

THE  
DIVINE ORGANIC LAW,

ORDAINED FOR THE HUMAN RACE;

OR,

CAPITAL PUNISHMENT FOR MURDER.

AUTHORIZED BY GOD AND SUSTAINED BY REASON.

BY REV. GEORGE DUFFIELD.

GEN. IX, 5, 6:—Surely your blood of your lives will I require; at the hand of every beast will I require it, and at the hand of man; at the hand of every man's brother will I require the life of man.

Whoso sheddeth man's blood, by man shall his blood be shed; for in the image of God made he man.

PUBLISHED BY REQUEST.

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## REQUEST.

We, the undersigned, a part of the hearers of the sermon delivered last Sunday evening, by the Rev. George Duffield, on the subject of CAPITAL PUNISHMENT, respectfully request a copy of the same, for publication.

J. A. VanDyke,  
T. S. Wendell,  
A. Knight,  
Wm. D. Holt,  
G. Williams,  
J. C. Miller,  
A. H. Redfield,  
G. W. Howe,  
Shub. Conant,  
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H. Logan Chipman,  
George Robb,  
E. Bingham,  
J. S. Farrand,  
Ed. A. Lawrence,  
A. L. Welles.

Detroit, January 17th, 1848.

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*To Messrs. J. A. VanDyke, T. S. Wendell, &c.*

GENTLEMEN:—I herewith forward to you the discourse referred to. It was prepared by request, and in haste, with but three days' notice, some five years ago. Since that time it lay untouched until still more hastily solicited, with but a day's previous notice; so that it is not as much condensed, nor as carefully written and arranged as it might have been, had there been more time afforded me. If you think it will in any way subserve the interests of the community, it is wholly at your service. Truly yours,

GEORGE DUFFIELD.

Detroit, January 18th, 1848.

## DISCOURSE.

GEN. IX, 5, 6:—Surely your blood of your lives will I require; at the hand of every beast will I require it, and at the hand of man; at the hand of every man's brother will I require the life of man.

Whoso sheddeth man's blood, by man shall his blood be shed; for in the image of God made he man.

I have yielded to the request of many, who, within the last few days, have expressed a desire for the repetition of a discourse this evening, which I delivered some five years ago in this place, on the subject of capital punishment. My desire would have been to present the subject in an entire new form, had time been allowed for this purpose. But upon a review of the argument, and of the history and progress of the discussion which has been carried on since that time, I can perceive no new ground of objection, and no new sources or method of argument which have since that time been advanced by those who urge the abolition of capital punishment. I have therefore been content merely to modify somewhat, the thoughts then presented.

At that time the subject was agitated in our legislative halls. Since then, the penalty of death has been stricken from our statute book, and some ten months only have elapsed for the development of the results of the experiment. The principal gazettes in this city, have, both of them, informed us of the fact, and proved their averments by an appeal to facts within the knowledge of most, of the rapid and alarming increase of murder in our State, and the growing indications of an increased recklessness as to human life. One or two facts we have been informed from reliable sources, as fully prove that the indulgence of vindictiveness which ensued in murder has been induced and encouraged in the minds of those who have imbrued their hands in another's blood, by the knowledge that imprisonment in the penitentiary had been substituted in this State, for death, as the punishment for murder. Thus far the experiment works disastrously; and, as evils increase rapidly by sufferance or neglect, it behoves us to awake, and gravely consider whither this may tend, and whether there is not already commenced a tendency of things among us to brutal and ferocious violence, which should excite the alarm of every philanthropist, and noble minded patriotic citizen.

The ordinary hearers of the word in this place, will doubtless bear testimony to the fact, that none holds in greater abhorrence than the speaker, any and every attempt to make the pulpit subservient to party political purposes, partisan influence, or hypocritical pageants. It has infinitely higher and nobler ends to advance. But when governmental measures, affecting the vital interests of society, involving great questions of morality, and having a bearing on prin-

ciples of revelation are proposed; the ministers of Jesus Christ and religious men owe it to their Master, to the truth and to the public weal, to let their voice be heard, and to contribute as much as in them lies, to enlighten the public mind, and to form public opinion, which, according to the genius of our government, is, and ever must be, the great director of our Legislative assemblies. It is not our province nor do we presume to dictate to the rulers of the land, nor to censure and condemn on partizan grounds, their legislation. But we feel persuaded that every generous and candid mind will object to any and every attempt which would impose silence on the pulpit in reference to great questions of public morality.

The subject of capital punishment, has, of late years, excited growing attention; and doubtless, there exists an honest difference of opinion, among many virtuous and patriotic citizens, and even the professed followers of Jesus Christ. Far be it from us to insinuate aught against the purpose or motives of those who have changed our penal code in this particular. The proper course is to weigh well the arguments and objections on both sides of the question. As far as reason and revelation will aid us in the investigation, let us respect their decisions; but at the same time beware how we criminate those who have adopted a different opinion.

In advocating the infliction of capital punishment, it will be understood that our arguments relate only to the crime of murder. Treason, abstractly considered, may, constructively, be murder, but it is only when it has, *de facto*, been carried so far as to have produced death, that we at present regard it deserving of capital punishment. The two main sources of argument in support of the propriety and necessity of such punishment, will be found in the prescriptions of divine revelation, and the constitution of civil society. After the examination of these, we shall be prepared to estimate the objections commonly alledged against the infliction of death as a punishment, and the reasons adduced for its obliteration from the penal code.

The proceedings of God, with Noah, immediately after the flood, were of a general or organic character. He assured him and his sons that the beasts of the earth should be affected by the fear and dread of man. He also made a grant of the animal tribes for food to the race, just as he had done of the vegetable kingdom to Adam; with this solitary exception, that the flesh should not be eaten with the blood in it; which exception we find the apostles regarded obligatory on the Gentiles, and necessary to be observed. (Acts, 15.) The blood was interdicted, no doubt, as well for moral and physical uses, as for religious; and the interdict was intended to affect the entire race, and guard against a ferocious, sanguinary, canine, diathesis of constitution. At the same time, he ordained that every murderous beast should be put to death, and likewise every man who should be guilty of murder. The ordination of God, here, is very explicit and imperative. "Surely your blood of your lives will I require; at the hand of every beast will I require it, and at the hand of every man; at the hands of every man's brother will I require the life of

man. Whoso sheddeth man's blood, by man shall his blood be shed; for in the image of God made he man." The idea very plainly is, that should a ferocious beast deprive a man of life, that beast should be put to death. Should a ferocious man also take away the life of his fellow man, that man should be treated like a ferocious beast—be regarded as thus degraded and sunk to its level, and be as certainly deprived of his life.

