

SENATE....No. 103.

Commonwealth of Massachusetts.

IN SENATE, April 4, 1854.

The Joint Special Committee, to whom was referred Petitions, praying for the abolition of the death penalty, and also an Order of March 2d, directing them to inquire into the expediency of extending the time, by law, intervening between sentence of death and the day of the execution of the criminal, have had the same under consideration, and submit the following

REPORT :

The subject of capital punishment has so long engaged the attention of philanthropists, and has so repeatedly been brought before the legislature, that the principal arguments for and against it are familiar to all.

The success which has attended the efforts of the advocates of its abolition, show that their arguments have not been lost upon the public mind ; but that there has been an increasing regard for the sanctity of human life, and a growing confidence in the efficacy of milder modes of punishment for the prevention of crime.

The catalogue of capital offences has been gradually diminished, until there remains but one for which the extreme penalty of death is inflicted. It is but fifteen years since it was thought that in no less than six forms of crime, the safety of society, and the enormity of the offence, demanded the death of the offender. Murder, treason, arson, rape, burglary, and highway robbery, were all alike punishable by death, and it was only with the most anxious solicitude that many high-minded men and Christians saw the substitution of milder penalties for the two latter offences against the property of an individual.

It is a significant fact, that in every instance of the abolition of capital punishment in this Commonwealth, its warmest opposers have soon been brought to laud the wisdom and justice of the act, and for that particular offence are the staunchest supporters of the milder form of punishment.

Your committee are of the opinion that executions are unfavorable to public morals, and, indeed, the fact has become so notorious, that executions are now conducted in private. It appears that an exhibition of this kind is an appeal to the animal propensities, and as the result of such executions show, are calculated to induce the commission of the very same crime for which the criminal suffers. If it were necessary that the criminal should suffer this extreme penalty for the purpose of deterring others, it would seem that the same principle would require the greatest pomp and parade to impress the minds of the community. Your committee are of the opinion that the certainty of punishment has a much more powerful effect upon the mind in deterring from crime, than the severity of the penalty itself; and the fact cannot escape the notice of the most casual observer, that, in consequence of the penalty of death being attached to the commission of any crime, jurors are very unwilling to convict, even when the evidence is of such a character that in any other case a conviction would be certain. While we are willing to admit that society have the right to take life if necessary to protect its members, we are also of the opinion that the necessity should be clearly shown before the right should be exercised. It is incumbent on the advocate of capital punishment, to show that the substitution of milder penalties will not protect society equally as well. If it will, the death penalty cannot be sustained on the plea of

self-defence, and in the decision of this question, the only evidence that can be relied on is the results which have followed from the substitution of such penalties. But the facts are decidedly in favor of the abolition of the death penalty.

From the parting charge of Sir James Mackintosh to the grand jury, while he was Recorder of Bombay, it appears that in a period of seven years, during which capital punishment was never inflicted, there were but six convictions for murder, while in the same period immediately preceding, there were eighteen, making a difference of nearly two-thirds in favor of the latter period.

“This small experiment has therefore been made without any diminution of the security of the lives and property of men; two hundred thousand men have been governed for seven years, without a capital punishment, and without any increase of crime. If any experience has been acquired, it has been safely and innocently gained. But perhaps the fairest and most satisfactory experiment, with which we are acquainted, was during the reign of the Grand Duke Leopold, in Tuscany. Upon ascending the throne, he instituted a general reform in the penal code, abolishing the torture and punishment of death, the latter provisionally and experimentally. After referring to his provisional acts as having, ‘instead of increasing the number of crimes, considerably diminished that of the smaller ones, and rendered those of an atrocious nature very rare,’ he proceeds: ‘In consideration of the proper objects of punishment, the redress of the injury sustained by the public or the individual, the correction of the delinquent, who is still, notwithstanding, to be regarded as a child of the state, whose amendment ought never to be abandoned in despair; the certainty that he shall never have the power of repeating his atrocities, and lastly, the public example, and that the government, in the punishment of crimes, and in adapting such punishment to the object toward which alone it should be directed, ought always to employ those means which, while the most efficacious, are the least hurtful to the offender; that this combined efficacy and moderation are found to exist more in condemning him to hard labor, than in putting him to death, since the former serves as a lasting example, and the latter only as a momentary terror, which often merges into compassion; in

consideration, likewise, that a very different legislation from that formerly prevailing, will better agree with the gentle manners of the present age, and especially of the people of Tuscany, we have resolved to abolish, and, by the present law, do abolish forever the punishment of death.' ”

But further testimony is furnished in proof of the success of the experiment in Tuscany. The following is from the report of Mr. Berenger, to the French Chamber of Deputies, in 1830: “ And the mildness of the penal legislation has so improved the character of the people there, that there was a time when the prisons were entirely empty.”

And Dr. Franklin, in remarking upon the subject, says: “ That in Tuscany, where murder was not punished with death, only five had been committed in twenty years; while in Rome, where that punishment is inflicted with great pomp and parade, sixty murders were committed in the short space of three months, in the city and vicinity.” “ It is remarkable,” (he adds to this account,) “ that the manners, principles, and religion of the inhabitants of Tuscany and those of Rome, are exactly the same.”

