

[Benjamin Rush]

AN ENQUIRY
 INTO THE EFFECTS OF
 PUBLIC PUNISHMENTS
 UPON CRIMINALS, AND
 UPON SOCIETY.

Read in the Society for Promoting Political Inquiries,
 convened at the house of His Excellency, Benjamin
 Franklin, Esquire, in Philadelphia, March 9th, 1787.

“Accustomed to look up to those Nations from whom we have derived
 our Origin, for our Laws, our Opinions, and our Manners; we have
 retained, with undistinguishing Reverence, their Errors, with their
 Improvements; have blended, with our Public Institutions, the Policy
 of dissimilar Countries; and have grafted, on an Infant Commonwealth,
 the Manners of ancient and corrupted Monarchies.”

—*Preface to Laws of the Society for Political Enquiries.*

Philadelphia: Printed by Joseph James, in Chesnut-Street. 1787.

Although An Enquiry into the Effects of Public Punishments (1787) is unsigned, its authorship is certain. Benjamin Rush's contemporaries knew it to be his work; it bears important similarities to a signed essay by Rush entitled “An Enquiry into the Consistency of the Punishment of Murder by Death, with Reason and Revelation” (an excerpt from this last-named essay is included in the present text beginning on p. 429).

An Enquiry into the Effects of Public Punishments is a minor masterpiece. Utilizing virtually unassailable logic, clear and forceful language, and emotionally powerful examples, Rush's essay remains one of the most important arguments against capital punishment in all of American literature. Even readers who disagree with Rush's position will admire his capacity to communicate efficiently and well—and will be impressed with his depth of understanding on this still-unresolved issue. Readers will also recognize that the contemporary stand against capital punishment relies upon the very arguments which Rush articulated more than two centuries ago. Biographical information about Benjamin Rush appears in the headnote to Medical Inquiries and Observations (1809), beginning on p. 383 of this text.

AN ENQUIRY INTO THE EFFECTS OF PUBLIC PUNISHMENTS UPON CRIMINALS, AND UPON SOCIETY.

THE design of punishment is said to be—first, to reform the person who suffers it; secondly, to prevent the perpetration of crimes by exciting terror in the minds of spectators; and thirdly, to remove those persons from society who have manifested, by their tempers and crimes, that they are unfit to live in it.

FROM the first institution of governments in every age and country (with only a few exceptions), legislators have thought that punishments should be *public*, in order to produce the two first of these intentions. It will require some fortitude to combat opinions that have been sanctified by such long and general prejudice, and supported by universal practice. But truth in government, as well as in philosophy, is of progressive growth. As in philosophy, we often arrive at truth by rejecting the evidence of our senses; so in government, we often arrive at it after divorcing our first thoughts. Reason, tho' deposed and oppressed, is the only just sovereign of the human mind. Discoveries, it is true, have been made by accident; but they have derived their credit and usefulness only from their according with the decisions of reason.

IN medicine, above every other branch of philosophy, we perceive many instances of the want of relation between the apparent cause and effect. Who, by reasoning *a priori*, would suppose, that the hot regimen was not preferable to the cold in the treatment of the small-pox? But experience teaches us that this is not the case. Cause and effect appear to be related in philosophy like the objects of chemistry. Similar bodies often repel each other, while bodies that are dissimilar in figure, weight and quality, often unite together with impetuosity. With our present imperfect degrees of knowledge of the properties of bodies, we can discover these chemical relations only by experiment. The same may be said of the connection between *cause* and *effect* in many parts of government. This connection often accords with reason, while it is repugnant to our senses—and when this is not the case, from our inability to perceive it, it forces our consent from the testimony of experience and observation.

IT has been remarked that the profession of arms owes its present rank, as a science, to its having been rescued, since the revival of letters, from the hands of mere soldiers and cultivated by men acquainted with other branches of literature. The reason of this is plain: Truth is a unit. It is the same thing in war, philosophy, medicine, morals, religion, and government; and in proportion as we arrive at it in one science, we shall discover it in others.

