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ART. I.—*The Life and Times of Red-Jacket, or Sa-Go-Ye-Wat-Ha ; being the sequel to the History of the Six Nations.* By William L. Stone. Svo. pp. 484. New York and London. Wiley and Putnam. 1841.

IN the volume of the Repertory for January, 1839, we took a highly favourable notice of a larger work by the same author, containing an account of the "*Life and Times of Joseph Brant*," the famous Mohawk chief. We remarked, that, under this title, Colonel Stone, while he made Brant a conspicuous and very striking figure in his narrative, had contrived to embrace a large amount of interesting and instructive matter, and, in fact, had given an entirely new history of the war which issued in American Independence. It cannot be said that the volume before us comprehends as large a portion of the history of our country as the preceding work ; but we may truly say of this, as well as of that, that the "*Life of Red Jacket*" occupies a prominent place in a large and rich narrative, which brings to our view, in a manner no less instructive than interesting, a great number of facts and characters with which the life of the celebrated Orator of the Senecas was immediately or remotely connected.

The Seneca chief and orator, popularly known by the name of *Red Jacket*, was born about the year 1750, at a place called *Old Castle*, about three miles from the town

keep pace with our intelligence. Let learning and religion go ever hand in hand; and the works of the Creator be always employed to illustrate and extend the glory of the Redeemer.

W. G. Ladd

- ART. VII.—1. *Report relating to Capital Punishment, presented to the House of Representatives of the Commonwealth of Massachusetts, Feb. 22d, 1836.* pp. 96. 8vo.
2. *Report on Capital Punishment, presented to the Assembly of the State of New York, April 14, 1841.* pp. 164. 8vo.

THE subject of criminal jurisprudence has, of late years, attracted much attention, and the effect has been a gradual amelioration of the penal codes of most civilized nations. Were it our task to unfold the causes which have conspired to produce this favourable change, we should certainly name as the very last and least among them all, that which Mr. Rantoul, the author of the Massachusetts Report, places first, the influence of Jeremy Bentham. So long as we believe that men are possessed of a moral nature, that in its workings makes them acquainted with pleasures and pains of a higher order than the gratifications of the palate or the pinchings of cold or hunger, we never can be persuaded that Benthamism can be the means of any extensive or enduring benefit to mankind. It would be such a miracle as might almost compel us into blank scepticism, if a philosophy of the lowest and shallowest order, that contemplates man only as the first of animals, and the universe only as the largest and best of machines, should supply such truths, motives and means, as would suffice for the substantial improvement and elevation of the human race. Whenever we are satisfied that this has actually occurred we shall deem it a fact sufficiently startling to lead us to examine, anew, the nature of man, and the character of the truths by which he is to live. In the mean time we shall remain in the belief that any wise and beneficent provision for the interests of men, must be derived from some higher source than a philosophy that is adequate in its legitimate scope, only to the care of cattle.

Our object, however, is not now to trace the true causes of the reformation which criminal jurisprudence has undergone, but simply to mark the fact. This reformation has been more extensive and striking in England than in any other country. The criminal code of England, as it stood thirty years ago, attached the punishment of death to more than two hundred different offences, many of which were of a comparatively trivial character. Thus it was a capital felony to steal property to the value of five shillings privately from a shop, or to the value of forty shillings from a dwelling house, to steal to the amount of forty shillings on any navigable river, to steal privily from the person, or to steal from any bleaching ground in England or Ireland. A still more sanguinary act, passed under the reign of Elizabeth, made it a capital offence for any person, above the age of fourteen, to associate for a month with gypsies. The latest instance of the execution of this last act, was under the reign of Charles I.; though Lord Hale mentions that as many as thirteen persons had, within his time, suffered death under it, at a single assize. When these severe statutes were enacted, it was doubtless intended that their penalties should be faithfully executed, as no sensible men would ever make laws without the design of carrying them into effect. But as the exigencies of commerce, trade, or manufactures, which had seemed to call for this bloody protection passed away, or as experience demonstrated the inexpediency of so sanguinary a code, and an enlightened public sentiment revolted from its cruelty, its provisions fell gradually into disuse. Under the reign of Henry VIII. Hollinshed states that not less than two thousand persons perished annually under the hands of the executioner. But during the seven years, from 1802 to 1809, the average number of executions for each year was only nine and a half; and these were chiefly for the gravest offences. During this same period eighteen hundred and seventy-two persons were committed to Newgate, for privately stealing in shops and dwelling houses, but of this whole number, only one was executed. The evidence of these and like facts, would be conclusive to any American mind, that the English system of penal law, interpreted according to the intention of its founders, had become obsolete. But it affords a curious illustration of the conservative tenacity with which English politicians clung, more a few years since than now, to the institutions of their ancestors, that

whenever it was proposed to amend their criminal laws by the light which experience had shed upon their operation, their very blunders were forthwith praised as excellencies. Thus Paley exalts the wisdom which had planned a penal code by which severe punishments are denounced, while, in the great majority of cases, only mild ones are inflicted. And when Sir Samuel Romilly commenced, in 1807, his efforts to reform the criminal code, by removing sundry minor offences from the list of capital felonies, where they remained for no other purpose than to illustrate the "wise provision of our ancestors," by which they had affixed to certain crimes a penalty which, in the altered state of society, it was deemed expedient never to inflict, he was visited with abundant reproach, and denounced as a rash and daring innovator who was seeking nothing less than the destruction of the entire system of English jurisprudence. This profound jurist, by the most untiring efforts, protracted through several successive sessions of Parliament, was able to carry only three of the bills which he introduced, by which the acts were repealed which inflicted the punishment of death upon persons stealing privily from the person, stealing from bleaching grounds, and stealing to the amount of forty shillings on navigable rivers. But in 1837, such has been the influence of the movement party in England, bills were brought into Parliament, and carried through without difficulty, by which the punishment of death was removed at once from about two hundred offences, leaving it applicable only to some aggravated forms of burglary and robbery—arson, with danger to life—rape—high treason—and murder and attempts to murder. By a subsequent act, the crime of rape was taken out of the list of capital offences, leaving the criminal law of England, so far as the punishment of death is concerned, in as mild a form as it bears in most countries.

In our own country the only offences that are punishable with death, in the great majority of the states are treason and murder; and as treason against a particular state is a crime that cannot well be committed so long as our present national compact survives, the punishment of death may be considered as practically attaching only to murder. The wilful and malicious destruction of human life, the greatest crime which man can commit against his fellow man, is distinguished, as it ought to be, from every other crime, by the direst penalty known to the law. No one will deny

that the severest punishment which it would be right or expedient for society to inflict for any offence, should be appropriated to this greatest of all offences. But the question has been raised, both in England and in many of our own States, whether society have the right in any case to take away human life, or whether having the right, some punishment milder, and equally efficacious, might not be substituted for this dread resort. Scarcely a year passes in which petitions are not sent in to some of our legislatures, praying for the abolition of capital punishment; and of late the friends of this proposed change in our penal laws seem to have been specially active. Their efforts have produced so much effect that it is plainly incumbent upon those who are opposed to the innovation, to state and vindicate their dissent.

In canvassing the arguments of the advocates for the repeal of capital punishment, we shall confine the discussion to the case of murder. Whatever doubt may exist as to the expediency of punishing any other crimes with death, we have no doubt that it is both the right and the duty of society, to accept of no price, to make no commutation for the life of the murderer. The strength of this conviction has not been, in the least degree, impaired, by a dispassionate consideration of the reasonings contained in the two reports to the legislatures of Massachusetts and New York, both of which advocate strenuously the entire abolition of capital punishment.

Neither of these reports contains any facts or arguments which would afford much food for thought to one who had previously read Mr. Livingston's report on the same subject to the legislature of Louisiana, in which the same views are advocated; nor would either of them commend itself by its style and manner to a truth-seeking spirit. They display more of the anxiety and heat of the special pleader, than of the calm fairness of the earnest inquirer after truth. There is in both of them, but more especially in Mr. O'Sullivan's report to the New York legislature, a confident array of mere plausibilities and an anxious grasping after every thing which can be made to wear the semblance of aid to his cause, which indicate too plainly the interested advocate of a foregone conclusion. If the efficacy of the punishment of death as an example to deter others from the commission of crime is to be impeached, Mr. O'Sullivan finds no difficulty in proving that solitary imprisonment for life is really

a more dreadful punishment than death; but this does not hinder him in another part of his argument from advocating the abolition of capital punishment, on the ground of its needless severity. If a remote fact lying far back upon the very borders of the deluge seems to lend him any countenance he presses it at once into his service without inquiring into its accuracy, or properly considering its relevancy to the case in hand. There is an utter want of that kind of guarded and cautious statement which ought to mark the reasons for an impartial judgment formed from a comprehensive survey of the whole question. We are persuaded that no one can read his essay without feeling as if he were listening to the intemperate and one-sided argument of a hired advocate, rather than to the candid summing up of a judge. It is not in this temper or with this spirit that great questions in jurisprudence should be approached. It is not in the exercise of such gifts as these that they can be adequately discussed, or wisely settled. He who undertakes to give utterance through the solemn voice of law, to the sentiment of justice upon a question which affects most deeply the interests of a wide community, should make it evident that he feels himself engaged in a work too sacred to admit of that kind of trifling with truth which might be tolerated in defence of a client upon trial. He who would innovate upon an institution, established in all lands and perpetuated through all ages, may be fairly expected to show his competency for the task, by that high bearing which, resulting from consciousness of well considered aims, and the dispassionate conviction of truth, cannot subsist for a moment in connexion with the evasions and subtleties of sophistical argument.

