

JULY.

## CAPITAL PUNISHMENT.

“FOR forms of government let fools contest  
 Whate’er is best administer’d is best.  
 For modes of faith let graceless zealots fight,  
 His can’t be wrong whose life is in the right.  
 In faith and hope the world will disagree.  
 But all mankind’s concern is charity;  
 All must be false that thwart this one great end;  
 And all of God that bless mankind or mend.”—POPE.

Tempora mutantur et nos mutamur in illis, and so it is now an uncontested truth that our methods for dealing with crime have been sadly defective. We have regarded punishment only from the deterrent and retributive standpoints, and have paid no attention whatever to the reformative. There is a movement starting in England to try to help and reform criminals, and so by reclamation to cure crime by going to the very root of the evil, and studying criminology as a science. This movement is growing day by day, flowing in like an enormous wave that is beyond the power of man to check. The abolition of capital punishment is only a small part of this great movement, but a part of no mean importance.

Let us, for a moment, look back to see what progress has been made as regards capital punishment—for through the eyes of history we can see everything. Remember the words of Emerson:

“I am owner of the sphere,  
 Of the seven stars and the solar year,  
 Of Caesar’s hand and Plato’s brain,  
 Of Lord Christ’s heart and Shakespeare’s strain.”

One hundred years ago death was the penalty in England for an enormous number of offences, and among others, for counterfeiting stamps for the sale of perfumery, and also of certificates for hair-powder,—we have made some progress, at least! We are altogether more humane now than we were then. In 1810 a Bill was thrown out—a Bill for the Abolition of Capital Punishment for stealing the value of forty shillings from a dwelling house—and there voted for its rejection the Archbishop of Canterbury and the Bishops of London, Salisbury, Ely, Hereford and Chester. We understand that when Dr. Oldfield, the President of the Society for

the Abolition of Capital Punishment, wrote a year or two ago, to the present members of the episcopal bench, one or two Bishops were neutral on the subject of the abolition, and the Bishop of London had not thought about it at all!

In 1864 a Royal Commission was appointed on Capital Punishment, and it reported in 1866. There was a minority report, signed by a third of the Commission advising the immediate abolition of capital punishment, and the majority made several recommendations, but only one of them has been carried out—that relating to public executions. *Inter alia* they advised that murders should be divided into murders of the first degree and murders of the second degree—the death penalty being retained only for the former. Mr. George Greenwood introduced a Bill last Session, which would carry this out, but unfortunately it has no immediate chance of being carried any further unless the Government are persuaded to adopt it. However, last Session the death sentence was abolished for children under sixteen, which is, anyway, a step in advance.

Thomas Hill Green said that capital punishment is justifiable only if it can be shown to be necessary for the maintenance of society, and if it can be shown that the criminal is permanently incapable of rights. As regards the latter, it is quite certain that in our imperfect state we are not justified in making any such assumption, for “to err is human, to forgive divine.” No one is past the power of reformation. In Charles Gingsley’s “Two Years Ago,” Tom Thurnall woke up one morning to find that he had been kept alive by someone’s cloak he found over him. A good Samaritan had taken his own coat and put it round Thurnall; the good Samaritan was a murderer.

Surely capital punishment is not necessary for the maintenance of society, when some countries have abolished it, and society is still maintained. Why does the State put a man to death; or to call a spade a spade commit murder? The real reason is because that method of dealing with the criminal is so very simple. But the simple methods are not the right ones. In France the Revolutionists thought that the best way of maintaining the Republic was to kill all the aristocrats. It was a simple way, and it was successful for a while, but time showed it was the wrong way. “Oh, it is excellent to have a giant’s strength, but it is tyrannous to use it as a giant.”

Some people say that the fear of death is very great. That seems rather hard to believe when we consider the number of suicides that take place yearly. What they really mean when they say the fear of death is the fear of being put to death. This may be so immediately before the execution, but it is certainly not so

several weeks before, especially when the punishment is so uncertain. During thirty years (1850-1879), 33 per cent. of those tried for murder were found guilty, whereas the percentage for non-capital crimes was 76.

The deterrent force of capital punishment is always very much exaggerated. There is a very interesting passage in Thucydides,<sup>1</sup> to which the present writer's attention was called by Professor Bury, which runs as follows:

"Now of course communities have enacted the penalty of death for many offences far lighter than this; still hope leads men to venture and no one ever yet put himself in peril without the inward conviction that he would succeed in his design. Again, was there ever a city rebelling that did not believe that it possessed resources adequate to the enterprise? All states and individuals are alike prone to err, and there is no law that will prevent them, or why should men have exhausted the list of punishments in search of enactments to protect them from evil doers? It is probable that in early times the penalties for the greatest offences were less severe, and as these were disregarded, the penalty of death has been by degrees in most cases arrived at which is itself disregarded in like manner. Either, then some means of terror more terrible than this must be discovered, or it must be owned that this restraint is useless; and as long as poverty makes men bold by necessity or plenty ambitious through insolence and pride, and the other conditions of life remain each under the thralldom of some fatal and master passion, so long will they continue to lead men into danger. Hope also and cupidity, the one leading and the other following, the one conceiving the attempt, the other suggesting the facility of succeeding, cause the widest ruin, and, although invisible agents, are far stronger than the dangers that are seen. Fortune too powerfully helps the delusion; and by the unexpected aid that she sometimes lends, tempts men to venture with inferior means and more especially communities, as the stakes played for are the highest, and as individuals, when acting in masses, irrationally magnify the objects that they strive for. In fine, it is impossible to prevent, and only great simplicity can hope to prevent human nature doing what it has once set its mind upon by force of law, or any other deterrent force whatever.

"We must not, therefore, commit ourselves to a false policy, through a belief in the efficacy of the punishment of death, or exclude rebels from the hope of repentance and an early atonement of their error."

1. Thucydides, iii., 45-46.

These sentiments were voiced more than four hundred years before Christ. It is the earliest and a most striking discussion on the theory of punishment. Macaulay describes how Monmouth, when he found that his abject entreaties for mercy were of no avail, walked on to the scaffold as a brave man; aye, and more than that, as a martyr. Even a murderer, if he is put to death, has a sort of halo of glory in the eyes of the uneducated.

Is it right to put men to death on circumstantial evidence, as the evidence in murder trials is nearly always of necessity? People say that innocent people are never put to death, but most people put too much trust in circumstantial evidence. In the Grant-Duff memoirs there is a story told of Lord Denman, of which the following is the gist: He wished to send some wine one day to a friend older than himself, and gave instructions accordingly. The wine, however, was put into bottles which had had poison in them. Now Lord Denman points out that if his friend had drunk the wine and died, it would have been a clear case of murder, as not one of his own bottles was poisoned and his friend's will was in his favour. Circumstantial evidence may be most misleading.

X Finally, let us remember that two wrongs do not make a right, and that the State does not annul the murder by putting the murderer to death, but instead, makes it a double tragedy. Some countries have abolished capital punishment altogether; others have suspended it, but it still remains in England, a "blot to honour, and religion." That same spirit which has abolished the punishments of drawing and quartering in the past, will abolish the punishment of death in the future.

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