AFTER this apology for dissenting from the established opinions and practice upon the subject of public punishments, I shall take the liberty of declaring that the great ends proposed are not to be obtained by them; and that, on the contrary, all *public* punishments tend to make bad men worse, and to increase crimes by their influence upon society.

- I. THE reformation of a criminal can never be effected by a public punishment for the following reasons:
 1. AS it is always connected with infamy, it destroys in him the sense of shame, which is one of the strongest outposts of virtue.

2. IT is generally of such short duration as to produce none of those changes in body or mind which are absolutely necessary to reform obstinate habits of vice.
 3. EXPERIENCE proves that public punishments have increased propensities to crimes. A man who has lost his character at a whipping-post has nothing valuable left to lose in society. Pain has begotten insensibility to the whip, and shame to infamy. Added to his old habits of vice, he probably feels a spirit of revenge against the whole community whose laws have inflicted his punishment upon him; and hence he is stimulated to add to the number and enormity of his outrages upon society. The long duration of the punishment, when public, by increasing its infamy, serves only to increase the evils that have been mentioned. The criminals who were sentenced to work in the presence of the city of London upon the Thames during the late war, were prepared by it for the perpetration of every crime, as soon as they were set at liberty from their confinement. I proceed,
- II. TO shew, that public punishments, so far from preventing crimes by the terror they excite in the minds of spectators, are directly calculated to produce them.

ALL men, when they suffer, discover either fortitude, insensibility, or distress. Let us enquire into the effects of each of these upon the minds of spectators.

1. FORTITUDE is a virtue, that seizes so forcibly upon our esteem, that wherever we see it, it never fails to weaken, or to obliterate, our detestation of the crimes with which it is connected in criminals. "I call upon you"—said Major André, at the place of his execution, to his attendants—"to bear witness, gentlemen, that I die like a brave man." The effect of this speech upon the American army is well known. The spy was lost in the hero; and indignation, everywhere, gave way to admiration and praise. But this is not all—the admiration which fortitude, under suffering, excites has in some instances excited envy. In Denmark, uncommon pains are taken to prepare criminals for death by the conversation and instructions of the clergy. After this they are conducted to the place of execution with uncommon pomp and solemnity. The criminals, under these circumstances, suffer death with meekness and piety, and sometimes with dignity. The effects of this, I have been well informed, have been, in several instances, to induce deluded people to feign or confess crimes, which they had never committed, on purpose to secure to themselves a conspicuous death and a certain entrance into a future happiness. There is something, in the presence of a number of spectators, which is calculated to excite and strengthen fortitude in a sufferer. "It is not so difficult a thing"—said Lewis the XIVth to his courtiers, who stood around his death-bed—"to die, as I expected." "No wonder," says Voltaire, who relates this anecdote, "for all men

die with fortitude, who die in company.” The bravery of soldiers is derived, in a great degree, from the operation of this principle in the human mind.

2. IF criminals discover *insensibility* under their punishments, the effect of it must be still more fatal upon society. It removes, instead of exciting, terror. In some instances, I conceive it may excite a desire in the minds of persons whom debt or secret guilt have made miserable, to seek an end of their distresses in the same envious apathy to evil.—Should this insensibility be connected with cheerfulness (which is sometimes the case), it must produce still more unfriendly effects upon society. But terrible must be the consequences of this insensibility and cheerfulness, if they should lead criminals to retaliate upon the inhuman curiosity of spectators, by profane or indecent insults or conversation.
3. THE effects of *distress* in criminals, though less obvious, are not less injurious to society than fortitude or insensibility. By an immutable law of our nature, distress of all kinds, when *seen*, produces sympathy and a disposition to relieve it. This sympathy in generous minds is not lessened by the distress being the offspring of crimes; on the contrary, even the crimes themselves are often palliated by the reflection that they were the unfortunate consequences of extreme poverty, of seducing company, or of the want of a virtuous education—[owing to] the loss or negligence of parents in early life. Now, as the distress which the criminals suffer, is the effect of a law of the state which cannot be resisted, the sympathy of the spectator is rendered abortive, and returns empty to the bosom in which it was awakened.