We are persuaded that Mr. O'Sullivan has greatly underrated the intelligence and moral sense of the community, if he supposes that an argument upon one of the gravest questions that can come before a legislative body, can maintain at one time the gratuitous cruelty of a punishment, and at another dwell upon the greater severity of the proposed substitute, without at once divesting its author's opinions of all influence with thinking men. Such inconsistency does not entitle us to charge him with dishonesty. We cannot rightfully infer that he is defending a conclusion which he knows to be wrong; or that without caring whether it is right or wrong, he is seeking to make for himself political capital, by espousing and advocating an opinion which he

knows to be popular with certain classes of the community. Such unhallowed influences have played their part before now in the work of legislation. Such miserable mountebanks have climbed up into high places and pretended to utter in the ears of a nation truth that had been sought in the patience and earnestness of love, when they have really had in mind only the advancement of their own private interests. The public can receive no valuable instruction from such men; for though, through a fortunate combination of the public good with their private aims, it should happen that their teachings, in some particular case are true, they will be wanting in the simple sincerity which marks those who only are qualified to teach, who in searching after truth have waited at the posts of her doors, and watched long at her temple gates. But the want of this sincerity may arise from other causes than dishonesty, and we are glad to believe that in Mr. O'Sullivan it has a different origin. He may belong to that class of men who seem to labour under an infirmity of mind, natural or acquired, which disqualifies them from seeing more than a small part of any subject at once. His temperament may be such as to place his reason too much under the command of his feelings. The weakness of compassion may have led him to shrink from the idea of putting a man to death even for the most horrid crime. Under the influence of this feeling he may have taken up the belief that it was wrong for human justice ever to become the minister of death, and then tasked the talent which he evidently possesses to defend this belief. But whatever may be the cause, the incompetency of any man to discuss and decide great questions in jurisprudence or morals, is evident the moment that he makes it manifest that the belief which he avows and inculcates rests upon other grounds than the truth, the whole truth, and nothing but the truth. Mr. O'Sullivan's opinion is for this reason deprived of all weight as authority. His arguments do not furnish, in all respects, the true reasons for his own belief; inasmuch as it is impossible for any man to cherish the reverence which he professes to entertain for the sacred writings as a revelation from God, and at the same time look upon the Hebrew code as the work of Moses aided by his pagan father-in-law, Jethro; or to believe that imprisonment for life should be substituted for the punishment of death, because being more mild it is more in accordance with the benevolent spirit of Christianity, and being more severe it will

be a more effectual restraint upon crime. But we propose to examine the arguments which he has produced to see what weight they ought to have with other minds. We shall confine our remarks chiefly to Mr. O'Sullivan's report, because it contains the substance of Mr. Rantoul's, and much more besides.

We do not propose to give a full exposition of the reasons for capital punishment, any farther than these shall be brought out in reply to the objections urged against it. We propose no new measure. We advocate no untried experiment. He who comes forward with a novel theory respecting the best mode of preserving human life, should come prepared with the amplest defence of its grounds and the clearest exposition of its tendencies. But in maintaining an institution which has received the assent of all civilized nations from the days of Noah until now, we do all that can be reasonably required of us, when we show the insufficiency of the reasons alleged in behalf of any proposed change.

Mr. O'Sullivan attempts, in the first instance, to invalidate the argument for capital punishment derived from the sacred scriptures. In this he shows his wisdom; for if, as he states, the opinion that the punishment of murder by death has not alone the sanction but the express injunction of divine wisdom, is the basis of nine-tenths of the opposition still to be encountered, in current society, to its abolition, he could not expect to accomplish any good end by his argument until he had first shown the erroneousness of this very general impression. He confesses for himself that if he considered the question under discussion as answered by a divine command, he would not attempt to go farther to consult the uncertain oracles of human reason; and rightly supposing that there is, through the great mass of the community a like reverence for what is esteemed a divine command, his first effort is to expose the popular error on this subject. This is the weakest, and in every way, the least respectable part of his essay.

He attempts, in the first place, to set aside the argument for a divine command enjoining capital punishment for murder, drawn from the Mosaic code. This code he contends was framed for the government of a people ungovernable beyond all others—"a nation who at that time probably exceeded any of the present hordes of savages in the wilds of Africa or Tartary, in slavish ignorance, sordid vices,

loathsome diseases and brutal lusts"—and who could only be restrained therefore by institutions of the sternest and most sanguinary character. If the provisions of this 'Draconian code' in relation to the punishment of murder are binding upon us, in the altered state of society as it now exists, then do they equally bind us to inflict capital punishment upon many other offences. Such is his argument. And though we have strong objections to the statements which he makes, copied chiefly from Mr. Rantoul, considered as an exposition of the true character and intent of the Mosaic code, yet we are perfectly willing to admit the force of his argument as an answer to those, if any such there be, who rest the defence of capital punishment upon the statutes of this code. Nor was it at all necessary, in order to give his argument upon this point its full force that he should stigmatize the laws of Moses as containing so many "crude, cruel and unchristian features," and then to cover this rabid violence, reduce these laws, with the exception of the ten commandments, to a level, so far as the Divine agency was concerned in their enactment, with "any other system of laws which the Supreme Governor of the universe has at different times allowed to be framed and applied to practice among nations, by law givers whom we must also regard as the mere instruments in his hands." It is true that in relation to the distinction which is here drawn between the divine origin of the decalogue, and the other parts of the Jewish code, the effect of which is nothing less than to make Moses an unprincipled impostor, Mr. O'Sullivan states that the committee consider it incumbent on them to present it, though they refrain from expressing their opinion respecting it. If Mr. O'Sullivan believes in the justness of this distinction why did he not frankly and fearlessly say so? If he does not believe in it why seek to avail himself of its help? We would as soon confide in a man as our adviser and guide, who would burn down his house to warm his cold hands by, as in one who to gain a small fraction of aid in establishing a favourite conclusion would not scruple to make use of arguments, not sincerely believed, the effect of which is to destroy the credibility of no small portion of divine revelation.

We have never met with an argument which professed to derive the obligation to punish murder with death from the Hebrew statutes to that effect. We are perfectly willing to admit that these statutes are of no farther weight in the ar-

gment than as a revelation of the will of God that at that time and among that people murder should be thus punished. They constitute a full and sufficient answer to those who deny the right of society to take away life in punishment of crime, but, taken by themselves, they do not prove that it is our duty now, as it was that of the Jews, to punish murder with death, nor even that it is expedient for us thus to punish it. Did the Bible shed no other light upon this question, we should take the fact that among the Jews murder was, by the divine command, punished with death, only as one element in the argument by which we should seek to prove that it was expedient for us to inflict upon it the same penalty.

But there is another statute upon this subject, given long anterior to the Mosaic law, which Mr. O'Sullivan finds it much more difficult to dispose of in accordance with his wishes, though he flatters himself that he has not only "destroyed all its seeming force as an argument in favour of capital punishment, but transferred its application to the other side." We allude, of course, to the directions given to Noah, recorded in the fifth and six verses of the ninth chapter of Genesis.

"And 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."

Mr. O'Sullivan's comment upon this passage strikes us as an extraordinary specimen of reasoning.

"The true understanding of this important passage is to be sought in the original Hebrew text, and in a comparison of its terms with the adjacent context. Such an examination will be found to reverse directly the sense in which it is usually received, and to show that our common English version is a clear *mistranslation*, founded on an ambiguity in the original, which ambiguity has been decided by the first translators, and so left ever since, by the light, or rather by the darkness, of their own preconceived views on this subject—views derived from the established barbarian practice of their time. The word in the Hebrew, (*sho-paich*) which is here rendered 'whoso sheddeth,' is simply the present participle 'shedding,' in which, in the Hebrew as in the English, there is no distinction of gender. And the word which is rendered 'his,' (*damo*), there being no neuter in that language, may with equal right be rendered 'its.' The whole passage is therefore fully as well susceptible of the translation, '*whatsoever* sheddeth man's blood, by man shall (or may) *its* blood be shed,'—as of that which has been given to it, from no other reason than the prejudice of a 'foregone conclusion.' Several of the most able commentators on the scriptures give the words virtually the same interpretation; and that profound and learned critic, Michaelis, of Göttingen, in his Commentaries on the laws of Mo-

ses, (ch. iv. § 3, art. 274.) says expressly: 'the sixth verse must be rendered, not *whosoever*, but, *whatsoever* sheddeth human blood.'

"The propriety of this correction of our common English version of the passage in question will appear very clear, when we collate it with both the preceding and the following words. In the preceding verse, after having alluded to that mystic sanctity of *blood*, as containing the essential principle of animal life, which we afterwards find so strikingly to pervade the Mosaic system, the covenant proceeds:

"'And 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 (whatsoever) sheddeth man's blood, by man shall his (its) blood be shed; *for in the image of God made he man.*'

"The very reason here given for the prohibition of the shedding of the blood of man, is *the defacement of the image of its Creator, in the 'human form divine.'* Does this high and sacred principle lose its force or its application, because the criminal may himself have been guilty of a previous outrage upon its sanctity? Can that afford any justification for a repetition of the same outrage upon the same 'image of God'? Where is the authority for any such assumption? The distinction here drawn is plain. The beast that sheddeth man's blood, 'by man' may its blood be shed; but when man's blood is shed by man's brother, 'I' will require it at his hands—by penalties, into the nature of which it is not for us to attempt to penetrate. The object of the whole passage is, clearly, to establish, on the most solemn basis, the great idea of the holiness of the principle of life, and especially human life. The destruction of animal life is permitted for 'meat,' being prohibited by implication for any other wanton purpose; while its being thus declared forfeited in atonement for the destruction of the life of man, can have no other reason—the brute being incapable of moral guilt—than to strengthen and deepen the idea of the sanctity of that life, in the minds of the human race itself. What can be more absurd than an interpretation which, by authorizing the practice of public judicial murder, in the most deliberate coldness of blood, is directly and fatally subversive of the very essential idea which constitutes the basis of the whole passage! Surely, then, instead of any sanction being afforded by this passage to the infliction of the punishment of death for any human crime—to this defacement and outrage of the 'image of God,' in the person of man—it passes against that very practice a far more awful sentence of condemnation than any which human reason could have framed, or human lips uttered."

