rejected with horror, were once upheld by the same spirit of vengeance, by the same traditions of other ages, as capital punishment.

Sooner or later the death penalty will become as obsolete as these instruments of torture. It is a relic of barbarism. It is contrary to the spirit of humanity. Society, turning from the gallows, should provide a comprehensive system of punishment, which will deter from crime, and which will promote the reformation of the criminal. As John Bright once said: "If the law regarded human life as enviable, then the people would also begin to regard it. A deep reverence for human life is worth more than a thousand executions, in prevention of murder; and is in fact, the great security for human life."

## I. THE INQUIRY

Just punishment should be the basis of the Penal laws. Punishments which are equal, certain, infallible, and remediable: and which attain the practical ends by example, prevention, reforma-

tion, and restoration, are just punishments. Punishments which are unequal, uncertain, fallible, and irremediable; and which do not attain the practical ends, are not just punishments, and should be abolished.

Is capital punishment a just punishment ? Is it equal, certain, infallible, and remediable; and does it attain the practical ends? These are the questions to be solved.

## II. BASIS OF PUNISHMENT.

We come first to the inquiry as to the basis of punishment.

What purpose has the State in punishing ?

### A. PREVENTION.

Blackstone says in his Commentaries that the end of human punishment is the preservation of society and a precaution against further offenses of the same kind. If this be correct it would



seem that punishment should precede and not follow crime. This is in opposition to a fundamental maxim of the Common Law, that not tendency to crime, but simply crime itself can be made the object of a criminal issue.

B. EXAMPLE.

The theory has been advanced that penal justice is law, teaching by example, and that the announcement of punishment as a consequence of crime, is essential to just penal jurisprudence. This may be one of the ends of punishment, but should not be the sole standard. Just punishment creates example, and example serves as a means to prevent others from the commission of future crimes.

Capital Punishment as deterring from the commission of crime by example, has signally failed, and this is the great end of punish-

ment is to deter from crime. It is upon this ground alone that society has the right to punish. The histories of all nations give the same lesson, and will sustain the remark of Beccaria:-

"The countries and times most notorious for severity of punishment were always those in which the most bloody and inhuman crimes were committed." Blackstone and Gibbon speak of the good effect in Rome of the Portian law, which forbade the infliction of the death penalty upon a Roman citizen for any cause, and which continued in operation two centuries and a half. The following are the words of Blackstone: "The laws of the Roman Kings and the Decemviri were full of cruel punishments. The Portian law which exempted all citizens from sentence of death, silently abrogated them all. In this period the Republic flourished: under the Emperors severe punishments were revived, and then the Empire fell."

Cicero, commenting on the Portian law, says: "O nomen dulce

libertatis. O jus eximium nostrae civitatis. O lex Porcia."

Thus the principle that ~~manciful~~ laws afford more protection to society than severe, has the authority of the testimony of ages and races. If it be severity that gives efficiency to law, then Draco's code which punished every crime by death, was an ideal one.

It is not severity, but certainty and uniformity of punishment that deters men. Burgh says, what experience justifies, that  
"violent punishments become familiar and are despised."

Rev. J. Roberts ascertained from one hundred and sixty-eight criminals that all but three had witnessed executions.

(10 Criminal Law Mag., p. 6.)

In 1822 a man named Lechler was executed for murder at Lancaster, P. A large crowd saw the execution. Among them was a man, who the same evening murdered another man with whom he was at variance. (From O'Sullivan's Report to the New York Legislature)

Mr. Rantoul says in his report in 1836: "On the very day in which a man was executed for the murder of his wife, under circumstances of peculiar cruelty, another man near the place of execution, murdered his wife in the same manner."

An execution took place some years ago in Covington, Ky., and within an hour, in the same place, two murders were committed. (10 Criminal Law Mag. page 5, 1888 .)

John Bright well said:- "Whenever you hang a man in the face of the public, under the circumstances which we are so accustomed in this country, if you do in the slightest degree deter from crime by the shocking nature of the punishment, I will undertake to say that you by so much - nay by much more - weaken that other and greater severity which arises from the reverence with which human life is regarded."