LET us briefly examine the consequences of this abortive sympathy in society. It will not be necessary here to dwell upon all the advantages of this principle in human nature. It will be sufficient to observe that it is the vice-regent of the divine benevolence in our world. It is intended to bind up all the wounds which sin and death have made among mankind. It has founded hospitals, erected charity-schools, and connected the extremes of happiness and misery together in every part of the globe.—Above all, sensibility is the sentinel of the moral faculty. It decides upon the quality of actions before they reach that divine principle of the soul. It is of itself, to use the words of an elegant female poet¹, “A hasty moral—a sudden sense of right.”

IF such are the advantages of sensibility, now what must be the consequences to society, of extirpating or weakening it in the human breast? But public punishments are calculated to produce this effect. To prove this, I must borrow an analogy from the animal economy.—The sensibility of the human body is said to be *active* and *passive*. The first is connected with motion and sensation; the second only with sensation. The first is increased, the second is diminished, by the repetition of impressions. The

same phenomena take place in the human mind. Sensibility here is both *active* and *passive*. Passive sensibility is lessened, while that which is active is increased, by habit. The passive sensibility of a physician, to the distress of his patients, is always diminished but his active sensibility is always increased by time; hence, we find young physicians *feel most*—but old physicians, with less feeling, *discover most*—sympathy with their patients.

IF such be the constitution of our minds, then the effects of distress upon them will be, not only to destroy passive [sensibility], but to eradicate active sensibility from them. The principle of sympathy, after being often opposed by the law of the state, which forbids it to relieve the distress it commiserates, will cease to act altogether; and, from this defect of action and the habit arising from it, [sympathy] will soon lose its place in the human breast. Misery of every kind will then be contemplated without emotion or sympathy. —The widow and the orphan, the naked, the sick, and the prisoner, will have no avenue to our services or our charity—and what is worse than all, when the sentinel of our moral faculty is removed, there is nothing to guard the mind from the inroads of every positive vice.

I PASS over the influence of this sympathy in its first operation upon the government of the state. While we pity, we secretly condemn the law which inflicts the punishment—hence arises a want of respect for laws in general, and a more feeble union of the great ties of government.

I HAVE only to add, upon this part of my subject, that the pernicious effects of sympathy, where it does not terminate in action, are happily provided against by the Jewish law. Hence we read of a prohibition against it where persons suffer for certain crimes. To spectators, the voice of Heaven, under such circumstances, is, “Thine eye shall not pity him.”

4. BUT it is possible the characters or conduct of criminals may be such, as to excite indignation or contempt instead of pity in the minds of spectators. Let us therefore inquire, briefly, into the effects of these passions upon the human mind. Everybody acknowledges our obligations to *universal* benevolence. But these cannot be fulfilled unless we love the whole human race, however diversified they may be by weakness or crimes. The indignation or contempt which is felt for this unhappy part of the great family of mankind must necessarily extinguish a large portion of this universal love. Nor is this all—the men, or perhaps the women, whose persons we detest, possess souls and bodies composed of the same materials as those of our friends and relations. They are bone of their bone, and were originally fashioned with the same spirits. What then must be the consequence of a familiarity with such objects of horror, upon our attachments and duties to our friends and connections or to the rest of mankind? If a spectator should give himself time to

reflect upon such a sight of human depravity, he would naturally recoil from the embraces of friendship and the endearments of domestic life, and perhaps say, with an unfortunate great man, after having experienced an instance of treachery in a friend, "Oh! that I were dog, that I might not call man my brother."—The Jewish law forbade more than nine and thirty lashes, lest the sufferer should afterwards become "vile" in the sight of spectators. It is the prerogative of GOD alone, to contemplate the vices of bad men without withdrawing from them the support of his benevolence. Hence we find, when he appeared in the world in the person of his son, he did not exclude criminals from the benefits of his goodness. He dismissed a woman caught in the perpetration of a crime, which was capital by the Jewish law, with a friendly admonition; and he opened the gates of paradise to a dying thief.

