

1911

Should Capital Punishment be Abolished

Maynard Shipley

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Maynard Shipley, Should Capital Punishment be Abolished, 2 J. Am. Inst. Crim. L. & Criminology 48 (May 1911 to March 1912)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

SHOULD CAPITAL PUNISHMENT BE ABOLISHED?

THE PROBLEM OF THE HOUR IN FRANCE.

MAYNARD SHIPLEY.¹

The bloody rioting in the streets of Paris on July 1st of last year, and the storming of the Santé Prison by an enraged populace, following the execution of one Liabeuf, seem to indicate that the recent restoration of the guillotine in France was an administration measure out of harmony with the views of the more enlightened urban population. For while it is true that the revival of the death penalty met with applause in the backward provinces, in the capital and other great cities the executioners' renewed activity is regarded by a large number of the common people as "the first step in a new terrorism instituted by the ruling class for suppression of a rising proletariat."

Despite the action of the parliamentary commission which, in 1906, voted for the abolition of capital punishment, and notwithstanding the fact that the budget committee of the same year struck out the salary of M. Deibler, Jr., the public executioner, the Chamber of Deputies resolved, in December, 1908, by a vote of 320 to 201, that death sentences should henceforth be strictly enforced. It was so well known, however, that both Premier Clémenceau and President Fallières were deeply averse to capital

¹Penologist, Oakland, Cal. The author of this article has written extensively on the subject of capital punishment. Among his articles are the following:

"Justice and Crime in Danish Greenland;" *The Juridical Review* (Edinburgh and London), March, 1905.

"Results of the Abolition of Capital Punishment in Belgium;" *Jour. of the American Stat. Assn.*, Sept., 1905.

"Abolition of Capital Punishment in Switzerland;" *American Law Review*, Sept.-Oct., 1905.

"The Abolition of Capital Punishment in Italy and San Marino;" *American Law Review*, March-April, 1906.

"Capital Punishment;" *Harper's Weekly*, Sept. 8, 1906.

"Homicide and the Death Penalty in Austria-Hungary;" *Jour. American Stat. Assn.*, March, 1907.

"Should Female Murderers Be Hanged?" *The Green Bag*, April, 1907.

"Homicide and the Death Penalty in Mexico;" *Annals of the American Academy of Political and Social Science*, May, 1907.

"Plato On Capital Punishment;" *Harper's Weekly*, Dec. 29, 1906.

"Homicide and the Death Penalty in France;" *Harper's Weekly*, June 15, 1907.

"The Abolition of Capital Punishment in France;" *American Law Review*, July-Aug., 1907.

"Does Capital Punishment Prevent Convictions?" *American Law Review*, May-June, 1909.

"What Shall We Do With Our Criminals?" *The World To-Day*, Oct., 1910.

SHOULD CAPITAL PUNISHMENT BE ABOLISHED?

punishment, that many thought the law would remain a dead letter. Although M. Briand, then Minister of Justice, succeeded in convincing these two statesmen that a majority of 119 members of parliament had voted for a literal, not for a theoretical revival of the guillotine's activity, when called upon to sign death-warrants for quadruple execution at Béthune, in Pas-de-Calais, it was with great reluctance that President Fallières yielded, saying, "If France wants blood, she shall have it." Premier Clémenceau, at the same time, was quoted in the *Aurore* (Paris) as saying: "I feel an inexpressible disgust for an administrative murder committed in spite of personal repugnance by officials acting upon order. The spectacle of all these men grouped together to kill one man under the command of other officials who are quietly asleep at the time, revolts me, as a piece of horrible cowardice. The murderer's act was that of a savage. His execution by the guillotine strikes me as a low kind of vengeance. I can understand savages being savage. But the only explanation I can give of the fact that civilized men of good education are not content with hindering the wrongdoing of the malefactor, but virtuously insist upon cutting him in two, is that we are reverting to a primitive state."

Soon after the beginning of the year 1909 "Monsieur de Paris," the trim, blackbearded headsman of the Third Republic, dropped work on his "Memoirs" and was seen to saunter unconcernedly toward the Rue Folie Regnault, where, in a small brick structure, lay "La Veuve," the historic guillotine, grown dull with neglect and aged with rust. The philosophic executioner was joined by two aids, who assisted him in putting "the wood of justice in order, with knife sharpened and machinery well lubricated. Thus quietly was rehabilitated this "mysterious agent of authority," without which, according to Joseph de Maïetre, and other advocates of Force, "thrones are engulfed and society disappears."