A writer in the North American Review (Nadal) says:- "If murders are many it proves that hanging does not prevent them, if murders are few, there is no need of resorting to such extreme means in dealing with them. We have no experience which shows that murders increase when hanging is abolished. We have the histories of States and Empires that have done away with it, and do not return to it." (116 North American Review, p. 149.)

It would seem that the very spirit of the gallows is infectious. Rev. Theodore Parker says:- "The State teaches men to kill. If you destroy the gallows, you carry one of the strong outposts of the evil."

Blackstone quaintly says. "Sanguinary laws are very bad symptoms of the distemper of any State, or at least of its weak constitution."

Society has not the right to take away the life of an indi-

viduals for an example. And even where this has been done the example has failed. More and more the conviction is growing that crime must be punished without imitating it.

The keen and incisive thinker, John Stuart Mill, evidently believed that example is the great end of punishment. He has left this on record as summing up his views on the subject of capital punishment. He says: - " When there has been brought home to any man by conclusive evidence, the greatest crime known to the law, and when the attendant circumstances suggest no palliation of the guilt - no hope that the criminal may even yet be worthy to live among mankind; nothing to make it probable that the crime was an exception to his general character, rather than a consequence of it, then I confess it appears to me, that to deprive the criminal of the life of which he has proved himself to be unworthy - solemnly to blot him out from the fellowship of mankind and from the cat-

alogue of the living - is the most appropriate, as it is certainly the most impressive mode in which society can attach to so great a crime, the penal consequences which, for the security of life it is indispensable to annex, to wit: "

For a criticism upon this view see "The Philosopher on the Hangman" : Loyd's Weekly Newspaper, May 3rd. 1868.

#### C. P U B L I C S E L F - D E F E N C E

It has been said that one of the purposes of punishment is that of public self-defence. According to this theory the state may protect itself on the same ground that an individual, by permission of law, may repel an attack, and even kill an assailant, when his own life is in danger. This theory is incorrect because self-defence can ward off a threatened crime, but cannot be invoked to punish a crime that is consummated. In this theory the state

can seize and even destroy a person threatening a crime, but can not punish a crime that has been committed.

We have seen that the state like an individual has the right of self-defence, and if absolutely necessary, the right to take the life of an enemy to preserve its own.

We have seen that all men have the right of self-defence, by both natural and human laws. But having overcome an enemy, and having bound or confined him securely, no man would be justified in the opinion of any civilized state, in taking his life, because the necessity which justifies self-defence is then absent. The law of nations does not justify a conqueror in shooting his prisoners of war. Such an outrage would be regarded as murder. Man has no right to take the life of another unless there is the overruling necessity of self-defence.

So it is with the state. No combination of men can have



higher rights in this respect than an individual. Absolute necessity is the only justification in taking the life of a human being, and such a necessity never exists in the civil administration of government, after the arrest and imprisonment of the criminal. Defensive war, when the very existence of the nation itself is in peril, can be justified only on the ground of self-defence. The taking by the state of the life of its members, without the necessity of self-defence, is not justifiable, nor excusable. It is simply murder.

#### D. RESTORATION.

It has been said that one of the aims of punishment is the restoration of an impaired sense of public right. How can this be done by capital punishment ? Reparation for injury is a proper object for punishment, when it can be done. But when the injury

consists in taking the life of another, what restitution can be made? Capital punishment effects nothing in this respect.

#### E. REFORMATION.

This theory is that the end of punishment should tend to the reformation of the criminal. According to this view the safety of the injured is not to be considered in inflicting punishment, but simply the reformation of the injurer.

Looking at capital punishment in this light shows its uselessness, because it takes the life of the offender, which is the very subject of reformation. Undoubtedly the reformation of the offender is one of the ends of punishment, but it cannot be viewed as a primary standard. The protection of the unoffending is as important an object as the reformation of the offenders. To carry out such a system the state must become a church.

Z. B. Brockway, the prison reformer seems to lean towards the reformatory idea. In an article published in one of the reviews this writer says: "It will be found in the last analysis of the duty of the state to criminals, that whether the aim be strictly the protection of the public against crime, or whether it be to comply with the promptings of one humanity and sympathies under the control of reason, in either case all effort must have the same object, namely a reformatory, rather than a retributive."

#### F. D E T E R R E N C E T H R O U G H F E A R.

This theory is that the end of punishment is to terrify others. Men were to be scared from crime, and therefore the punishment was made as shocking and ghastly as possible. The cruelty of punishment in the ancient law was based upon this theory. (Amos. Science of Law. p. 297.)

