SPIRIT OF THE PRESS.

EDITORIAL OPINIONS OF THE LEADING JOURNALS UPON CURRENT TOPICS—COMPILED EVERY DAY FOR THE EVENING TELEGRAPH.

Rationale of the Death Penalty.

From the N. Y. Tribune.

Human opinion once established in the right direction rarely goes backward; but it sometimes happens that, under the pressure of circumstances, it asserts itself in new forms, and while apparently submitting to abeyance, is substantially as active as ever. This we believe to be especially true of that hostility to capital punishment which only a few years ago seemed to indicate its speedy erasure from the catalogue of legal expiations. But society, being itself thoroughly concrete, seldom accepts a reform which is based purely upon abstract morality. The moral and religious argument against hanging is as perfect as any logician could desire. It is merely child's play to show that it is condemned by Christianity; and the statistics which prove that it does not diminish crime bristle invulnerably and irrefragably. But use wears out all things mortal. Legislatures will no longer listen to arguments against judicial killing, and the opposition to it has taken a new turn. What this turn is, we think is sufficiently indicated by the events of the last few days. Men are constantly hung, but they are not hung without protest. Courts of final jurisdiction are appealed to. The Executive antechambers are thickly haunted by clamorers for reprieves, for commutations, and for pardons. Judges are solicited to disavow their rulings, witnesses to qualify their testimony, jurors to explain away their verdicts. Every weapon which the humanity of the law puts into the hands of the accused is freely resorted to. Rulings are canvassed, indictments are criticized, and the legal bearing of testimony carefully examined. There is a frequent recourse to technical objections, and even quibbles are resorted to with a feeling that the desperate importance of the case lends them dignity. There is an argumentation after conviction which rivals that which preceded it. And the battle for a human life, reduced though its champions may be to a forlorn hope, does not cease until that life has been extinguished. Illustrations of this fact may be found in the cases of Twitchell in Philadelphia and of Real in this city.

The case of Twitchell is particularly to the point, because the whole theory of capital punishment assumes that the jury, in convicting, acted intelligently and without bias or external influence. Yet here is the statement of a juror that he thought when the presiding Judge at the trial told the jury "he would wait half an hour for the verdict," that he meant that the jury must find a verdict of "guilty," and substantially directed them to do so! Here was the life of a man depending upon the intelligence and good judgment of another man who could make a blunder like this, and who supposed that a presiding judge had a right to direct the jury to stay out just thirty minutes and then to bring in a verdict of "guilty!" Such stupidity seems incredible; yet here is another juror who joins in the statement that he labored under the same extraordinary delusion, although he was originally in favor of a verdict of "not guilty." Neither of these men, to whom duties of vital importance had been committed, knew that the judge had no right to direct them how long to stay out or what verdict to render. Still another juryman is said to have been influenced by the same opinion. To complicate matters, two of the jurymen now deny that they have ever said what several citizens declare that they have heard them say! Here is contradiction without stint, and a muddle apparently without a clue; and yet we talk of the infinite blessings of the jury system, and of the almost certain accuracy of verdicts! We are not about to say a word against that system, but it cannot be denied that it is constantly furnishing fresh evidence of the infirmity of human judgment.

Here, then, we take our stand. Until it can be shown (as in the nature of things it never can be) that judges are infallible in judgment, and that jurors cannot err in their finding, we insist that the law has no right, according to its own theories, to so dispose of any respondent as to put it out of its own power to redress an injury or to correct a mistake. Hanging presupposes omnipotence and omniscience. In all other human affairs, we trust to the disclosures of time, and patiently or impatiently wait for the development of circumstances. In hanging, we assume that no new evidence can be discovered, that every witness has told the truth, the whole truth, and nothing but the truth, that the Court has made no mistake in its law, that the jury has been entirely faithful in the discharge of its duties, that in all things it has acted intelligently, and that legal science will never hereafter be able to find a flaw in the indictment. We take issue here. We say that precision and certainty like this are impossible, and, whatever may be our judicial machinery, must always remain impossible. We say further that experience in quite a large number of cases has shown that even confession is not to be relied upon as conclusive evidence of guilt, and that without such evidence the law is continually falsifying its own dictum that it is better that ten guilty men should escape than that one innocent man should suffer. Yet we begin in doubt, go on in doubt, and end in doubt, the only certain thing being the death of our victim!

