Early Efforts to Abolish Capital Punishment in Pennsylvania

The criminal codes of the American colonies were derived from and owed much of their severity to the barbaric and bloody system of penal law of England. However, the colonists never went to the extremes of the mother country, where in the eighteenth century well over two hundred capital crimes were listed in the statute books. It was with the appearance of Beccaria's *Essay on Crimes and Punishments* in 1764 that a new era in the history of punishment was ushered in. This epoch-making book, a true product of the age of deism, rationalism, and scientific enquiry, became the handbook of all prison reformers, and as early as 1773 an English edition was printed in New York, while another appeared in Philadelphia five years later. Beccaria maintained that the certainty not the severity of punishment was the most powerful deterrent against the commission of crime; this principle all opponents of capital punishment made the keystone of their argument. Other reformers like Voltaire, Montesquieu, Howard, and Bentham also greatly influenced American views on penal reform.

At the time of the settlement of Pennsylvania by William Penn, the number of capital crimes in the colonies averaged about fifteen. But the Quakers, dominated by pacifism and non-resistance, in their model commonwealth punished only wilful murder with death. After 1700 Negroes were punished capitally for murder, rape, burglary, and burglary. This was the state of affairs until 1718, when a compromise over the right of affirmation resulted in the introduction of the English criminal code. Thirteen crimes, including treason, murder, manslaughter, highway robbery, arson, sodomy, and rape, were made capital, and in 1756 and 1767 counterfeiting was added to the list. Until the emergence of the penal reform movement after...
the American Revolution imprisonment was rare due to the lack of a penitentiary system, and criminals were usually punished by death, corporal punishment, and fines.¹

Long before Beccaria, in 1699 John Bellers, an English Friend, had advocated the complete abolition of the death penalty. The execution of felons, wrote Bellers, is a “stain . . . to Religion and [a] loss . . . to the Kingdom.”² Not capital punishment but a timely and industrious education, he believed, would be the best preventative against crime. From Bellers’ time the Quakers became the greatest single force in England behind the movement to abolish capital punishment, and in the second decade of the nineteenth century under the leadership of William Allen they were instrumental in forming the Society for the Diffusion of Knowledge Respecting the Punishment of Death and the Improvement of Prison Discipline.³

Like their English brethren the Friends of Pennsylvania showed a keen interest in the reformation of the criminal code. Influenced by French ideas and the work of Beccaria, the Constitution of 1776 called for penal reform, but, owing to the war with England, no change was made in the criminal law until 1786, when the number of capital crimes was greatly reduced. In 1776 there had been formed The Philadelphia Society for Relieving Distressed Prisoners, but it was dissolved the next year. Prison reform, however, would not down and, mainly because of Quaker persistence, in 1787 The Philadelphia Society for Alleviating the Miseries of Public Prisons was organized in Philadelphia. This organization exists to this very day as The Pennsylvania Prison Society, and in its long history has contributed greatly to place Pennsylvania in the van in penological


progress—witness the Walnut Street Jail which became the envy of European reformers.⁴

Capital punishment was regarded generally as the greatest deterrent against crime. The public execution of a felon was an example, it was believed, which would strike fear into the heart of every evildoer. Man, as a free moral agent, deliberately chose the path of crime and must take the consequences. Many advanced thinkers disputed this position, considering the reformation of the culprit and the protection of society to be the twin objects of punishment. Also they recognized the importance of the conditioning factors of social environment and heredity, a far cry from the old belief in natural human depravity.

Among the earliest opponents of capital punishment was William Bradford, Attorney General of Pennsylvania and the United States, who was the moving force behind the Pennsylvania statute of 1794 which punished only murder in the first degree, "murder . . . perpetrated by means of poison, or by lying in wait, or by any other kind of willful, deliberate or premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate, any arson, rape, robbery or burglary . . . ," with death.⁵ This was the first statute in the United States to distinguish between first degree and second degree murder. In a pamphlet expressing his views Bradford showed himself to be a true disciple of Beccaria, Howard, and Montesquieu. The Mosaic Laws, which were used by the enemies of reform to stifle progress, Bradford declared, "might have been proper for a tribe of ardent barbarians wandering through the sands of Arabia [and] are wholly unfit for an enlightened people of civilized and gentle manners."⁶ A severe criminal code, he insisted, leads only to the acquittal of the prisoner. As for the deliberate assassin, he ought to suffer death, for "it were better that ten such atrocious criminals should suffer the penalty of the present system, than one worthy citizen should perish by its abolition. The crime imports ex-


