

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

DOCUMENTS

PRINTED BY ORDER OF

THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1835.

AUGUSTA:
WILLIAM J. CONDON,.....PRINTER.

1835.

FIFTEENTH LEGISLATURE.

NO. 25.

HOUSE.

REPORT

OF THE

COMMITTEE TO WHOM WAS REFERRED

THE SEVERAL

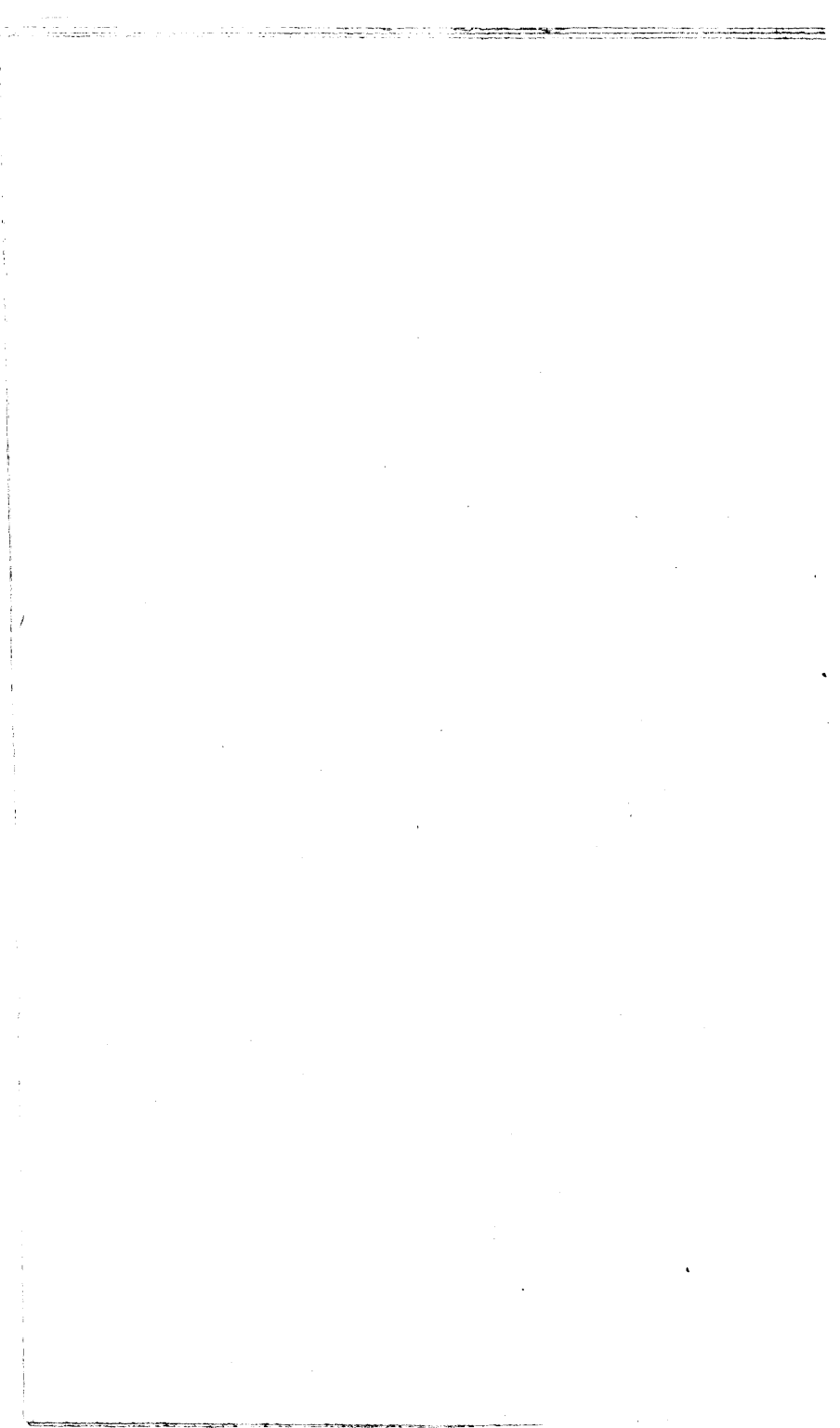
MEMORIALS AND PETITIONS

FOR THE ABOLITION OF

CAPITAL PUNISHMENT.

WM. J. CONDON, Printer to the State.