The Hebrew scholar may form from the remark upon "*damo*" a judgment of Mr. O'Sullivan's fitness to dogmatize so confidently respecting the mistake made by our English translators of the Bible. These translators, however prejudiced they may have been in favour of any barbarian practices of their time, were at least men who knew the difference between a Hebrew noun, and its pronominal suffix. Mr. O'Sullivan quotes the authority of Michaelis for substituting "its" in place of "his" in this passage. It is true that Michaelis advocates this change, but not in the sense for which Mr. O'Sullivan contends. Mr. O'Sullivan's argument requires that the pronoun should be neuter, to the exclusion of the masculine. Michaelis was too profound

and learned a critic to propose any such absurdity as this. He contends that as the original pronoun may be either masculine or neuter, it should be translated by our neuter, that it may include both. His idea of the true meaning of this passage would be accurately expressed, using the plural number instead of the singular, by the translation, "the shedders of blood, by man shall their blood be shed." The use which Michaelis makes of this translation is to extend, instead of lowering and limiting the application of this command, and both he and the readers of this report are unfairly treated when his authority is so disingenuously perverted. This profound critic was learned in the laws of nature, and of nations, as well as in Hebrew etymologies, and he expresses the earnest hope that "none of his readers entertain those new fangled notions of compassion which by way of avoiding capital punishments, condemn delinquents to be cast into prisons and there fed."

But we are told that the "very reason here given for the prohibition of the shedding of the blood of man is the defacement of the image of his Creator," and are asked "whether this high and sacred principle loses its force or its application because the criminal may have himself been guilty of a previous outrage upon its sanctity." It is really difficult to answer such argument as this with the respect that is due to the reasoner, if not to his reasoning. If it should be proposed to punish the man who has injured the property of another by a fine, that is by taking away from him against his will, a certain portion of his own property, would it not be thought a piece of effrontery rather than an argument in the opposer who should contend that this would be an outrage upon the same sacred right of property which the criminal had himself violated? Or would it be deemed a valid argument against punishing the crime of false imprisonment by the imprisonment of the offender, that the punishment would infringe the same inherent right to liberty, the violation of which constitutes the offence? If in favour of such punishment, there should be urged the great importance of the right of personal liberty and the heinousness of any outrage upon it, would all this be turned not aside but upon the other side of the question, by simply asking, "whether this high and sacred principle loses any of its force because the criminal may himself have been guilty of a previous outrage upon its sanctity." The understandings of our legislators must be rated at a low standard by any

one who supposes that such reasoning as this can impose upon them.

The remaining part of the argument upon this passage falls to the ground with the proposed amendment of our translation, for which, in the sense contended for by Mr. O'Sullivan, there is not the shadow of foundation. Let us look at this passage, supplying the place of "his" in the sixth verse by our ambiguous pronoun, and for this purpose using the plural number. It will then read:

"And 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."

"*The shedders of man's blood, by man shall their blood be shed; for in the image of God made he man.*"

We are perfectly willing to grant to the other side of the question whatever benefit may be derived from such a correction of the common translation. The passage as it thus stands, interpreted according to its obvious meaning, presents no difficulty.

The only phrase contained in it that can well give rise to any misconception in the mind of one who is not seeking to torture its meaning, is in the latter part of the fifth verse; "at the hand of every man's brother will I require the life of man." This is sometimes interpreted to mean, that at the hand of the brother of every slain man, that is of the whole community or society of which he formed a part, inquiry shall be made for the blood shed, from the responsibility of which they can be relieved only by the death of the murderer. We do not mean to question the truth of this opinion, but such is not the sense of the passage. The Hebrew phrase translated "every man's brother," (*aish ahiv*), is an idiomatic form of speech, meaning, *the one and the other*; so that "at the hand of every man's brother" is, as Gesenius says, "*repetitio verborum antecedentium, haud quidem otiosa, sed emphatica*," a repetition, not unmeaning but emphatic, of the preceding words, "at the hand of man." We make no attempt to sustain this interpretation by comparing parallel passages, or adducing authorities, being persuaded that it will be called in question by no one who will turn to the passage in his Hebrew Bible.

In this passage God declares in the first instance, that he will surely inquire after, that is avenge, the blood of man.

He then proceeds to state from whom he will exact this responsibility; at the hand of every beast that has shed the blood of man, will I require it; and much more, at the hand of man, even at the hand of one and another, that is, of every man, will I require the blood of the man whom he has slain; there shall be no escape on the part of any one who has stained his hands with blood from the account which must be rendered of that blood.

The next verse proceeds to state how this requisition shall be made, what punishment this crime shall incur, and who shall be the agents of divine justice in inflicting that punishment. The shedders of man's blood, by man shall their blood be shed. It is too plain for argument, that though this verse be thus translated, so as to involve the same ambiguity as in the original, it lends no shadow of countenance to Mr. O'Sullivan's interpretation. The previous verse has asserted, in general, that the blood of man shall not be shed without inquisition being made for it, and further that this inquisition shall be made from every beast and every man that has shed the blood of man. It is then added, that they who shed man's blood by man shall their blood be shed. Who then are the shedders of blood upon whom this doom is pronounced? Michaelis contends that both men and beasts are included. Rosenmüller on the other hand, prefers the interpretation which limits it to the human shedder of blood; the previous verse having spoken of the punishment of both beast and man for the slaughter of man, this verse he supposes to contain a repetition of the principle in its application to man, with a distinct annunciation of the kind and manner of his punishment, on account of the greater dignity of the offender. But no commentator ancient or modern has ever given to this passage an interpretation such as Mr. O'Sullivan advocates. It has not one particle of authority in favour of it. There is nothing of intrinsic evidence to sanction it, nothing in the obvious meaning of the passage to call for or even to warrant it, unless the whole question at issue be begged, by the assumption that it is impossible that God can have directed the shedding of man's blood. It is in short nothing more than the desperate resort of a reasoner who is not ashamed to descend to mere quibbles and plays upon words in support of a favourite conclusion. If it be thought by any that we have here unwarrantably forgotten the distinction which we before made between what is due to a reasoner, and to his

reasoning, let him call to mind that the subject of this miserable trifling is the inspired revelation of God's will, and that the professed object of it is to enlighten a legislature upon one of the most important questions that they can be called upon to settle. And let them still further read the following extract from this report.

"If any, after this exposition of the passage, should still desire to retain the accustomed form to which prejudice may continue to cling, of 'whosoever,' it is clear that the precept thus read would require the sacrifice of the life of the slayer, in atonement for the blood his hand has spilled, on all occasions, without discrimination of circumstances—in the most pardonable cases of sudden and impetuous passion, and even in the most innocent case of accident, as well as the most heinous one of coldly premeditated murder. The terms of the command would be absolute and imperative; and however unfathomable to us might seem the mystery of its cruelty, *yet why would it be less consistent with reason than the punishment, upon the animal, of the act of brute unconsciousness and obedience to its natural instincts?*"

The first part of this paragraph in which the lax principles of interpretation previously proceeded upon have become so wondrously stringent, calls for no reply. It might be improved however, and we are surprised that the thought should have escaped a mind that was acute enough for this, by adding that as the precept reads it would apply to the physician who bleeds his patient no less than to the wilful murderer, and that the penalty does not demand the death of either since, as it reads, it may be literally and fully satisfied by the loss of a few ounces of blood from the arm.

It is for the latter part of this paragraph that we have quoted it, and yet we hardly dare trust ourselves to comment upon it. We are here informed that the punishment of a brute, who has slain a man, which the author of the report admits is directed by the divine command, is no more consistent with reason than the sacrifice of the life of a man who had accidentally slain his fellow-man. Who does not feel his whole moral nature insulted by this most outrageous declaration? Who can doubt that any man who believes this, however vigorous and discursive his understanding might be, would have yet to undergo the very birth-throe of reason? Where is the reason, though yet in its infancy, that makes no distinction between putting to death a beast that has been the means of death to a man, though it had only acted in obedience to its unreflecting instincts, and sacrificing the life of an unfortunate but innocent man? What kind of reason is it, with which it is consistent to destroy a man for every cause which is deemed a sufficient ground for taking away the life of a brute? What would be

thought of the man, who in conducting a grave argument on an important question should maintain that it would be as consistent with reason to slay a man for food as to kill an unoffending beast for the same purpose? But this would not be more monstrous than the interrogatory assertion which we have quoted from this report.

We are utterly at a loss to conceive upon what principles or for what purpose this assertion was made. It is not even a legitimate inference from the unspeakably shallow and vile philosophy of the Godwin and Bentham schools, with which Mr. O'Sullivan is so much enamoured. This philosophy does indeed overlook entirely man's moral nature and reduce him to the standing of a mere beast,—but then it admits him to be a noble beast, even the first of beasts; and having power to that end he may make such use of the inferior beasts as may best promote his good. It permits him to kill them for food, and could not therefore consistently deny to him the right to slay a beast that had killed a man, for the purpose of guarding the mystic sacredness of life, and associating an idea of horror with the shedding of human blood, for this would be a more useful result than satisfying the appetite of a hungry man. But yet whatever principles they are which forbid the destruction of men while they allow that of animals for the purposes of food, would apply with equal force to prohibit us from making use of a lunatic or an accidental manslayer to serve a useful end by his violent death, while they permit us to use an inferior animal for such purpose. There is therefore no ground for Mr. O'Sullivan's assertion even in the principles of this beastly philosophy.

