

**VACATION THOUGHTS
ON CAPITAL
PUNISHMENTS**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649471904

Vacation Thoughts on Capital Punishments by Charles Phillips

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

CHARLES PHILLIPS

**VACATION THOUGHTS
ON CAPITAL
PUNISHMENTS**

VACATION THOUGHTS

ON

CAPITAL PUNISHMENTS

BY

CHARLES PHILLIPS, A.B.,

One of Her Majesty's Commissioners of the Court for the Relief of Insolvent
Debtors, in London.

"I have seen,
When after execution, judgment hath
Repented o'er his doom."

MEASURE FOR MEASURE.—*Act 2, Scene 2.*

Ten Thousand.

LONDON:

W. & F. G. CASH, 5, BISHOPSGATE WITHOUT;
JAMES RIDGWAY, 169, PICCADILLY.

—
MDCCLXVII.

1860, Sept. 18.

File in Ser.

A. P. Peabody of Cambridge.

(Class of 1826.)

Soc 3555, 3

TO

AN OLD AND VALUED FRIEND,

STANLEY LEES GIFFARD, LL.D.

THE FOLLOWING PAGES

ARE,

WITH EVERY SENTIMENT OF ESTEEM AND RESPECT,

AFFECTIONATELY INSCRIBED.

May, 1857

“THOU SHALT NOT KILL.”

IN proposing to expunge from our statute-book the punishment of death, I am not unaware of the opposition to be encountered. The same opposition has however met every attempt to mitigate the cruel severity of our penal code, and in every instance it has been overcome. There never yet was an error which could plead prescription, that had not its worshippers, or a proposed correction of it, which did not fill them with alarm. But the errors have been slowly and effectually exposed, and yet the world has gone on as usual, and men have lived to smile at the phantoms which formerly peopled the pathway of reform. Our penal code especially has been humanized, and capital punishments have all but disappeared from its enactments. This has been attained, however, but by slow and painful progress, against a dogged opposition in both houses of parliament, and, strange to say, amid the outcries and lamentations and minatory predictions of the wise and good.

The most eminent Judges of the land, the most pious dignitaries of the Church, sustained by their eloquence, their learning, and their authority, what Bacon so emphatically calls “the rubrics of blood.” Chancellors and Chief Justices, Archbishops and Bishops, voted for the retention of the capital punishment for the offence of stealing to the amount of five shillings in a shop. This no doubt they did conscientiously, but assuredly such examples should warn all not to let their

terrors overcome their reason, or their convictions, however venerable, militate alike against common sense and humanity.

Five and twenty years of no ordinary experience in our criminal courts gives the writer of these pages some title to have a voice in this discussion; and after much patient thought, and much very painful observation, that voice is decidedly for the abolition of capital punishments in every case whatever. Where so much depends, and must necessarily depend, on the constitutional temperament both of the Bench and Jury-box, operative, often unconsciously, on their respective occupants, it is unwise, and as unsafe as unwise, to confide to them an authority which, if exercised in error, is altogether without remedy. Many will think, perhaps, with the great Italian, that man usurps a power which is not his, when he presumes to inflict capital punishment at all. Many there are who will ask with Beccaria, "What right have men to cut the throats of their fellow creatures? Certainly not that on which society and the laws are founded. The laws are only the sum of the smallest portions of the private liberty of each individual, and represent the general will, which is only the aggregate of that of each individual. Did any one ever give to others the right of taking away his life? Is it possible that in the smallest portions of the liberty of each, sacrificed to the good of the public, can be contained the greatest of all good—life? If it were so, how shall it be reconciled to the maxim which tells us that a man has no right to kill himself, which he certainly must have, if he could give it away to another?"

If this be well founded, and it is easier to ridicule than to answer it, it at once disposes of the question. If it be true, what a fearful amount of crime has been committed! Let us however, assume that man has the right to surrender what does not belong to him, and see what the consequences of that surrender have been, and especially in England. The retrospect is the most horrifying, humiliating, and disgusting ever pre-

sented to the gaze of civilization. Yet it must be contemplated. It is essential to the argument, because it will prove, that all the reasons now advanced to sustain death punishment as it exists, were employed to sustain it as it existed, and that experience has shown them to have been futile and unfounded. The buried sophisms long laid in dust, send forth their spectres to affright us, but like spectres, they will vanish in the daylight.

It is frightful to look back on the penal code of England, as it stood even in our own day. Every page of our statute-book smelt of blood. True, the laws were not of our own enacting, but those cruel laws were of our own retention. True, wholesale massacres did not occur as formerly, but even latterly executions were frequent enough to shock humanity, and for offences so disproportionable as to make it shudder. Many who are still alive, might have exclaimed with Lord Coke, and justly, "What a lamentable case it was indeed, to see so many christian men and women strangled on that cursed tree of the gallows: insomuch, that if in a large field a man might see together all the christians that in one year, throughout England, came to an untimely and ignominious death, if there were any spark of grace or charity in him, it would make his heart to bleed with pity and compassion." Would this have been one whit less applicable within our own memories, when the Bank of England issued their £1 notes, and Mammon sacrificed his human hecatombs at the Old Bailey? Draco, the archon of Athens, who, about two thousand five hundred years ago, proclaimed it as his opinion, that "the smallest crime deserved death, and he could find no other punishment for the greatest," has come down to us as the very incarnation of cruelty. Every school-boy's heart throbs more quickly at his name. And so be it—let his time-dishonoured memory carry down with it, for centuries to come, an accumulating infamy. But still let us be just. Let even Draco have his due. The glorious ray of the gospel had not reached his mind, nor had its tones of charity ever