It was the basis of the whole secular jurisprudence of the world during the Middle Ages. (Maine. Ancient Law.p.389.) But it violates the fundamental principle of all free communities, that the members have equal rights to life, liberty, and personal security.

With the growth of civilization the terroristic theory of punishment has ceased to be one of the elements in the measurement of punishments.

### III. THE IRREVOCABILITY OF CAPITAL PUNISHMENT.

Capital punishment has done irrevocable wrong in depriving the innocent of life. This wrong, though unintentional, must be attributed to capital punishment, although the attempt may have been to deter from crime, or to punish the murderer.

The fallibility of human judgment and human testimony, even

in civil matters, has been long recognized. "The glorious uncertainty of the law" is almost a household phrase. This fallibility of human judgment has been one of the most important reasons urged for the total abolition of the death penalty, and justifies the language of La Fayette: "I shall persist in demanding the abolition of the punishment of death until I have the infallibility of the human judgment demonstrated to me."

Sir James Mackintosh, a most cool and dispassionate observer, showed by careful returns, that when capital punishments were 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 shown.

Smollet in his history of England says: "Rape and murder were perpetrated upon an unfortunate woman in the neighborhood of

London, and an innocent man suffered death for this complicated outrage, while the real criminals, who 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."

(Vol. III. page 318.)

O'Connell says in his speech in 1832: "I myself defended three brothers of the name of Cumming. 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 not twenty-five years of age. I saw her hang on her second son who was **but** twenty. I saw her faint when she clung to the neck of her youngest boy, who was but eighteen, and I ask. 'What recompense could be made for such agony?' They were executed and they were innocent."

There are no words for such facts. They are unutterably awful, and should make the civilized world pause. This is the most serious and terrible feature of the death penalty. The evil is in no way accidental. It is not the error or sin of judge, jury, or witness. The law is plain, the evidence direct, the guilt proven, and yet there is no guilt. It is astonishing to see the weight of evidence all refuted by subsequent events.

The number of persons sent to execution by the courts and afterwards proved to be innocent, has been counted by the hundreds in Great Britain, and must probably run into the thousands in civilized states only. When we add to these, those innocent but never clearly proven so, the number would run still higher. This is unjust and irremediable punishment.

Jeremy Bentham is urging against the death penalty says: "The punishment of death is not remissible; no infallible system of jurisprudence having yet been laid down to render testimony equally

conclusive for proving a fact, an action, or an intention, as mathematical proof for a given proposition. In every other case of judicial error, compensation can be made to the injured person. But death admits of no compensation."

Again he remarks: "There is an evil resulting from the employment of death as a punishment which may be properly noticed here. It destroys one source of testimonial proof. The archives of crime are, in a measure, lodged in the bosoms of criminals. At their death all the recollections, which they possess relative to their own crimes and those of others, perish. Their death is an act of impunity for all those who might have been detected by their testimony; whilst innocence must continue oppressed, and the right can never be established, because a necessary witness is subtracted."

Again he says: "Whilst a criminal process is going forward, the accomplices of the accused flee and hide themselves. It is an



interval of anxiety and tribulation. The sword of justice appears suspended over their heads. When his career is terminated, it is for them, an act of jubilee and pardon. They have a new bond of security and they can walk erect. The fidelity of the deceased is exalted among his companions as a virtue, and received among them, for the instruction of the young disciples, with praises for his heroism."

Human judgment cannot be relied upon, and for fallible man to pass judgment upon the consciences of his fellows, and, in the strength of his prejudices or the weakness of his intellect, undertake to determine the exact nature of their guilt, and to deal out punishment accordingly, constitutes a remarkable and unwarrantable assumption of power.

Of all penalties death alone is irreparable. Life once taken can never be restored. Property may be retrieved, honor once lost

may be regained; but human life once taken can never be restored.

No legislative enactment nor judicial decree can rekindle the spark of life after it has once been extinguished.

Fatal mistakes have been made, and will be made as long as human judgment is fallible. If the statement that "it is better that ten guilty persons escape than one innocent man should suffer," means anything, then the safest way to avoid this injustice, is to abolish the death penalty.