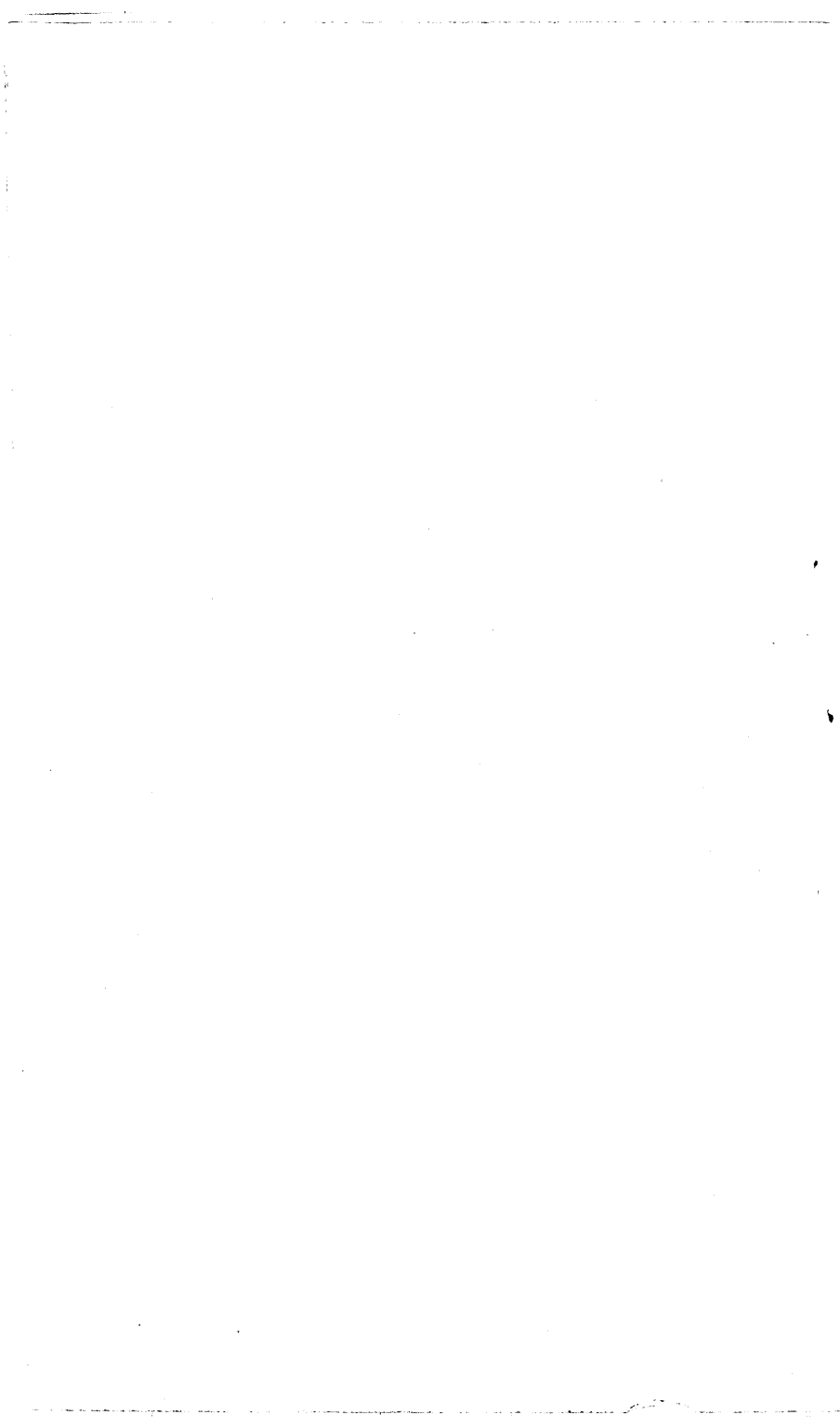
1835.



**Committee on the subject of the Abolition of Capital
Punishment.**

Messrs. Barnard,
Smith,
Greene, of York, } *Of the Senate.*
Prescott,
Allen,

Messrs. Abbot, of Vassalboro',
Cilley, Thomaston,
Mildram, Wells,
Webb, Windham,
Phelps, Fairfield,
Sabine, Eastport, } *Of the House.*
Hutchings, Atkinson,
Briggs, Sumner,
Bunker, Cranberry Isle,
Moulton, Thorndike,



REPORT.

The Joint Select Committee to whom was referred the Memorial from the Vassalboro' Quarterly Meeting of Friends, together with other Memorials and Petitions praying for the abolition of Capital Punishment, have had the same under consideration and ask leave to submit the following

REPORT.

The papers aforesaid relate to a subject of deep interest to the community and one to which the public attention has been for some time forcibly drawn. They propose a change in our penal code no less than the total abolition of capital punishment in all cases.