⁵ Statutes at Large of Pennsylvania, 1786–1809 (Harrisburg, 1906–1915), XV, 175.

treme depravity and it admits no reparation." Bradford, however, did admit that the death penalty might be abolished by the spread of educational facilities.

It remained for the eminent physician, Benjamin Rush, to be the first Pennsylvanian openly to advocate the complete abolition of capital punishment. In 1787 Rush read a paper to the Society for Promoting Political Enquiries in Benjamin Franklin's house in which he pointed out the harmful effects of public executions and the advantages of imprisonment over death as a punishment for murder. The publication of this paper aroused the ire of the Reverend Robert Annan, a Presbyterian minister, who castigated Rush in the local press in a most "Calvinistical" manner. "Murder is propagated by hanging for murder," Rush declared. More influential, however, was his Considerations on the Injustice and Impolicy of Punishing Murder by Death, issued in 1792 after partial publication in The American Museum of Mathew Carey. The arguments used by Rush were almost wholly those of Beccaria. For example, Rush repeated the sophistry that capital punishment violated the political compact because no person could legally dispose of his life and therefore could not commit that authority to any body of men. The scriptural argument was considered in detail, and the Noahic precept—"Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man"—was not held to be mandatory. As for the Mosaic Law, it would oblige Christians "to punish adultery, blasphemy, and other capital crimes that are mentioned in the levitical law, by death." Capital punishment, the author maintained, was the natural offspring of monarchy and had no place in republican governments. Kings have considered their subjects as their property and have acted accordingly; republics like the United States have peaceful and benevolent forms of government and an execution in

7 Ibid., 35.
9 Collections of the Massachusetts Historical Society, 6th series, IV, 419.
such a country was like a "human sacrifice in religion." Thomas Parvin, a Friend, hoped that the legislature would imbibe the sentiments expressed in the pamphlet. The legislature, however, never did "imbibe" these views and to this day Pennsylvania punishes capitally first degree murder.

For almost a generation the question of the death penalty lay in abeyance. An occasional dissenter like Robert J. Turnbull was but a voice in the wilderness. The mild criminal codes of America were undoubtedly greatly influenced by the prevailing scarcity of labor. In Europe labor was cheap and plentiful; the criminal law harsh and the death penalties many. The westward movement of population in the United States created a still greater labor shortage, and imprisonment, calling for the utilization of the prisoners' working capacities, was substituted for corporal punishment and death. With the inauguration of a system of contract labor the penitentiaries were put on a capitalistic basis. However, the humanitarian factor was especially strong in Pennsylvania. The Friends, it is true, generally favored the abrogation of the death penalty, but they were a declining factor in the political history of the state and lacked the crusading zeal so necessary to the success of a cause.

The capital punishment issue was suddenly revived in 1809 by a series of articles in Poulson's Daily Advertiser and the farsighted annual message of Governor Simon Snyder to the legislature. Governor Snyder recommended the substitution of imprisonment for life in lieu of punishment by death. A Senate committee reported in favor of abolition, believing that the propitious moment had arrived "for giving the last stamp of greatness and humanity to the character of Pennsylvania . . . ," but by a vote of 16 to 12 the Senate preferred to postpone the issue. According to John Connelly, the principal opposition to the resolution came from the "committee