The reason here assigned, may be either for the punishment or for the turpitude of the crime. It evidently shews, either that murder should be so punished, because it is especially an affront against God, the Great Author of all life; an obliteration in the individual murdered, of the image of God;—or, that death, of right, should be inflicted for the punishment of such crimes, God having endowed man with authority to deprive the murderer of life—i. e. having constituted him His image or representative to execute that punishment. The remark "for in the image of God made he man," is indeed ambiguous. But it must be viewed either as the reason why God regarded murder as a crime deserving death, or as a reason why He required death to be inflicted on the murderer. If it be the consideration which determines and aggravates the guilt of murder, then it is equivalent with saying that murder is an outrage upon God, himself, an affront offered to His image or representative—a daring act of practical contempt of the Most High. For the murderers hands have not been restrained from doing violence to God's image, and seeking to obliterate and extinguish all that there was of God in the man. This circumstance makes murder an attack upon the very sovereignty of God, the Great Creator and Moral Governor, and by that very fact renders it a capital offence; an act of high treason against Heaven. If, however, it be regarded as the reason why man should take away the life of the murderer, then it was in fact the Organic law ordaining the institution of civil government, and furnishes both the rationale of its authority and the warrant for the infliction of such a penalty by man upon his guilty brother. It is equivalent with God's saying, "in requiring man to shed the blood of the murderer, I will have it understood that I have constituted him my image or representative. It is as the civil magistrate bears the impress of my sovereignty, is invested with authority as my representative in this matter, that he has any right and as such is required by me to deprive the murderer of life.

The latter, we believe to be the true reason, and, therefore, in this precept addressed by God to Noah and his sons, we find the original warrant for civil government, and the only true source of its punitive authority. We are aware that it has been customary for different writers to found the right of governmental authority over men, very differently; some on the parental relation and the obligations arising out of filial dependence; others, on conquests, or superior force or wisdom, or wealth, or skill to govern, and others still, on what they call the civil compact, the conventional agreement, in and by which men unite for the attainment of the great ends of government to give up in some specified respects their individual and per-

sonal rights and liberties. But the obligations of obedience to the civil magistrate, do in fact, spring from none of these sources. Might can never make right. Parental control is not absolute and perpetual. Predatory violence, superior wisdom, or wealth, or skill to govern, cannot, in themselves, originate legitimate obligations of obedience. Nor has the majority, absolutely and exclusively, as such, the right to impose its will on the minority, who consent not to surrender their personal rights and liberties, in this and the other respect, any more than the minority, or one man has to do so, on the majority, by reason of any claimed personal or hereditary superiority. The only true solution, that can be given of the legitimate authority of the civil magistracy, and the right to punish crime, is, that God, to whom all men belong as his creatures, and in whose hand is their life, has ordained there shall be such a thing for the welfare of society. It is better than anarchy, the least of two evils. Having constituted the civil magistrate His representative or image, God has clothed him with authority to punish crime, to preserve the life, and to promote the welfare of men. He has not prescribed the manner and way in which different persons shall be called to the office of civil magistrate. That he has left men to settle among themselves; but whether it be the patriarchal constitution under which the common parent by common consent was submitted to as the sovereign; or the monarchical or imperial form of government, which grew out of it; or the military sovereignty established by conquest; or the simple and more rational and equitable democratic process of a popular convention; a written constitution and the exercise of the elective franchise; the civil magistrate, be he who he may, when selected, deputed and installed in his office is as truly the image of God, as he is the image or representative of the people. His right and authority to govern and punish, imposing corresponding obligations of obedience on others, comes not from man or human compact, but from God. It pertains to the people to select the men that shall exercise this authority, and to prescribe the forms, manner and ways in which it shall be done. But the obligation to obey this and the other man who holds the office of the civil magistrate, and in the exercise of such authority, springs not from our consent. God has ordained civil government, and required obedience to the civil magistracy. Rebellion, here, when that authority is rightfully and well exercised, is an offence, not only against the social compact, but against God.

But it is not an absolute divine right given to the magistrate to do all his pleasure. For the design of human government as ordained by God, determines and restricts the exercise of that authority. He is to be God's representative to execute the laws and administer justice for the divine honor and for the public good. God's own great organic law summed up in the ten commands controls alike the governor and the governed. All human legislation must be founded on it to possess legitimate authority. Deviation from it, and the perversion of government from the great end to be sought, the public good, and the prosecution of private and party, or family and

sinister selfish objects and interests on the part of governmental authorities, is to renounce all their legitimate authority. Under such circumstances, it becomes the right of the people peaceably to displace, reject and punish the unfaithful and unjust magistrate, according to the terms and provisions of their constitution, if he should abuse his power. If it cannot be done peaceably, to put an end to tyranny and oppression, revolution becomes necessary. To this, our fathers resorted in their glorious struggle for liberty; and they avowed, intelligently their right to do so in their ever memorable and glorious declaration of American Independence.

It is a remarkable fact that the idea of this declaration penned by Tho's. Jefferson was conceived from the previous declaration of the provincial Congress of North Carolina, April 7th 1776, the first promulgated by the constitutional authorities of a State. That had been preceded by what is called the Mecklenburg declaration—a declaration from the delegates of the county called by that name in that State. This declaration had been prepared by Dr. Ephraim Brevard, and was unanimously adopted by the convention of delegates from Mecklenburg, May 20, 1775, assembled to deliberate on the crisis of their affairs. Of that convention, ten out of the twenty-seven were office bearers in the church, and all were connected with the congregation of Presbyterians in Mecklenberg, who had been trained by the Rev. Mr. Craighead in religious things by the doctrines of the Reformation, and whose ancestors had in their memorable struggle for liberty of conscience against the Papal government of Scotland, given abundant precedents of noble and exalted independent bearing in their covenants, creeds and bands in which they declared their principles and avowed their purposes. To the Presbyterians of Scotland and the North of Ireland, and the precedents given in their revolution against Popery, are to be traced both the Mecklenburg and Jefferson declarations, as well for their manner, spirit, design order and language, as for their original conception. This by the way.\*

The great object of civil government, as ordained by God, is to preserve the life, and to promote the happiness of man—to secure the highest possible amount of good, and to advance the public weal. In this respect it is His representative; and has been clothed with all proper and necessary authority and power. For civil rulers to pervert them for selfish ends, for purposes of tyranny and oppression, is to forfeit that authority and power, and to render themselves obnoxious to the exercise of the same for their punishment, when those for whose good, God had ordained their authority should be exercised, shall rise and declare the forfeiture. Just as men have been authorized by God, in this precept addressed to Noah, to combine together, appoint their head, and efficiently act for the protection of themselves against the depredations and violence of the wild beasts of the earth, and has given them authority to put to death, such of them as shall be of murderous spirit, and shall destroy the life of man; so has He authorized the very same course to be pursued towards a still

\*See 2d No. of Southern Presbyterian Review; Art., Foote's Sketches of North Carolina.

more dangerous foe, *the wild men* of murderous spirit, who, by their violence and thirst for blood, degrade themselves to the level of the beast, and forfeit all claim upon the protection and fostering care of society. Wild beasts and murderers are put by God in the same category: and whether we interpret the phrase "for in the image of God made He man," as the explanation of that positive authority which God required man, as his representative to exercise over both, or as the consideration which aggravates the murderer's guilt, who outrages the sovereignty of God as Creator and Lord of Life, and renders him deserving of death, the result is precisely the same. God has required that the very same punishment which shall be inflicted on the wild and ravenous beast, shall be visited on the wild and murderous man, who imbrues his hand in the blood of his fellow. He has abjured and degraded the rationality of his nature, become the victim of ferocious passions, and sunk himself to the level of the wild bull, or tiger, or lion, or hyæna, or ravenous beast, and has thus forfeited all rights in, and claim on society. The same measure of humanity, according to this great organic law of God, must be extended to both. Till we are prepared, therefore, to build prisons for murderous beasts of prey, or to let them roam abroad unpunished, according to the organic law given to Noah and his sons, we must not do it for murderous men.