We have but little patience with that legal arrogance which assumes that in judicial proceedings there can be no mistake. This is an assumption, indeed, which the law itself does not countenance. It virtually admits its fallibility by permitting appeal. The lowest court may be wrong; the next higher court may sanction the wrong; but when we arrive at the pinnacle of the judicial structure we find cosily seated there five or six gentlemen who cannot possibly be mistaken. With all due reverence for these august functionaries, we must refuse to accord to them the attributes of the Almighty. And even these Solons will have successors who will overrule their decisions. For all kinds of contracts, for every question which affects material gain, for law points which change the titles of estates, the construction of agreements, or the interpretation of devises, there is considerate patience and delay long drawn out; but when it has to deal with so small a matter as a human life, the law grows peremptory and perfunctory, and will hear of no continuance. There is no chancery with its interminable processes, with its humane doubts and cautious procrastinations, to which the death-doomed felon may flee. We are tenderer of titles than of life, and care more for bill and answer than for a soul in jeopardy.

In thus claiming for cases of murder privileges and immunities which are accorded to all other cases, we are presenting no novelties of jurisprudence. There are States in Germany in which, for years, no criminals have been executed until after a full and satisfactory and coherent confession of guilt. We can hardly hope for a speedy amelioration like this of our criminal practice in capital cases; but sooner or later, in this century or the next, the necessity and justice of it will dawn upon the public mind.

Dangerous Complications in Europe.

From the N. Y. Herald.

In our telegraphic and ordinary news columns we have from day to day for some time past given intelligence which can only be explained on the principle that Europe is on the eve of a great, a tremendous crisis. From the northern shores of the Baltic to the northern shores of the Mediteranean it is difficult to name a spot where war alarms do not exist, where war preparations are not going on. The fortress of Luxembourg, it is true, which so nearly involved Europe in war in the spring of 1867, is being demolished; but fortresses are growing up all over Prussia. Russia strengthens herself in the Baltic, and in those waters so long under her control Prussia begins to be a dangerous rival. The Finns, completely under the heel of Russia since 1809, but attached to the Protestant faith, speaking the Swedish language and cherishing Swedish traditions, have no sympathy with their present masters, and long to be reunited to the people with whom they bravely fought under the great Gustavus. The growing power of Prussia begins to inspire them with hope, and, as our correspondent at St. Petersburg shows, encourages them to speak on. A collision on the Baltic between Russia and Prussia is no longer an impossibility. Spain as yet vainly seeks a king, and it now seems that Napoleon must submit to a fresh Bismark victory in the appointment of Montpensier to the vacant throne. Meanwhile a Belgian question has turned up—a question which may yet assume dangerous proportions. Add to all this that Europe bristles with bayonets, that the material of war is being manufactured in fabulous quantities, and that horses are being bought by government agents in every market. Actual war has not yet broken out; but the burdens, the uncertainties, the anxieties of war are everywhere so experienced that actual war would be a relief.

Wherefore, then, this state of things? Why is it that war is so universally expected, so universally dreaded, and so universally deemed unnecessary? The explanation is to be found in the relations which have for some time existed between France and Prussia. The French press, the French War Minister, the French Emperor, so far as we can know their thoughts, have given the world good reason to believe that the time has come when the French people must know once and for all whether or not they are the controlling force in the European body politic. It is not otherwise with Prussia. Since 1865 the Emperor of the French has known that there existed a power too weighty for even his genius and too strong to be crushed by any force at his command. No one questioned the right of France to choose her President, and, later, to choose her Emperor. France had the sympathy of the Western nations when she fought at a later day for the holy places and the integrity of the Turkish empire. At a date even later still, when Austria was humbled, and when Italy, through the forces at the command of the French Emperor, was made a unit, the European powers not immediately concerned looked on, and were silent. It was not until 1866 that the world generally began to question the policy and the infallible wisdom of the French Emperor. Since 1866, however, the fates have been rather against him. Prussia, mainly through the force of individual genius, has brought to the surface a new and controlling power in the European body politic. The mastery of Europe, for some time previous supposed to be in the hands of France, was then questioned. Prussia became more daring than France, and Bismark showed more immediately telling genius than Napoleon. Since then the situation has been changed. The mastery of Europe has been an open question, claimed by two powers. France claimed it and Prussia claimed it. Which is entitled to the position has yet to be proved.

We state the whole European trouble when we say that France and Prussia, Napoleon and Bismark, are jealous and fearful of each other. Whatever complications now exist—and the complications are numerous and serious—must be looked at, to be understood, from this particular standpoint. Germany and France are now, although there is no actual war, struggling for the mastery of Europe. Which is to win? Which is to be master? France and Napoleon say that they must win. North Germany and Bismark say they must win. France arms herself to the teeth; so also does Prussia. We wait, however, for actual war; and while we wait the intending combatants look out for allies and the European nations choose their sides. How do the European nations stand in regard to the struggle?