If Capital Punishment can be laid aside consistently with the safety of Society and our duties and obligations as a Christian Community—humanity would seem to require that it should be. There is something so shocking, so awful, so forbidding in the idea of deliberately taking human life, that nothing but absolute necessity can give to it any color of justification. The enquiry then is, does this necessity exist? Formerly there was but one response to this enquiry. All agreed that it did exist.—It was necessary to take life, not only for the more atrocious crimes of murder, and treason, and arson, and the like ; but also for offences of a much lower grade, descending sometimes even to simple larceny. By the laws of Draco all crimes were punishable by death. The English Statutes affix the same penalty to no less than one hundred and sixty different offences. France, in the revolutionary period of her

history, presents the most shocking spectacle of human butchery under a sanguinary code of laws.—Suspicion fixed the guilt, and the guilt was death. Vengeance has been dealt out with a liberal hand by the Government, under the belief that the peace and safety of the Community demanded it. Governments have assumed to possess the indubitable right of punishing crime at pleasure, little regarding the line where justice ends and cruelty commences. Laws have been dictated rather by a spirit of revenge than from feelings of justice and humanity. Such at least has too often been the case. But the spirit of enquiry is abroad, and the right and the necessity of these severe measures are called in question. Public opinion seems fast travelling towards the point that forbids capital punishment altogether. But yet there is a portion of our citizens, how large a portion we know not—who meet us with the objection that capital punishment is an institution of divine appointment—always binding and never to be dispensed with. Respect for those who urge this objection, as well as veneration for the high authority they refer to, demand of us an attentive and scrutinizing investigation of the grounds on which it rests; because, if well founded, it forever puts at rest all enquiry in regard to the expediency of a change, so far at least, as the crime of murder is concerned. The text referred to, is in the ninth chapter of Genesis—“Whoso sheddeth man’s blood, by man shall his blood be shed”—This text is a part of the revelation of God to Noah and his sons on leaving the Ark, and stands connected with liberty granted to man to make use of animal flesh for food, having before been restricted to the use of herbs and fruits.—“And the fear of you and the dread of you shall be upon every beast of the earth, and upon every fowl of the air,”—“Every moving thing that liveth shall be meet for you”—“And surely your blood of

your lives will I require—at the hand of every *beast* will I require it.” It may admit of doubt, whether the text in question should be considered as a *command* or a declaration having a *prophetic* view. It might well be paralleled by a passage in Matthew—“For all they that take the sword shall perish by the sword.”—But considered in the form of a command, it may still be doubtful whether it refers to human murderers, or to beasts that might ferociously destroy the life of man. Those conversant with the Hebrew, tell us that the passage in the original decides nothing. An elipsis is to be supplied—and the word *whatever* referring to *beast*, might as well be supplied, as *whoso* referring to *man*. It is the opinion of many that it does refer to beasts, and accords with the provisions afterwards made in the Mosaic law that the beast which should gore a man that he died, should be stoned and his flesh not eaten. If these considerations throw a doubt upon the meaning of the passage, we may well hesitate before we adopt the belief of a *divine injunction*, from which there can be no release. But admitting its applicability to human actions, it may yet be questionable whether it be binding at the present time ; and if so, to what extent. We are aware that such as consider it binding, will generally answer that it may be dispensed with in all cases except *murder*. But where is the authority for such an assertion? It certainly is not derived from the language of the text—“Whoso sheddeth man’s blood”—no exceptions, no circumstances or conditions are named.—But “whoso sheddeth man’s blood,” whether of malice prepense, or from the sudden ebullition of passion without malice, or by accident, or necessarily in self defence—“by man shall his blood be shed.” All the different species of homicide are reduced to a level, and one tremendous doom, without the possibility of reprieve, is denounced against the whole. Nor can the public execu-

tioner claim exemption. Blood must succeed blood till the last man finds none to destroy him. Now this is evidently claiming too much for the text, but who shall limit it? Who is authorized to narrow it down to one particular set of circumstances? It is sometimes said that the cities of refuge appointed many centuries afterwards, indicate the extent to which it should be understood to apply. But this would not remove the difficulty. Our laws already exempt from death, those guilty of manslaughter, and no one complains—no one pretends that we are violating a divine command by the exemption. And yet the cities of refuge afforded no protection to crimes of this sort except in its *lowest degrees*. Those guilty of the higher species of manslaughter should surely be put to death, and could not claim the privilege of these cities. From the promulgation of the text in Genesis, to the adoption of the Judicial code at Sinai, was about eight hundred and sixty years. During this period we read of three cases of killing among the Hebrews, all of which would be murder by our laws—and yet in neither case was the penalty of death inflicted. May it not be then, that the text in question, though it might be well understood by those to whom it was spoken, is of very doubtful meaning with us at this distant day?