From this conclusion, however, many dissent, and various methods have been adopted to prove, either that the law given to Noah and his sons has been abrogated, or that the terms admit of another meaning. These, of course, must be examined and settled before the argument can be pronounced decisive and conclusive. Previously, it may be of use and serve to throw some light upon the subject, to appeal to reason, whether it does or does not confirm what we have affirmed to be the decision of God's revealed will. This is the more important, because the authority of the sacred Scriptures, as a divine revelation, is denied by some; and attempts to appeal to it in our halls of legislation have been ridiculed and resisted occasionally, as a trespass of theology on precincts not within its sphere.

Of this class there are two branches, and of a very different description. *First*, those who deny the authority and necessity of civil government entirely; and *second*, those who admit both. Of the former division, we find, again, one portion insisting on the sovereign potency of human reason, and the exclusive efficacy of the great law of social good will, that as we would have others do to us, so should we do to them. Denying the depravity of human nature, and its strong natural tendencies to evil in preference of virtue, they affirm that nothing more is necessary, than enlightened human reason and the dictates of human conscience. But, as these positions are directly in opposition to the experience of the world; as they have never, in one solitary instance, yet shown their efficiency, nor furnished a satisfactory specimen of what it is contended, they are able to do; as they are wholly hypothetical in their operation, depending upon an *if*, to be yet, for the first time in the history of this world, realized—a supposition, in other words, which the experience of man-

kind, for thousands of years, has proved to be Utopian; and, as they ultimately resolve themselves into the appropriate and efficacious influence of Christianity, against which the infidel portion of the community object, we do not deem it necessary to our argument, to say any thing further, than that; in the first place, the whole scheme of the *no government* men is based on false assumptions with regard to the nature and character of man,—views, which both the Scriptures and human history prove to be false; in the second place, that it demands admissions which will not and cannot be granted, viz:—that the great mass of mankind may, and can be effectually governed by reason, and need no other restraints to be laid on their appetites, passions and corruptions, than *it* can furnish—which is begging the very question in dispute;—and in the last place, that it is a mere delusion of the fancy, produced by conceding a supposition, which we have no right to believe ever will or can be realized, as society is at present constituted at least, without infinitely more potent influences and appliances than christianity has ever yet brought to bear upon the world, or than it has promised us to exert under the present dispensation of divine grace, viz:—that all men will or can be influenced, as they unquestionably are in duty bound, “to do to others as they would have others do to them.” The rampant selfishness or depravity of the human heart, is a fact too notorious to render it necessary to enter into a serious argument, with those whose whole system is founded on the denial of it. Human depravity is a fact affirmed not only in the sacred Scriptures, but assumed in all our civil and criminal courts, and any argument founded on its denial, is, and must be wholly hypothetical and inconclusive.

The second division of those, who deny the rights of civil government, run into the very opposite extreme, and despairing of all efficient aid, from reason or conscience, to subdue human corruption, claim that society shall be organized under the dominant influence and control of some established form of religion, making the state but the hand-maid or organ of the ecclesiastical power of the church, to carry out and enforce the laws of Jesus Christ. This is the view of some among us, chiefly foreigners, who account liberty of conscience, liberty of opinion, liberty of the press, and the want of union between church and state four great and enormous evils in our system. In this country, we are, however, generally so justly, and ought to be ever so keenly, jealous of the established authority of ecclesiastical bodies or of the church, after the terrible persecutions which drove our fathers to the wilderness, and the tyranny and oppression of the various experiments which have been made of theocratic government, that we do not deem it necessary to dwell in our argument on this point. Yet we fear that fallacious views of many with regard to the nature of the millennium, and of the immediate design of christianity, while professing to abhor all union of church and state, nevertheless lead them to anticipate a state of things in this world when religion shall be so paramount in its authority, and its existing instrumentalities and agencies so much more efficient, as to control the organization and to regulate the entire administration

of human government, without any other appliances and influences than the Bible and the Spirit of God. This Utopian expectation, as we must pronounce it, is, not only, directly opposed to the experience of the world for nearly 2,000 years, to the history of all the great moral and spiritual reformations which have occurred in it, and to the experiments which have been made from the days of Constantine or upon the basis of the code Justinian, which regulated the legislation of Europe, till the introduction of the code Napoleon; but also resolves itself ultimately into some more intimate efficient union of church and state, than the world have ever yet seen, and which none have ventured or are willing to define. Before such a result there must be some new and more perfect modification of human society. Civil governments must become as unlike any thing the world has ever yet seen, as is the social machinery of Fourierism for dignifying labor, destroying caste, equalizing human condition, and consolidating mankind in great communes or confraternities associated on some principles of joint partnership or stock corporations, the history of which has been so fraught, of late years, with disaster and crime—a system of machinery which has proved itself just as destitute of soul as the less extended and less complicated money making and saving corporations of our country, which, as managed in late years, have but manufactured wings to facilitate the flight and escape of riches. It is true that appeal is made to the predictions of the word of God, which affirms that kings and queens will become nursing fathers and nursing mothers to Zion, and that the Scriptures do hold forth, a glorious advancement in civilization, refinement and religion, destined to take place in the latter days. But we object to the assumption that this millennial glory, is predicated of the mere expansion and perfection of the existing condition of things in this world, instead of an entire new dispensation, in which Jesus Christ appearing personally and visibly, will Himself define exactly the relations and bonds of union between church and state, and the power of government will be lodged not immediately in the hands of erring mortal men, whether secular or ecclesiastical, political or religious, but in a Theocracy of His own omniscient righteous, visible administration by means of His raised and glorified saints. Till the advocates of the perfectibility of human society or social government, can determine themselves the boundaries which they will have drawn between the secular and ecclesiastical authorities, and how they are going to establish in their millennium a union between church and state—a scheme, in our opinion, just as baseless, and idle, and visionary, as that of the no government men, we do not deem it necessary to delay any further to frame our argument so as to meet such mere theoretical views of civil government. We take society and civil government as they are at present, and have existed in the world, and direct our argument to those who do admit the right, and feel the necessity, of introducing some punitive system for the better attainment of the great ends of distributive justice.

What then, it becomes necessary for us to enquire, are the proper and legitimate ends of civil government? It is of moment to under-

stand this, in order to understand that of the penal code; for the penal code must not be founded on any other principles than those on which the whole structure itself rests. It is owing to mistake here—to unfounded assumptions, and to the assignation of principles and ends peculiar to the penal code and conflicting with those of the government at large—that many theorists and self-styled philanthropists, have contributed to produce so much confusion in men's minds, upon the subject of capital and other punishments.