Then the headsman took his departure for Béthune, a town made memorable in French literature by Alexandre Dumas, whose story of "The Executioner of Béthune" forms the climax of that wonderful series of adventure in "The Three Guardsmen." In this romantic little town, only a few miles distant from the bleak, stricken mining country of Courrières, 30,000 people had gathered in the dawn of a cold, rainy day (January 11, 1909) to witness the revival of an ancient and popular diversion.²

Four noted criminals were to be decapitated for the benefit of the public—and the innkeepers. Long ago Victor Hugo had declared

²Details of the several executions described were obtained from accounts which appeared in French and American newspapers.

that "The law that dips its fingers in human blood to write the commandment, 'Thou shalt not murder,' is naught but an example of legal transgression against the precept itself." Ignoring Victor Hugo's logic, the French Government was about to teach the rabble something of the sanctity of human life, and of the horror of homicide. And what an inspiring lesson it turned out to be! Each time the slanting knife was seen to fall, the savage crowd yelled with delight as they kept count of the heads. The night preceding had been one long debauch. Cafés and drinking shops remained open, that no one with the price need go thirsty, nor hungry. Repeated efforts were made by half-drunken revelers to break through the lines of the soldiers that surrounded the inclosure in which the guillotine had been erected. When the prisoners were at last led to the State's temporary shambles, there arose a murmur of delight, followed by hooting and jeering as the four condemned men were led to the guillotine. When there was a moment's delay in the falling of the knife on one neck, the mob set up a howl of impatience.³

On August 5, 1909, occurred the first execution seen in the capital since the beheading of Peugnez, ten years previously, on the Place de la Roquette. At that time such an event in Paris as a guillotining was a gala day for lovers of the brutal and sanguinary. The streets, houses and wine shops were crowded with dehumanized men, women and children, singing and shouting hysterically, while the half-drunken murderer hurled oaths at the spectators as he was hurried to the scaffold. "Respectable" people, too, looked gleefully on from rented balconies, cracking jokes to the popping of champagne corks. A party of excursionists, among whom was Lord Roseberry, came all the way from London to view the elevating spectacle, and, on account of their superior social positions, were allowed to stand close to the victim, that no detail of the decapitation might escape their gaze.

Last year all this was changed. The brutality and debauchery still permitted in the provinces could not now be tolerated in the streets of Paris. The public might watch M. Deibler at his work, but only at a distance. Attracted by an official announcement that a public execution would take place at 4:30 the following morning (August 5, 1909), in the boulevard Arago, fronting the Santé Prison, immense crowds began at midnight to gather at the scene of the expected beheading, but were kept back from the guillotine by heavy details of police and municipal guards. From midnight till after the execution, all the streets leading to the prison were closed by Republican guards on foot and on horse-

³This, on authority of Mr. Vance Thompson.

SHOULD CAPITAL PUNISHMENT BE ABOLISHED?

back, and by cordons of gendarmes. Only journalists were permitted to pass the line; even deputies were debarred. During the night, M. Deibler and his two silent assistants erected M. Castillarde's panacea for crime. At the break of day the chief of police and his assistants made their appearance, accompanied by the magistrates in their robes. Then followed the victim, a stolid, stupid butcher of twenty-three years, who had, in 1908, stabbed and strangled his own mother, robbery being the motive. Manifestly, the man was a moral imbecile, a much more fit subject for the State's care in an asylum than a proper sacrifice on the altar of "justice"—itself atavistic. There in the pale dawn this victim of society's arrested development stumbled to his doom, dressed only in a shirt, and blinded by a black cloth which entirely veiled his face. Close behind him hurried a priest, whispering prayers into his ear.

Under ordinary circumstances, the condemned would have been at once thrown upon the plank and the whole miserable business terminated in a few moments, sans ceremony. But in the case of parricides, it is the duty of the usher of the tribunal to read the culprit's sentence to him at the very edge of the guillotine. Conformably with that ancient practice, the usher, in a trembling voice, now read the mediæval sentence, whereupon the half-witted matricide was seized by two aids, and the hooded figure flung swiftly upon the plank. The cruel knife, gleaming dully in the dawn, was soon released, and the head of this "free moral agent" toppled into the basket.

M. Deibler resumed his active duties as public headsman on the morning of January 11, 1909, when occurred the quadruple execution at Béthune already described. During the month of March, after several executions had taken place, no less than fifty-seven murders and 189 robberies were reported by the French press. During the preceding November, before the revival of the "lean widow," as the guillotine had been facetiously dubbed, when cold and hunger were gripping the poor and driving them to crime, fewer than twenty cases of murder, and only forty-three cases of robbery were reported.⁴

⁴These statistics were compiled by Miss E. H. Beyer, of Chicago, from the columns of the Parisian daily papers.

A press dispatch from Paris on February 8, of the present year, gives the following account of a festivity at Lille on the occasion of the execution of a murderer in that city.