The Jewish Nation for a long period enjoyed the peculiar privilege of living under a Theocracy. God himself condescended to be their law-giver, and to direct their movements. At the foot of Sinai in the wilderness, they received by the hand of Moses not only the Decalogue, and the ceremonial law, but a full and complete *Judicial* code. This code was written out by Moses—read to the people and adopted. Here there was established a system of rules for the regulation of Society and for the direction of the Magistrate—a system broad and extensive, and particularly full in the criminal part of it. The penalty of

death was denounced against quite a variety of human actions. Not only killing a person was death ; but if a man smote his father or mother without killing, or even cursed them, he should surely be put to death.—Adultery, Witchcraft, Sabbath-breaking and Idolatry, were punished with death. If one enticed another to forsake the Lord and turn to the worship of Idols—though it were a brother or a son, a daughter or a wife—the command was “*thou shalt surely kill him*”—“*Thy hand shall be first upon him to put him to death.*” Now is it reasonable to suppose that after the adoption of this code, the Jewish magistrate could travel out of the compass of these Statutes and inflict penalties by virtue of the text in Genesis ? If not, then that law, if it be called a law, was virtually repealed by the adoption of this new code. It was hence no longer binding on the Jews and cannot be obligatory on us.

But it is said by some, that the obligation descends to us from the *Mosaic* code, which required life for life, in accordance with the text in Genesis. But if any part of the *Judicial* code of the Jews is binding on us, it may be difficult to say what part is *not* binding. This law was suited to the character and condition of that peculiar people; but it has not been understood that its requirements were to descend to people in Gospel times. Governments are at liberty to make their own laws and fix their own penalties, not inconsistent with the great principles of the *moral law*. Were it otherwise, there would be no alternative but to adopt the *Judicial* code of the Jews *entire*, without addition or retrenchment.

But another text is quoted in Romans as pointing to the text in Genesis, and adopting its principles into the Christian system—“The magistrate beareth not the sword in vain”—“He is a *revenger* to execute wrath upon him that doeth evil.” Hence it is inferred that the Sovereignty of the

State, is always bound to punish *some* offences *capitally*. It may be well to glance at the context a moment, in order to show the danger of fastening upon a particular insulated passage, and insisting upon its yielding an authority which it might never be designed to do. "Let every soul be subject to the higher powers—for there is no power but of God—The powers that be are ordained of God—*Whosoever therefore resisteth the power, resisteth the ordinances of God, and they that resist shall receive to themselves damnation.*" Now the text, rightly considered, conveys important instruction, and guides the citizen in his duties towards the Government under which he lives. But suppose we insist upon all that its language, in an unqualified sense, would seem to import. Our fathers resisted the powers of the Mother Country. Have they all received to themselves damnation for that act? We cannot venture upon a conclusion so rash, yet it would most irresistibly follow. Again, Rulers are not a terror to *good* works, but to *evil*—do that which is *good* and thou shalt have praise of the same. Now was the promulgation of the Gospel in the Roman Empire, a *good* work or an *evil* work? And did it meet the cordial approbation of Nero, and have his praise, or did he not rather put on all his terrors against it, and endeavor to crush it under foot? The danger, again, is most awfully exemplified in the history of the Romish Church. A pertinacious adherence to the supposed authority of a few particular texts, has led them to spill much innocent blood. The history of that Church is the history of cruelties and oppressions, at the view of which, humanity recoils and the blood chills in our veins. But all this, in their opinion, is only carrying out, and accomplishing the will of God *as expressed in the Scriptures*. It is for the extirpation of heresy, and the punishment of evil doers.—Thus thousands and thousands have fallen victims to a

mistaken zeal for the honor of God's law, which is supposed to speak imperatively that all heretics should be cut off. Not men only, but women and even children have been brought to feel the excruciating tortures of the stake, and been consumed by the devouring element—whole cities of peaceable, unoffending inhabitants have been inhumanly butchered—all the horrors and tortures of the inquisition, have been designed and inflicted under shelter of the same high authority. Nor are the Catholics alone chargeable with these errors and delusions—Protestant history is stained with errors of the same character, though different in degree. Even our puritan fathers, to whom we are so deeply indebted for the valuable religious and political institutions we enjoy, could argue themselves into the belief that the Scriptures *enjoined it upon them as a duty* to extirpate heresy, by taking the life of the heretic. Thus were the meek, the humble, the unoffending followers of George Fox, and in one or more instances, a *Female* too, suspended between the heavens and the earth for preaching *another Gospel* among them. Now, in all these cases, both among the Catholics and the Protestants, the behest of Heaven was pointed to as the authority under which they acted. But do not these examples admonish us to beware how we spill human blood under the supposition of divine injunction? They most certainly do.