We have put a question which it is not so easy to answer. In the approaching struggle, which our news columns and the irresistible logic of facts prove to be inevitable, what nations are to be the allies of France and what nations are to be the allies of Prussia? In such a struggle as that which is now impending France would, in ordinary circumstances, command the sympathy and support of Spain, Portugal, Italy, and Austria. But the circumstances are not ordinary, and herein lies the trouble. On the other hand Prussia will command the sympathy and gold of England, the sympathy and sinew of Holland, of Sweden and Norway, and even of injured Denmark. How Russia will go is one of the biggest questions of the hour. If she should throw her forces on the side of France the results will be fearful. Perhaps it might be safest to say that while Europe on an early day is likely to be arrayed in two hostile camps, Russia and England, knowing that their great contest is to take place on the fields of Central Asia, are willing for the present to stand aloof and be spectators of the fray. One thing we can no longer refuse to admit is that a great European war is inevitable.

The Annexation Mania—Cuba and St. Domingo.

From the N. Y. Times.

There is evidently a concerted movement to foster a spirit of filibusterism and a desire for territorial expansion, regardless of possible complications with foreign powers. Mischievous agencies may be traced in several directions. The scum of the South and Southwest drifts towards Cuba. Busybodies and professional sympathizers are at work in New York. Washington swarms with them. Cuban ladies flaunt their finery in the galleries of the Capitol; Mr. Banks cultivates his fondness for demagogism on the floor of the House; and the committee over which he presides echoes his aspirations and helps forward his little game. Then come the whole army of Washington correspondents with highfalutin despatches about "the Cuban cause," the worthless bonds of a mythical "Cuban republic," the debt of the Dominican Government, and cognate subjects, all pointing to a policy of universal meddling and wholesale annexation.

Systematic exaggeration is the prime characteristic of those who are concerned in crying up the Cuban cause. They require us to repudiate authenticated testimony and to magnify guerilla skirmishing and incendiarism into a disciplined warfare. They talk of "the Cuban Republic" and its government as realities, when all trustworthy information shows that nothing like governmental organization exists—that the Rebel leaders severally act on their own account, and make promises and declarations by which only themselves would in any event be bound. We are further asked to believe that the insurgents anxiously desire annexation to the United States, despite the notorious fact that hostility to Spanish domination is the sole vital element of the insurrection, and that the Creoles as a body detest the idea of national affiliation with Americans.

We do not doubt that there are Cubans now in this country who really wish for annexation. But they have no rightful pretension to a representative character, and under the circumstances are of no political importance whatever. Exiles fleeing from the insurrection are not likely to have authority to speak in its name. They are more careful of themselves than of the Cuban cause. Even the Envoy, so called, would be puzzled were he called upon to locate the Government in whose name he is supposed to act, or to define the organization from which he derives his title. He is simply an emissary of certain of the insurgents, with no Government behind him, and with no right to commit any organization to which the insurrection, if more successful, might give rise. What he promises or protests matters little. The fact which most concerns us, in the presence of a movement favoring recognition as a preliminary to annexation, is the hostility of the Cuban population to that result. They want to be as independent of the United States as of Spain.

Moreover, it should not be forgotten that the insurrection would be less serious than it is but for material aid rendered from this country and constant accessions from our Southern population. Our own war has left in that section a class of reckless men, averse to regular labor, with nothing but life to lose, and with a fondness for conflict and adventure, which Cuba seems able to gratify. Left to themselves, we believe that the native insurgents would ere now have been compelled to abandon the struggle. All in it that is formidable comes from filibusterism. From the same cause will probably spring any serious complication that may occur. The only chance of trouble with this country has grown out of resistance to law by men who plead American citizenship as a pretext for lawlessness. A part of the programme is to provoke national difficulties of this nature. And another part is to excite the national lust for territory—to induce the belief that by fostering the insurrection, or forcing Spain to fight, the annexation of the island may be secured.