5. BUT let us suppose, that criminals are viewed without sympathy, indignation, or contempt. This will be the case either when spectators are themselves hardened with vice, or when they are too young, or too ignorant, to connect the ideas of crimes and punishments together. Here, then, a new source of injury to society arises from the public nature of punishments. Every portion of them will appear, to spectators of this description, to be mere arbitrary acts of cruelty. Hence will arise a disposition to exercise the same arbitrary cruelty over the feelings and lives of their fellow creatures. To see blows or a halter imposed in cold blood upon a criminal whose passive behaviour, operating with the ignorance of the spectators, indicates innocence more than vice, cannot fail of removing the natural obstacles to violence and murder in the human mind.
6. PUBLIC punishments make many crimes known to persons who would otherwise have passed through life in a total ignorance of them. They moreover produce such a familiarity in the minds of spectators with the crimes for which they are inflicted, that, in some instances, they have been known to excite a propensity to them. It has been remarked, that a certain immorality has always kept pace with public admonitions in the churches in the Eastern states. In proportion as this branch of ecclesiastical discipline has declined, fewer children have been born out of wedlock.
7. IGNOMINY is universally acknowledged to be a worse punishment than death. Let it not be supposed, from this circumstance, that it operates more than the fear of death in preventing crimes. On the contrary, like the indiscriminate punishment of death, it not only confounds and levels all crimes, but by *increasing* the disproportion between crimes and punishments, it creates a hatred of all law and government, and thus disposes to the perpetration of every crime. Laws can only be respected and obeyed while they bear an exact proportion to crimes. The law which punishes the shooting of a swan with

death in England has produced a thousand murders. Nor is this all the mischievous influence which the punishment of ignominy has upon society. While murder is punished with death, the man who robs on the highway, or breaks open a house, must want the common feelings and principles which belong to human nature if he does not add murder to theft in order to screen himself, if he should be detected, from that punishment which is acknowledged to be more terrible than death.

IT would seem strange that ignominy should ever have been adopted as a milder punishment than death, did we not know that the human mind seldom arrives at truth upon any subject till it has first reached the extremity of error.

8. BUT may not the benefit derived to society by emptying criminals to repair public roads, or to clean streets, overbalance the evils that have been mentioned? I answer, by no means. On the contrary, besides operating in *one*, or in *all* the ways that have been described, the practice of employing criminals in public labour will render labour of every kind disreputable, more especially that species of it which has for its objects the convenience or improvement of the state. It is a well known fact that white men soon decline labour in the West-Indies and in the Southern states only because the agriculture and mechanical employments of those countries are carried on chiefly by Negro slaves. But I object further to the employment of criminals on the highways and streets, from the idleness they will create by alluring spectators from their business; and thereby depriving the state of greater benefits from the industry of its citizens than it can ever derive from the public labour of criminals.

THE history of public punishments, in every age and country, is full of facts, which support every principle that has been advanced.—What has been the operation of the seventy thousand executions that have taken place in Great-Britain from the year 1688 to the present day upon the morals and manners of the inhabitants of that island? Has not every prison door that has been opened to conduct criminals to public shame and punishment unlocked, at the same time, the bars of moral obligation upon the minds of ten times the number of people? How often do we find pockets picked under a gallows, and highway-robberies committed within sight of a gibbet? From whence arose the conspiracies, assassinations and poisonings, which prevailed in the decline of the Roman empire? Were they not favoured by the public executions of the amphitheatre? It is therefore to the combined operation of indolence, prejudice, ignorance—and the defect of culture in the human heart—alone, that we are to ascribe the continuance of public punishments after such long and multiplied experience of their inefficacy to reform bad men, or to prevent the commission of crimes.