During a reign of twenty years, Elisabeth, the Empress of Russia, never inflicted the punishment of death, and Catharine, her successor in the “ Grand Instructions for framing a new code of laws for the Russian Empire,” uses the following language: “ Experience demonstrates that the frequent repetition of capital punishment never yet made men better. If, therefore, I can show that, in the ordinary state of society, the death of a citizen is neither useful nor necessary, I shall have pleaded the cause of humanity with success. I said, in the ordinary state; for the death of a citizen may be necessary in one particular case; I mean, when, though deprived of liberty, he has still means and power left to disturb the national repose, a case which can never happen, except in times of anarchy, when disorder and confusion take the place of laws, in a state defended against enemies from without, and sustained by the firm basis of power and general sanction from within, and where authority is lodged in the hands of the sovereign; in such a state, there can be no necessity for taking away the life of a citizen.” The twenty years reign of the Empress Elisabeth, gave the fathers of the people a more excellent pat-

tern, than that of all the pomps of war, victory and devastation, held forth by the most glorious conquerors.

In the State of Michigan, capital punishment was abolished in 1846, and in 1851, the Secretary of State, in a letter to the committee of the Massachusetts Legislature, stated that crimes which were formerly punishable with death, had decreased about eighteen per cent. since its abolition; and we are informed by a very intelligent gentleman recently from that State, that there is not a single convict now in their penitentiary for the crime of murder.

In Wisconsin and Rhode Island, the death penalty has recently been abolished. In Vermont and Maine, a law virtually abolishing capital punishment has been in operation for several years. Your committee have no official documents which show the practical result of the change; but, in a letter from a gentleman in Portland to a member of the committee in 1852, it is stated that the effect of the change in the law was all that its friends could ask.

It would be useless here to multiply the amount of statistical facts, which go to show that wherever capital punishment has been abolished, and a milder penalty substituted, it has been found not only as effectual a preventive of these crimes, but has invariably been followed by a decided diminution in the number of offenders. The able reports to the legislature by Mr. Sullivan, in 1831, by the lamented Rantoul, in 1836, by Mr. Mason, in 1851, and other reports to the legislatures of different years between these periods, together with the numerous essays upon the subject, are all so easy of access, that we would not reiterate the facts and arguments which have remained unanswered, and afford substantial proof of the position we have taken. The favor with which the abolition of the death penalty in the five cases in which it has been effected within the last fifteen years, affords the most convincing proof that, as a punishment for crime in these cases, it is uncalled for, and we humbly believe that a few years, with its total abolition as a punishment for the crime of wilful murder, will show the wisdom of the change. Indeed, it was generally supposed, that the statute of 1852, which substituted imprisonment during life for the death penalty, for the crimes of treason, arson, and rape, did also virtually abolish the punish-

ment of death for wilful murder, or, at least, that the execution of the criminal would not only be delayed for one year, but that the governor would forbear to issue his warrant for the purpose, except in some extreme case, which it was not probable would ever arise. But the chief executive, with the advice of the council, and in accordance with the opinion of the highest judicial tribunal in the State, deemed that the law rendered it imperative upon him, after the expiration of one year from the time of the sentence, to cause execution to be done. We are aware that this construction of the statute took many of its advocates by surprise, and, if we may judge from the general expression of opinion to which this construction of the statute has given rise, we think we may safely conclude that the public mind is prepared for the enactment of a statute which will effectually secure the end it was supposed that statute accomplished. And while a majority of your committee are in favor of a total abolition of the death penalty, after a full consideration, we have decided to report the accompanying Bill, which does not render it imperative upon the governor to issue his warrant for execution, but leaves it to his discretion, and requires the advice and consent of the council thereto.

For the Committee,

DANIEL WILBUR, *Chairman.*

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Fifty
Four.

AN ACT

Concerning Persons under Sentence of Death.

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :

1 SECT. 1. When any person shall be convicted of
2 any crime punishable with death, and sentenced to
3 suffer such punishment, he shall, at the same time, be
4 sentenced to hard labor, either in the State prison,
5 county jail, or house of correction of the county
6 where such conviction is had, as the court passing
7 such sentence may determine, until the governor shall
8 issue his warrant for execution.

1 SECT. 2. And such person shall be kept at hard
2 labor for one year from the day of the sentence, after
3 the expiration of which the governor may, in his dis-

4 cretion, with the advice and consent of the council,
 5 issue a warrant, commanding the sheriff of the county
 6 in which the trial was had, to cause execution to be
 7 done in said county, according to sentence.

1 SECT. 3. This act shall take effect from and after
 2 its passage.

AN ACT

Concerning Penitentiaries and a Penitentiary at Leavenworth.

Enacted by the Senate and House of Representatives
 in General Court assembled, and by the authority of
 the same, as follows:

1 SECT. 1. When any person shall be convicted of
 2 any crime punishable with death, and sentenced to
 3 suffer such punishment, he shall, at the same time, be
 4 sentenced to hard labor, either in the State prison,
 5 county jail, or house of correction of the county
 6 where such conviction is had, as the court hearing
 7 such sentence may determine, until the governor shall
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