The art of Printing has been the means of diffusing much light—light is still increasing. Science and philosophy have felt its renovating influence—Christianity, too, has been disencumbered of many errors heaped upon it by human hands, and is exhibiting itself in its native excellence and beauty. It holds forth mildness, gentleness, benevolence and good will, and frowns upon every thing harsh and revengeful. As light has advanced, many opinions venerable for antiquity, and of supposed unquestion-

able soundness, both in philosophy and religion, have been swept away—and we cannot but indulge the belief that ere long the doctrine of a *divine command* for the infliction of Capital Punishment, will find little favor in the eyes of this people.

But there is another class of our citizens, certainly very respectable, both in point of numbers and moral worth, who believe that in *no case* can human life be intentionally taken by human hands, without violence to the true spirit and intent of the religion of Christ. Some of the Memorialists are of this class—they believe that Government can derive no authority, either from Scripture or from any other source, which will justify the infliction of such a penalty. The *right* to punish capitally has generally been considered a necessary consequence of the formation of Society. The man who unites with Society and becomes a member of the body politic, yields up a portion of his natural rights for the security of others, more dear to him; and hence, it is inferred, that he gives to the sovereignty the right, in certain cases, to take his life. But it may be difficult to conceive how a man can be supposed to have yielded up what he never possessed. Life is the immediate gift of the Creator, inherent by birth in every individual. But does the individual possess the right of *disposing* of that gift? If so, he must necessarily be the judge of the time and manner of such disposal, and hence suicide is no longer a crime. We may turn our eyes with complacency to the ancient examples of self destruction, and view in them only that unyielding virtue and heroic courage which drew forth such admiration among the Greeks and Romans. Again, they say a man cannot be supposed to have *given up* this right, on the supposition that he EVER POSSESSED IT; because it would be impossible he should receive an equivalent. He might yield the power to regulate, not to destroy his life.

But the spirit of the Gospel, it is said, forbids capital punishment. Christ did not condemn the adulteress, though the Mosaic law hung with all its penalty over her head. The language of the law was (and that law was given by God himself) *the adulteress shall surely be put to death*. Nothing could be stronger than this language—and yet she was pardoned. Gospel light was then breaking upon the world, and those laws that were given “*because of the hardness of men’s hearts,*” were to vanish away. It was the work of the Messiah to establish a spiritual Kingdom, and in that Kingdom the swords should be beat into plough-shares and the spears into pruning hooks. “The lion and the lamb should lie down together,” and none should hurt or destroy in all the holy mountain. In accordance with this, Christ says, resist not evil—love your enemies—bless them that curse you—do good to them that despitefully use you and persecute you. And again, I come not to *destroy* men’s lives but to *save* them. It is said that Dr. Rush, with his finger upon this passage, exclaimed, that though an Angel should declare it, he could not be persuaded that capital punishments were authorized by Scripture.

Having now glanced at the different views taken of the subject by two different classes of our Citizens, we will pass to the question of expediency. And here a wide field is opened, and room for much conflicting opinion.

The advocates of capital punishment have but a single argument which appears to us deserving of much consideration. It is this, that Capital Punishment is more effectual than any other in the prevention of crime. Whether this be true or not, it is certainly very natural that we should fall into the belief. From childhood, we have seen the law upon our Statute books. Our fathers have told us, when we could but lisp the enquiry why a man was hanged, that it was necessary and right. History has shown us the

belief and the practice of other Governments, and the laws of our mother country, from which we derived our own, are ample in these sanguinary provisions. The opinion has grown with our growth and strengthened with our strength. Coming into our minds by the force of education, we nourish it and cherish it, and array all our prejudices against any attempt to examine the foundation on which it rests. Reluctantly indeed, do those prejudices yield which were early imbibed, and have been long cherished. If we speak of the substitution of some other punishment for that of death, we are met by those who start from the idea, as if the ruin of Society would be the consequence. They picture before our eyes the fell murderer with his weapons of death, and then ask if we would remove the only barrier between the bosom of innocence and the steel of the assassin? Every heart responds in the negative. But this does not establish the position that capital punishment is more efficacious than other punishments. The first emotion excited in the breast by these strong appeals and high wrought representations, is that of revenge. This passion springs up involuntarily; and without stopping to think, we denounce the vengeance of death upon the head of the guilty. But a little reflection will show, that while under the influence of this feeling, we shall not be likely to come to a fair decision. The question is not, whether we shall *remove* the barrier, and give the murderer full scope, but what sort of barrier will be most effectual for our protection. It was once thought and is still believed among some Nations, that the greater the tortures inflicted upon the criminal, the more effectually would others be deterred. Hence the rack, the knot, the practice of slowly sawing off the head, of nailing iron shoes upon the feet before execution, of roasting by a slow fire, tearing the flesh with hot pincers, drawing in quarters,