It is not necessary, to go into any labored argument, to prove, that the true legitimate design of all civil government, is, and ever should be, the security and happiness of the people, and that in its administration, the greatest possible amount of good with the least possible amount of evil should be sought. Such is the government of God. Such, also, should be that of man, his representative. Mistaken views of the origin of government, have led to correspondent mistakes as to its object. Those, who, with Beccaria, and his supposed commentator, Voltaire, have contended that government originates in the sacrifice of portions of personal liberty, made by individuals for the purpose of warding off greater evils and enjoying greater security and tranquility, will resolve, the right to punish guilt, and every act of authority of one man over another, into absolute necessity, and pronounce with Montesquieu, all punishment to be tyrannical, which is not thus absolutely unnecessary. But who is to be the judge of that necessity, and what is the rule or standard by which it is to be estimated? Admitting the principle that human government grows out of the necessity which men feel, and which makes them consent to part with items of personal liberty, to make an aggregate of sovereignty in the civil magistrate, of course it becomes a question, whether it is necessary to punish murder with death, and whether the life of the murderer might not be spared, and his labor be made to subserve the general interest. But in practice it will be found, that differing opinions will ever be entertained among men, about the nature and degree of that necessity, according as they take narrow or more extended views of the interest of human society, and the best means of promoting it, and according as their sympathies are in unison, either with society or with the criminal. The great current of argument employed at the present time against capital punishment, runs in the way of sympathy for the criminal. The essays of Mr. Spear, and the views of Mr. Upham, or Mr. O'Sullivan or the Editor of the New York Tribune, are mainly founded on an overweening sympathy for a worthless and dangerous member of society, to the utter neglect and want of sympathy for the great mass. We object not to sympathy. Let it be cherished so as to extend as far as possible the benefits, of a meliorated code, of a healthful penitentiary system, of religious instruction and moral influence, and whatever may lead criminals to feel that it is not vindictiveness that prompts society to punish, but the high and holy demands of that public justice which seeks the greatest good of the greatest number, and cannot peril the rights of the many through morbid sensitiveness

and tenderness towards the few, that by their crimes make war upon the public good.

Others, again, who have supposed that government originates in might or conquest, will feel that punishment, inflicted by the magistrate, is rather vindictive than otherwise, and is therefore an evil that must only through imperious necessity be submitted to. It will be judged, and, under aristocratic governments administered upon the principles of caste, will be rightly judged, to be designed for the safety or honor of the prince or nobles, the privileged few, and therefore cannot fail to breed discontent, and to foster a spirit of rebellion. Under the influence of such views, it may be well questioned, whether the happiness and life of the peasant is to be sacrificed for the illustration of the severity of the monarch. Still more will men be disposed to err in their estimate of the right to punish, where, as Beccaria states, it once was, the custom is to make punishments pecuniary fines, and to appropriate the crimes of the subject as an inheritance of the prince, and so make an injury to government a favor to the crown, and the judge a collector or treasury officer, rather than a protector and minister of the laws. Endless must be the perplexity in which men will find themselves on this subject, if they adopt any erroneous views of the nature and foundation of civil government. The Bible doctrine on the subject, relieves from all such perplexity, and ordinarily the plain common-sense man who takes his principles from it, escapes a thousand sophisms and errors, into which they are apt to run, who adopt this or the other theory of the origin or design of civil government. It resolves the origin of civil government and the right of inflicting punishment, into the authority and ordination of God. It says nothing about the form, whether it shall be monarchy, aristocracy, or democracy, or all conjoined in its civil constitution, although it teaches, that when God undertook to sketch for man a political constitution and to enact a penal code, He sanctioned the republican, and presented to the world the first specimen of rational political liberty in the institution of the Jewish Theocracy. And it is a remarkable historical fact, that the Jewish nation had enjoyed for several centuries the blessings of a republican form of government, before any other was known in the world, until becoming corrupt, neglecting to enforce the laws, complaining of course of its weakness and inefficiency, they rejected it and asked from God a monarchy, at the very time that the first republic was founded in Athens. But while the Bible sounds the right of punishment, and traces the origin of civil government to the authority of God our Creator and Moral Governor, it appeals to the human conscience, and claims obedience and respect from men for the powers that be, as to those ordained of God, proving itself to be both the instructor and protector of human liberty. This is a very different doctrine from the absurd and ridiculous attempt of Mr. Filmer, and others, to maintain, upon the authority of the Bible, the *jure divino* right of kings, as the regular legitimate successors of the patriarchal fathers, in whose hands they allege that God lodged the civil authority. The Bible doctrine is perfectly coincident with the deductions of

sound reason, that civil government is necessary, and has been sanctioned of God, as the proper means of promoting the greatest amount of good or happiness among men, and consequently, that as such it commends itself to, and commands respect and obedience from, the human conscience. Such being the design of civil government, it is obvious that the design of punishment must also be the same. The Bible doctrine on this subject is in perfect unison with their views who teach that the design of punishment is to protect the innocent and virtuous in the enjoyment of their natural and inalienable rights, life, liberty, and the pursuit of happiness, to guard against the repetition of the offence by the same individual, to deter others from doing the same, and thus to prevent injury and prove a safeguard to society. The penal code, therefore, forms one great branch of the motives, to promote obedience and to deter from the commission of crime.

It is affirmed by Mr. Spear, that government should be disposed to *prevent* rather than to *punish* offences. This is unquestionably true. But how is this to be done better than by bringing sufficient power of motive to guard against temptation to the indulgence of passion. The penalties of law furnish these motives. They are intended to take up those who cannot be reached by higher and nobler motives, and by appeals to their fears assist them in self-government, and protect society from their bursts of passion. No more cogent motive to deter from the destruction of human life can be brought to bear upon depraved man, than the fear of sacrificing his own by so doing. The execution of the penalty in a few instances, does indeed lead to the sacrifice of life, but it is the sacrifice of a guilty few, for the benefit of the multitude of innocents. How much the penalty of death operates with motive power to prevent murder, may be learned from the history of pirates and robbers and bandits, who become perfectly reckless of life as soon as they think they have, by combination, skill, courage, or in any other way succeeded to frustrate the application and execution of the penalty in their own case. The men of fierce and savage passions need such aid to prevent them from yielding to their impulses. The penalty of death for their indulgence in murder furnishes this aid. Punishment, therefore, as both Jeremy Bentham and his Redacteur Mon. Dumont, have said, "however vile an instrument in itself, and however repugnant to generous sentiments, rises into a blessing of the highest order, when regarded not as an act of anger or resentment against a guilty or unfortunate person who has yielded to hurtful propensities, but as a sacrifice indispensably necessary to the public safety."

In the graduation of punishment, there will, of course, be a call for the exercise of wisdom. Whatever may have been men's views of other crimes, with almost universal consent, from the very days of Noah and his sons down to our own, has death been awarded to the murderer. Sometimes it has been with torture, as among barbarians, and is yet recognized and called for by law in some of the governments of Europe, though in the present advanced stage of humanity

\*Dr. Patton on capital punishment, page 14.

not enforced in practice— In our own country, happily, unlike many others, but few crimes are made capital—except, indeed, among the wretched oppressed slaves of the South, who are subjected to a most ferocious and sanguinary code. Eleven crimes are punishable with death under the government of the United States. Murder, treason, arson and rape are capital in Massachusetts, Delaware, Louisiana and Maryland, in which last State they may be commuted by imprisonment. Most of the states make but murder and treason capital. Pennsylvania, murder in the first degree only. But Georgia 7; North Carolina 22; and Virginia 24. In England, not long since, 160 different crimes were punishable with death, and the life of man was regarded as of little value, less, even than the price of a sheep. Public opinion, however, has become more enlightened, and it has been well questioned whether God sanctioned such a sanguinary code; so that, for 72,000 persons *executed* during the 36 years of the reign of Henry the 8th, only nine hundred and thirty-three persons out of 23,700 condemned to die from 1813 to 1833 were actually put to death, the pardoning power having been exercised to counteract the severity of the law.\* Our argument is concerned mainly with the crime of murder. In estimating the punishment due to it, where the necessity and rightful obligations of a penal code are admitted, we have to meet two classes in society: those who believe in Revelation, and those who do not. It behooves us to inquire first, whether God has authorized or required the death of the murderer, and in the next place, whether the great ends or designs of punishment, as just stated, can in any other way be as well and certainly secured.