Nor can we discern for what object it is made. He is seeking in the paragraph where it is found to reduce to the absurd the common interpretation of the passage of scripture upon which he has been commenting, by showing that an abhorrent consequence flows from it, viz; that it requires us to sacrifice a man who may have innocently shed the blood of a fellow-man. But then he immediately asks why this very consequence, so abhorrent that it has just been held up as decisive against the received interpretation of the law given to Noah, should be deemed any more inconsistent with reason than the killing of an animal which he has himself contended that the law actually enjoins. Why, if this be so, did he spread so much labour in quibbles upon the meaning of Hebrew words, of which he knew literally

nothing? Why did he not, with the manly openness of a fair and truthful reasoner, say at once, that this law, however interpreted, was utterly repugnant to human reason, and must therefore be discredited as a part of divine revelation? If there be a law which orders, as he maintains that this does, that to be done, which is as inconsistent with right reason as it would be to put an innocent man to a violent death, then nothing can be clearer than that this law never proceeded from the lips of divine justice. Had he but frankly said this, it would at least have furnished some excuse for his trifling manner of dealing with its interpretation.

Such are the arguments by which this report attempts to set aside the received interpretation of the law of murder as delivered to Noah. We have in the first instance, a philological argument founded on the ambiguous gender of the participle and pronoun in the sixth verse, in which it is contended that this participle and pronoun should be translated into our neuter gender and limited by it, since any other interpretation of the passage would lead to deliberate, cold-blooded, judicial murder. That is, this limitation is to be made, by the assumption that the judicial infliction of death is murder, and the only reason for this assumption is that the infliction of death in punishment for murder would violate the very principle which it was intended to guard, the sacredness of human life; a reason which would compel us to pronounce every law which imposes a fine and every jury which assesses pecuniary damages for injury to property, guilty of judicial stealing. Let it be further observed that the only reason given for excluding man from the shedders of blood upon whom the doom of death is pronounced, is one that if true would of course make it impossible that God could at any time have directed this punishment to be inflicted. And yet we find that in the only code of laws that ever proceeded directly from him, he has distinctly, and beyond all question, affixed this penalty to murder. This is of itself decisive, so far as this part of the argument is concerned. And we have in the next place, an argument which commences with a *reductio ad absurdum*, that proceeds upon principles too puerile to be refuted except by the application of the same method, and which ends by a gratuitous disclosure of the principles of that bestial philosophy which looks upon man only as the head of the animal creation.

We have no fear of the effect of such argument upon the

honest and humble inquirer after truth. If he is already a believer in the received interpretation of the law of murder, his faith will be strengthened, if a doubter, his doubts will be removed, by seeing how futile are the attempts to set it aside, even when conducted by the most intelligent and zealous of its opponents. The law, as given to Noah, does in its most obvious sense, command that the wilful murderer shall be put to death. The most critical inquiry into the meaning of its terms, only serves to confirm this interpretation. It has been so understood by all men, in all ages, until these latter days. The universal belief of all Christian nations has been that God has pronounced this doom upon the murderer; and the public conscience has every where, with mute awe, approved the dread award of human justice, made in fulfilment of this divine command.

But was this law intended to be of universal and perpetual obligation? We see nothing in the law itself, in the circumstances under which it was delivered, or in any changes or revelations that have since occurred, to limit its application. It is, in its terms, most general and peremptory. The reason assigned for its penalty, is founded on the essential nature and relations of man. This reason is as true now as it was in the days of Noah, and ought to have the same force with all who believe in the spiritual dignity of man. If man be somewhat more than an assemblage of digestive organs, and senses, and an understanding that judges according to sense,—if in addition to these, he has any attributes which reflect however dimly the excellencies of the Divinity,—then he who wilfully and maliciously defaces this image of God deserves the same doom now, that like outrage deserved when this law was enacted.

Nor is there anything connected with the time or manner of its delivery to lead us to suppose that it was meant to be special or temporary. It was given in immediate connection with that covenant of which the seal still remains in the ever-recurring bow of heaven. It was delivered not to the head of a particular tribe or nation, but to the second progenitor of the human race,—not under any peculiar and pressing exigency, but at the commencement of a new order of things. It stands at the beginning of the new world stretching its sanction over all people down to the end of time, to prevent the outbreaking of that violence which had filled the world that was swept away. It is idle to tell us that the circumstances, and with the circumstances, the character of society

have been materially changed, and that in the present high state of civilization the severe enactments which were necessary for a ruder condition of society, are no longer needed. Have the essential attributes of man changed? Does he bear any less of the image of God now than he did in the days of Noah? Is it any less a crime to destroy that image now, than it was then? The law has no respect to any peculiar proneness to violence, existing at the time it was enacted, to any local or national necessities, but passing over every thing that is variable and accidental, it seizes upon man's relation to God, involving the distinctive and unchanging attributes of humanity, as the sufficient reason for its fearful penalty. So long as these attributes remain unchanged, this law must stand in full force, unless repealed by the same authority that enacted it.

And where is the evidence that it has at any time been repealed? The abrogation of the specialities of the Jewish code left this prior law untouched. It had its existence entirely separate and independent of the Mosaic economy, and could not therefore be involved in its dissolution. Nor is there any thing in the Bible which can be construed into an explicit repeal of this statute. It is indeed maintained, strangely enough by Mr. O'Sullivan, that the sixth commandment, "Thou shalt not kill," is in opposition to this statute. He denies our right to limit this commandment, by interpreting it to mean, thou shalt do no murder; and he really expends a page of declamation upon the "absolute, unequivocal" prohibition of capital punishment involved in this precept. How is it possible that any man could descend to such argument, if he were not intent upon carrying a side, rather than on finding and defending the truth? There are perhaps among us, legislators who do not comprehend the laws that they themselves enact, but it may surely be presumed that in this case the lawgiver understood the meaning of his own precept; and we find that in immediate connection with it he delivers a body of laws which direct the magistrate to inflict the punishment of death, in what Mr. O'Sullivan supposes, an excessive number of cases. Or if we avail ourselves of the distinction which the report makes, but respecting which the committee refrain from expressing any opinion, and imagine that though Moses pretended to receive these laws from God, they were really of his own invention; yet we cannot doubt that Moses understood the true interpretation of the sixth commandment; nor suppose

that he would have had the hardihood to deliver to the people, as coming from God, a body of laws that were in direct contravention to it. We are sure our readers will sympathize with the humiliation we feel in being compelled to expose such paltry subterfuges—sophistry is too respectable a name for them—in the conduct of an argument upon such a question.

But it is contended that a virtual repeal of the penalty for murder may be inferred from the general spirit of the gospel, and especially from its many precepts, in which forgiveness of injuries is inculcated and the indulgence of a revengeful spirit forbidden. We do not understand the spirit of the gospel as offering any impunity to crime. It is indeed a proclamation of mercy, but of mercy gaining its ends, and herein lies its glory, without any sacrifice of the claims of justice. But we are told that the gospel forbids us to avenge ourselves, or to recompense evil for evil, and requires us on the other hand to love them that hate us, and do good unto them that despitefully use us. If our argument were with those who are opposed to all human government, as an unauthorized interference with the rights of man, we should attempt to prove, what is undoubtedly true, that these precepts were not intended to apply to men in their collective capacity as constituting a society, and that they are perfectly consistent with another class of precepts which make it the duty of the magistrate to bear not the sword in vain and to be a terror to evil doers. And we could at least succeed in proving that the apostle Paul thought a man might be guilty of offences that were worthy of death, and was willing, if he were thus guilty, to submit to the penalty. "If," said he, "I have committed any thing worthy of death, I refuse not to die." To this class of earnest and consistent opponents we would reply seriously and respectfully. But how can we reply to the argument against capital punishment, drawn from the Christian precepts enjoining a meek submission to evil, when it is urged by those who still contend for the magistracy and the avenging sword, but only object to this one punitive infliction? What force is there in these precepts which would not tear down the penitentiary as well as the gibbet? How does the command to love our enemies, and return good for evil forbid us to hang the murderer, if it permits us to imprison him for life? Especially, how can this be, if the imprisonment is of the character proposed by this report, "per-

petual, hopeless and laborious, involving civil death, with the total severance of all the social ties that bound the convicted culprit to the world—under a brand of ignominy and a ban of excommunication from his race, than which alone it is difficult to imagine a more fearful doom,—a punishment the anticipation of which would operate as a far more powerful control and check than the fear of a hundred deaths” ? We do not assent to this relative estimate of capital punishment and perpetual imprisonment. We believe death to be the severer and more fearful doom, and we have quoted the above extract only to show how the reasoners upon the other side of the question are ready to blow hot or cold, as serves their purpose. But though we look upon death as the most dreadful of all punishments, yet the difference in severity between it and any proposed substitute as a penalty for murder, cannot warrant us in concluding that under the mild reign of Christianity, the ancient, primeval law has been repealed. If we are permitted to punish at all, then where is our authority for superseding the original law which explicitly directs us to punish the murderer with death ? What right have we, while this law stands uncancelled by the authority that gave it, to pronounce it obsolete and unnecessary.