and many other modes at which humanity shudders, and from which we turn with abhorrence. But did these cruelties accomplish the desired object? Far from it—they contributed largely, it is believed, to the formation of that savage and ferocious character which prepares men for the commission of the most shocking and atrocious crimes. From habits of thinking we fall back upon the heaviest penalty our laws inflict as affording the greatest security against crime. But it is obvious to every one that it does not afford *perfect* security. If it did, we might well cling to it with a tenacious grasp, and fear to exchange it for one of doubtful efficacy. But such is not the fact. This barrier is often overleaped—and it is far from being certain that it gives even as great security as could be gained by some other provision. Those men who commit homicidal acts may be ranked under two descriptions. The first class is composed of men, generally, of firm, athletic bodies, often of more than ordinary powers of mind, of a bold and daring spirit, and whose habits of life have wrought deep depravity of morals, and nearly or quite silenced the voice of conscience. From this class, proceed those cold blooded, deliberate acts of murder, which strike the mind with such horror. These they perpetrate in full view of the penalty of the law, and upon a deliberate calculation of all the chances of avoiding it. The other class embraces men of less depravity, and of less uniform daring, but men of strong and violent passions and generally of many vices. These men, under the influence of sudden and violent excitement of passion, seize upon the first weapon that comes to hand, and commit those acts termed manslaughter. In these acts the perpetrator does not stop to think whether the penalty of the law be one thing or another, or whether there be any penalty at all. Now it is evident that the first class only, can be operated upon

by penalty, and the question is what penalty is best suited to the moral condition of this class of people. In other words, what will most effectually deter them from the commission of crime. Is it death, or is it imprisonment for life? It is confidently believed, it is the latter. Death it is said is the greatest of all penalties. True, but it does not hence follow, that it always *appears* so at a distance. The sun is the largest body in the universe—but a marble at a certain distance from the eye is of the same *apparent* magnitude. Because death, when brought nigh and made certain is most terrifying, it does not argue that it is necessarily so at a distance. The corrupt state of morals among these men, wholly changes these natural relative proportions of power in the different penalties. Death, they know, they must eventually meet in some shape or other, and they have hardened themselves against it. All beyond that, is in their view, an eternal sleep, or an uncertain existence, about which, conscience has long since ceased to trouble them. Hence death at an uncertain distance, has but few terrors for them while roaming at large. It is no argument against this to say that they shrink from death when brought to the gallows. The circumstances are then wholly changed—and the mind is changed with them. The bold and daring assassin possesses in an eminent degree the love of liberty. Not rational liberty, consistent with the rights and happiness of others; but an unconquerable, uncontrollable, and criminal love of natural, unrestrained liberty—liberty to act as he pleases—to go where he pleases, and to have what he pleases, let the consequences to others be what they may. This unbounded and criminal love of liberty exists only in minds deeply depraved. And if you would restrain that depravity from breaking out in open acts of wickedness, you must hold out those threatenings which carry with

them the most terror to a depraved and vitiated mind, though they might be less powerful than some others upon a mind in a healthy state of morals. Perpetual imprisonment, would, we think, strike a greater dread upon men of such character, than taking life. They have made up their minds in the first place not *to be detected*, but if they should be, they think they could meet death at the hand of the public executioner. But they have not made up their minds to endure imprisonment for life. It is totally inconsistent with their character and feelings. Hence when viewed at a distance, the prison has more terrors than the gallows.

But the fear of death can be subdued by men of different character. The good and the bad can brace up their minds to such an event, especially when uncertain. The Martyr goes to the stake, and the Soldier rushes into the battle. Now would the paltry pittance of the Soldier's pay induce him to hazard the number of chances of imprisonment for life, that he does of death upon the battle ground? We think not. Hence we come to the conclusion, that perpetual imprisonment would be even more efficacious as a prevention of crime, than the penalty of death.

