

**REPORT ON CAPITAL
PUNISHMENT: MADE TO
THE MAINE LEGISLATURE
IN 1836; PP. 1-45**

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Report on Capital Punishment: Made to the Maine Legislature in 1836; pp. 1-45 by T. Purrington

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T. PURRINGTON

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REPORT

2.23.25
ON

CAPITAL PUNISHMENT,

MADE TO THE MAINE LEGISLATURE IN 1836,

BY

HON. T. PURRINGTON.

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THIRD EDITION.  
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REPORT ON CAPITAL PUNISHMENT,

MADE TO THE MAINE LEGISLATURE IN 1836.

THE Joint Select Committee to whom was referred the proceedings of the last legislative session, relative to the punishment of death, together with sundry petitions in favor of the abolition of the same, have had the whole subject under consideration, and ask leave to report:

That, having given to the subject all that deliberative attention which the time and circumstances would permit, your Committee have agreed that in their opinion the punishment of death ought to be abolished, and that public sentiment demands the adoption of the measure. Considering the able Report of the Committee of the last Legislature on the question now under consideration, your Committee have not thought proper to reiterate the same train of arguments, especially those relating to the Mosaic Law contained therein; nor can they perceive why the legislator should be influenced by those laws any more than by those of Greece or Rome, aside from their wisdom and justice. If it should be found, therefore, that there are arguments not contained in this report, their omission will not be taken as evidence that the Committee did not attach importance to them. They have labored more to illustrate the principles on which legislative proceedings should be predicated in relation to crime, the prin-

ciples of justice and natural right, together with the expediency of the measure, than to give voluminous details of arguments having one common object. They have therefore taken a somewhat different view of the subject from the former Committee. And, in doing this, they are gratified in being able to state that gentlemen of talents and worth have essentially aided in the accumulation of facts to illustrate and substantiate, even in prejudiced minds, the correctness of the positions which they have thought proper to assume in this report. In discharging this duty, they are not conscious of being actuated by prejudice, a false delicacy towards criminals, or any considerations other than the public good.

It is necessary to the general interest, to the perpetuity of individual and public liberty, that we should recur occasionally to first principles; that we should scrutinize the acts of government, in order to determine whether it has kept within the sphere of its legitimate or constitutional powers. If it is found to have encroached upon the rights of citizens, and to have been in the practice of meting out cruelty and oppression under the imposing name of necessity, no matter if sanctioned by all nations upon the face of the earth, by past ages, by its great antiquity; for, as precedent cannot confer the right, it ought to be visited by the hand of reform. If the inviolability of human life was not recognised in the early period of the world, after the wickedness of man had perverted his way upon the earth, and in the dark and barbarous ages; if, in consequence, oceans of blood have been made to flow, while inglorious ambition, ignorance, superstition, and bigotry consigned their victims to the most unfeeling and heart-rending cruelties which the ingenuity of man could invent; to the violent sufferings of maiming, the rending asunder of limbs, the rack, the torture, the gibbet, the stake, and the halter; if it be a relic of those times when the despotic will of tyrants and conquerors enriched the soil of empires with the blood of human victims, sometimes innocent, and for the smallest, as well as the more aggravated offences; surely we, who

profess so much abhorrence of the tragic scenes of those times, who profess to be guided by the greater light of modern intelligence and the immutable principles of right, and, above all, by the pure and benign principles promulgated by the world's great Lawgiver and Benefactor, ought to pause and reflect whether we can, consistently with the spirit of our free institutions, with the improvements of the age in moral reform, continue a practice so demoralizing in its tendency, and so abhorrent to the feelings of humanity, against the strong and decided opinions of a large, very respectable, and discreet portion of the people, as the punishment of death; and whether it is not in our power to so elevate the character of our people, and to throw around human life a sacredness which will secure its inviolability to a greater extent than can possibly be done by the sanguinary punishment of death.

To adopt such measures as are best calculated to promote the greatest good, to ensure the tranquillity, happiness, and prosperity of the people, is the legitimate object of our assemblage. To depart from this is to betray the trust confided to us by our constituents, and prove our unworthiness to serve them.

The measure prayed for by your petitioners and memorialists is the abolition of the punishment of death for treason, murder, arson, and accessories thereto before the fact; these being the only crimes punishable, by our statute laws, with death. As treason against the State will not be likely to be committed without at the same time committing this offence against the United States, and be liable to be punished by the laws of the latter, it is practically a nominal offence, so that virtually the petitioners ask for the abolition of the punishment of death for the crimes of murder and arson.

Your Committee are strongly impressed with the importance of adopting this change in our criminal code, on the ground of its justness as well as its expediency; and, in giving their views, will commence with a few postulates, or what they deem self-evident truths.