13 Ibid., 19.
18 Ibid., 82.
for Dickinson College” whose “humanity has not kept pace with their learning.” In December, 1810, the Senate again postponed consideration. Governor Snyder returned to the subject of capital punishment in his message of December 5, 1811, and committees were appointed in the Senate and House to consider the question. In addition, petitions favoring abolition began to descend upon the legislature as public agitation increased. On March 5, 1812, in the House a memorial from a public meeting of inhabitants of Chester County, praying that a law be passed for the abolition of the death penalty, was read and laid on the table; remonstrances, opposed to any change, also were presented. In the Senate, however, a more determined effort was made to repeal the death penalty. On February 22 a select committee reported that they “feel a decided conviction of the propriety and policy of extending still further the boundary of humanity, by abolishing the punishment of death, altogether, and thereby obliterating the last feature of sanguinary law, that remains to sully the pages of our criminal jurisprudence.” By a vote of 21 to 7 the Senate adopted the resolution of the committee to bring in a bill for abolition. On March 11 consideration was postponed until the next session. Although the subject was before the legislature for several more years, favorable action on the issue was hardly to be expected. Considerable excitement, however, was aroused on several occasions. For example, in January, 1815, a petition from Mifflin County was read in the House accusing Governor Snyder of omitting any mention of capital punishment in his message of 1810 for political reasons and castigating him for reviving the question.

The period from 1817 to 1827 was one of comparative quiet; only once did the subject of the abolition of the death penalty cause more than the merest ripple. In February, 1824, the Negro Benjamin Stewart was hanged for murder in Market Square in Harrisburg. As for the scenes which attended this execution, they were more like those one would expect at a fair than at a hanging. “There was

21 Pennsylvania, Senate Journal (1811-1812), 278.
22 Ibid., 291-292, 388-389; The Weekly Register (Baltimore), May 7, 1812, 16.
scarcely any thing but intemperance to be seen and profanity
heard."24 Influenced by the proximity of such a spectacle, strong
attempts were made to carry a bill through the legislature substitut-
ing solitary confinement during life for capital punishment; they
were entirely unsuccessful. "We should suppose," declared the
Harrisburg Chronicle, "that the scenes that attended the execution
of Negro Benjamin would have a more powerful influence in favour
of the abolition than volumes of argument."25

From 1828 to 1852, however, the question was continuously before
the legislature and public; and the outpouring of petitions, especially
during the 1840's, was enough to cause many legislators to act
cautiously. When Governor J. Andrew Shulze appointed a com-
mittee to consider the revision of the penal code, its report in
December, 1827, was a reasoned defense for the status quo.26 In
January, 1831, both the Senate and House voted to postpone con-
sideration of resolutions instructing the Committee on the Judiciary
System to enquire into the expediency of abolishing the death
penalty.27 Two years later a similar resolution reached a second
reading in the House, and again in January, 1836.28 In the Senate
even less success was achieved.29

The heyday of the agitation against capital punishment was during
the 1840's. This decade saw the creation of state societies in Massa-
chusetts and New York opposed to the death penalty; the establish-
ment of a national society with headquarters in Philadelphia; and the
appearance of the first paper devoted exclusively to the abrogation
of the gallows—The Hangman of Boston. In the state legislature
capital punishment became a question of importance as a deluge of
petitions swamped the legislators and each session beheld the friends
and foes of abolition struggle for supremacy. In April, 1840, a House
committee reported that it was inexpedient to grant the prayers of
the petitioners.30 A year later this position was affirmed by the

24 Harrisburg Intelligencer, quoted in Franklin Gazette (Philadelphia), Feb. 9, 1824. Cf.
General Advertiser (Philadelphia), Feb. 9, 1824.
27 Ibid. (1830-1831), I, 144-145; House Journal (1830-1831), I, 97; Pennsylvania Reporter
(Harrisburg), Jan. 21, 1831.
30 House Journal (1840), I, 989.
Instead of waning at these setbacks, the demand for the abolition of the gallows increased; in 1842 a tremendous mass of petitions plagued the legislators, who preferred to ignore the question if possible. But it could not be evaded.

