

COULD ITS USE BE MADE A SUCCESSFUL ANTIDOTE FOR LYNCHING?

AN EMINENT JUDGE SUGGESTS IT AS A PART PENALTY.

By SIMON E. BALDWIN, LL. D.,
Judge of the Connecticut Supreme Court.

There is a form of murder called lynching. Instances of it are common in the South and occasional in the North. It is a disgrace to our civilization and a reproach to our laws. There must be some deep cause for it, or it would not be supported, as it too often is, by the public sentiment of the community in which the crime occurs. Cannot this cause be discovered and removed?

The man lynched is put to death, in the great majority of cases, because it is believed that he has been guilty of the crime of rape, and that no sufficient retribution for the offense will be inflicted upon him in the ordinary course of law. What ground is there for this distrust of our system of criminal justice? It rests partly on the failure of the law, but more on a popular conviction that the penalty which is provided is an inadequate one. This penalty is generally imprisonment for a term of years in the penitentiary, with a possibility of release during the term on parole or by pardon, and a certainty of a considerable reduction of time in case of good conduct while in confinement.

The imprisonment ought not to be for life, nor should capital punishment be allowed. If it were, rape would generally be followed by murder. It may be that the possibility of release on parole is not indefensible. This particular crime is one which may be committed upon a sudden impulse, under the influence of extraordinary temptation through a momentary lapse from the habits of a lifetime. But in more instances even for a brief period of years, an adequate punishment for such an offense? It gives the guilty party comfortable shelter, board and clothes at public expense, with labor enough to occupy his time and insure him against idleness without at all overburdening his strength. If, as is generally the case, he is a poor man, he is not unlikely to be better housed and fed than he otherwise would have been, and his harder work, and his means of support is removed, and during his spare hours he has some opportunity for reading in a prison library. Is the father or brother of the unhappy woman whom this man's superior strength has enabled him to make his unwilling victim likely to think that this manner of dealing with him is a due measure of retributive justice?

This brings us to a question of a fundamental character, is retributive justice the main motive and end of criminal prosecutions? Philosophers like Kant have declared that it is. Those of a different school have denied it, and asserted that the only legitimate object of legal punishment is to protect society by preventing repetitions of the offense and to reform the offender. Is it true that human government has no right to make a criminal smart for his crime? The common people will never believe that. They never ought to believe it. The instinctive sense of natural justice cries out against such a doctrine. Organized society is a divine agency for administering to wrongdoers their deserts, so far as it can be done by human judgment and human power. In the last apostrophe of Leo XIII he says that the world has been made for the rights of man; that it needs to be heard more of the rights of God. May it not need, also, to look with greater care into the rights of society?

The progress of civilization tends to soften manners, to lessen occasions for the exertion of physical force, to develop sentiments of compassion and charity. These results are sure to show themselves in the administration of criminal justice. It is right that they should; but here, as with everything else, reform is something that may be pushed too far. Criminal procedure may be smoothed down and polished away to a point at which it seems to the mass of men to content itself with retributive justice. It is a reaction. It may be a reaction in the law, but it is not a reaction in the sentiment. Lynching is an expression of the latter. It should meet by an expression of the former.

The ordinary remedy for the offenses which it punishes is an expression of the former. It is a necessary consequence of his conviction. That, probably, under the law will deprive him of his right to vote or hold office, and he will be unable in court to discredit his testimony if he is offered a witness or appears as a litigant. He is known, also, and always will be, as a felon. His family will suffer for it through generations. These things degrade more than a private flogging can.

The third objection—that it is an attempt to punish rather than to reform—is its best defence. The ravisher ought to be punished, and punished so severely that such crimes will be less apt to recur than they otherwise might be. He ought to be punished because he has done wrong, and the law, which forbids the woman's relatives to take summary vengeance into their own hands, comes under an obligation to them to deal out retributive justice.