1. All men are born equally free and independent, and are endowed by their Creator with certain inalienable rights, among which is that of life.*

2. All power is inherent in the people.†

3. Government is instituted by their authority, and acquires rights, only so far as they are surrendered by the people, the legitimate end of which is the greater security of the natural rights of those for whom it is instituted, and is in its nature a "*quid pro quo*," or an equivalent for those surrendered.

4. A natural right cannot be transferred or given up, for which, in the nature of things, no equivalent can be rendered.

5. It therefore necessarily follows, that government is a delegated trust, founded in compact, and must possess limited powers; that the assumption of unlimited or absolute powers is an usurpation of the rights of the people not delegated; that acts founded on such an assumption of power cannot be legally or morally binding on the citizen, the exercise of which is tyranny; and that, as no adequate consideration can be given in exchange for the inestimable privilege, the enjoyment of life, no man has the right to dispose of it, either according to the whims, caprice, or opinions of himself or others.

6. Right and obligation are correlative. Neither government nor a citizen can possess civil rights without having imposed on them corresponding obligations. Each severally is not only under obligation to respect the rights of the other, but to defend them when invaded. To preserve a just balance between these, so that one shall not encroach upon the other, and to ensure their respect in tranquillity and peace, constitute the most important business of government.

Human life, therefore, can be taken only by virtue of this obligation, which makes it imperative on the government to preserve its own existence and just rights, and those of

* Declaration of Independence.

† Constitution of Maine, Art. 1, sec. 2.

each individual member of it unimpaired, however poor or humble in life.

If these premises be correct, government, as well as individuals, have the right of self-defence, and, to do this, if an absolute necessity shall exist, to take the life of the aggressor. But, without such necessity, no power on earth can of right take it. Now, if it can be shown that the destruction of life is absolutely necessary to protect the State or the citizens against foreign or domestic aggressions, it is both lawful and right; it is then not a matter of mere choice or expediency, because the first law of nature, self-preservation, imposes the necessity. But if, on the other hand, it can be shown that in a civilized, intelligent, and moral community like our own, no such necessity exists, then it must be conceded that to inflict the punishment of death is not only unlawful and impolitic, but unjust and cruel. In determining this, we must not barely consider whether crimes, of an aggravated nature are committed or not, but we must take into consideration the nature and constitution of man, the means best calculated to control his actions in conformity to the rules of society, the proper ends of punishments, and the practical experience of past times.

Although men are born equally free and independent, so far as their natural rights are concerned, and in our Government have no prerogatives or exclusive privileges, (unless they may be found in the numerous monopolies which hang like a vampire upon the Republic, and may be descendible, as property, from father to son,) yet there is a difference in their physical organization and susceptibility to intellectual and moral attainments. The object is not, however, to enter into a consideration of the truth or falsity of metaphysical abstractions and speculations; to speak of the absurdities and incongruities, or of the truth and consonance, of any system of philosophy, whether of Bacon, of Locke, or of Gall and Spurzheim, but to speak of the nature of man in general, and his susceptibility to intellectual and moral culture, though he

may have been nursed in the lap of venality, and reared in the commission of crime.

It will be sufficient for our present purpose to observe, that all the animal propensities and manifestations of mind depend upon organization ; that every animal function, and every faculty of the mind, has its own appropriate and peculiar organ, which is somewhat differently developed, and may also possess different degrees of energy or activity, in different individuals ; and that all men are naturally influenced either by a preponderance of their intellectual and moral faculties, or of their animal propensities, except where they are so equally balanced as that there is no decided predominance on either side. No attentive observer of the conduct of men can have failed to have perceived this difference, founded as it is in nature, though he may not have attributed it to the same cause. This natural difference is the basis of a division of men into three classes.

The first class embraces all those who have a decided predominance of intellect and moral feeling. In these the animal propensities are proportionately weak, but sufficiently strong for their legitimate ends, the preservation of the individual and the propagation of the species. The inferior tendencies of these, though sometimes strong and vigorous, can never gain that ascendancy over the higher and nobler faculties of the mind so as to impel them to the commission of crimes. Endowed with quick moral perceptions, commanding intellect, and a natural aversion to crime, they instinctively shrink from its commission, and it becomes morally impossible. Thus, having the law written in their hearts, they are a law unto themselves. Actuated by high-minded and honorable motives in their intercourse among men, the Government nor individuals have nothing to fear from low, grovelling selfishness, or unlawful acts of violence from them. To engage in active benevolence, to disseminate intelligence and virtue throughout the world, and make men wiser and better, is to them enjoyment ; it is satisfaction and peace.