Paris, Feb. 8.—One morning last week Antoine Favier, the young wine merchant who murdered and robbed a bank messenger in his own house, was guillotined at Lille On the eve of the execution the city wore quite a festive aspect.

Windows overlooking the little square before the Palais de Justice, where the guillotine was erected, were let for remarkable prices, a Lille merchant offer-

Just exactly one year to the day from the morning that "Monsieur de Paris" left his ugly little villa on the outskirts of the capital, and started for the Rue Folie Regnault, bent on sharpening the Government's homicide machine, a dispatch, published in the morning papers, brought the following news to America: "Paris, January 10th (1909): The continuation of the increase in shocking crimes has spread alarm not only in Paris, but throughout France. A wave of tragedy seems to be sweeping over the country," etc.

Four days later appeared the following additional evidences of the value of mediæval repressive measures:

"Paris, Jan. 12.—According to an official report just issued, criminal aggressions have been greatly on the increase in the last year, the number of premeditated murders having nearly doubled, and deaths caused by assaults having increased forty per cent."

Again: Paris, Feb. 11.—The Parisian police are unable to cope with the crime that is disgracing the city. Indeed, it has become so dangerous that they have to travel in pairs and trios at night in certain sections.

The people had been assured by such journals as the *Temps*, the *Gaulois*, and the *Figaro*, that crimes of violence in France had become frequent through the "morbid sentimentality" of the Government, which had, they declared, "feebly shrunk from necessary social surgery," an opinion which received the endorsement of certain conservative criminologists. When it was seen that crimes of violence had but increased with the restoration of the guillotine, it was then contended that what was needed was *more social surgery!* The history of crimes and penalties the world over, however, shows that "more social surgery" has always been followed by *more social violence*. Witness the history of capital

ing \$400 for one window, while as much as \$100 was paid for a single seat. The two little cafés on the square were packed. The prices for refreshments were trebled, and each customer was charged a 50-cent entrance fee.

The doomed man was awakened by the noise of the crowd during the night, but went to sleep when the warders mercifully assured him that the din was due to the arrest of some criminals. At 6 o'clock the public prosecutor awoke him with the news that he had to die. Favier did not move a muscle. He merely said gently to the warders: "You knew yesterday and would not tell me." Then he calmly gave some directions about his papers and heard mass.

The guillotine being just outside the prison gates, the doomed man came in sight of it immediately on emerging from the prison. He did not flinch for a moment. He looked at the crowds on the housetops, at the immobile lines of police, at the little group of reporters and persons with special "permits," among whom were the father and brother of his victim, and then of his own accord stretched himself on the plank. Deibler touched the catch, and justice was done.

SHOULD CAPITAL PUNISHMENT BE ABOLISHED?

crimes, and penalties among the Romans, the Anglo-Saxons, and, later, among the English.⁵

What, in fact, do the judicial statistics of France reveal relative to the course of grave crime during the years of few capital executions?

In the first quarter of the nineteenth century the annual average of persons guillotined in France was about one hundred and twenty; in the second quarter, about forty culprits were beheaded annually. From 1850 to 1860 the yearly average of executions did not exceed twenty-eight, and from 1860 to 1879 the annual average was reduced to about ten, falling to eight during the fifteen years ending in 1890. From 1895 to 1901 the annual average of culprits beheaded was but five. Of eleven criminals sentenced to the guillotine in 1900, only one met death at the hands of "Monsieur de Paris."⁶

Concurrently with the above-noted decrease in the number of criminals executed, the number tried for murder materially diminished, falling from 879 in 1885 to 439 in 1895, and 356 in 1900. During the five years 1891-95, there were 3,127 persons tried in France for capital offenses, and but sixty of these were executed, an annual average of twelve only. Yet, the number of persons brought to bar on charges entailing the death penalty fell to 2,392 during the next five years, a decrease of 735, and "social surgery" was resorted to in twenty-seven cases only. In eleven years, out of 246 culprits condemned to death, the sentences of 156 were commuted. Despite this "morbid sentimentality of the Government," the number of persons charged with capital offenses was, as we have seen, 735 less during the five years 1896-1900 than during the preceding five years.

It may be safely assumed, on the basis of the statistics available, that in so far as *adult* crime is concerned, the decline of the death penalty in France had been accompanied rather by a decrease than an increase in homicide. Official reports show clearly that it is from among the thirty thousand or more "Apaches" of Paris, and other large cities of France, that the murderous criminals are recruited, and these are mostly

⁵Asked his opinion on this point, Prof. E. Durkheim, the distinguished sociologist, replied, in part, as follows: "I know of no facts that permit me to think that abolition of the death penalty results in encouraging and reinforcing homicidal tendencies. The experiments made in several countries of Europe, namely, Italy, Holland and Portugal, show the opposite . . . The criminal, especially the violent criminal, does not think of the possible consequences of his act when it is accomplished. On the contrary, however, capital punishment has necessarily for effect to develop homicidal tendencies. . . . The true means for the enforcement of the desired respect for human life is that society itself refrains from taking human life for any reason."