As hardly a day went by without the presentation of a petition on the subject of capital punishment, the Senate was forced to take cognizance of the issue. On February 21, 1842, however, the Senate voted to postpone consideration for the present. Meanwhile in the House, E. Joy Morris of Philadelphia attempted to amend an act to abolish imprisonment for debt by substituting "imprisonment for life in solitude and at hard labor" for capital punishment, only to see his amendment defeated by an overwhelming majority. During the same session the House refused to grant the use of its hall to a group of citizens of Philadelphia for the purpose of delivering a lecture in opposition to capital punishment. In March, 1843, the House Committee on the Judiciary System reported against any change in the law, but an obdurate minority pointed out that "public opinion is every day becoming more and more averse to the infliction of death, and the chances of escape to the offender are every day rapidly increasing." Although the torrent of petitions continued to increase, the Senate attempted to ignore the subject entirely, while in the House it was never brought to a vote. Undoubtedly the session of 1843-1844 saw the high watermark of petitions as thereafter a noticeable decline followed.

Not until March, 1846, did the legislature deign to consider seriously any change in the law regarding capital punishment. A month later in the House, John L. Webb of Bradford offered an amendment to a bill on the jury system which would substitute life imprisonment, separate and solitary, at hard labor for the death penalty in case of first degree murder. This attempt at reform was defeated by a vote of 53 to 27; an amendment permitting the court and jury to recommend to the governor commutation of the death penalty was also defeated.

31 Ibid. (1841), I, 677. An attempt to abolish capital punishment for females was also defeated. The Keystone (Harrisburg), Jan. 16, 1841.
32 Senate Journal (1842), I, 326-331.
33 House Journal (1842), I, 1152.
34 Ibid., 119, 135-136.
penalty to life imprisonment was likewise defeated, 50 to 35.36 In the Senate during this session, although four of the five committee members favored abolition, no vote was taken. Stirred by the possibility of success, the number of petitioners increased, but the next legislature remained aloof.37 On February 18, 1848, the Senate voted against any change in the law; in the House, although the Judiciary Committee reported “An Act to Abolish Capital Punishment,” no further action was taken. A year later a resolution of George T. Thorn of Philadelphia instructing the House Committee on the Judiciary System to enquire into the expediency of abolishing capital punishment was defeated, 62 to 32.38

By 1850 much of the original fervor behind the anti-gallows movement had subsided; petitions to the legislature became fewer and fewer but, notwithstanding this, several determined efforts were made to push through reform legislation. In April, 1852, the House agreed to a compromise measure: upon the rendition of a verdict of guilty in cases of murder in the first degree the jury might recommend to the court the substitution of imprisonment in solitary confinement for from fifteen to fifty years instead of capital punishment.39 The bill was sent to the Senate where it was buried. Not until 1859 was another serious effort made to press the issue. In March of that year the House Judiciary Committee reported unfavorably an anti-capital punishment bill and was sustained by the House by the close vote of 45 to 42.40 This was the last endeavor made to force the matter prior to 1860, and with the approach of the bloody struggle between the states thoughts of humanitarian reform fled from the legislative mind.

But the movement to reform the penal code was not entirely unsuccessful. As early as 1787 Benjamin Rush had spoken out against public executions,41 and, although humanitarians deprecated the barbaric custom, almost no positive attempts were made prior

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36 Ibid. (1846), I, 672-674.
37 On March 6, 1847, the Speaker of the House presented petitions opposing capital punishment containing almost 12,000 signatures. Ibid. (1847), I, 477.
38 Ibid. (1849), I, 48.
39 Ibid. (1852), I, 710-712.
40 Ibid. (1859), 598.
41 Benjamin Rush, An Enquiry into the Effects of Public Punishments Upon Criminals and Upon Society (Philadelphia, 1787).
to 1824 to eliminate such ghastly spectacles. Public executions, it was asserted, were demoralizing and debasing and only led to more murders. As thousands, young and old, gathered to see a human being launched into eternity, their value of human life naturally decreased. Many of these affairs turned into drunken brawls, and not infrequently murders were committed shortly after by one of the spectators. In February, 1824, a Senate resolution instructing the Judiciary Committee to enquire into the expediency of prohibiting public executions was laid on the table. In the House one day after the execution of the Negro Benjamin a legislator introduced a resolution instructing a select committee to bring in a bill providing for the execution of capital punishment within the limits of jail yards only in the presence of a proper number of peace officers and as many ministers of the Gospel as shall ask admittance. After considerable discussion a compromise was reached—a committee was appointed to investigate the subject. The select committee came out in favor of a bill but the House laid the report on the table. In 1831 another unsuccessful effort was made to prohibit public executions. Finally on April 10, 1834, "An Act to Abolish Public Executions" became law. This statute provided for the infliction of capital punishment within the walls or yard of the jail of the county in which the culprit was convicted, in the presence of the sheriff or coroner; in addition, the sheriff was to invite a physician, the attorney general of the county, twelve reputable citizens, and at the request of the criminal not more than two ministers of the Gospel, and any of the criminal's immediate relatives, together with such officers of the prison and deputies as the sheriff in his discretion might think expedient. In no case were minors to witness the execution.