#### IV. RIGHT OF THE STATE TO TAKE LIFE.

We come now to the inquiry as to the right of the state to take the life of its members. The right of the state to punish its members is admitted; but does this right extend to the taking of life?

The principle that society has no right to destroy life as

a method of punishment, is an opinion held by many able writers on social science. Blackstone says: "Life is the immediate gift of God to man, which neither can he resign, nor can it be taken from him, unless by the command or permission of Him who gave it." And the same opinion, that the state had no right to take life, was held by Benjamin Franklin, John Quincy Adams, Wendell Phillips, John Bright, and many others.

The first and probably the greatest <sup>*advocate against the*</sup> right to take life, is Marquis Beccaria of Milan. He was the first publicist to raise a doubt as to the legitimacy of the death penalty, and to propose its suppression. As to whether or not this question was discussed before his time, we do not know. If a few nations, the Romans for instance- tried to restrain its application, it was from different motives than those of humanity. Plato thought it should be inflicted only in cases where the culprit was incorrigible.

He says: "If the legislator sees that the criminal is irredeemable, what punishment should be meted out to him? Since he knows that for such persons life is not the most advantageous state, and that by their death they become of two-fold utility to others,- their punishment being an example which prevents others from doing wrong, and at the same time rids the republic of dangerous subjects,- he can hardly do otherwise than to pronounce sentence of death. But except in such cases he ought not to employ this remedy."

Filangien wrote: "Man in his state of natural independence has a right to life, and cannot renounce this right. But can he lose it? Can he be deprived of it without renouncing it? Have I the right to kill the bad man who attacks me? No one has any doubt on this subject. If I have the right to kill him, he has lost the right to live, for it would be extraordinary that two rights

opposed to each other should exist at the same time. Now in society it is not one single individual who arms himself against another individual, but society entire. The depository of public power exercises this general right which each individual has transferred to society as a body."

Kant says. "This proof proves too much, since for the same reason no one would be found to expose his life in defence of his country. Moreover it is sophistry and a poor interpretation of right, since nobody is made to suffer punishment because he consented to it beforehand, but because he consented to commit a crime. By the social contract each one submits beforehand to every law necessary to the maintenance of society, and consequently, to the penal law."

This last sentence of Kant is the only basis upon which an argument can be advanced in support of the right of the state to

take life.

Faust~~e~~ Helie writes: "The best answer is, that we must put aside this fiction of social contract, upon which the publicists of the eighteenth century based their arguments, and seek the right of man, not in a state of nature which has never existed, but in the social state, which is his natural state. The right of society has been contested, not because of a lack of consent on the part of its members, but because man's life, legitimate defence aside, is inviolable and beyond all human power. Man's life is inviolable and sacred. Does that mean that it is so in all cases? What becomes then of the right of defence? And the right of war? Is it peril which creates right?"

Beccaria replies: "Man has no right to dispose of his life; he cannot therefore transfer such right to others. Either man must have a right to dispose of his own life, or he must be inca-

pable of transferring to another or to an entire society what he does not himself possess."

"The punishment of death is not authorized by any right. It is therefore a war of a whole nation against a citizen whose destruction they consider as necessary, or at least useful, to the general good. But I can further demonstrate that such a measure is neither necessary nor useful to the general good." (Beccaria on Crimes and Punishments, Ch., 2.)

It would seem that the position of Beccaria is a logical one. No man possesses a right over his own life, and not possessing it himself, how can he delegate it to another? If this were so how can it be reconciled with the law which punishes unsuccessful suicide as a crime? (New York Penal Code. Sec. 174.)

There is grave doubt as to the truth of the statement which political repeat as a sort of axiom,- "a man knows the penalty,

and in becoming a member of society submits to it." Such reasoning would justify the arbitrary decrees of a despot.

How can the government acquire a right to take life on the ground of surrender or transfer? This theory has been refuted by modern thinkers. The state has a personality and an existence of its own. There has been no contract - no "meeting of minds."

We find one writer's argument against the reasonableness and justice of the death penalty to be thus: Every man has an original right, prior to, and in the face of all society, to be a "man". Society may limit it, may mutilate the man as it thinks fit, but must leave so much of him behind as may bear the name "man" (M. Zschokke.)