- III. LET it not be supposed, from any thing that has been said, that I wish to abolish punishments. Far from it—I wish only to change the *place* and

manner of inflicting them, so as to render them effectual for the reformation of criminals and beneficial to society. Before I propose a plan for this purpose, I beg leave to deliver the following general axioms.

1. THE human mind is disposed to exaggerate every thing that is removed at a distance from it, by *time or place*.
 2. IT is easily disposed to enquire after, and to magnify such things as are *secret*.
 3. IT always ascribes the extremes in qualities, to things that are *unknown*; and an excess in duration, to *indefinite* time.
 4. CERTAIN and *definite evil*, by being long contemplated, ceases to be dreaded or avoided. A soldier soon loses, from habit, the fear of death from a bullet, but retains, in common with other people, the terror of death from sickness or drowning.
 5. AN attachment to kindred and society is one of the strongest feelings in the human heart. A separation from them, therefore, has ever been considered as one of the severest punishments that can be inflicted upon man.
 6. PERSONAL liberty is so dear to all men that the loss of it, for an indefinite time, is a punishment so severe that death has often been preferred to it.
- IV. THESE axioms being admitted (for they cannot be controverted), I shall proceed next to apply them by suggesting a plan for the punishment of crimes, which I flatter my self will answer all the ends that have been proposed by them.
1. LET a large house of a construction agreeable to its design be erected in a remote part of the state. Let the avenue to this house be rendered difficult and gloomy by mountains or morasses. Let its doors be of iron; and let the grating occasioned by opening and shutting them, be increased by an echo from a neighbouring mountain that shall extend and continue a sound that shall deeply pierce the soul. Let a guard constantly attend at a gate that shall lead to this place of punishment to prevent strangers from entering it. Let all the officers of the house be strictly forbidden ever to discover any signs of mirth, or even levity, in the presence of the criminals. To increase the horror of this abode of discipline and misery, let it be called by some name that shall import its design.
 2. LET the various kinds of punishment that are to be inflicted on crimes be defined and fixed by law. But let no notice be taken, in the law, of the punishment that awaits any particular crime. By these means we shall prevent the mind from accustoming itself to the view of these punishments, so as to destroy their terror by habit. The indifference and levity with which some men suffer the punishment of hanging is often occasioned by an insensibility that is contracted by the frequent anticipation of it, or by the appearance of the gallows suggesting the remembrance of scenes of criminal festivity, in which it was the subject of humour or ridicule. Besides, punishments should always be

varied in degree, according to the temper of criminals or the progress of their reformation.

3. LET the duration of punishments for all crimes be limited, but let this limitation be unknown. I conceive this secret to be of the utmost importance in reforming criminals and preventing crimes. The imagination, when agitated with uncertainty, will seldom fail of connecting the longest duration of punishment with the smallest crime.

I CANNOT conceive any thing more calculated to diffuse terror thro' a community, and thereby to prevent crimes, than the combination of the three circumstances that have been mentioned in punishments. Children will press upon the evening fire in listening to the tales that will be spread from this abode of misery. Superstition will add to its horrors, and romance will find in it ample materials for fiction, which cannot fail of increasing the terror of its punishments.

LET it not be objected that the terror produced by the history of these secret punishments will operate like the abortive sympathy I have described. *Active* sympathy can be fully excited only through the avenues of the eyes and the ears. Besides, the recollection that the only design of punishment is the reformation of the criminal will suspend the action of sympathy altogether. We listen with paleness to the history of a tedious and painful operation in surgery without a wish to arrest the hand of the operator. Our sympathy, which in this case is of the *passive* kind, is mixed with pleasure when we are assured that there is a certainty of the operation being the means of saving the life of the sufferer.

NOR let the expence of erecting and supporting a house of repentance, for the purposes that have been mentioned, deter us from the undertaking. It would be easy to demonstrate that it will not cost one-fourth as much as the maintenance of the numerous jails that are now necessary in every well-regulated state. But why should receptacles be provided and supported at an immense expence, in every country, for the relief of persons afflicted with bodily disorders and an objection be made to providing a place for the cure of the diseases of the mind?