42 On this score Edward Livingston quotes a Pennsylvanian: "Executions in this state are scenes of riot and every species of wickedness; twenty, thirty, or forty thousand persons have been in attendance in the merrymaking, much after the manner of fairs in former times." Raymond T. Bye, *Capital Punishment in the United States* (Philadelphia, 1919), 4.

43 *Harrisburg Chronicle*, Feb. 5, 1843.


Opponents of the gallows recognized the importance of organizing societies on the anti-capital punishment principle. By 1850 such societies existed in Massachusetts, Tennessee, Ohio, Alabama, Louisiana, Indiana, New York, Iowa, and Pennsylvania; with a national society as the capstone of the edifice. Undoubtedly the most formidable campaign against the gallows was carried out in Massachusetts, where the Massachusetts Society for the Abolition of Capital Punishment, formed in 1844, listed Wendell Phillips, the Reverend John Pierpont, Robert Rantoul, Jr., the Reverend Charles Spear, the Reverend Samuel J. May, the Reverend James F. Clarke, John Greenleaf Whittier, and J. A. Andrews among its members. The New York society, organized in the same year, included William T. McCoun, Horace Greeley, Freeman Hunt, F. C. Havemeyer, and the Reverend William S. Balch. Throughout this period the Philadelphia Society for Alleviating the Miseries of Public Prisons dominated the penal reform movement in Pennsylvania notwithstanding its refusal to come out on the question of capital punishment. Although prominent members like Roberts Vaux were opposed to the death penalty, the society avoided any official opinion on the subject. Undoubtedly many members quietly agitated in favor of the reform; for example, Richard M. Smith requested copies of Roberts Vaux's essays on capital punishment so that he could circulate them among acquaintances. No formal organization, however, devoted exclusively to the eradication of the gallows was established before the 1840's. When the Reverend Cornelius C. Cuyler of the Second Presbyterian Church delivered a sermon upholding the gallows, the friends of reform decided to reply. In May, 1842, they held a town meeting and appointed a "Committee of Twenty-Five on Capital Punishment"; this committee published a reply to Cuyler and was still active three years later.

The immediate occasion for the formation of an anti-capital punishment society in 1845 was a convention of the foes of the gallows in New York in May of that year which resulted in the establishment

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47 *The Prisoners' Friend* (Boston), II (1850), 282.
48 Teeters, *op. cit.*, 394ff.
of a national society headed by George M. Dallas, Vice-President of the United States. The first meeting of this national society was to be held in Philadelphia in October. But before that date Philadelphians got busy. In June they met in the county courtroom and formed the Philadelphia Society for Promoting the Abolition of Capital Punishment.\(^{51}\) Dr. Henry S. Patterson was elected President; John Scholefield and John Bouvier, Vice-Presidents; John Ashton, Jr., Secretary; and an executive committee of twenty was instructed to issue an address to the people of the state. This address appeared in the newspapers in July and called on all friends of reform to attend the great convention and to assist in concerting plans for the complete overthrow of the bloody gallows.\(^{52}\) Before the national convention met, however, the Philadelphia society was reorganized. On November 11, 1845, the society met in the Chinese Saloon of the Museum Building and called John Scholefield to the chair. The executive committee reported that in several places local societies opposed to capital punishment had been formed and recommended that the Philadelphia society be expanded into a state society. After listening to an eloquent plea by Charles C. Burleigh defending this project, the Pennsylvania Society for Promoting the Abolition of the Death Penalty was born out of the Philadelphia society, which still carried on an independent existence. John Scholefield was chosen President and in the evening the members heard Horace Greeley, William D. Kelley, and Dr. Henry S. Patterson flail the murderous penal code.\(^{53}\)

