

REPORT

OF THE

SELECT COMMITTEE,

TO WHOM WAS REFERRED, A BILL

TO ABOLISH THE DEATH PENALTY.

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SELECT COMMITTEE

ON THE

TO ABOLISH THE DEATH PENALTY

IN THE STATE OF NEW YORK

ALBANY

1858

R E P O R T

THE Select Committee, to whom was referred No. 67 (A.) A bill to abolish the death-penalty, have had the same under consideration, and respectfully ask leave to submit the following Report:

That they view the question submitted to them, as one of momentous importance, and one in which every member of community should feel a solemn interest and an individual responsibility.

The taking of human life, for the crime of murder, which for many centuries has been regarded as absolutely necessary to the security and well-being of society, has, under the enlightened policy of free and republican institutions, become a subject on which there is to be found a wide difference of opinion.

While many still regard the taking of life, by process of law, with an eye of indifference, and endeavor to smother all doubts that may arise in their minds, with the reflection that it is the established statute of by-gone ages; others, have become convinced that it is a monstrous sin, and that the penalty of death for capital crimes, is, under any and all circumstances, a wrong beyond which there can be no greater. Some have endeavored to maintain the bloody Law by Scriptural quotations, basing their arguments on the penal code of the Jews, and ascribing its enactment to Deity; while others again believe it to be an unrighteous Act, repugnant to the better feelings of man's nature, in direct opposition to the spirit of a liberal and enlightened form of govern-

ment, and at complete variance with the principles of a pure Christianity, as derived from the Gospel of Nazareth.

Many have also advocated the abolition of the death penalty, for the reason that it is not sufficiently severe or protracted in its duration; and recommend instead, solitary confinement for life, or in other words, would desire that their unfortunate brother man should be placed in a situation where they might witness and exult over his tortures, until the sands of his life are exhausted.

Others again have advocated its repeal, assigning as their reason, firstly, the great aversion to taking life, rendering it almost impossible to obtain jurors from the most intelligent portions of community, thereby placing life at the disposal of men but illy qualified to judge of the Law and the evidence. Secondly, that from the fallibility of testimony, and the uncertainty of obtaining correct evidence, as it is tortured and wrung from witnesses by ingenious attorneys and severe cross examinations, the innocent frequently suffer conviction and subsequent death.

To the last argument in favor of its repeal much weight may be attached; but in arriving at the conclusion that there is no right existing by which man may justify himself in destroying his fellow-man, your committee would assume the broad ground, that the taking of life by Legislative enactment, under any and all circumstances, is not only a grievous wrong to the immediate parties, but is a direct assault on the morals of community, demoralizing in its tendency, and seriously retarding the expansion and unfolding of those correct moral principles, the perfect growth of which would render mankind peaceful and happy. That if the commission of the crime of murder by individual man is a sin, the perpetration of the same act by society cannot be called a virtue. That if life is sacred in the one case, it is in all cases, and what is denounced as an infamous crime in the individual cannot be regarded as a punishment when inflicted by community.

Society may with propriety be termed a compact or partnership, composed of individual members, who feel an interest in its wel-

fare and possess an influence in its proceedings. When individuals, to whom are delegated certain powers, assemble in Senate and Assembly, it then assumes a form of government. Individuals, when entering into this compact as partners, agree to surrender to society the smallest possible portion of their rights for the purpose of more effectually securing the greater portion of rights which they did not surrender, for instance, individuals through their representatives consent to be taxed, conceding to government the right to seize upon a small portion of their property, for the purpose of securing to themselves redress when wrongs may have been committed, and also for the preservation of peace and order. In the present imperfect state of society, no one will deny this right; furthermore, individuals possess the same right which is claimed by the compact. Two individuals may enter into a similar compact, mutually conceding to each other by agreement, certain rights to property which they may have held, and this too, without the interference of government. Here, then, individuals are vested with the same rights which by common consent are accorded to government.

Let us now go one step further. Did we in entering this compact as partners, concede our title to that life with which the Creator has endowed us? Had we the right to place our lives at the disposal of a majority, whose uncertain and often times inexplicable decisions no man can calculate before hand? In case of certain alleged offences, are our lives to be placed at the discretion of the majority, which is liable at times to become excited and blinded with passion? Is human life to be tampered with by passion and prejudice? In short, does man possess the authority to delegate to his fellow man, the complete control of that life-giving principle which was given him by his Creator and belongs to Him alone. Are our lives at our own disposal? Have we the right to forfeit that which does not belong to us? It cannot for an instant be admitted, for if it is urged that man's life belongs solely to himself, independent of superior claims—that he has the right to dispose of

it as he may deem proper; then all will be forced to acknowledge that suicide ceases to be a wrong, which very few persons would be willing to admit.