That God sanctioned and required the punishment of murder with death at a former period of the world, the Mosaic code, and the law given to Noah and his sons, are proof sufficient with all who believe in the divine revelation of the books of Moses. But it is contended that the Mosaic code was framed specifically, peculiarly, exclusively for a people separated from the rest of the world, with whom God had established a relation such as He had not with any other, so that the Theocracy of Israel having long since ceased, with it expired the obligation of its penal code. We do not affirm the contrary; but deem it important to remark, that the divine wisdom having framed that constitution and code, in view of the particular design of that government, it behooves all who admit its divine character, to treat it with the respect due to the character of its author. It is but the device of infidelity to pour contempt upon the Levitical code, on the ground of its having been excogitated by Moses. Moses affirms it to have been handed over to him by God as the code dictated by Jehovah, the Holy One of Israel. So far from its deserving the practical contempt with which it is treated by many, it is to that code we are indebted for most of our important and valuable principles and maxims of common law. Some profound civilians and Judges, have affirmed; that the admirable and beautiful adaptation of most of its great and leading features, to the nature of man, and their efficient tendency to promote domestic virtue and social happiness, personal

worth and civil liberty, a lofty heroism and true courage, individual enterprize and national independence, deservedly bespeaks for it much more attention and regard than it is wont to receive from many of our statesmen and legislators. Never was there a system, which retained so long and so deep a hold, and under such peculiar embarrassing circumstances, as it has done upon the hearts of the peeled and scattered remnants of Judah. It is certainly, to say the least, presumptuous in man to despise the wisdom of God. The ribaldry and contempt with which some of the Levitical precepts have been treated, are to be traced to ignorance of their specific design and of the social evils they were intended to prevent. But let this pass.

The next attempt to invalidate the authority of revelation, is to deny the organic character of the law which God gave to Noah and his sons, relative to the punishment of murder. Some who are not remarkable for their study of the Bible, have confounded it with the Mosaic code, which was not enacted till about nine hundred years afterwards, and which the Savior admits permitted the giving writings of divorce, "because of the hardness of men's hearts." Others, like those who drew up the report to the Legislature of New York, made in March, 1832, deemed God's treatment of Cain to have been a practical illustration of the law not given till 1600 years afterward! "Historical accuracy," however, (it has been well observed,) "in Bible matters, perhaps is not always to be expected in speeches and reports made to legislative bodies." Yet do we naturally expect it when it is claimed that the law given to Noah has been abrogated. There is no proof, in the sacred Scriptures, that it has been abrogated, any more than there is that the grant made to man by God of animal food has been abrogated, or of the authority given him to take the life of ferocious and murderous wild beasts. One provision is just as organic as the other. The burden of proof devolves on those who affirm that this section has been repealed.

A recent author affirms that this law is of "divine validity and authority, only where the particular condition and circumstances of man's nature exist, out of which it necessarily rises,"\* and that the meaning of the original Hebrew terms confirms his opinion. He has not stated what that condition and those circumstances are, but evidently regards it as a law applicable to barbarous hordes—a state of society in which the friends or nearest kinsmen of the murdered person feel bound to avenge the blood that has been shed by pursuing the murderer unto death. The word require, he says, means to run after or pursue, and he interprets the language to mean nothing more than a prediction founded on "the efficiency of the laws which God has established in the nature of things," that thus it would be. This is the common method. Instead of being an organic law, they pronounce it a mere prediction, or a threatening, to deter from the punishment of the murderer, or a declaration that God had reserved for Himself exclusively, the power of taking away life. It is not a prediction, for there have been most successful murderers in the world,

\*Graham's Philosophy of Sacred History, No. 11.

who have escaped from all punishment from man, and accomplished their days without any direct interposition and inflictions of divine providence. How many duellists and murderers skulk about on whose head no bolt of divine vengeance falls! It cannot be a mere threat to deter the magistrate from the infliction of death in any case. For the language is explicit, "at the hand of every man's brother will I require the life of man." The plain and obvious meaning is, that God authorized and held responsible the brother of every man who had been murdered, to inflict on the murderer retributive punishment. And this exposition is so plain and obvious that it has the sanction of all antiquity. Hence arose the law of the goel or kinsman redeemer, according to which the nearest surviving kinsman is required to inflict punishment on the murderer. Here is the origin of that law which obtains in almost all barbarous tribes. Where civilized governments neglect to punish murder, the feelings of society very soon furnishes a sanction for retaliation, and the law of the Goel or redeemer or pursuer of blood is revived. The language of the passage has been tortured by criticism, but there is nothing requiring the skill of the philologist here. Biblical writers of the highest authority, however, prove the fallacy of the criticism referred to. God says not, that men will do it, but *I* will require it. It is not the fact that God does it uniformly in His providence. This, therefore, cannot be its meaning. It must therefore be that He requires it by His ordinance. The law was not given when mankind existed as barbarous tribes, but when the government, of necessity, became patriarchal or domestic, the parent being prince. There is no manner of difference, as it regards the result, between God's authoritatively ordaining it as His sovereign constitution, His organic law for the regulation of human government, that "whoso sheddeth man's blood by man shall his blood be shed," and His establishing certain great constitutional and efficient laws in the nature of man, or the nature of things, which he foresaw would secure the infliction of death on the murderer—except that the former is much more rational and consistent with the character of God. To talk about God's preference and desire for human improvement being such, that when men become "sufficiently susceptible to the moral and spiritual power of God, to be restrained by them, in the consciousness of entire moral freedom, not only from the act of taking life, but also from entertaining the murderous feeling and the sanguinary desire;" and to say that they do but meet His wishes in abolishing capital punishment, and even civil government, is just nothing to the purpose. It is but blinding the eyes, and introducing confusion into the elements of the argument.

Admit it—but what then? Does it prove that men are either now, or ever will, under the present system of moral means and spiritual influences, universally come into such a state of personal and social improvement as to render civil government unnecessary? By no means. The question is simply a question of fact, and not of theory. What has God done? what is the judgment He has expressed? what is His law adapted to the existing condition of things? No one, who professes to believe the Bible, can deny, that capital punishment

for murder, has received the sanction of God, whether he resolves that sanction into organic law, or into the efficient principles or laws inwrought into the very constitution of human nature, engraven on the human heart. Be it the sanction and incorporation into their social system of the right and obligation of the Goel or kinsman redeemer or avenger or pursuer of blood, to punish the crime of murder, by the death of the murderer—as it has for centuries obtained, and yet is preferred, in the administration of justice in the Oriental nations, and among our own savage tribes; or be it the public act of civil authority, taking it out of private hands and fulfilling the demands of the law engraven on the human heart, as it obtains in the more civilized governments of Western Europe, and in these United States, it amounts to the same thing. Capital punishment, in either case, is but the appropriate retribution awarded by the judgment of social man for the crime of murder. Take, therefore, the law given to Noah either way, whether as a precept, or a prediction founded on established laws of human nature, the result is exactly the same, unless, indeed, it can be shown that some new moral and spiritual influences have been introduced, by God into the world, to counteract these constitutional principles of human nature, or to render the organic law of Noah and civil government unnecessary.