THE nature, degrees, and duration of the punishments should all be determined beyond a certain degree by a court properly constituted for that purpose, and whose business it should be to visit the receptacle for criminals once or twice a year.

I AM aware of the prejudices of freemen against entrusting power to a discretionary court. But let it be remembered that no power is committed to this court but what is possessed by the different courts of justice in all free countries; nor so much as is now wisely and necessarily possessed by the supreme and inferior courts in the execution of the penal laws of Pennsylvania. I shall spend no time in defending the consistency of private punishments with a safe and free government. Truth, upon this subject, cannot be divided. If public punishments are injurious to criminals and to society, it follows that crimes should be punished in private or not punished at all. There is no alternative. The opposition to private punishments, therefore, is founded altogether in prejudice—or in ignorance of the true principles of liberty.

THE safety and advantages of private punishments will appear further when I add that the best governed families and schools are those in which the faults of servants or children are rebuked privately, and where confinement and solitude are preferred for correction to the use of the rod.

IN order to render these punishments effectual, they should be accommodated to the constitutions and tempers of the criminals and to the peculiar nature of their crimes. Particular attention should be paid, likewise, [to] the nature, degrees, and durations of punishments [for] crimes [arising] from passion, habit or temptation.

THE punishments should consist of BODILY PAIN, LABOUR, WATCHFULNESS, SOLITUDE, and SILENCE. They should all be joined with CLEANLINESS and a SIMPLE DIET. To ascertain the nature, degrees, and duration of the bodily pain will require some knowledge of the principles of sensation and of the sympathies which occur in the nervous system. The labour should be so regulated and directed as to be profitable to the state. Besides emptying criminals in laborious and useful manufactures, they may be compelled to derive all their subsistence from a farm and a garden cultivated by their own hands [and] adjoining the place of their confinement.

THESE punishments may be used separately or [may be] more or less combined, according to the nature of the crime, or according to the variations of the constitution and temper of the criminal. In the application of them, the utmost possible advantages should be taken of the laws of the association of ideas, of habit, and of imitation.

TO render these physical remedies more effectual, they should be accompanied by regular instruction in the principles and obligations of religion by persons appointed for that purpose.

THUS far I am supported in the application of the remedies I have mentioned for the cure of crimes by the facts that are contained in Mr. Howard's history of prisons, and by other observations. It remains yet to prescribe the *specific* punishment that is proper for each *specific* crime. Here my subject begins to oppress me. I have no more doubt of every crime having its cure in moral and physical influence than I have of the efficacy of the Peruvian bark in curing the intermitting fever. The only difficulty is, to find out the proper remedy or remedies for particular vices. Mr. Dufriche de Valazé, in his elaborate treatise upon penal laws, has performed the office of a pioneer upon this difficult subject. He has divided crimes into classes, and has affixed punishments to each of them, in a number of ingenious tables. Some of the connections he has established between crimes and punishments appear to be just.—But many of his punishments are contrary to the first principles of action in man; and all of them are, in my opinion, improper as far as he orders them to be inflicted in the *eye* of the *public*. His attempt, however, is laudable and deserves the praise of every friend to mankind.

IF the invention of a machine for facilitating labour has been repaid with the gratitude of a country, how much more will that man deserve who shall invent the most speedy and effectual methods of restoring the vicious part of mankind to virtue and happiness, and of extirpating a portion of vice from the world? — Happy condition of human affairs! when humanity, philosophy and Christianity shall unite their influence to teach men that they are brethren and to prevent their preying any longer upon each other! Happy citizens of the United States, whose governments permit them to adopt every discovery in the moral or intellectual world that leads to these benevolent purposes!