A few individuals of elevated character, and enlightened views, have sometime since given us the result of their extensive inquiries and observations in relation to the effects and necessity of Capital Punishments. The first we would name, though not the first in chronological order, is Mr. Justice Blackstone, the distinguished Jurist who commented so fully upon English law. "Though the end of punishment, (says he,) is to deter men from offending, it never can follow from thence, that it is lawful to deter them at any rate and by any means." "Every humane Legislator will, therefore, be *extremely* cautious of establish-

ing laws that inflict the penalty of death." He will expect a better reason for his doing so, than that loose one which is generally given, that "it is found by former experience, that no lighter penalty will be effectual." Is it found upon *further* experience that capital punishments are more effectual? Was the vast territory of all the Russias worse regulated under the late Empress Elizabeth, than under her more sanguinary predecessors? Is it now, under Catharine 2d, less civilized, less social, less *secure*? And yet we are assured that neither of these "illustrious Princesses have, throughout their whole administration, inflicted the penalty of death—and the latter has, upon the full persuasion of its being useless, nay *even pernicious*, given orders for abolishing it entirely throughout her extensive dominions." Such is the testimony of an English Lawyer, a Judge of an English Court—a man who brings to the investigation of his subject, the powers of a strong and discriminating mind—A man of the deepest research, the most extensive and minute law knowledge—an acute observer of the springs of human action, and from his official situation must have been eminently qualified to judge of the *effects* of all the means employed by Governments, not his own only, but others, for the prevention of crime. And what testimony does he bear in the case? Why, after clearly intimating his own opinion that capital punishment is *not* necessary, he points to the experiment of another State, as affording ample proof of the correctness of his belief. This single authority, connected with the instance alluded to, we consider as a most triumphant refutation of the argument, that capital punishment, *more than any other*, deters from the commission of crime. But this opinion does not stand alone. The Marquis Beuaria, a Milanese General, is another authority to whom we would refer. His treatise on crimes and punishments had been published, and is

referred to more than once by Justice Blackstone; and its powerful arguments no doubt had their influence upon the Judge's mind. So powerfully did they impress themselves on the mind of the Grand Duke of Tuscany, that he broke through all the fetters of his former prejudice and abolished capital punishments entirely. And what was the effect? If any where, we may look to these old Countries where the population is more dense and the distinctions of society greater, for a people that can be restrained by nothing but the fear of instant death. But not so in this case. Fewer murders perhaps occurred during the succeeding twenty years than was common—only five it is stated, for the whole term.

It was the doctrine of Beuaria, as it now is of many others, that "crimes are more effectually prevented by the *certainty* than the *severity* of punishment"—"The *certainty* of a *small* punishment will make stronger impression than the fear of one more severe, if *attended with hopes of escaping.*" If punishments be very severe, men are naturally led to the perpetration of other crimes to avoid the punishment due to the first." To the opinion of these gentlemen might be added that of many more, both in Europe and America, together with many facts and arguments in support of them, but the limits of this report will not permit.

We will now state, in short, what we consider to be some of the principal objections to capital punishment. And in the first place, its moral tendency is believed to be bad. If Government give the example of setting lightly by human life, individuals will follow it. It is well observed by the Marquis Beuaria, that cruel punishments have a hardening influence upon the mind. Severity in the laws excites bitter and revengeful feelings. It has been observed that those countries most remarkable for their cruel and sanguinary laws, are also remarkable for the frequency and

atrociousness of crime. Veneration and respect for the law can never be secured when the law is considered severe beyond necessity—on the contrary such a law will be viewed as an enemy, and feelings of a hostile character will rise against it. By the indulgence of these feelings the mind becomes soured and depraved, and prepared for the commission of crime.

In the next place, there is much weight in the consideration that men having committed crimes for which the penalty is death, often commit others to prevent detection. Thus in countries where death is the penalty for robbery as well as for murder, we are told, the robbed is almost sure to be murdered. While in countries where a different penalty is provided for robbery, it is seldom accompanied by murder. The testimony of Pirates, taken and executed, is full to this point. Why are you so cruel as to murder the crews, we ask them, when you have robbed them of all they had? Because, if we are taken, you murder us, is the reply—and we do it to prevent detection. A rape and murder were once committed on a young female in Vassalboro'. Death was then the penalty in both cases. The man was apprehended, convicted and executed. On confessing the whole, he was asked why he murdered the girl? Then was disclosed the startling fact,—“she begged of me, said he, to spare her life, I hesitated, but I knew I should certainly be hanged if she told of it, and she would tell of it if I did not kill her.” Nerved by this consideration, he applied the savage gripe to her throat and ended her earthly existence.