The very next day, November 12, at the national convention the American Society for the Abolition of Capital Punishment was organized. "The attendance last evening," declared the Public Ledger, "was very large, embracing a great proportion of ladies, and all present listened with earnest attention to the arguments put forth, with eloquent language, by the various speakers."\(^{54}\) Although John Quincy Adams was unable to attend, he prayed for the success

\(^{51}\) Pennsylvania Inquirer and National Gazette (Philadelphia), June 10, 1845; Public Ledger, June 11, 1845; The Hangman, July 2, 1845.

\(^{52}\) Public Ledger, July 3, 1845; Pennsylvania Inquirer and National Gazette, July 3, 1845; The Hangman, Aug. 13, 1845.

\(^{53}\) Public Ledger, Nov. 12, 13, 1845; The North American (Philadelphia), Nov. 12, 1845; The Pennsylvanian (Philadelphia), Nov. 12, 1845; The Friend, XIX, 61.

\(^{54}\) Public Ledger, Nov. 13, 1845.
of the cause in a public letter. Resolutions were passed approving the formation of central committees in the states and the need for adequate publicity. George M. Dallas, the president of the national society, delivered an address in which he eloquently portrayed the duties of the members, deprecated any religious controversy, and begged his audience to respect the laws for capital punishment as long as they remained on the statute books. Among the vice-presidents were Horace Greeley, R. E. Homer of New Jersey, J. E. Snodgrass of Maryland, Dr. John Harsem of New York, Cyrus M. Burleigh of Connecticut, and Daniel Neall, William H. Johnson and Dr. Henry S. Patterson of Pennsylvania. As for the national society, it was meeting as late as 1849 and probably continued a precarious existence for several more years. The Pennsylvania Society for Promoting the Abolition of the Death Penalty seems to have faded from the scene shortly after its creation.

It is especially difficult to gauge the influence of the Society of Friends in the movement to abolish capital punishment. Both Orthodox and Hicksite Friends were among the prominent opponents of the gallows, but the yearly meetings observed silence. On the other hand, the Progressive Friends, who had broken away from the Hicksites in 1848, were outspoken in their denunciation of the death penalty. In 1853 the Progressive Friends of Pennsylvania held their first yearly meeting and were strengthened in their determination to seek the primitive spirit of Quakerism by heartening letters from Theodore Parker, Gerrit Smith, Samuel J. May, Cassius M. Clay, William L. Garrison, and Thomas W. Higginson. At this meeting testimonies were adopted supporting temperance, abolition of slavery, equal rights for women, abstinence from tobacco, peace, and the abolition of capital punishment. In addition, the meeting petitioned the state legislature to end the reign of the gallows and to "substitute in the place of death, some means of prevention more in accordance with the Christian precepts, and the advancing spirit of the age."

55 The Hangman, Nov. 26, 1845.
60 The Pennsylvanian, Nov. 18, 1845; Public Ledger, Nov. 13, 1845.
58 Proceedings of the Pennsylvania Yearly Meeting of Progressive Friends, held at Old Kennett, Chester County, Fifth Month, 1853 (New York), 39.
the legislature, and in 1856 they denounced the "wrongfulness and barbarity of Capital Punishment." 59 From 1857 to 1860 the Progressive Friends continued to adopt testimonies calling for the abolition of the gallows and the reformation of the criminal by humane imprisonment. This religious society, which was not founded on any creed, invited the cooperation of all friends of truth, humanity, and progress without regard to sectarian distinctions, sex, nationality, or color on behalf of enlightened reform. Nor was their call in vain, for among the most ardent champions of reform were Unitarian ministers like Robert Hassall, Thomas J. Mumford, Octavius B. Frothingham, Moncure D. Conway, Samuel Longfellow, and James Richardson, Jr.