But the annexation of Cuba is not at present desirable. Could it be effected, it would be dear at any price. The only profit that can accrue may be best realized through the ordinary channels of commerce. To obtain it as a prize of war or a result of successful insurrection would be to assume a burden which we are in no condition to carry. The island would come devastated. The policy of the insurgents is to destroy plantations, to uproot the sources of wealth and trade, and to spread desolation as widely as possible. If ever the Spaniards find themselves unable to hold their ground they will resort to the same ruinous procedure. They will leave nothing that can be destroyed. The richest portion of the island will be laid waste. The public works will be blown up. The cities will be reduced to ashes. A slave population, numbering more than a fourth of the whole, demoralized and brutalized by strife, will be the crowning feature of the legacy left by vanquished Spain. Is the picture so tempting that we should desire its realization? Is the prospective prize so great that we should covet it? Is it worth our while to encourage filibusterism, or to formally respond to Cuban appeals or to pick a quarrel with Spain and her European allies for the sake of an acquisition which for a generation would be worse than worthless?

Nor is the House committee's proposition favoring the annexation of St. Domingo less foolish or less criminal. The Dominicans don't wish for annexation; they detest it heartily, as trustworthy accounts have clearly shown. Baez, who sends an agent to Washington to talk about it, is an imposter and usurper, holding the Presidency by a precarious tenure of fraud and cruelty. He has no right to sell the territory, and if we were mad enough to buy it an army would be needed to establish our title. The country is as Cuba would be with the insurrection successful; it is a wilderness, with a population more difficult to manage than were the negroes of the Southern States when the war ended. It would be necessary to reconstruct the Freedmen's Bureau to civilize the black Dominicans, and to redeem the slaves of Cuba from semi-savagery. And of course the Freedmen's Bureau implies soldiers to uphold its authority and enforce its decrees.

Is the House of Representatives taking leave of its senses, that it proposes to fasten upon this country a responsibility which only madmen would incur? What do we want with more territory, with three large States yet unreconstructed? Why should we trouble ourselves about the blacks of the West Indies while the problem involved in the emancipation of the Southern blacks is not half solved? On what pretense can we decently incumber ourselves with expenditures on account of Cuba or San Domingo while our tax-payers groan under their burdens and the national credit is under a cloud?

At the proper period it may be well to look abroad for objects of sympathy, and even for territorial expansion. But that period is, we imagine, somewhat distant. There are duties—urgent duties—at home which we cannot afford to neglect. There is a debt to be paid, taxation to be reduced, a South to be reconciled and restored in spirit as well as in form, and half a continent to be redeemed from the wilderness. For years to come we shall have quite scope enough for enterprise and energy in attending to our own business, rebuilding places and industries wasted by war, and investing the Union with a character befitting its pretensions. If, hereafter, it be necessary to enlarge its boundaries, we suggest that it will not be prudent to search the seas for islands until the land near us is exhausted. One New Brunswick will be worth a dozen St. Thomases; one Nova Scotia will outweigh Cuba with St. Domingo into the bargain.

The Insurrection in Cuba.

From the N. Y. World.

If General Banks were not the shallow charlatan which the country knows him to be, his superserviceable efforts to commit our Government to Cuban independence might be mischievous. The only circumstance which gives any importance to his foolish spirit of intermeddling is the fact that he is chairman of the House Committee on Foreign Relations. Fortunately, the Secretary of State, who will have more influence on a matter of this kind than all other officers of the Government together, is a man of sense and prudence. We are confident that Mr. Fish would sooner resign his position than be a party to any such wild proceeding as the charlatan Banks is so eager to inaugurate. Of course, our citizens may freely indulge their sympathies with the Cuban insurgents; but the Government is not at liberty to give way to headlong, unreasoning impulses. The Government must act on a broad view of its responsibilities. No person capable of viewing this question in its larger bearings would wish the Government to take any steps to encourage the insurgents. Fortunately, Congress can initiate nothing in the management of our foreign relations, except by a declaration of war. We have no cause, or even pretext, for a war with Spain; and until Congress changes the state of peace to one of war by a declaration, it is the duty of the Executive to preserve pacific relations. Even if Congress should pass a resolution of sympathy with the Cuban insurgents, the Executive would be in no respect bound by it. We have too good an opinion of the Secretary of State to believe that he would not deprecate the passage of such a resolution.