It has good warrant to assume this obligation. This is denied by the sentimental school of modernists. Their arguments have been recently reviewed and put in form by Professor Willsborough, of Johns Hopkins University, in his "Social Justice." Punishment, he argues, cannot be justly retributive, because judges and juries are not omniscient. They cannot read the mind. They cannot allow for temptation. They cannot know the whole of the criminal's history and training and defects of inheritance. Only God can punish by way of retribution, for only he can rightly measure guilt. Only God can punish, because premises justify the conclusion? Must we not say, with the Anarchist, that no human government has a right to exist because it is necessarily imperfect in scheme and execution?

ing it is not, of course, suggested as the only penalty. Imprisonment, and imprisonment for a long term of years, should be continued, but in the course of it moderate whipping might be inflicted, once or several times, if the judge who passed sentence deemed the case one that called for it.

A BACKWARD STEP.

JUDGE GRAY, OF THE NEW-YORK STATE COURT OF APPEALS, THINKS ONLY AN IMPROVED PUBLIC SENTIMENT CAN STOP LYNCHINGS.

To the Editor of The Tribune.

Sir: In compliance with your request I will state as briefly as I can my views upon Judge Baldwin's proposition of "whipping as an antidote to lynching." I have read the learned Judge's article with the attention and interest which it deserves. As I understand him, he argues that mere imprisonment for such a crime as that of rape is inadequate as punishment, and that, in order to satisfy and allay popular feeling in that respect, the infliction of the whip upon the criminal should be added to his term of imprisonment. I quite agree with him that the "whipping," which has been of such frequent occurrence, are disgraceful to our civilization and tend to bring reproach upon our country. If I could believe that the added penalty of corporal punishment by whipping would serve to put an end to such occurrences, I would heartily concede the wisdom of his suggestion. But, for inability to entertain the belief, I am compelled to differ with him, and therefore to regard legislation which shall provide for such a form of punishment as not merely useless, but as an unfortunate step backward for the State to take.

The main duty of the State is to regulate the relations of its citizens to each other and to society as a whole by laws which shall provide for the protection of their lives, liberties and properties, and which shall furnish such rules of conduct as will best promote order and progress. The object of its criminal statutes is the punishment of all infractions of those laws or rules, and under the stimulating influence of modern thought there is added the further object of reforming the imprisoned convict, so that upon his return to the community he may, if possible, become a useful member of it, and not a menace. The purpose of criminal legislation is the prevention of crime, and the penalty prescribed should be such as will be proportioned to the offense. When punishment by a term of imprisonment has been inflicted organized society is then concerned with the offender's status in so far as that he may be reformed of his vices and turned from his evil ways. The punishment of the offender against the laws in penalties proportioned to the character of the offense, and his decent care and reform while imprisoned are results which progress in civilization has brought about which comparatively recent times. We should be solicitous that the State should not retrograde, nor appear to do so, by the restoration of forms of punishment which are associated in our minds with the practices of a less advanced state of civilization. Especially is this true if the penalty proposed to be restored is one which may, and as I think will, not achieve the end in view.

As Judge Baldwin admits, the crime of rape, which furnishes the basis for the proposition of his article, is generally the result of sudden impulse, and, under some extraordinary temptation, the man lapses from the habits of a lifetime. It is none the less heinous and deserving of the severest punishment that the State can inflict, and the putting of the offender to death, which would fall of justification upon any theory of proportionate punishment, but would the restoration of the whipping post of former times, as an additional punishment, seem such a sufficient penalty to the community to prevent such a crime from occurring? I believe there would be no fewer. When the minds of the individuals who are affected by the commission of this detestable crime, either through their relationship with the victim or their interest in the affair as neighbors, are so inflamed with the passion and hate engendered by the act as to disregard all law to the extent of being willing to retaliate by murder, I doubt exceedingly that the prospect of the whipping of the offender, however ordered, being added to his imprisonment, will cause them to desist in the project of revenge and to await patiently the orderly result of the trial. Infuriated by the perpetration of an offense which brutalizes the victim and leaves her degraded, the dominant idea at the time will be that the offender shall be made to suffer immediately, and that his removal from the world by death will also be compensatory to his victim and satisfactory to an outraged public sentiment. These are the motives for taking the offender out of the world, and the removal of the offender and perpetually removing the criminal from society, and I can conceive of no way of countering the effect of the Legislature, that must be accomplished by the force of public opinion and an improved public sentiment.