⁶The figures quoted to 1890 were furnished the writer by the lamented Prof. G. Tarde, and those from 1891 to 1901 by courtesy of the Ministry of Justice.

adventurous, fearless, desperate boys who would snap their fingers in the face of M. Deibler.⁷ An overweening confidence in their ability to escape both jail and guillotine is part of their essential mental equipment.⁸

Some statistics given by Dr. Paul Garnier, an official of the Paris Prefecture of Police, show for that city an increase from twenty juveniles arrested for murder in 1888 to fifty-five in 1894, one hundred and eighteen in 1898, and one hundred and forty in 1900.

Dr. Garnier ascribes the increase of murders among the youth of Paris, not to inactivity of the guillotine, but to certain definite social causes, among which he mentions "alcoholic heredity and want of education."⁹ It may be well to mention in passing that the educational facilities in the crowded districts are notoriously inadequate.

The latest official report on crime in France¹⁰ shows that out of 274 murders for the last recorded year, sixty-five were committed by youths between the ages of sixteen and twenty-one. The same class of offenders were guilty of thirty-five out of one hundred and sixty-eight assassinations or premeditated murders, and of twenty-six out of one hundred and seventy-one assaults. The total French population of both sexes over twenty-one is 24,406,244, and that of minors between the ages of sixteen and twenty-one is 3,248,598, so that the percentage of juvenile criminality is higher than that of adults. That this percentage is growing rapidly higher is attested by the fact that whereas in 1830 the number of offenses against common law committed by minors was but 6,979, the last recorded estimate gives the number as 31,441, an increase of 450 per cent in seventy-five years. Obviously the remedy for this grave situation lies rather in the hands of French statesmen than in the hands of M. Deibler and his two assistants.¹¹

Now who are they who clamor so loudly for the guillotine in France?

⁷Dr. Pierre Janet, the eminent French psychologist, observes, in a letter to the writer:

"For one who has been accustomed to disciplining in the schools, or asylums, it is easy to see that what influences most of the individuals capable of committing criminal acts is not the gravity of the penalty to which they expose themselves, but the certainty of the penalty."

⁸It is stated by Dr. Gustave Le Bon that many of the bands of "Apaches" consist of boys from 14 to 17, and their chiefs are often not more than 19 or 20 years of age.

⁹*Annales d'Hygiene*, Dec., 1901.

¹⁰Published in 1907.

¹¹Dr. Garnier's contention that alcoholism is a potent cause of crime in France is borne out by official statistics, which show that the amount of alcohol consumed by the French people more than doubled, per capita, during the last half of the nineteenth century, and that the amount of alcohol employed for the production of absinthe and similar liqueurs had almost tripled between 1874 and 1905.

SHOULD CAPITAL PUNISHMENT BE ABOLISHED?

Who are the "constituents" who demand a "literal revival" of this social and moral anachronism? Precisely those who still live mentally and morally in the feudal ages, unmindful of the advances of modern penology and criminology. Behind these reactionaries stand the country distillers, the "bouilleurs de cru," and their agents. Is not every execution an occasion for a debauch of alcohol as well as of blood? The eloquent Jaurès did not spare his opponents of the Chamber on just this point when the question of the guillotine was up for debate. Turning to those whom he had dubbed his "alcoholic friends," Jaurès ended his scathing rebuke in the following words: "You who claim that economic servitude, hostility between races, crimes and savage repression are inevitable, you wish to place the guillotine in that dread category. You wish to say that progress shall never permit an end of murder or social assassination. You wish to hoist the black banner of despair. But we have put up a barricade through which your dripping red fingers cannot reach, and we say that hope shall not pass away from the human race."

Let it not be thought that Jaurès and the left side of the Chamber were alone in the fight against restoration of the guillotine. At the conclusion of Jaurès' impassioned speech, Abbe Lemire, from the right, broke away from his colleagues and marched to the tribune, his priestly robes fluttering as he mounted the rostrum; and there he denounced capital punishment as an unwarranted reversion to barbarism. He said, in part: "Jaurès has said that Christianity is not enough. Yet I say that Christianity is full of pity and pardon for the unfortunate, and that on this occasion every Christian should align himself with Jaurès and his colleagues. This question is too big to let bonds of politics or party separate men. I cannot lend my voice to the assistance of a social order which has as its pinnacle a dripping scaffold. This nation cannot go back to barbarism." France, however, did take the backward step, and with what results, we have, it is hoped, clearly shown.