The controversial literature on capital punishment will fill a fairly large library; indeed, from the day of Benjamin Rush the subject has continued to agitate the public mind. During the first half of the nineteenth century in America the most influential writings on the death penalty were based largely on Beccaria, Howard, Montesquieu, and Voltaire; the most prominent popularizers were Edward Livingston, Robert Rantoul, Jr., and John L. O'Sullivan and most of the work done merely rehashed their ideas. Three basic principles underlie the thinking of the penal reformers of the early nineteenth century. In the first place, it was insisted that not the severity alone but its certainty gave efficacy to punishment. Then, punishment must be proportionate to the offense so that one criminal code would not carry incongruous penalties for similar crimes. And finally the criminal was to be regarded as a human being whose reformation was one of the aims of punishment.

The argument against capital punishment was twofold: on religious grounds, and on those of expediency. In general the opponents of the gallows rested their case on the New Testament and denied the propriety of any citations in favor of the death penalty taken from the Old Testament. The Scriptures of the Jews, it was declared, have no validity in modern Christian society. When Christ died on the cross, he freed all men from the tenets of Israel including its numerous capital crimes. And nowhere in the New Testament is there an explicit injunction to observe the death penalty; instead, everywhere one inhales the air of benevolence, charity, and forgive-

59 Ibid. (1856), 48-49.
ness—a rebuke, not the gallows. This position was clearly expressed by a lawyer of Bucks County:

There seems to me to be in capital punishments, in legal or Judicial killing, so much of the spirit of retaliation, so much like vengeance, so much of a former of the Mosaic dispensation, that I find it utterly irreconcilable with my ideas of humanity—of the law of love—which Jesus promulgated, which He obeyed, and which He commanded us to obey also. . . . The truth is, the spirit and entire scope of Christianity breathes passiveness, non-resistance, mildness, humanity and mercy in the amolest manner and upon the most comprehensive scale.  

This conflict between the Old and New Testament moralities was apparent in all thinking on the subject of the death penalty.

In a lecture published at the request of the Philadelphia Peace Society, Dr. John A. Elkinton maintained that capital punishment was anti-republican, was opposed to the federal and state constitutions, and was in direct contravention of the Declaration of Independence. But few abolitionists were willing to express such extreme views. Rather, they based their attack on the gallows on the inexpediency of the death penalty. It was pointed out that in many cases juries found capital punishment repugnant and refused to convict the criminal even in the most obvious instances of guilt. In addition, capital punishment was irrevocable; once the penalty was executed there was no way of recalling the punishment. The death penalty, its opponents declared, was nothing so much as a survival of the barbaric lex talionis and completely out of harmony with modern ideas of humanity. Again it does not take into account the reformation of the criminal, for frequently his extreme act was owing to maladjustment in society and could be cured by therapeutic methods. Imprisonment made possible the emergence of a genuine feeling of repentance on the part of the criminal, while the gallows only ended his life in the midst of his sinful state.

Supporters of the gallows frequently were to be found among the orthodox clergy. In a debate held in March, 1845, under the auspices of the Committee of Twenty-five for Abolishing Capital Punishment,
Elder Frederick Plummer set forth their reasons for upholding capital punishment. The authority to inflict the death penalty, Plummer declared, was grounded on the sacred oracles—the Bible. God has issued a mandate to Noah and his sons to extirpate the murderer; and no other possible interpretation of Genesis 9: 5, 6 was possible without completely twisting the sense of the verses. This was God’s law and was eternal. Nowhere in the New Testament, held Plummer, was there any evidence that Jesus forbade the supreme penalty for murderers. In fact, Jesus definitely advocated obedience to the civil authorities. Undoubtedly death was the greatest deterrent against crime and any errors which occur in the carrying out of this penalty were those incidental to any punishment. Are we to abandon all law because there are mistakes? asked Plummer. No, but abuses in the law could be corrected. Nor is the death penalty inflicted in a spirit of revenge; rather, it represents pure justice annihilating the shedder of blood. The experience of mankind over a period of centuries has sustained capital punishment and the weak-blooded benevolence of certain “philosophers” cannot eradicate the knowledge acquired through religion and morality. When Plummer exclaimed, “... all murderers are children of the devil,” he expressed views full of the Calvinist spirit of righteous retributive justice—views which to this very day hold back progressive penal legislation.

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64 Ibid., 99.
65 Ibid., 130.