Our Government, in the management of its foreign relations, should not act from fitful and capricious impulses, but upon settled and stable principles, and with due respect for the obligations of international law. Mr. Fish enters upon the duties of his responsible office with one question of first-rate magnitude on his hands, an unsettled question inherited from the late administration, which may eventually embroil us with the most powerful nation on the globe. The dispute with England respecting the depredations of the Confederate cruisers involves questions identical with those which would arise between us and Spain, if we should aid the Cuban insurgents. There are people shallow enough, or thoughtless enough, to fancy it would be a prodigiously smart thing for us to adopt the same line of action pursued by Great Britain during our civil war. If Cuba were not a Spanish but a British possession, such smartness would be intelligible; but what sense or pertinence would there be in retorting upon Spain an injury which we received from England? The moment our Government abets and aids the Cuban insurgents, it will draw a sponge over the Alabama claims. We have been contending, for six or seven years, that the sham neutrality of Great Britian in our civil war was a grave injury—a violation of international obligations. With what face could we persist in our demands for reparation, if we should adopt a similar course towards Spain, when a portion of her subjects rise in Rebellion against her, and attempt, like our Southern States, to establish their independence? When we had thus sanctioned by our example the principle on which Great Britain acted during our war, we should have renounced our claims and made their further prosecution ridiculous. Not only justice, but the universal popular feeling in this country, exacts reparation from England for the great injury she did us during the war. Whatever unthinking enthusiasts may demand, our Government should be careful that it does not renounce this claim by giving to Great Britain the indorsement of our example in a similar case. But even if no such controversy were pending, our Government is bound, both by our own laws and by international comity, to give no encouragement to the Cuban insurgents. Neither the laws of nations nor our own municipal statutes have changed on this subject since 1851, when our Government took active measures to suppress the Lopez and other similar expeditions. Those expeditions had for their professed object the independence of Cuba; they expected to succeed by risings of the inhabitants against the Spanish authorities. There was at that time no difference of opinion among our statesmen respecting our obligations; and there is just as little ground for difference of opinion now. It is the clear duty of our Government neither to aid, nor to permit our citizens to aid, in overthrowing the authority of Spain in that island. Her right to that possession we have repeatedly acknowledged in almost every possible way. If the island is not hers, why has our Government again and again offered to purchase it of her at the expense of hundreds of millions? If it is not hers, why has our Government so often proclaimed, in the most solemn forms, that it will always respect her rights and sovereignty in the island, though it will not permit it to pass into the hands of any other European power? If her sovereignty is not valid, why has our Government so steadily and sternly put down filibustering expeditions against Cuba on the ground that they would be trespasses against Spain, a nation with which we were at peace?

Whether the sympathies of our citizens should be given to the Cuban insurgents in their present effort to free the island from the Spanish yoke, is a question on which different minds will take different views. Abolitionists, like Mr. Beecher, of course wish them success, as the extinction of slavery is expected to one of the first results of independence. No man of sense supposes that the island would be permanently independent; and if brought into the Union under Republican auspices, it would be "reconstructed" after the pattern of our Southern States. We have already more of these Africanized States than are likely to be well governed; no sober patriot would wish to increase the number. Commercially, their would no doubt be great advantages in annexation; but only on the supposition that the island would continue to be as productive as it has been heretofore. If it should go into a decline, as Jamaica has, and cease to raise its great staples for export, it would be of no more value to us than ruined Jamaica now is to Great Britain. What guarantee can we have that the negroes of Cuba, if freed, would exert more industry and thrift than the lazy and shiftless free negroes of Jamaica? The Cuban negroes are in a climate equally warm and relaxing, where the necessities for shelter, clothing, and fuel are so slight as to take away many of the chief spurs to voluntary industry. It must also be borne in mind that the Spanish inhabitants of the island belong to a race that has no aptitude for self-government and a melancholy proclivity to anarchy. The Spanish race on this continent has been trying the experiment of republican institutions for half a century; and never were communities more unsettled, or in a more chronic state of domestic embroilment. We are better acquainted with this experiment in Mexico, our nearest neighbor, than in the other Spanish American States; and with the example of Mexico staring us in the face, he must be a bold and sanguine man who can be very confident that independence would be a blessing to Cuba, even if she were not cursed with her large negro population.

In a state of anarchy and chronic disturbance, the commerce of independent Cuba would be far less valuable to this country than the commerce of the Spanish colony. The great rise in the price of sugar since the insurrection has been in progress, shows how important it is to us that the island should be tranquil, and have the advantages of a steady government. Stability and industry under Spanish rule are far better than independence with anarchy, or annexation with negro supremacy. There is nothing to warrant the belief that Cuba will be well governed if independent; or that her negroes would be more industrious than those of Jamaica, if she was annexed. We conclude, therefore, that, quite apart from the bearing of this question on our pending controversy with Great Britain, and quite apart from the international obligations which our Government has always recognized respecting the Spanish sovereignty of that island, the prospect of advantage from the success of the insurgents is not sufficient to justify this country in espousing their cause with a very forward or headlong zeal.

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