

of the State, to devote with assiduous care its attention to the reformation of such criminals as there may be yet hope of reforming. But the chief concern of the public with the more serious offences is to prevent their recurrence; to protect itself from this character of attack upon the social body. The public may be amply protected from the further depredations of criminals who by some overt act have already disclosed the vicious trend of their natures. This may even be accomplished in cases of serious offences without the infliction of death, by the lawful detention of the offender. But this is not true of those who, though morally perverse, have failed by reason of youth or the lack of opportunity, to give warning by any direct act, of their dangerous tendencies to crime. The law cannot lay hold upon these, and their restraint is dependent wholly upon example. It is only by the effect that the punishment of others may have upon such as these that the State can protect itself. It is therefore but a question of the safety of the State or the exemption of the criminal from severe punishment. Men instinctively fear and shrink from pain, and upon this fact the efficacy of all punishment is based. The punishment must be sufficient to create such fear in the breasts of men as will deter them in the commission of offences against the social body.

It is upon the principles stated that the *right* to assess the death penalty exists in the State. The proposition is axiomatic. If the Government is to afford its citizens protection in life and property it must be vested with the right to inflict such penalties as are necessary to enforce an observance of its rules of conduct which are prerequisite to its continuance.

Whatever is necessary to be done, or most expedient to be done, in the preservation of the political organization, may be done. This right is subject to one limitation only, namely, that unnatural or brutal penalties may not be levied. By this is meant such penalties as are naturally repugnant to the majority of the human minds, unnatural tortures or cruelties. Even this exception which eliminates elements of cruelty is due to no consideration for the criminal himself, but is based rather upon