

THE ABOLITION OF CAPITAL PUNISHMENT.--C. H. Eaton, D.D., in the *Criminal Law Magazine*, examines the grounds on which capital punishment should be retained or abolished. The natural conservatism of humanity retards changes in laws which have worked more or less successfully for centuries; but experience and widening intelligence at last reveal their defects, make their enforcement more difficult, and suggest the remedy. Such a time, Dr. Eaton thinks, has come in the history of capital punishment. The classes of offences for which the death penalty is inflicted have become fewer, and in some parts of the world the penalty of death has been abolished. The article in question first reviews the arguments in favour of capital punishment. These are, he thinks, mainly three.

The first of these recognizes, with Blackstone, "the revealed or divine law, which is part of the law of nature directly expounded by God." The behest of that law is, "Whoso sheddeth man's blood, by man shall his blood be shed." In the Mosaic law the penalty of death is applied to many offences, and the *lex talionis* pervades the Jewish code. It is argued that this code was of but local and temporary application, and is not binding on us. That may be granted; but if divine wisdom prescribed laws which inflicted the death penalty, then there must have been states and conditions of society in which it was wise and humane to inflict capital punishment, and that, too, for a considerable variety of offences. If so, then it surely rests on the advocates for the abolition of capital punishment to show that we have so far departed from the states and conditions in which divine wisdom required the death of the transgressor for the good of the community, that we can afford to ignore these precepts of the Mosaic law. Dr. Eaton has gone but a small way towards meeting the force of the argument based on the Jewish civil law, when he has shown that it is no longer binding on us. It was the best possible law for the community for which it was designed. It remains for him to show wherein our circumstances and character differ so radically from those of the Israelites that its penalties are no longer applicable to any crimes, no matter how heinous that may be committed among us. That task he has not attempted.

The second argument reviewed is that capital punishment is essential to the protection of society. It is admitted that as the law of self-defence permits man to kill his assailant when his own life is in danger, so, on the same grounds, society—an association of men—may protect itself. But the influence of sympathy for the culprit is so strong, say those who are opposed to capital punishment, that nothing but the evident hand of necessity can justify the destruction of one human being by another. Is not this sympathy often misplaced? The innocent victim of the criminal, and society at large, are the true objects of sympathy. If there was less notoriety given to the sayings and doings of the condemned criminal, and less publicity to the pity, rather than sympathy, which may be properly felt for him, his punishment would be more effective as a preventive measure than it now is. We confess that we fail to see that the writer of the article referred to above has established his contention that the adequate protection of society can be attained without the death penalty.