THE WHIP HAD A FAIR TRIAL.

JUDGE TORRANCE, OF THE CONNECTICUT SUPREME COURT, SAYS IT WAS FOUND WANTING.

To the Editor of The Tribune.

Sir: You ask me to express briefly my views on the use of the whip for criminals. I have given the matter so little attention that my views are of little worth, but, such as they are, I can state them very briefly. Judge Baldwin seems to believe that the main purpose and object of punishment for crime should be retribution, vengeance, so much bodily pain inflicted arbitrarily for so much crime. Under this theory for centuries society has punished its criminals, has glutted its vengeance upon them for a while, and then turned them loose more humane, more brutal, more bitterly disposed toward their fellows and society than before. I differ from him upon this fundamental point. I think the main object of punishment should be the protection of society through the reformation of the criminal wherever possible, and never mere vengeance. The reformatory process, when properly carried out, will necessitate the infliction of punishment enough, and if in carrying it out the whip should be found to be useful I should not object to its use.

Judge Baldwin believes that the use of the whip as a part of the punishment for crime would lessen the number of crimes and the number of lynchings. Judging from the past, I very much doubt whether either of these results would follow the use of the whip. In the past the infliction of bodily pain by the whip, the knout, the rack and the thumbscrew has played a prominent part in controlling the conduct of men, and, so far as I know, its use brutalized alike the users and the victims. The whip was at one time freely used in the Army, the Navy, the prison and the school house, and was abandoned. To bring it into use again for the purpose of punishing criminals, as Judge Baldwin would, I think, is taking a step backward.

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MEXICO AND THE WORLD

THE FOREIGN RELATIONS OF THE SOUTHERN REPUBLIC.

EX-SECRETARY FOSTER WRITES OF THAT NATION'S DIPLOMATIC INTER-COURSE UNDER PRESIDENT DIAZ.

III.
Cuernavaca, January 18.
Cuernavaca is a suggestive place from which to write a letter on the foreign relations of this country. Its first invader, Cortez, nearly four

hundred years ago, after he had become its conqueror, from among all the attractive places of this fair land selected this beautiful valley as his home, here built an imposing palace, which still stands in good condition, and located his family estates, which still yield bountiful and profitable harvests. Maximilian, too, the last of Mexico's invaders, was charmed with this spot, and spent here much of his leisure. His hunting grounds and the ill-fated Carlotta's villa are still objects of attraction to the visitor.

When President Diaz assumed the reins of government the evil effects of Maximilian's attempt to establish an empire on the ruins of the republic were yet being felt. The country had not recovered from the exhausted condition into which its resources had been brought by the

followed by Russia, and had some years before been preceded by all the other leading nations of Europe except Austria, and even that monarchy has ceased to exhibit any feelings of bitterness for an act which, under the circumstances, was for Mexico a political necessity, and would have been committed by any other civilized nation under similar provocation. The recent petty manifestation of ill feeling on the part of the European Ambassadors in Washington on the advent of the new Mexican Ambassador in that city was inconsistent with the action of their governments at home and of their countrymen in Mexico. Here the bitterness occasioned by the Maximilian regime has died away. The Government has allowed the pious Catholics to erect a small chapel on the spot where Maximilian was executed, and only last week President Diaz and his Cabinet made a special visit to Puebla to dedicate a mausoleum or monument in honor of the Mexican and French soldiers who died in the late war, and whose bones have been gathered in one common burial.