The indirect influence of the gospel, instead of tending to the abrogation of this law, does, in truth, give to it new emphasis and force. The gospel has brought life and immortality to light. It has given distinctness and reality to those great moral truths, which lying beyond the reach of sense, and too apt therefore to appear as mere shadowy abstractions, are nevertheless the only substantial and abiding verities. It has thrown a flood of light upon the spiritual nature, the powers and responsibilities of man. It has revealed enough of the mystery of death, to add to the fearfulness of the mystery which still remains. Above all, it has given us the highest conception we can form of the dignity of man, by revealing to us the union of human nature with the divine, and the high privileges and blessings which flow from this union. If the murderer deserved death for defacing the image of God in man, before this revelation of man’s true dignity and destiny as an inhabitant of the spiritual universe of God had been distinctly made, then still more does he deserve it now. The only reason assigned for the original infliction of the penalty has derived new meaning and force from the gospel of

Christ. It is perfectly consistent that an infidel philosophy, as superficial as it is vain, which degrades man into the creature of time and sense, should desire the abrogation of this penalty, since it has no faith and can feel no reverence for the original reason on which it was founded. But let men beware how they attempt to degrade the gospel, which by giving to this reason its fullest and most forcible development, adds new emphasis to the law which rests upon it, into fellowship with this earthly and sensual philosophy. Let the philosophers of this school confine themselves to their legitimate province. Proceeding upon principles which convert the world into a mere kitchen and cattle-stall and man into an animal to be well fed, clothed, and lodged in this his abode, they may be competent to settle wisely and well, some questions arising out of this aspect of it. But when they trespass beyond these, and attempt to decide questions that are connected with the spiritual nature and relations of man, they should be rebuked for venturing upon ground that lies higher than their principles. When the dimensions of the human soul can be taken by means of a yard measure, we will admit the competency of these men to pronounce judgment upon such questions. At least we have a right to ask of them, that they will leave the holy gospel to be interpreted by those who have too deep a reverence for it, to permit them to draggle it through the dirty mazes of insincere and sophistical argument.

We have derived new faith from the examination of these attempts to invalidate the ancient law of murder. We find that this law, as given to Noah, does in terms too plain to be misunderstood, and too peremptory to be set aside, direct that the murderer shall be put to death. We find this law spreading from Noah through Gentile nations, and afterwards incorporated in the Jewish code. We find it surviving the destruction of that code, because it existed before it; existed independent of it among other nations while that code was yet in force; and existed through the demands of nothing peculiar to the Jewish nation or incidental to any particular form or state of human society, but for reasons that are drawn from the unchanging invariable attributes of humanity. And we find that the gospel, so far from undermining the foundation on which this law rests, only strengthens and establishes it. From Mount Calvary, where the dignity and importance of man, as the child of God and the heir of immortality, receive their fullest illustration, this law

goes forth with increased force. Not only was man created in the image of God, but Christ the Son of God, hath died for him. Let him who dares to lay the hand of lawless violence upon a being so highly born, and redeemed at so costly a price,—the depositary of such mysterious and awful interests,—undergo the doom decreed by Him who alone knows the value of life and the solemn meaning of death.

There is only one other argument derived from the sacred scriptures against the lawfulness of capital punishment, which need elaim our attention. The impunity of Cain, the first murderer, is pleaded in proof that it is not lawful to inflict the punishment of death. But why does it not prove equally well, that it is not right to inflict any punishment, and that the murderer should be left to the self-inflictions of his own conscience? This argument comes with an ill grace from those who contend for a punishment which is represented as more fearful than a hundred deaths. Nor can it be consistently urged by any who regard the law given to Noah, as in all respects of the nature of a positive institution. But we do not so regard it. We look upon this law as a re-publication, distinct and unequivocal, of a law of nature, written on the hearts of men; and this view of it receives confirmation from this very case of Cain. We do not know, we will not even attempt to surmise, why God saw fit to interfere to save the life of this atrocious criminal. But that this interference was necessary, is more for our argument than his death would have been. Cain felt that he deserved to die—he knew that others felt so too, and felt it so strongly that whoever found him would slay him—and nothing less than a mark, which could be recognized as the sign-manual of the great author of life, was necessary to protect him from the sense of retributive justice in the hearts of those that then lived, pronouncing that the murderer deserved to die. God, the sovereign law-giver, had an undoubted right to dispense with the penalty of this law, in that or any other case. And whenever by any similar intervention now, he sets upon a criminal a mark, significant of His will that the destroying sword of justice should pass him by, there will be none to question or murmur. The only inference that we are warranted in drawing from this case, is, that the sense of justice which demands the death of the murderer should always pause and stay its hand, whenever God makes known His will to that effect.

Here we might rest our argument. Having shown that He who holds in his hand the issues of life and death, has revealed to us his will respecting the punishment of murder, we might without incivility, decline to pursue the inquiry upon other grounds. If the divine justice, from which human justice takes its origin and derives all its force, has decided this question, we may rightly call upon men to submit to its decision. But we have no fear of the result of the most rigid scrutiny of reason into this divine decree; and we propose briefly to exhibit the grounds of our belief in the agreement of the law of nature with the law of revelation respecting the punishment of murder.

Here we are compelled at once to join issue with the opponents of capital punishment, and with some too upon our own side of the question, respecting the true ends of the penal sanctions which accompany human law. Mr. O'Sullivan contends that the only legitimate end of punishment is the prevention of crime. And in a recent sermon in favour of capital punishment, it is admitted "that this is unquestionably the true doctrine, for it is the principle upon which God, the only supreme and infallible lawgiver proceeds." And carrying out the same idea, the author adds, that when "the strong arm of the law seizes upon the murderer and puts him to death, it designs to operate upon the living and to prevent the repetition of the like crime." That this is one of the ends of punishment no man can deny, but that it is the sole end, will scarcely be maintained by any one who has reflected deeply upon the question, or analyzed carefully the operations of his own mind. If the prevention of crime be the only lawful end of penal sanctions, then the efficacy of any proposed penalty as a restraint upon the perpetration of offences is the test of our right to inflict it. It is right, under this view of the case, to fine a man, to imprison or to hang him, if we have sufficient reason to believe that we may thereby produce a certain amount of good to the community, in the restraint imposed upon the commission of crime. Let us suppose then that the infliction of this doom, whatever it may be, upon an innocent man, would prevent an equal amount of crime, would it be right to lay it upon him? Could it be certainly known that the hanging of some man, whose hands are pure from crime, would prevent all future murders down to the end of time, would it be right to put him to a violent death for the good of his race? What right have we to take any man and torture

him merely for the sake of doing good to others? We have often doubted whether the English judge, who, in pronouncing sentence upon a convicted horse-thief, said, "you are hung, not because you stole a horse, but that horses may not be stolen," if there had been no real grounds for his sentence, better than the avowed one, would not himself have been guilty of a much higher crime than the culprit before him had committed. What right have we to catch a man and hang him up, because we have reason to believe that he will prove a scarecrow to frighten other men from mischief? We can have no right, except that which is derived from what this theory leaves altogether out of view, the intrinsic ill-desert of the offender. The foundation of human punishments can never be laid, by any just principles of reasoning, in their tendency to benefit society. This attempt to found justice upon utility is only another effort of a low material philosophy, seeking to solve a problem that lies as high above its reach as the heavens are high above the earth. The idea of law is in every human mind, ignorant or instructed, an immediate derivative from the idea of duty; and this again arises at once out of the primary conception which all men form of the essential distinction between right and wrong. These ideas are the product of the reason and conscience. They are primitive, necessary and absolute. That the criminal should be punished for his crime, is not a truth, summed up from the tardy teachings of experience; it is an immediate, and peremptory decision of the moral sense. Whether punishment is useful to society or not, is altogether a different question, and to be decided upon different grounds. The positive penal laws by which we punish crimes, that trespass upon the rights of men and violate social order, have their origin in that sense of justice which is one of the spontaneous products of human reason. No social compact could ever give this right, no considerations of utility could ever establish it, if the ground were not laid for it in the moral nature of man. There can be no doubt that it is useful to society to punish offences which invade its peace and order, and that the consideration of this utility is real and weighty. But this consideration is subordinate to the primitive idea which constitutes the true basis of penalty. Let us suppose that this primitive idea is removed, that there is no law of the human mind by which it pronounces upon the essential demerit of crime, and demands that its decision shall be realized in

every well-ordered society ; and what becomes of our right to seize upon a man and subject him to disgrace and suffering, because his tortures will be an edifying spectacle to others? No exigency of local or state affairs, no extremity of public necessity, no amount of good to be produced, can ever make such an intrusion upon the sacred rights which belong to every man, any thing else than an unauthorized and atrocious exertion of power. Nothing but guilt can break down the defences which stand around every moral being, and permit us to subject him to suffering for the advantage of others. It is from this prior consideration of justice that the penalties of law derive their utility. It is because the community feel that the criminal deserves to suffer, that the example of his punishment is rendered powerful in restraining others from crime, beyond the efficacy which fear alone would possess. Punishment is not just because it is useful ; but it is useful because it is just.

The penalties inflicted by human law, having their foundation in the intrinsic ill-desert of crime, are in their nature vindictive as well as corrective ; and hence there are two questions to be settled, in adjusting any penalty ; does the offence deserve the proposed punishment ; and, does the public good require it. It is not necessary for our present purpose that we should pursue the inquiry into the relative weight to be allowed to these two considerations, since they both combine in their fullest force to sanction, and indeed to demand death as the punishment of murder.