LET it not be objected that it will be impossible for men who have expiated their offences by the mode of punishment that has been proposed to recover their

former connections with society. This objection arises from an unfortunate association of ideas. The infamy of criminals is derived not so much from the remembrance of their crimes as from the recollection of the ignominy of their punishments. Crimes produce a stain which may be washed out by reformation, and which frequently wears away by time: But public punishments leave scars which disfigure the whole character; and hence persons who have suffered them are ever afterwards viewed with horror or aversion. If crimes were expiated by private discipline and succeeded by reformation, criminals would probably suffer no more in character from them than men suffer in their reputation or usefulness from the punishments they have undergone when boys at school.

I AM so perfectly satisfied of the truth of this opinion that methinks I already hear the inhabitants of our villages and townships counting the years that shall complete the reformation of one of their citizens. I behold them running to meet him on the day of his deliverance.—His friends and family bathe his cheeks with tears of joy; and the universal shout of the neighbourhood is, “This our brother was lost and is found—was dead, and is alive.”

IT has long been a desideratum in government that there should exist in it no pardoning power since the *certain ty* of punishment operates so much more than its severity, or infamy, in preventing crimes. But where punishments are excessive in degree or infamous from being public, a pardoning power is absolutely necessary. Remove their severity and public infamy, and a pardoning power ceases to be necessary in a code of criminal jurisprudence.—Nay, further: it is such a defect in penal laws as in some measure defeats every invention to prevent crimes or to cure habits of vice. If punishments were moderate, just, and private, they would exalt the feelings of public justice and benevolence so far above the emotions of humanity in witnesses, juries, and judges that they would forget to conceal or to palliate crime; and the *certain ty* of punishment, by extinguishing all hope of pardon in the criminal, would lead him to connect the beginning of his repentance with the last words of his sentence of condemnation. To obtain this great and salutary end, there should exist *certain* portions of punishment, both in duration and degree, which should be placed by law beyond the power of the discretionary court (before mentioned) to shorten or mitigate.

I HAVE said nothing upon the manner of inflicting death as a punishment for crimes because I consider it as an improper punishment for *any* crime. Even murder itself is propagated by the punishment of death for murder. Of this we have a remarkable proof in Italy. The Duke of Tuscany, soon after the publication of the Marquis of Beccaria’s excellent treatise upon this subject, abolished death as a punishment for murder. A gentleman, who resided five years at Pisa, informed me that only five murders had been perpetrated in his dominions in twenty years. The same gentleman added that after his residence in Tuscany, he spent three months in Rome, where death is still the punishment of murder, and where executions, according to Doctor Moore, are conducted with peculiar circumstances of public parade. During this short period, there were sixty murders committed in the precincts of that city. It is remarkable that the manners, principles, and religion of the inhabitants of Tuscany and Rome are exactly the same. The abolition of death alone, as a punishment for murder, produced this difference in the moral character of the two nations.

I SUSPECT the attachment to death as a punishment for murder in minds otherwise enlightened upon the subject of capital punishments arises from a false

interpretation of a passage contained in the Old Testament, and that is, "He that sheds the blood of man, by man shall his blood be shed." This has been supposed to imply that blood could only be expiated by blood. But I am disposed to believe with a late commentator² upon this text of scripture that it is rather a *prediction* than a *law*. The language of it is simply that such will be the depravity and folly of man, that murder, in every age, shall beget murder. Laws, therefore, which inflict death for murder, are, in my opinion, as unchristian as those which justify or tolerate revenge; for the obligations of Christianity upon individuals to promote repentance, to forgive injuries, and to discharge the duties of universal benevolence are equally binding upon states.

[IT IS an inviolable principle that the taking off human life is the solitary prerogative of HIM who gave it. Human laws, therefore, rise in rebellion against this prerogative when they transfer it to human hands.

IF society can be secured from violence by confining the murderer so as to prevent a repetition of his crime, the end of extirpation will be answered. In confinement, he may be reformed—and if this should prove impracticable, he may be restrained for a term of years that will probably be coeval with his life.