One of the most important duties to which Mr. Mariscal addressed himself was the adjustment of boundary disputes with Mexico's neighbors. The frontier with the United States was not a matter of controversy, but the old boundary monuments had to be replaced, and the changing nature of the channel of the Rio Grande made the dividing line along that extensive frontier somewhat uncertain, and a joint commission of experts has been for some years at work on this delineation. The only question existing between the two countries having relation to this subject is that of the diversion or appropriation of the waters of the Rio Grande by the residents of Colorado and New-Mexico in recent years, which has left the Mexicans in the Rio Grande Valley without water for irrigation, greatly to the injury of their agricultural interests. A bill for their relief is now before the Congress of the United States.

GUATEMALA BOUNDARY DISPUTE.

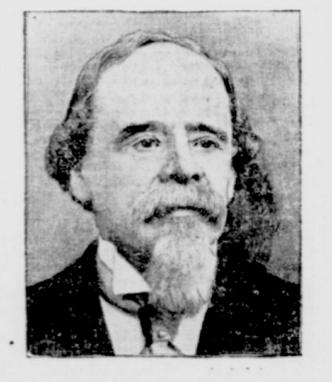
The boundary with Guatemala had long been a matter of serious controversy, and had frequently brought the two countries to the verge of war. The question became very acute about 1881, and when it seemed that it was likely to be settled by the arbitration of arms Mr. Blaine, then Secretary of State of the United States, instructed the American Minister in Mexico to interfere between the angry disputants as a peace mediator. Guatemala, the weaker Power, was quite willing to take advantage of the proffered mediation, but Mexico, conscious of the rectitude of its intentions, repudiated the intimation that it was relying upon the argument of superior force, and courteously, but with some haughtiness, declined the mediation. Happily the question was adjusted to the satisfaction of both parties in interest by peaceful diplomacy, but the incident served to illustrate the misapprehension which sometimes exists with statesmen of the United States that our Government has a mission to preserve peace between our sister republics of this hemisphere.



THE CHAPEL AT THE PLACE OF MAXIMILIAN'S EXECUTION, QUERETARO.

hundred years ago, after he had become its conqueror, from among all the attractive places of this fair land selected this beautiful valley as his home, here built an imposing palace, which still stands in good condition, and located his family estates, which still yield bountiful and profitable harvests. Maximilian, too, the last of Mexico's invaders, was charmed with this spot, and spent here much of his leisure. His hunting grounds and the ill-fated Carlotta's villa are still objects of attraction to the visitor.

THE CHAPEL AT THE PLACE OF MAXIMILIAN'S EXECUTION, QUERETARO.



IGNACIO MARISCAL, Mexico's Secretary of Foreign Relations.

long, bloody and expensive war. The passions of the contending parties, which had been so deeply embittered by that terrible contest, had not altogether calmed down. And the foreign nations which had taken part in or sympathized with the intervention—France, Great Britain, Austria and other European Powers—had not renewed their relations with the restored republican Government.

It was important for the wellbeing of the country that the wastes of war should be restored, that the people should bury their partisan rancor, and especially that the two first named nations should renew their diplomatic intercourse, because from them it was expected would come much of the capital and skill to develop the country's great resources. Time and statesmanship were requisite for this task. One of the first acts of General Diaz toward the accomplishment of these ends, after he became well seated in power and when the step could not be interpreted as a sign of weakness, was to call into his counsels two of the most prominent and able men in the government of his predecessor, President Lerdo, whom he had driven

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With the British Government that of Mexico had conducted a long diplomatic correspondence respecting "the wood cutting settlement" of Belize, which by gradual encroachments on adjoining territory had been erected into an extensive and permanent crown colony. Mr. Lafragua, Mexican Secretary of Foreign Relations under President Lerdo, had conducted an able correspondence with Lord Granville on the subject, but it did not affect the conduct of Great Britain. Mr. Mariscal brought the question to a satisfactory conclusion by negotiations resulting in a treaty of limits without a surrender of Mexico's contentions. The enlargement of Belize had been made mainly at the expense of Guatemalan territory, and as that Government had recognized the British claims it was to the interest of Mexico not to allow its boundary with Belize to be longer uncertain.