Beyond all question the murderer deserves to die. His crime is the greatest that man can commit against his fellow man. There is no other outrage which approaches it in atrocity—there is none other like unto it. It not only stands alone, but it is separated, by an incomprehensible interval, from every other crime. Other injuries lie within the reach of our understanding. They do not surpass the limits of our experience, and we know how to form some estimate of their enormity. We sustain ourselves in prospect of other evils to come upon us, by the thought that other men have endured these same evils, and yet lived through them. Any thing less than death we can comprehend. But between all else that men have borne, and death, there lies we know not what interval. None of us have yet died,—and we know not what it is to die. We can form our estimate of the pain of body and the struggles of the spirit, which precede it,—but what is death it-

self? Who shall tell us what is going on within the yet breathing body at that last moment,—how snaps the thread of life—what sensations attend the breaking of the bond that unites soul and body,—what strange scenes surround the disembodied spirit. We speak not now of the injury which the murderer does to the public by the destruction of a valuable member of society—nor of the indescribable agony inflicted upon the domestic circle bereaved, in the most horrible manner, of one of its inmates;—we enter into no calculation of the general consequences of this crime. We speak of it as it is in itself, a crime that stands alone in atrocity, unequalled and unapproached. Every murderer however extenuated his crime may be, has done a deed of which neither he nor any other man comprehends the full enormity. It is right then that this deed should receive the severest doom that human justice has the authority to inflict. It is right that a crime of such paramount guilt, should incur an extreme and distinctive punishment. Our natural sentiment of justice, of its own accord, proclaims the law, whose sheddeth man's blood, by man shall his blood be shed.

Such has been the voice of the public conscience in all ages. Cain felt that he was in danger of death from the hand of any one that might find him. Among all nations and tribes of people, civilized or savage, Christian or pagan, justice has ever demanded blood for blood. The general conscience of the human race has taught the truth and justice of the sentiment expressed by a Roman poet,

“ Neque enim lex aequior ulla,
Quam necis artifices arte perire sua.”

From the infancy of the human race there comes down to us an unbroken line of testimony, delivering it as the universal judgment of mankind, that the murderer should be put to death.

Here we may be met with the argument, that it is impossible to prove, from the light of nature, that human society possesses the right to take away life. This argument is presented by Mr. O'Sullivan, as one which may have influence on some minds though he himself admits its unsoundness; conceding expressly that society may lawfully punish with death, and yet giving the argument on the other side to catch such minds as can be taken in by it; another illustration of the *per fas aut nefas* kind of reasoning of which we have already given so many specimens. Mr. Rantoul presents the same argument at still greater length, though he also

prudently reserves the expression of his own opinion of its validity,—but he gives it to pass for what it is worth. These arguments against the right of society to take away life are all of them at bottom nothing more than the well known sophism of the Marquis Beccaria. It is in substance this—‘Human society is the result of a compact in which each individual surrenders to the state the smallest possible portion of his personal rights, that he may securely possess the remainder. The state therefore can have no right over the life of a citizen, since we may be sure that this is a right that he has never parted with. Besides no man has a right to take away his own life, and therefore, could not, if he wished, give any such right to another.’ A full and complete answer to this subtle sophism would be given by a correct exposition of the origin of human society, and the source from which the state derives its authority to institute laws for the government of its subjects. The right to establish municipal regulations may for aught we know be limited by a compact expressior implied, real or fictitious—but in every state the sovereign authority possesses a right to enact laws embodying the essential ideas of justice, that is dependent upon the terms of no social compact, and subject to none of its limitations. Its true source is in the ideas and laws given to us by the moral nature of man. It would not be difficult, had we space for it, to develop this theory and show that it involves of necessity the right for which we contend.

But, setting this aside, the authority of the state to take away life, may be derived from the natural right of self-defence which is inherent in communities as well as in individuals. And it is further sufficiently proved by the universal consent of mankind. When a plain question of right and wrong has been submitted to the conscience of men, and the same response has been returned by all men in all ages, we cannot doubt its correctness. We question whether any truth has been sustained by a more unanimous consent of mankind, than the right of society to punish the murderer with death.

The murderer deserves to die,—such is the sentence that reason pronounces, in view of the enormity of his crime, and such has been the unvarying judgment of the conscience of humanity. Society possesses the right to inflict this deserved punishment upon him,—such is the necessary conclusion of an inquiry, properly conducted, into the derivation and nature of the authority inherent in the state, and

such again has been the universal decision of human reason. But is it expedient for society to exercise this right? This is the only remaining inquiry.

The point upon which the determination of this question rests is, whether the punishment of death operates with greater efficacy, than any proposed substitute, to restrain the crime. The other considerations which arise in connection with the inquiry into the *expediency* of capital punishment, are all subordinate to the main one, touching its efficacy for the prevention of murder. And so far as this main consideration depends upon abstract reasoning, the principles which govern it are simple and obvious.

It cannot be denied, that, other things being equal, any penalty, provided it does not exceed what the moral sense deems a righteous retribution for the offence committed, will be efficacious in proportion to its severity. And of the comparative severity of different punishments, every man may at once form his estimate by asking of his own heart, which he would most dread; or by looking abroad and judging, from the general sentiments and conduct of men, which is suited to inspire the most fear. There are exempt cases. There are men who fear disgrace more than death. There have been men who have desired death as a relief from their burdens, being willing to fly from ills they had, to others that they knew not of. It is true that there is scarcely a passion of the human heart, that may not, under some special and rare excitement, gain such head as "to mate and master the fear of death." But these are paroxysms that only briefly and occasionally disturb the usual judgments of the mind, and that always give way to any influence that recalls its habitual modes of thought and feeling. We knew a man who, intent upon suicide, had actually raised the deadly weapon to inflict it, when his hand was stayed and an entire revulsion of feeling produced, simply by the bleating of a lamb that had strayed by his side. And we have read of one, who, being met while on his way to destroy himself, by a man who threatened his life, was affrighted and fled, his habitual fear of death overmastering his determination to rush upon it.

Of all natural evils, death is that which takes the strongest hold upon the imagination of men, and inspires them with the deepest and most prevalent fear. It is not like other evils, that we can handle, measure, and calculate,—it is dark and mysterious, confounding the sense, perplexing the

understanding, puzzling the will, and thus exercising over us the power of awakening intense emotion, which must of necessity belong to that, which we see and dread, but which is so vague and vast that we cannot discern the form thereof. We are subject to other terrors, but this is the king of terrors. All that a man hath will he give for his life.

It is of no weight to tell us, that this fear belongs to thoughtful and cultivated minds, rather than to the degraded and brutish class, who are most frequently the perpetrators of murder. If there be a man who has sunk so low in brutishness that he has lost, in considerable measure, the fear of death, he will be still more insensible to any other fear. What, to him, are the disgrace, the ignominy, the ban of excommunication, the severance of social ties, involved in imprisonment for life. If he has sunk below the fear of death, the penitentiary will be to him only an asylum, where he will be sure of being fed and clothed. When was it ever heard, that a criminal desired his counsel to strain a case of manslaughter into murder, that he might be put to death rather than incarcerated for life? What convicted culprit would not struggle for his life and call for help, against the avenger of blood who should waylay and attack him on his way to the penitentiary? Let men exercise their ingenuity, as much as they please, in reasoning from abnormal freaks of the human mind, let them quote as many instances as there have been executions, of murders perpetrated in sight of the scaffold, it still remains a notorious truth, open and palpable as a thing of sense, that men dread death more than any other natural evil. It is therefore clear that it must possess a greater intrinsic efficacy, as a punishment for murder, than the proposed substitute.

But this efficacy, it is urged, is lessened by the uncertainty of conviction. There are in every community some men who disbelieve or doubt the right to inflict capital punishment, and others who question its expediency, and as strenuous efforts are always made to get one or more of such men on the jury, the doubt of his conviction if brought to trial, combines with the chance of his escaping detection, to embolden the criminal in the execution of his purpose. The unsoundness of this reasoning, in its application to our case, is at once detected, when we call to mind that in most of our states, murder has been changed from a common-law, to a statutory offence, and that the statute, discriminating between murder of three or four different degrees, affixes

death as the penalty of the first, imprisonment for life of the second, and so on. The jury, empannelled for the trial of murder, are not charged to find the prisoner absolutely guilty or not guilty, but it falls within their province to find, if guilty, within what degree he is guilty. The scruples therefore arising from a conviction of the unlawfulness, or a sense of the horror of capital punishment, need not operate in any case to lessen the doom of the culprit below that which it is proposed to inflict in all cases. The only effect of these scruples where they exist and govern the decision of the jury, will be to make them render a verdict of guilty of murder in the second degree, instead of the first, and this is already, or if not it may be made so, punishable with the next heaviest sentence to death.

We recur therefore to the evident truth, that death is the fitting penalty for murder,—fitting because, in addition to its correspondence with the enormity of the crime, it must needs be more efficacious than any other in preventing its repetition. We have indeed, besides the reason which we have just shown to be utterly devoid of weight, a historical argument in disparagement of the efficacy of capital punishment. This argument is a curiosity in its way. Reflecting and thoughtful men, who love and seek the truth, will always be cautious in establishing the relation of cause and effect between consecutive historical events. The most laborious collection and collation of facts, and the most intimate acquaintance with all the circumstances affecting the result, are in most cases necessary, to enable us to eliminate what is accidental, and discover the true connecting link. But with Mr. O'Sullivan the simple principle "*post hoc, propter hoc*" cuts short all this labour. One thing precedes another, therefore it is the cause of it. Under the Roman republic there was no capital punishment, and the state was flourishing; under the empire capital punishments were inflicted, and the state fell. No better illustration is needed of the rashness of this kind of reasoning, than is afforded by the uncertainty which still exists respecting the effect of the change made, several years since, in the English criminal code. There were strong arguments against that code as it formerly stood, and at length upwards of two hundred minor offences were taken out of the list of capital crimes. And many who were in favour of the reform have thought and said that the effect of it has been, a diminution of crime. But from full and accurate statistical tables, kept at the Home Office and reported to Parliament, it appears that for the three

years succeeding the change in the criminal law, there was an increase of no less than thirty-eight per cent. in the offences from which the punishment of death had been removed. We should be very loth however to infer from this fact the relation of cause and effect, as Mr. O'Sullivan is in the habit of doing upon grounds vastly more vague and indecisive.