The question may now be asked, have two individuals the right to enter into an agreement that in case one of the parties burns the dwelling of the other, or wrests from him his purse on the highway, the wronged man shall possess full power and privilege to murder in cold blood the offender; or in case the other should first offend, he should be served in like manner. Would they possess the right to form a compact of this nature? No one will admit it. Have ten men the right to enter into a league like this? Certainly not. Should one hundred men enter into an agreement conceding to each other their title to life in case of certain offences, would such a compact be based on correct principles? Would society wink at a partnership like this? No! it would be regarded as an infernal league or banditti, and measures would be instantly taken to bring every member of this association to justice. If then such an association would be regarded as violating all principles of right and justice, would not a similar compact entered into by fifty thousand individuals, by their representatives in Legislature assembled, be equally as void of all principles of right? Would the moral character of the transaction be varied a hair's breadth, whether entered into by two, ten, one hundred or fifty thousand individuals?

Where is the authority for society to say to individuals, ye shall not murder, for that power is delegated to us? To the ten men, ye shall not by any agreement of yours destroy one another's lives, for that is a right belonging exclusively to us. To the one hundred men, ye shall not by any contingency that may arise, deliberately strangle one of your partners, for that would be foul murder; but we possess the right to do what ye shall not. It is a fearful sin for you, as individuals, to commit the crime of murder: but when society, by legal enactment, puts to death one of its members, it is a righteous deed. Yes, it is a familiar fact to be

found in the history of the past and the pages of the present, that governments and bodies corporate, have ever been found ready to do that which as individuals they would spurn with contempt or would blush to acknowledge.

And though no individual is willing to assume the responsibility of legal murder, still it can rest in no other place than in the bosom of every person who advocates its terrible realities. Should innocent blood be shed on the morrow, through force of circumstantial evidence, a thrill of horror would pass through the breast of every member of community when such fact should have been ascertained. All would express the deepest regret and sorrow, yet no one would for a moment feel that he had contributed in the slightest degree to such a deplorable result. The jury would feel no responsibility, for they merely returned their verdict in accordance with the evidence presented; moreover they did not frame the Laws. The Judge could feel no uneasiness, for he had pronounced sentence as required by Law, and the jury had found the verdict of guilty. So here would be no responsibility. The Law makers would cast the responsibility on the people whom they represented. The people would cast it back on Jury, Judge and Law-Maker, and there could not be found a single individual who would profess to feel the slightest responsibility; and yet there has been an unrighteous act—a greivous wrong committed, and yet there is no one to be found who will say—it is I. And still there is a deep and heavy responsibility resting somewhere, and that responsibility can find no other resting place except in the breast of every individual who advocates the penalty of death for crime.

That innocent persons have frequently suffered the extreme penalty of the Law is a matter of record. That this alone should call for its immediate repeal would seem evident to every thinking mind, for life once taken away can never be restored. Property may be diminished and subsequently increased. Liberty may be taken away,—afterwards restored and reparation made; but no

Legislative enactment or Executive clemency can rekindle the lamp of life after it has once been extinguished.

The penalty of death for capital crimes has ever proved itself to be demoralizing in its tendency, checking the growth of all that is moral in our natures, preventing man from rising in the scale of moral excellence and intellectual greatness, and familiarizing the mind to scenes of bloodshed, brutality and violence. It chains the finer sensibilities of man's nature, to the grovelling passions of life, and restrains him from the practice of those pure principles of virtue which are the safeguards of society.

By referring to the pages of the Past, it will be found that this cruel punishment was instituted in an age when society was in a rude and uncivilized condition—that it engendered and begat the very crime it was intended to prevent—that it has ever proved the prop of tyrants and the shield of cowardly despots, the pride of kings, and the secret power of the Church—that it has ever been under the fostering care of the great body of the clergy, who in their endeavors to prove its Christian vitality, have abused the Gospel of Nazareth to an unworthy and unholy purpose.

Believing that the great cause of humanity would be advanced, the moral standard of mankind more highly elevated, and the bonds of christian brotherhood more closely cemented by the repeal of this law, your Committee would report back the accompanying bill and recommend the passage of the same.

M. H. BOVEE.

J. T. LEWIS.