This, it is urged, God has done by the introduction of christianity, and by the abrogation of the Mosaic code. But the abrogation of the Mosaic code as we have seen, does not affect the law given to Noah, and therefore, before christianity can be affirmed to have been designed to supercede the civil magistrate, and to nullify the penal code of nations, its precepts and provisions to that effect must be shown distinctly and conclusively. This cannot be done. Any and every attempt to do so is but seeking, as infidelity is forced to do, to convert the grand ægis of our safety, the protectress of our civil government, into the worst enemy of social peace and order. For the effect of all such attempts, is to make christianity contradict itself and deprive it of our confidence. How perfectly ridiculous, for example, is it for men to quote, for this purpose, such precepts as the following:—"Thou shalt not kill," which is found in the very same code, and comes from the very same authority with that which made it obligatory on the civil magistrate for various crimes to punish with death. The precept is addressed to mankind in their individual relations to each other, and not to society as organized into civil government under the divine sanction. The spirit and the letter of the precept is, thou shalt do no murder, and yet our latitudinarian and infidel expositors, would explain it for us, so as to prohibit the civil magistrate from taking away life, as if that were *murder*, while, with most singular and unblushing inconsistency, they will allow the plea of justifiable homicide to be entered in our courts, and juries will thus construe the murders which have been provoked by insolent behavior, provocations and broils, and let the murderer run at large, for having himself done what the State must not—dare not, retaliate on him. Equally ridiculous too, is their pretence, who say, that it is but confirming the old and odious law of retaliation, and who attempt to in-

terpose the authority of our Lord and Savior Jesus Christ, as having abrogated it when He said, "Ye have heard it said, an eye for an eye, and a tooth for a tooth, but I say unto you resist not evil." For this is not a precept addressed to the civil magistrate; not an abrogation of a Mosaic edict; for He says He came not to destroy the law but to fulfil; not organic law intended to affect the constitution of States, for if so, the Lord Jesus Christ would Himself have been found a transgressor, and reviler of the very constitution under which He lived, and would have rendered Himself obnoxious to the charge of setting aside the Mosaic code, which He says He came to honor, and which He justly claimed to have perfectly observed. The whole design of His discourse and the import of the context show, that the authority of Christ is interposed to prevent the retaliatory spirit of private revenge, from being cherished *by men in their intercourse with each other*. They must not take into their own hands, the work of vindicating themselves, but let the law do it. The rule of action to guide the civil magistrate must not regulate personal and civil intercourse. That is to destroy all government. God says, "vengeance is mine, I will repay," and one of the modes of His retribution, is by the adjudications and penalties of the civil magistrate, whom He has clothed with power and authorized to punish crime.

Still more ridiculous is their pretext, who plead, in proof of the impropriety of capital punishment, the precepts which inculcate the spirit of forgiveness, yea impose an obligation on us to pardon even repeatedly. They might just as well urge these against every part and parcel of the penal code as against capital punishment, for the principle is the same precisely, and so the objection resolves itself into the plea for no government. The error lies in interpreting the moral instruction, given by Christ and his apostles for the regulation of the private personal conduct of men in their various social relations, as applicable, or intended to apply, to the organization of civil government, and to the administration of justice by the civil magistracy. By such rules of interpretation the instructions of the meek and blessed Redeemer may be construed as seditious, and He Himself set forth as the enemy of civil government, and all that, too, by those who profess to be the most enamored and impassioned admirers of the genius of christianity! Verily of such professed friends and children of our holy religion, we cannot but suspect some hypocrisy, and exclaim of their laudation of christianity, as did the hind to the panther:

"Oh," said the hind, "how many sons have you  
Who call you mother, whom you never knew?  
But most of them who that relation plead  
Are such ungracious youths as wish you dead."

So far from Christianity sanctioning the idea, that civil government is unnecessary, and interposing its authority in opposition to its right to punish crime, yea, even capitally, the New Testament clearly and distinctly teaches the contrary. When Peter drew his sword to resist those who came to apprehend his master, the Savior reminded him that thus he would become obnoxious to death. "Put up again thy sword into its place; for all they that take the sword shall perish with the sword."

He never for one moment questioned or denied the abstract right of the magistrate to punish capitally, though in His own case He protested justly His innocence, and His apostles charged the rulers with injustice in the act of condemning and executing Him. Paul, too, recognized the same rightful authority, observing, "if I be an offender or have committed anything worthy of death, I refuse not to die." The strongest and most pointed testimonies are delivered as to the rightful authority of the civil magistrate, which both Paul and Peter declare to be founded in the ordination of God. "Submit yourselves," said Peter, "to every ordinance of man for the Lord's sake, whether it be to the king as supreme, or unto governors as unto them that are sent by him for the punishment of evil doers, and for the praise of them that do well. For so is the will of God."\*

Let every soul, said Paul, 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 ordinance of God; and they that resist shall receive to themselves damnation. For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? Do that which is good, and thou shalt have praise of the same. For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain, for he is the minister of God, a revenger to execute wrath upon him that doeth evil. Wherefore ye must needs be subject, not only for wrath, but also for conscience sake.† These testimonies, with every one who bows to the supreme authority of the sacred Scriptures, are sufficient proof of the necessity of civil government, of the legitimate authority of the civil magistrate, and of the right to punish crime. They also unfold what are the true and legitimate objects of civil government, and the design of the penal code. Being left, too, in the form of mandates addressed to the human conscience they also abundantly disprove the pretensions of those visionary philanthropists and politicians, who prate to us about the progressive moral improvement of society keeping pace with intellectual cultivation, and of these things being destined to the abolition of capital punishment, yea, of a penal code, and even of civil government itself. When, therefore, we take into view, the divine ordination of civil government, the organic law given to Noah and his sons for the punishment of murder with death, and the fact that no trace or record of the abrogation of that law is to be found either in the cessation of the Theocracy instituted at a much later period of the world, or by the introduction of christianity, the lawfulness, propriety, and even obligation thus to punish murder, cannot be disputed by those who admit the plenary inspiration and divine authority of the sacred Scriptures.

But this conclusion will have little weight with those, who, like the New York committee, can make such egregious blunders as they have done in point of fact, and so gratuitously assume that Jesus Christ

\*1 Peter, III, 13, 14.

† Rom. XIII, 1-5.

was opposed to Moses. My audience will, I trust, excuse me if I trespass a few moments longer on their attention, and in conclusion, briefly notice the more common and specious arguments in favor of the abolition of capital punishment, adduced by those who claim reason solely for their guide. The punishment of death, it is alleged, is tyrannical and unjust, because no government has, or ever can equitably acquire, the right to take away the life of any of its citizens. This resolves itself into the following process of reasoning:—All the rights possessed by government, are such as have been surrendered by individuals composing the body politic, for the common benefit of the whole, and inasmuch as no man has a right to take away his own life, so he can never surrender or convey away to any other what he does not himself possess.