But a farther difficulty with this historical argument is that the facts themselves upon which it rests are, most of them, unworthy of credit. In the first instance, we have the experience of ancient Egypt under Sabaco, who during the space of fifty years, we are told, abolished capital punishment, and with much success. Whence Mr. O'Sullivan learned the success of Sabaco's experiment, we do not know. It is true that Herodotus and Diodorus both mention this monarch, and state that he refrained from punishing criminals with death, but condemned them to raise the ground about the towns so as to place them above the reach of inundation. But we do not remember that either of them has said aught of the good or ill effect of the experiment. And if they had, it would not be difficult to tell what weight ought to be attached to the testimony, when we consider that the eldest of these historians was separated by an interval of at least three hundred years from the reign of Sabaco, and that no statistical tables, official returns, or other means of accurate information had been transmitted down to him. Mr. O'Sullivan too should have inquired enough, before using this alleged fact, rude as it is, for his purpose, to ascertain that Sabaco's character, his doings, and the length of his reign, are all involved in doubt. Herodotus's own account is not consistent with itself: and Manetho informs us that he burnt one man alive; and limits his reign to eight years.

The example of Rome is also adduced in illustration of the good effects to be expected from a repeal of capital punishment. For a period of two centuries and a half, we are told, that the infliction of death upon a Roman citizen was expressly forbidden by the famous Porcian law, which was passed in the 454th year of Rome. To say nothing of the trifling error of more than a hundred years in the date of this "famous Porcian law," which was not enacted until the 557th year of Rome—was the author of this report aware that this Porcian law was but a revival of the Valerian law, which had been already renewed twice before, once by Va-

lerius Publicola, and again by Valerius Corvus; and that after its revival under the tribuneship of M. Porcius Lecca it became obsolete again, and was subsequently renewed for the fourth time by Sempronius Gracchus, after which it fell again into disuse,—and that of course the administration of criminal justice at Rome was never for any considerable period restrained by the limitation of this law? Does he know too that those who are most competent to form a correct opinion upon the subject, suppose that the law, while in force, only forbade the execution of a Roman citizen who had been condemned by a magistrate, and that it was not intended to apply to such as had been cast in an appeal from his sentence? If he did not know these things, we hope he will look beyond Adams' Roman Antiquities, to which he refers us for information, before he again undertakes to shed light upon our path from the history of Rome.

But we have more history still. "The Empress Elizabeth of Russia, on ascending the throne, pledged herself never to inflict the punishment of death; and throughout her reign, twenty years, she kept the noble pledge." We know that Elizabeth made this pledge, but where did Mr. O'Sullivan learn that she kept it? We have never met with any authority for it but Voltaire, who says, 'she kept her word;' but a man who never kept his own word when it suited his purpose to break it, is not an unexceptionable witness on behalf of others. It is well known now, that many executions occurred under the reign of this Empress—we do not know how many, for despotic governments publish no registers of the deaths they inflict. Mr. O'Sullivan adds, that so satisfactory was found the operation of the immunity from death by judicial sentence, that Elizabeth's successor, "the great Catharine, adopted it into her celebrated Code of Laws, with the exception of very rare cases of offence against the state." From that day to this, he informs us, there have been but two occasions on which the punishment of death has been inflicted in Russia. The code of Catharine does indeed breathe a spirit of clemency, but a clemency that extends only to the expiation of wrongs committed by one of her subjects against another. To hold such wrongs in light esteem, and make them easy of atonement, may well consist with the policy of a despotic government. Her royal clemency indicates an indifference to human life instead of a high regard for it. Whoever will take the pains to compare the sixteenth chapter of Beccaria's work on Punishment,

with sect. 4, art. 10, of the Instructions of Catharine, will be at no loss to discover the probable motives which led to the institution of her Criminal Code. She has borrowed the ideas, and sometimes the very words of Beccaria, taking good care, however, to leave out every thing touching the social compact, the surrender of the "*minime porzioni*" of personal rights, and the limitations of the sovereign authority.

The work of Beccaria had been recently published, and was attracting much attention. Its doctrines had been espoused by the French school of infidels, who were at that time the savans of Europe. Catharine, who was in close correspondence with them, was ambitious of establishing a reputation in philosophy, as well as war; and, to this end, she issued her "Instructions pour dresser la Code de Russie," in which she is philosophically clement, so far as the punishment of wrongs between man and man is concerned, but sufficiently rigid in stationing the ministers of death around the throne. If this explanation is more uncharitable than Mr. O'Sullivan's, it has the merit of being more consistent with the known character of this Empress,—one of the most abandoned sovereigns that ever disgraced the seat of empire. She commenced her reign with the murder of her husband and his nephew, and filled it up with acts too abominable to be recited. But whatever may have been the motives which dictated her code, who, besides Mr. O'Sullivan, will vouch for its observance? The edicts of despotic sovereigns are one thing, and their practice another. The same caprice which enacted the law can at any time dispense with its execution; and there is nothing in the character of Catharine to lead us to suppose that she would esteem herself bound by the philosophical flourish of her "Instructions;" nor are there any sources of information from which we can learn whether justice was actually administered in accordance with the criminal code which she established. And how did Mr. O'Sullivan arrive at the knowledge of the fact that "from that day to the present there have been but two occasions on which the punishment of death has been inflicted in Russia." It is now eighty years since Catharine ascended the throne. It would not be an easy matter to ascertain, in our own free country, or in England, how many executions have taken place in the last eighty years. And who has kept statistical tables and brought in reports, of the sentences pronounced and executed throughout the fifty provinces of the vast empire of Russia during this period? Travellers tell us that

the code of Catharine fell, long since, into disuse. And while in force it only nominally exempted the criminal from death ; since death, in an aggravated form, was the frequent result of the punishments it prescribed. We have before us now, an account, from an eye-witness, of the punishment of a murderer by the knout, which is too horrible to be quoted in full. The criminal received three hundred and thirty-three blows, each one tearing away the skin to the breadth of the thong, and sinking into the flesh. At the conclusion of this terrible operation his nostrils were torn with pincers, and his face branded with a red hot iron. He was then re-conducted to his prison, to be transported to the mines in Siberia ; but upon the most diligent inquiry, it could not be ascertained that any one had seen him afterwards brought out of his prison. But let all this pass. Be it so, that no capital punishments have been inflicted in Russia for the last eighty years. How are we to learn the effects of this remission ? Who can tell us whether the lives of men have been safe under this system of indulgence to crime ? Where is the record of the number of murders committed during this period ? And where is the proof that they would not have been fewer, if even-handed justice had dealt to the murderer his merited doom ? The argument from this case breaks down at every point. That cause must be sadly in want of substantial support, which is compelled thus to clutch at shadows.

We had intended to make a similar exposure of all the other historical cases, referred to in this Report. But our limits forbid, and we have already devoted to this part of the argument more space than it intrinsically deserves. The cases given may be taken as a sample of the whole,—erroneous frequently in their facts, and wrong always in the conclusions drawn from them, supposing the facts themselves to be correct. And such must be the end of every attempt to establish, by historical induction, the truth of that which is not, and cannot be true. This part of the discussion is a waste of words. If a man should offer to prove to us from history that the best interests of every state would be promoted by committing its sovereign authority to the hands of a cruel and unprincipled despot, we might very properly decline to follow such an argument, on a question that is already decided, upon principles that are plainer and more certain than any process of reasoning from historical facts can possibly be. And yet we will engage to

make a collection of facts which shall go farther in support of this theory, than any that can be marshalled in favour of the abolition of capital punishment. The considerations which determine that death is a more effectual preventive of murder than any less punishment, are superior, in their simplicity and certainty, to all historical teaching. They lie in every man's bosom, and close around him. He need not go back to ancient Egypt, nor search abroad among the scarce civilized serfs of Russia, to find them. Let any man ask himself which he would most dread, death or imprisonment, taking his answer not from any casual mood of mind which may now and then rule him, but from his most habitual and prompt fears: let him ask any criminal upon trial, which he would prefer, a verdict which would send him to the gallows, or one that would permit him to take refuge in the penitentiary. Can there be any doubt that death is the master evil of our lot,—that it is the sorest punishment that human law has the right to inflict,—and that it must be, upon the known and certain principles of human nature, a more efficacious preventive of murder than imprisonment. Whatever efficacy the law exerts in restraining from the perpetration of this crime would be lessened by the proposed diminution of its penalty, as certainly as that theft would increase, if the punishment of the thief were lowered to the restitution of a portion only of the amount stolen. This conclusion cannot be wrong,—it is an inference so immediate, from facts and principles that are themselves so elementary and self-evident, that it cannot be involved in the error that is incident to remote deductions from doubtful premises. And if it be a just rule of reasoning, that that which is simple and certain, should be used to illustrate whatever is more complex and obscure, then this truth may lend its aid to the interpretation of historical sequences, but cannot receive its proof or its refutation from them. At least, it never can be refuted by any thing less than an experiment, conducted upon a large scale, protracted through a period long enough to test and reject every other cause, and leading to results so clear and definite that they can be explained on no other hypothesis. No such experiment has yet been made. Admitting all the facts alleged on the other side, they do not constitute even the beginning of what could be considered an adequate experiment. In the mean time, instead of going back into the dim obscure of a traditional antiquity, or abroad to India, Russia, or Tuscany,

to gather up loose and vague statements of facts, and reason from them upon principles which would equally well warrant us in concluding, that it is the croaking of the frog that brings back the spring, or the singing of the lark that makes the sun to rise; we shall prefer to stand fast by such principles of truth as are given to us immediately by our own nature, and by the sentiments and conduct of all around us. And if we wish the sanction of authority for our opinions, we shall seek it in some higher quarter than among the disciples of an infidel philosophy, that insults God and degrades man,—a philosophy that laying aside all its higher attributes, and wandering from its palace, has gone forth to eat grass as oxen,—a philosophy which may chew its cud, and tell us what kind of grass is good, but which can do nothing better, until it regains its reason, as did the degraded monarch of old, by “lifting up its eyes unto heaven.” And if we are to be influenced by imitation, if “patterns of noble clemency” are to be sought, we shall go somewhere else than to an Empress, who was twice, at least, a murderer of the foulest degree, and always a loathsome adulteress.