THERE was a time when the punishment of captives with death or servitude and the indiscriminate destruction of peaceable husbandman, women and children were thought to be essential to the success of war and the safety of states. But experience has taught us that this is not the case. And in proportion as humanity has triumphed over these maxims of false policy, wars have been less frequent and terrible, and nations have enjoyed longer intervals of internal tranquillity. The virtues are all parts of a circle. Whatever is humane is wise—whatever is wise is just—and whatever is wise, just, and humane will be found to be the true interest of states, whether criminals or foreign enemies are the objects of their legislation.

I HAVE taken no notice of perpetual banishment as a legal punishment as I consider it the next in degree, in folly and cruelty, to the punishment of death. If the receptacle for criminals which has been proposed is erected in a *remote* part of the state, it will act with the same force upon the feelings of the human heart as perpetual banishment. Exile, when perpetual, by destroying one of the most powerful principles of action in man, viz. the love of kindred and country, deprives us of all the advantages which might be derived from it in the business of reformation. While certain passions are weakened, this noble passion is strengthened by age; hence, by preserving this passion alive, we furnish a principle which, in time, may become an overmatch for those vicious habits which separate criminals from their friends and from society.

NOTWITHSTANDING this testimony against the punishment of death and perpetual banishment, I cannot help adding that there is more mercy to the criminal and less injury done to society by both of them than by *public* infamy and pain without them.

THE great art of surgery has been said to consist in saving, not in destroying or amputating, the diseased parts of the human body. Let governments learn to imitate, in this respect, the skill and humanity of the healing art. Nature knows no waste in any of her operations. Even putrefaction itself is the parent of useful productions to man. Human ingenuity imitates nature in a variety of arts. Of all matters of all kinds are daily converted into the means of increasing the profits of industry and the pleasures of human life. The soul of man alone, with all its moral

and in intellectual powers, is, when misled by passion, abandoned by the ignorance or cruelty of man to unprofitable corruption or extirpation.

IF the foregoing reasonings and facts have been urged in vain in favour of private punishments, I shall add one more argument, which I hope will be irresistible. The punishments of wicked men in the world of spirits are invisible; we have no knowledge of their reality, nature, degrees, or duration but what was revealed to us nearly eighteen hundred years ago; and yet governments owe their stability, chiefly, to that morality which the terror of these invisible, remote, and indefinite punishments excites in the human mind.

A WORTHY prelate of the church of England once said upon seeing a criminal led to execution, "There goes my wicked self." Considering the vices to which the frailty of human nature exposes whole families of every rank and class in life, it becomes us—whenever we see a fellow-creature led to public infamy and pain—to add further, "There goes my unhappy father, my unhappy brother, or my unhappy son," and afterward to ask ourselves whether *private* punishments are not to be preferred to *public*.

FOR the honour of humanity, it can be said that in every age and country there have been found persons in whom uncorrupted nature has triumphed over custom and law—else why do we hear of houses being abandoned near to places of public execution? Why do we see doors and windows shut on the days or hours of criminal exhibitions and processions? Why do we hear of aid being secretly afforded to criminals to mitigate or elude the severity of their punishments? Why is the public executioner of the law an object of such general detestation? These things are the latent struggles of reason, or rather the secret voice of God himself, speaking in the human heart against the folly and cruelty of public punishments.

I SHALL conclude this inquiry by observing that the same false religion and philosophy which once kindled the fire on the altar of persecution now doom the criminal to public ignominy and death. In proportion as the principles of philosophy and Christianity are understood, they will agree in extinguishing the one and destroying the other. If these principles continue to extend their influence upon government as they have done for some years past, I cannot help entertaining a hope that the time is not very distant when the gallows, the pillory, the stocks, the whipping-post, and the wheel-barrow (the usual engines of public punishments) will be connected with the history of the rack and the stake as marks of the barbarity of ages and countries, and as melancholy proofs of the feeble operation of reason and religion upon the human mind.

Notes

¹Miss MOORE. [Rush's note]

²The Reverend Mr. WILLIAM TURNER, in the second Volume of the *Memoirs of the Literary and Philosophical Society of Manchester*. [Rush's note]