This argument is founded on false premises. It is not true, that the authority of the civil magistracy—the right to rule and govern, grows out of compact. How few are there in our older states that ever gave their consent to the constitution under which they live! Their fathers died, but no convention since called, ever afforded them an opportunity to say yea or nay, or how far the government should have authority over them. Females and minors too, have not even been consulted or asked to give their consent, and yet no one will dare to deny that they are under obligations of obedience to the laws. It is not compact that originates the obligation of the citizen or the right of government to rule. It may determine the form of the government, the provisions of the constitution; but the authority of the civil magistracy, and our obligations to obedience, must be traced to other sources.

Were society to act on this principle, we should have nothing but confusion. The citizens are changing every year and month. Some, too, may change their mind, and aliens may come among us, and how shall their consent be ascertained and maintained? Who would take it as an excuse for disobedience, from a citizen or foreigner, that he never gave his consent to the government, or to the law. The obligation to obey cannot be traced to consent. We have said whence it proceeds, but the man who rejects divine revelation, will be compelled to resolve even, this, his favorite view of compact, into the odious doctrine of might making right, the very element of despotism. The majority, as such, originally have no right to make a compact for the minority who dissent. Might of numbers in the majority, may prove just as odious a tyranny, as wealth or force in an aristocracy or monarchy. There must be some common standard by which to judge and protect the rights both of the majority and minority. That is the law of God. God recognizes and teaches the obligation of the child's obedience to the parent, and so do all but the advocates of no government. He makes the obligation of obedience to flow from the relation of dependence, and with all men's theories about government, they cannot unfold the obligation of obedience on any other principle. There is a fallacy therefore, in the argument which founds the obligation of obedience on compact or conventional agreement, and consequently in the conclusion which is drawn from it.

A living writer, quite conspicuous among the advocates for the abolition of capital punishment, has pronounced the argument under consideration, to be "over fine," and admits that it is contradicted by facts of daily occurrence and notoriety. He is constrained to deny that government rests on an absolute compact between *all* the members of a community, and knowing no other mode of ascertaining the obligation of obedience, broaches the doctrine, that it is the result of a combination between the just, the wise, the virtuous, the order-loving, or those, at least, who have sense enough to perceive the necessity of a general predominance of justice and order, to repress the outrages of the vicious, the turbulent, the covetous, the cruel, and all who are so mentally darkened or morally perverted as not to realize that the individual good should be brought into subordination to, and in harmony with the universal well being, and cannot be compassed otherwise.\* This is just as false in fact, as it is offensive to our cherished ideas of liberty and equality, and resolves itself explicitly into the tyrant's doctrine, that might makes right. He, too, is constrained to admit, that there may be circumstances when it is right to deprive of life, but urges that it must not be done *vindictively*.

In so saying, he makes a false issue, dodges the question, and attempts to put a false construction on the design of the penal code, especially in this particular. They who deny the right of government to take away life, on the ground that a man has not a right to take away his own life, and therefore can never delegate that right to others, not only mistake the origin of government, but assume other false premises, and see not the absurd principle to which their positions and arguments lead them. On this principle, no man has a right to expose and jeopard, much less to sacrifice, his life, for the safety of his family or country. This position is at war with some of the best feelings of the human heart. It obliterates some of the noblest traits of human character. It strikes a death blow at one of the essential elements of a nation's safety, the love of country. It pours contempt upon, and attaches crime to the lofty and heroic spirit of, the men that pledged, and were willing to forfeit, their lives, their fortunes and their sacred honor for their country's freedom. Yea, it condemns the blessed Redeemer Himself, who gave Himself a sacrifice unto death for us, that we might live. To be consistent they must deny the right of government to require any arduous or dangerous service for their country's good. They must never enlist a soldier, march an army into battle, equip a fleet, nor require the citizens to oppose an invading foe. In short, they assume principles which, if carried out, would subvert all government. They must prohibit the physician from visiting the bed-side of the patient attacked with some malignant contagious disease. They must drive friends and relatives from around their dying couch. They must leave the wretched victims of virulent disease to perish and rot upon the surface of the earth, without christian burial, and sound the trumpet of alarm to warn all how

\*New York Tribune, December 20, 1842.

they dare to render the last offices of kindness to their poor and sad remains. Verily the thing is too absurd.

Equally absurd is the plea taken from the alledged example of God, who, contrary to his expectations, inflicted not the penalty of death on murderous Cain. The experiment of abolishing the penal code, has been made on a grand scale in the world. God left man at first to himself—made no ordination for the civil magistracy before the flood—but suffered Cain to roam abroad a vagabond and wanderer on the face of the earth, and cursed the earth that it should not yield to him the fruit of his labor. Cain complained that his punishment was too great to be borne, and was filled with alarm lest others might kill him. He was, however, suffered to live. We trace his murderous spirit in his race. The next murders we read of were among his sons. It propagates itself from father to son when suffered to spread. The family of Cain proved the fountain of crime. The earth became filled with violence and corruption. There were giants in the earth in those days, and God destroyed the earth and its inhabitants with a flood. This was the first experiment, and fatal was the result. The mighty deluge of divine wrath was the comment which God has recorded in relation to the absence of capital punishment, and the want of civil government. The forbearance, therefore, shown to Cain, affords a potent argument in favor of the obligation of capital punishment, imposed by the divine organic law ordained for the race after the flood.

Others object against capital punishment as being opposed to what they say is the design of the penal code, to wit: the reformation of the culprit. The objection is, that it loses sight of his good, and fosters in the community a spirit of vengeance. The true, legitimate and main design of punishment is not to reform the criminal; but to protect the community and to promote the public good. The reformation of the criminal is an incidental circumstance proper to be regarded, when it can be secured consistently with the public good, but not the primary design; for that would be to convert the penal code into a mere system of discipline. And as to fostering the spirit of vengeance, it is wholly hypothetical and contradicted by fact, for the history of nations will prove that the spirit of vindictiveness rages most ferociously, precisely where the civil government undertakes not to punish murder with death, as in Oriental countries and savage tribes, where private man becomes the avenger of his brother's blood. The governmental execution of the murderer, represses the spirit of vengeance, and the admitted right of the civil magistracy, especially where there is confidence in its justice and firmness, to inflict the punishment of death for murder, serves more than any thing else can do, to allay the tempest of passion in the inanguished bosoms of the wretched sufferers that have lost a child, a parent, brother, friend, protector. The unnecessary publicity of the execution, and the addition of tortures, are no part of capital punishment. Objections drawn from circumstances altogether incidental and capable of being easily remedied are frivolous. We really doubt sometimes, whether this objection can be believed by those who

make it, for with most singular inconsistency, in almost the very next breath, perhaps, they will alledge that capital punishment is mischievous, because it tends, they say, to excite sympathy, and produce commiseration for the criminal. That the parade, display and solemn farce, as I must call it, which often occurs, of attendant ministers and public sermons and prayers, as though the criminal had been sainted and is about to die a martyr, may have this effect, we doubt not. But these, too, are incidents and form no part of capital punishment. The instruction of ministers, the visits of mercy, the commiseration of christian tenderness, which should not be withheld, can all be had, and much more beneficially, without the fulsome and ridiculous parade that is often made about attempts to prepare the criminal for death, and sometimes for the mere spirit of cupidity, to be gratified by the publication of the dying confessions. Errors and mischief of this sort, are to be referred to their proper causes. Not to the fact of capital punishment, but to unnecessary and studied attendant scenical *displays* of sympathy.