By far the most powerful argument against the power of the state to inflict the death penalty has been mentioned under the head of self-defence. The state having the right of self-defence,



the same as an individual, and if absolutely necessary, the right to take the life of an enemy to preserve its own. But having overcome the enemy, as when it has bound or confined him, the State, same as an individual, commits murder in putting the enemy to death. The state having no higher right in this respect than an individual.

On the affirmative side of the issue it has been asserted that God himself revealed the penalty of death for murder when he gave the precept to Noah.

"Whosoever sheddeth man's blood, by man shall his blood be shed." (Genesis., IX. 6 )

And further it is said in the Scriptures, "that if man has wilfully and maliciously committed murder, if he seeks refuge at the altar of God, he shall be taken from that altar to die." It has also been asserted that Christ re-enacted the legal penalty of death for murder, when he said: "All they that take the sword,

shall perish by the sword." "He visits transgression with uncompromising retribution." "He did not spare even his own son."

It is not the purpose to review these arguments here. The right to take life does not rest upon any positive command or sure permission of God. Blackstone recognized the Bible as "the revealed or divine law, which is part of the law of nature directly expounded by God." There are many things in the Bible that cannot be accepted as part of the law of nature. This whole matter is discussed by Wendell Phillips in 133 North American Review pp. 550 - 559. He reaches the conclusion that has been stated above; that capital punishment does not rest upon any divine command.

This ends the discussion upon the right of the state to take life. It would seem that such right, even allowing it to exist,

is based upon a vague and ill-defined foundation, or none at all.

It is plainly contrary to the rules of justice, humanity, and re-

ligion. No argument or experience can shake this conclusion.

## V. R I G H T.

Capital punishment is not right, because:

1. The death penalty is not rational; and is unjust and  
cruel.
2. The penalty has never been equally inflicted.
3. The penalty has never been sure and certain.
4. The result of the penalty is irreparable. Innocent  
men have been put to death. Many mistakes have been  
made and will continue to be made as long as human  
judgment is fallible.

5. It is an injustice to take man's life except in self-defence. Because one murder has been committed another should not be.
  
6. Capital punishment does not effect restitution. It does not restore the victim to life. A man commits murder; the government in turn sentences the man to death. Here are two parties who have presumed to take a human life. This is injustice. Thinking men and women are coming more and more to realize that this revolting legacy of a barbarous past has outlived its usefulness. It is a crime against justice in whose name it is executed.

## VI. ~~EXPERIMENTS~~ IN THE ABOLITION.

To prove that there is no absolute necessity for employing the death penalty, we come to the consideration of testimony in

regard to the practical experiments in the abolition. Capital punishment has been abolished with safety and advantage; and is not absolutely necessary for the protection of society. It is proven by the most convincing evidence. There has been a number of modern states, both in Europe and America, that have the experiment of the abolition of capital punishment, to prove that it is not essential to the security of society.

Capital punishment has been abolished in Italy, Portugal, the German principalities, Austria, Baravia, Baden, Holland, Finland, Saxony (since 1868), Belgium (since 1831), and several other states.

A writer (B. Paul Newman) in the Fortnightly Review of Sept. 1889, gives statistics to show that in those European countries where capital punishment has been abolished, there has not been the increase in number which advocates of the penalty have so

confidentially predicted.

In America the state of Michigan was the first to abolish the death penalty. This was in 1847. Rhode Island followed in 1852; Wisconsin 1852; Iowa in 1872; and Maine in 1876. In Michigan the statistics show that since 1847, murders have decreased relatively to the population fifty-seven per cent. (Fortnightly Review. September, 1889.)

As to Wisconsin, Gov. Washburn writes in 1873: "It is twenty years since the abolition of capital punishment. No state can show greater freedom from homicidal crime; with a population representing almost every nationality, statistics show that crime, instead of increasing with the growth of the state, has actually diminished."

Other states have been equally successful, and the result of these experiments should be decisive. Facts annihilate theories.

Every experiment has succeeded.

## VII. SUBSTITUTES FOR CAPITAL PUNISHMENT.

The following are some of the tests which should decide the suitability of a punishment :-

1. It should be certain.
2. It should be capable of graduation.
3. It should be revocable.
4. It should be of a reformatory character.
5. It should not shock the moral sense.
6. It should not destroy sources of evidence.
7. It should be an efficient deterrent.