Another objection is that so long as capital punishments are inflicted at all, they must and will occasionally fall upon the innocent. In what proportion of the cases, it is impossible to say, but many have been ascertained. It is but recently, that two lives at least, in New England, have

but just been saved by a timely discovery of the mistake. One in Vermont, where the murdered man arrived but the very day previous to the one appointed for the execution of his murderer. Another in Boston, where the man was tried and convicted, but was afterwards found innocent. These instances show that when suspicion becomes strongly excited, it is not all the guards and cautions which the law can throw around the prisoner that can always shield him from conviction though he be innocent. English history abounds in instances where rage and malice have been the chief instruments and the principal witnesses in procuring conviction and death. The term murder originally signified the *secret* killing of a person. A killing seen by no one and known to no one but the perpetrator of the act. It is now generally committed in a clandestine manner, and the perpetrator is hunted out and convicted by the force of circumstances. These can never amount to certainty, and hence there is always danger of convicting the innocent. But if death is the penalty, there is no rectifying the mistake, however clear may be the proof of innocence in after time. The deed is done, and the man is sent by a violent and ignominious death into the presence of his Maker. But who can estimate the injury to the wife and children—the parents, the brothers, and the sisters. Who would dare approach the forlorn and despairing wife, and attempt to soothe the deep anguish of her soul by a cold lecture on the possible utility of such a law in the prevention of crime? The children, the parents, the brothers, the sisters—language can only point to them, it has no power to describe their distress. What advantages are within the reach of imagination that could offset one such case as this? And yet such cases there are, no doubt—and many that are very similar to it, are of record.

Another objection is the difficulty of conviction when indicted for a capital offence. The very fact that innocent persons have been sometimes convicted, has a startling effect upon the Jury and the witnesses, and they will scarcely believe what is perfectly apparent. Hence the cunning rogue calculates his chances of acquittal should he be apprehended and tried. He knows that the law is considered the relic of past and less enlightened ages—that it is but feebly supported by public opinion—that the moment a man is on trial for his life the commiseration and sympathies of the people gather around him—that the utmost eloquence of the ablest counsel will be put forth in appeals to the best feelings of the heart—and he thinks that all these influences must raise a doubt in the minds of the Jury, upon which doubt he may escape unhurt. Most certainly he has examples enough to encourage him in such a belief.

Again, we object, that the execution of criminals, whether it be public or private, sheds an unhappy influence upon the community. We have now no reference to such as witness the scene, but those who are at home, and whose sensibilities would not *allow* them to be present, were nothing else to prevent. In the vicinity of an execution, the effect is great—particularly on the feelings of women and children. The man *to be executed* is in their view continually—he is the subject of their thoughts by day, and their dreams by night. The aggregate of suffering in the community from this source, is far from being inconsiderable. But this is not all. The tendency of this pressure upon the sensibilities is to deprive them of their life and vigor, and thereby rob the heart of one of its best and most valuable attributes.

If the execution be public, as is commonly the case, further effects of a most demoralizing nature are the re-

sult. Those in Augusta at the time of Sager's execution, will call for no proof on this point. It has been argued that public executions are calculated to make a deep and solemn impression, which must long be remembered.—Doubtless such impressions are produced on the minds of many, but these are not of that class of people from which to expect crime. Those whom it would be desirable to affect solemnly, and from whom we have most reason to fear crime, make the day of public execution, a day of drunkenness and profanity. These with their attendant vices, quarrelling and fighting, were carried to such an extent in Augusta, that it became necessary for the Police to interfere, and the Jail which had but just been emptied of a murderer, threw open its doors to receive those who came to profit by the solemn scene of a public execution.

In conclusion, your Committee would remark, that the investigation of the subject, has resulted in a thorough conviction in their minds, of the truth of the following propositions.

1st. Capital Punishments are not enjoined upon us in Scripture, so as to impose an obligation for their continuance.

2d. The Spirit of the Gospel most clearly forbids the infliction of any punishment having its foundation in a spirit of revenge.

3d. Government has no moral right to take life, unless it be very clear that the public safety imperiously demands it.

4th. The public safety in this State does not demand the taking of life in time of Peace, and hence we have no moral right to do it.

In accordance with these views, your Committee recommend the total abolition of Capital Punishment, in all

cases except Treason and misprision of Treason, and the substitution of imprisonment in State's Prison for life, as per Bill accompanying this Report.

All of which is respectfully submitted,

J. R. ABBOT, *Per Order.*

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED
AND THIRTY-FIVE.

AN ADDITIONAL Act providing for the punishment of certain crimes, and for the prevention thereof.

*Be it enacted by the Senate and House
2 of Representatives, in Legislature assembled,
3 That the Laws of this State, providing for
4 the Capital Punishment of certain descrip-
5 tions of offenders, (those laws relating to the
6 punishment of treason, and misprision of treason,
7 only excepted,) be and hereby are so altered as
8 to substitute, in lieu of said punishment by death,
9 confinement to hard labor for life in the State
10 Prison.*

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
February 18, 1885. }

Bill, "An Additional Act providing for the punishment of certain crimes, and for the prevention thereof," was read twice, and one thousand copies of the same, and of the accompanying Report, ordered to be printed for the use of the Legislature.

[Extract from the Journal.]

Attest:

JAMES L. CHILD, Clerk.