Again, with similar inconsistency, it is objected, that public executions have a tendency to harden the heart, and to stir up the corruptions of some. That they do, in some cases, and therefore are injurious, we doubt not. But executions before a popular crowd of curious gaping spectators that run to see strange sights, however dreadful, is no necessary part of capital punishment. Execution by the Sheriff himself, instead of by a Jack Ketch, and under sufficient circumstances of publicity to meet the ends of public justice, would obviate much if not all of that mischief which some improperly object against the capital punishment, instead of the circumstances, of the public execution.

It is objected by others, that to inflict the punishment of death, tends to lower the estimate of human life. Unquestionably it does, if it be for trivial offences, or if life is valued by property. But it cannot have this tendency when life is sacrificed for life—when the murderer is not allowed to redeem his life by costly ransoms, by deep degradation, by protracted suffering, by perpetual imprisonment. Nothing can teach men more effectually to put a right estimate on human life than to know that nothing can expiate the crime of murder, but that the murderer himself must die. We have many dreadful practical illustrations in our own country, where the sensitiveness and commiseration of juries, the pardoning prerogative of governors, the subtleties and uncertainties of the law, and other expedients, have induced a practical relaxation of the penal code in this respect. The estimate of human life is becoming less and less continually, as is proved by the increasing number of horrid murders, and by the diminished number of executions. Yet strange to say, diminished executions are plead in proof of diminished murder. Happy should I be were I able to say, that in our own vigorous young State, whose soil has never been stained by the blood of a condemned criminal, shed by the officers of justice, and on which no gallows has been erected, that soil had not been often stained by the blood of murdered innocence. The history of our own county furnishes any thing but

a comment on the truth of this objection. Homicides, if not murders, have been alarmingly frequent.

But finally, it is objected, after all, that the punishment is too great—no crime can be commensurate with the taking away of life. Something else may be substituted, such as perpetual solitary imprisonment, which will afford time and opportunity for the criminal to repent, which will afford an opportunity for his manual labor to be turned to the profit of the State, and which will prolong the example of punishment. But certainly the violent taking away of the life of virtuous and innocent and valuable citizens—the horrid desolation of the widow's heart, the moans and misery of helpless children deprived of their father, the protector of their youth, the loss of valuable services to the State by the industry, intelligence and patriotism of some worthy, enterprising and benevolent member of society, by the foul dagger or weapon of some fell assassin and murderer, is a crime more than commensurate with the taking of the life of the wretched, guilty, depraved being, whose malignant passions, neither the laws of God nor man will restrain. Shall all the sympathy be for the foul demon who has done this murderous deed? and none for the widow's sore broken heart? for the desolate homes and fatherless babes, and the incurable anguish produced by every recollection of one once loved, whose every look and word imparted bliss? Shall the State be made the patron and protector, the almoner and dispenser of good by the hands of its officers, and by the money of its coffers, to any and every vile ruffian, that like the wolf or tiger, rushes from his lair and gluts on human blood? Is this to promote the public good? to protect innocence and virtue? to accomplish the great design of civil government? or to pervert the ends of government and the ordinance of God? Is it not to make integrity and industry penal, and to bribe to the commission of crime? Will the great ends of punishment be answered by commuting perpetual imprisonment for death?

If that imprisonment be solitary, it is but a more lingering and torturing method of inflicting death. Such has the history of solitary confinement adjudged for life proved it to be, where there has not been a relaxation of the rigor of the law. But if the imprisonment be not solitary, only perpetual, it must operate as an incentive to murder and a provocation to its repetition. The highway robber, can but be imprisoned. He may judge that dead men tell no tales, and therefore prefer to run the risk of escaping imprisonment at all by adding murder to robbery and other crimes. When imprisoned, the desire and hope of escape, may prompt to the murder of his keeper, knowing that if not successful in accomplishing his freedom, he can suffer no more, having already met the full retribution of the law. Who will consent to be the keeper of our prisons? Armed bands must be placed in them. Our citizens must be drafted in them, or troops be enlisted and supported in crowded penitentiaries; and they must be authorized, should they judge it necessary in case of assault or insurrection, without judge or jury, to shoot the murderous insurgents down. Lynch law, too, will be resorted to, and in the midst of popular ex-

citement, blood will be shed without form of law or stay of execution. The infliction of death for murder, cannot be prevented. The right and power to do so is best lodged in the hands of the civil magistracy. If the law shall prohibit its infliction after regular trial and verdict of guilt rendered, private revenge, popular excitement, Lynch law, the hired assassin, will inflict it. Capital punishment is the truest, wisest economy of human life.

But enough, the scheme of abolishing capital punishment in this country, is quite too inconsistent, chimerical and visionary, to be long seriously entertained or endured. It cannot fail to bring back the vengeful spirit of barbarism—to make every man arm himself and thus to multiply the occasions and facilities for shedding blood—to lead to the practical contempt of human life—to bribe to the multiplication and aggravation of crimes—to increase the expense of the penitentiary system—to impose onerous and unnecessary taxes, and to abstract, what the experience of the world for thousands of years, has proved to be one of the strongest of motives to restrain from deeds of murder—the fear of death.

In conclusion, we have only one remark more to make, that inasmuch as it has been well ascertained, that at least three-fourths of all the murders and homicides that take place in the United States, are connected with, or grow out of the use of intoxicating liquors—and it is an old and sound maxim of criminal law that drunkenness rather aggravates than extenuates the crimes it causes men to commit—so, if the State will, by its constituted authorities, refuse to inflict the punishment of death for murder, and render it possible for the murderer again to return to the haunts of men, or at least diminish the restraints upon this crime, we may justly, and ought by all means instantly to require it to protect us against the manufacture of drunkards. If intoxicating drinks be a moral and physical poison, causing the death of conscience, the death of thousands of our citizens, and it shall be demanded that intoxication mitigates crime, then we demand that the same authority, which would shelter the murderer, and build costly prisons for him to dwell in, shall at least protect the people, the innocent, sober, virtuous community; no longer license the sale of intoxicating drinks, but banish forever the maddening cup, which converts men into lions and tigers, and makes them thirst for human blood. What with honorable duellists and pardoning of their crimes; what with the irresponsible courts where Lynch law is brought to bear for the execution of men in defiance of the law of the land; what with the alarming increase and prevalence of murder in our country; and what with the floods of liquid damnation legalized and flowing in dreadful devastating streams through the length and breadth of our land, we have abundant reason to cry out for the protection of the civil authorities, and to implore them to beware how, by the abolition of capital punishment they weaken still more the few slender restraints yet remaining on the cupidities and crimes, the blood-thirsty spirit, of the robbers, assassins and murderers that prowl around and make our lives to hang in doubt about us. May God give our rulers wisdom, and preserve the safe-guards of the social state.