We have seen that capital punishment does not answer these tests. M. Zschokke suggests blindness:

"The blinded man is an eternal prisoner without need of pris-

on walls. He must envy other culprits their chains, their darkest dungeons; for in the darkest dungeon hope may penetrate that they may one day see the light again. He must envy the dead on whom the executioner has done his utmost, for to himself life has become one endless punishment. He is bound without fetters - bound more securely than if he were locked to the bar or welded to the rock. Every step, every moment, tells him of his weakness and of his guilt. The living world around him - he has lost it all ; he retains only its sources of pains and the unfading memory of his own crime. Scoffed at by the unfeeling, pitied by some, by all shamed - contempt and commiseration and scorn are the smarting scourges to which he stands defenceless for the residue of his days."

This substitute for death should not and has not, met with approval. It is irrevocable, and admits of no recall in case of error. Neither does blindness, any more than death, admit of



degree of punishment. "The punishment is valuable in its nature through all degrees of severity of which there can be any need."  
(Bentham.)

Imprisonment for life is the only substitute for the death penalty. It meets the tests and where it has been tried all has gone well. If it is found that an innocent man has been sentenced, he may be restored to his former position. It is revocable at any time and under any circumstances.

Hanging does nothing more than put the criminal out of the way. The lesson taught by the gallows is short-lived. The man dies and is forgotten. But the prisoner for life preaches from his lonely cell a daily sermon to deter from crime.

Beccaria says: "There are many who can look upon death with intrepidity and firmness; some through fanaticism, and others through vanity, others from a desperate resolution either to get rid of their misery or cease to live. But fanaticism and vanity

forsake the criminal in slavery, and an iron cage and despair seem rather the beginning than the end of misery. The mind by collecting itself and uniting all its force can for a moment repel assailing grief, but its most vigorous efforts are unable to resist perpetual wretchedness."

This brings us through the last inquiry. We have traced the developement of capital punishment from different points of view, and have investigated the prevailing theories, on the one hand, and upon the other,- for and against.

Much has been done in the way of prison reform since the days of Howard. An authority upon the subject, Prof. Charles A. Collin, of Cornell Law School in a recent address, has thus summarized the prevailing theory. Prof. Collin says: "The idea of prison reform is to save the man, to train him into nobleness that will make him a successful citizen. Even if the thought of impris-

onment is that of the infliction of pain, the reforming idea secures that, for nothing so hurts the lazy man as to have to work, nor the drunkard as to be made to keep sober. There is hurt to the criminal in the reformatory discipline, but it is ahurt for the sake of the making of a man. If the idea of imprisonment is to protect society, the prison reform idea will do that more effectually than simple punishment; for it will send a man back into society a reclaimed and useful citizen; while the other method sends him back into society to prey upon it, and make the trouble and expense of again sending him to prison.

In prison regulations under the reformatory idea, there is labor, obedience to regulation, and intellectual and moral training. The whole man is thus kept so busy that idle and vain thoughts are crowded out; that the man gets himself in hand, and can the better work out an honorable career upon his discharge. There is something of the divine within every man to which appeal can be

made; and that in his prison work he had formed among some of the prisoners, some of the truest friendships of his life. A man, easily the foremost in the prison reform movement says that the division he has made for years, of prisoners into corrigible and incorrigible, he had abandoned entirely, because he found that there were no incorrigibles for if he could not get at the good that was in a man some one else could and did."

As long needed and hoped for reforms have been made in the matter of prison discipline, why should not as much needed and hoped for reforms be made in the infliction of the death penalty ?

As a writer on social science has most aptly said: " For the man who kills another in a heat of passion, there is a pity. For the man who kills another while goaded into madness by starvation, there is a pity. For the man who kills another in the defence of

himself or family, the law gives an excuse. But to take a man out after his crime has been committed, and while praying with him, shaking hands with him, hoping to meet him in Heaven, and bidding him farewell - then to calmly put him to death like a dog - is the most brutal and disgusting of all murders."

It would seem, that from all this evidence, from the authority of great jurists and philosophers, from the practical experiment in the abolition, and finally by the eternal laws of justice and right which ought to prevail, that the death penalty is contrary to the spirit of humanity and should be abolished.