I have referred to the happy manner in which the leading nations of Europe renewed their diplomatic intercourse after the rupture occasioned by the overthrow of Maximilian. A marked feature of the recent diplomatic relations of Mexico has been the extension of these relations to the Far East. Several years ago a treaty of amity and commerce was effected with Japan, and missions are now maintained at the two capitals by both governments. Last year a similar treaty of a very liberal character was signed at Washington by the Mexican Ambassador and the Chinese Minister. By it Chinese laborers are admitted into the country, and they are already coming, especially to the Pacific Coast, in considerable numbers, and by their industrious and persistent habits are making themselves felt as an important element of the country.

TO WELCOME PAN-AMERICAN CONGRESS.

Mexico has also cultivated more intimate and friendly relations with the other Latin American republics, and at no time has her intercourse with them been more pleasant than at present. By her larger population, by her worthy example of a quarter of a century of unbroken peace and constitutional government, and by the consequent era of unexampled development and prosperity, Mexico stands to-day at the head of the Latin American States; and when it was suggested that the time was ripe for the holding of another Pan-American International Congress, similar to that which assembled in Washington ten years ago under the direction of Secretary Blaine, it was unanimously agreed that the Mexican Government was the proper one to issue the invitations, and that its beautiful capital was the ideal place in which the representatives of all the Americas should assemble. The meeting of this International Congress has been fixed for October of the present

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others that the bones are those of members of the expedition of Cabeza De Vaca. The De Vaca expedition was in the sixteenth century. De Vaca started out to find an El Dorado, and his route was across Texas from east to west and into Mexico. The members of the expedition all perished with the exception of the leader.

WILLIAM'S PART AT THE FUNERAL.

EMPEROR'S CONDUCT LIKELY TO MAKE MANY FRIENDS IN ENGLAND FOR GERMANY.

At the time of the death of Emperor Alexander III of Russia, King Edward, then only Prince of Wales, hastened with his consort from England to the deathbed of his brother-in-law in Livadia, and became the principal supporter and adviser of his nephew, the present Czar, during the days immediately following the latter's accession. The funeral ceremonies were of a most elaborate and fatiguing character, involving processions on foot behind the hearse through the streets of Sebastopol, of Moscow and Odessa. In all these processions the Prince of Wales walked by the side of Nicholas II, and by the fatherly kindness and care which he lavished upon the young monarch so endeared himself to the Russian people as to accomplish more toward removing animosity against the English than fifty years of diplomacy had been able to do. It is no exaggeration to assert that the attitude of the Prince of Wales at the funeral of the late Czar was largely responsible for the good will displayed by the Muscovite and French governments toward Great Britain in connection with the Boer war.

It may be expected that the presence of the Kaiser at the deathbed of Queen Victoria, the



THE CENTRAL FIGURES IN THE QUEEN'S FUNERAL PROCESSION. King Edward and Emperor William at Hyde Park Corner.

year, and Mexico is preparing to extend its generous hospitality, both on the part of the Government and its citizens.

JOHN W. FOSTER.

MAY BE BONES OF SPANISH EXPLORERS.

Chicago, Feb. 14.—A dispatch to "The Tribune" from Austin, Tex., says that Judge W. Van Sickle, member of the House of Representatives from Brewster County, has returned from a visit to his Western Texas home, and brings the report of the discovery in the Chisos Mountains, ninety miles south of the town of Alpine, of a cave heretofore unknown. In this cave were found the skeletons of twenty-six human beings. The skulls were submitted to an examination. Surgeons say they are not skulls of Indians.

MANY SPEAKERS HAVE ACCEPTED.

The third annual dinner of the XXVth Assembly District Republican Club will be held at the Knickerbocker Athletic Club on Friday evening, March 15. Among those who have accepted invitations to speak are Senator Chauncey M. Depew, Lieutenant-Governor Timothy L. Woodruff, ex-Judge Henry E. Howland, Senator Nathaniel A. Elberg, Simon J. Ford, Frank T. Kilpatrick, of Albany, and Gerard Ford.