Our ground now is, that society has the right to take away life upon sufficient cause—that death is not an excessive penalty for murder, but, on the contrary, is pointed out by the nature of the crime, and the general judgment of mankind respecting it, as its most fitting punishment—and that this penalty is demanded as the most effectual preventive of the crime. If these several positions are established, as we think they are, then our case is fully made out. Nothing more is necessary to prove the duty of the sovereign authority in every state, to establish and maintain this penalty. Mr. O’Sullivan does indeed demand that besides all this, we should prove, that though capital punishment “does operate to produce that effect, (the prevention of murder), it is not accompanied with other evil consequences, upon the general well-being of society, sufficient to neutralize the amount of advantage which it may be supposed to possess in this respect over all other modes of preventive punishment.” That is, if we understand this aright, we must strike the balance upon some such calculation as this. We must find how many murders would be committed within a given territory, say the state of New York, during a definite period, under the reign of capital punishment—we must then find to what number this would be increased within the same territory and period, if capital punishment were supplanted by im-

prisonment for life : let us suppose that there would be three murders in the former case, and five in the latter ; we should then have to weigh the murder of three men, and the hanging of the three murderers, six deaths in all, against the five murders and the perpetual imprisonment of the five murderers : there is one death more in the first case, but then this is to be off-set by the incarceration of five men for life ; it must be taken into the account too that three of the six deaths are inflicted by the hand of the law, and we must calculate whether three such deaths are a greater evil than the two surplus murders of the other alternative ; in the latter case, too, the whole five are driven out of the world into eternity without a moment for preparation, while in the former, three of the six have timely notice to prepare for death, and we must estimate the value of this consideration : after settling these and many other like points which arise immediately out of the case, we must look a little farther and inquire into the effects of solitary imprisonment upon health of body and soundness of mind—into the probability that some one or more of these five culprits may be reduced to a state of insanity—into the alleged tendency of capital punishments to produce suicide, compared with the force of the temptation which the five men, imprisoned for life, will lie under to the commission of the same crime—into the temptation too under which these prisoners will lie, doomed as they already are to the heaviest punishment which can be laid upon them, to murder their keepers, and escape from prison—into ten thousand other questions which no man can answer. The moment we attempt to reduce this problem of the calculation of general consequences, out of the vague form in which Mr. O'Sullivan states it, so as to get it in a condition for solution, we find that it is intricate and vast beyond the power of any human mind to comprehend. This is yet another illustration of the utter impotency of the utilitarian philosophy to discuss questions of guilt and innocence, death and life. What have these general consequences to do with our duty to prevent all the murders that we can ? Out upon these calculations of profit and loss when the lives of innocent men are in question ! We have no patience with this Iscariot arithmetic, which knows how to calculate so precisely the price of innocent blood. If one course being pursued, which it is right for us to take, there would be only three murders committed during the coming year, while five would occur under an altered course, then the blood of the

two men whom the change would slay, calls upon us for protection, and we are blood-guilty if we refuse it.

There are two or three considerations, referable to this part of the discussion, upon which it may be expedient, in conclusion, to bestow a passing remark. The irremediable nature of capital punishment is much insisted upon by the advocates of the other side of the question. If a mistake has been committed, by the condemnation of an innocent man, it is beyond recal. And under this head we generally have an affecting narrative of cases in which men have been condemned and executed, who were afterwards found to have been innocent. An exaggerated impression is commonly produced in relation to the number of such cases. Many are given, and in such a manner as to leave the reader to infer that they are but selections from a vastly greater number which might be cited; whereas they are all, or nearly all, that the most diligent ransacking of the annals of criminal jurisprudence has been able to furnish. The most of them are given in Phillips' Treatise on Evidence, and they constitute the stock in trade of the prisoner's counsel in all murder trials. Whoever will examine these cases will find that in almost every instance, except those in which the *corpus delicti* was not found, and it appeared afterwards that no murder had been committed, the real culprit has taken away the life of the innocent prisoner by perjury, or which amounts to the same thing, by arranging and directing a set of circumstances so as to implicate him. The amount of it is that the murderer, in addition to the murder already committed, has made use of an institution of justice, instead of the assassin's knife, to perpetrate another. There is, in such cases an additional murder committed, not by the law nor by its ministers, nor yet by the state which gave them their authority, but by the wretch who has brought upon himself the guilt of a double murder to prevent the detection of one. Capital punishment may in this way occasionally add to the number of murders. This is a consideration which we feel bound to weigh, as it involves not "the well-being of society" but the life of an innocent man. What then is its true value in its bearing upon the general question? If capital punishment be the doom of murder, there may occur now and then, with extreme rarity, an instance in which a murderer will seize upon this law to commit another murder, for the purpose of screening the one already committed. But if capital punishment be abolished, and a milder substitute introduced, the diminished severity of the penalty will tend at

once to increase the number of murders. It will be observed that we do not undertake to weigh the consideration under discussion, by placing over against it, the imprisonment which, under the proposed change, would in like circumstances be inflicted upon the innocent prisoner, nor do we institute any inquiry into the value of the restitution that would be made when after years of incarceration, upon the discovery of his innocence, you release him broken it may be in health, and shattered in mind. We make no such comparisons. We weigh murder only with murder. And dreadful as is the thought, that guilty men may be able, in rare cases, to make use of the law, notwithstanding all the precautions which guard its exercise, to carry into effect a purpose of murder, we would still uphold the law, because we are certain that its abrogation would lead to tenfold more murders than can possibly be committed through this abuse of it.

Here too we may point out another mode in which the abrogation of capital punishment must certainly increase the number of murders. We have spoken already of the strong conviction which has always pervaded the hearts of the mass of mankind, that death is the fitting and the only fitting punishment for murder. This conviction is not the product of a passionate excitement of feeling:—it has its seat in the sense of justice and is deep and strong as the heart of man. Now just as surely as capital punishment is abolished, this conviction that the murderer ought to die will combine with the exasperated feelings of the near of kin to the murdered, and the avenger of blood will be abroad through the land. Men who would not under any other exigency trample upon the laws of the land, will take upon themselves the work of vengeance under the impulse of what they will consider a higher law written on their hearts; and murder will thus be added to murder.

“ Passion then would plead
In angry spirits, for her old free range,
And the wild justice of Revenge prevail.”

The only other objection to capital punishment that calls for notice, is that which is drawn from its cutting short the period of man's probation. This objection has but little weight with us, for believing as we do that God has revealed to us His will, both through the laws of reason and conscience, and in his written word, that the murderer should be put to death, we consider the arrest of the term of his probation through the infliction of this sentence, as no less distinctly and properly the dispensation of Divine Provi-

dence, than if the criminal had been cut off by a sudden disease. But independent of this view, let us beg those who urge this objection to remember the compassion which is due to those who are to be murdered as well as to the murderer. By the abolition of capital punishment we should increase the number of murders, and thus cut short the probation of those that are murdered, and with this additional aggravation, that they are sent, without notice, without a moment for thought, to their last account, while to the victim of the law we give time for repentance and preparation. This consideration meets the objection and disposes of it by presenting an evil of like kind but greater magnitude, which cannot but follow the repeal of the penalty of death. In addition to this, too, let it be borne in mind, that no man can tell whether imprisoning the culprit for life in the manner proposed, would not as effectually interfere with the ends of his probation, as to put him to death after timely notice. Consider the case of a man condemned to death, with several weeks intervening between the sentence and its execution, perfectly certain that the hour is fixed in which he is to appear before his Judge, and placed under the strongest motives to induce him to repent and avail himself of the means of salvation,—and then contrast with this the situation in which he would be placed, if immured within the penitentiary, with a life-time before him for the spirit of procrastination to range over, cut off from the influence of public opinion, and other manifold influences which are ordinarily at work upon men,—placed under circumstances so new and strange and trying, that many minds have given way entirely under them and become insane,—when all these things are taken into the account how shall we determine which of these dooms would most effectually, to all intents and purposes, interfere with the probation of the criminal. Happily it is not necessary for us to determine this question, in order to learn our duty. In executing the murderer we are but instruments in the hands of Providence to effect His purposes: and we are preventing, so far as we can, other murderers from cutting short the lives of those whom it is our sacred duty to protect. They have claims upon us which the murderer has wilfully forfeited—they have rights which we cannot put in jeopardy, by an ill-judged lenity to the guilty, without incurring a heavy responsibility. It can be no part of our duty, through the weakness of a blind compassion, to clip the demands of justice upon the criminal, and thus let loose the bloody hand of violence upon the innocent.