

crimes? The answer is society is surely, if slowly, coming to see that Governments have no right, under the moral law, to take human life for any crime, and that the doctrine of "an eye for an eye, and a tooth for a tooth" is but a relic of barbarism, which must pass away entirely with the efflux of time.

And 2nd.—The legal grounds.

I lay down this proposition as incontrovertible, that no Government of the people, by the people, for the people—and really this is the kind of government that prevails among all English-speaking people—has no right to take the life of any person, unless the safety of society depends thereon, and that the safety of society does so depend must be clearly and unequivocally shown by affirmative evidence, or the right cannot be maintained.

It cannot be maintained by quoting any passages from the Old Testament, however clear those passages may be, for no such quotations prove that the safety of society depends on the existence of the death penalty. This must be shown by experience. It cannot be maintained by quoting precedent, however long the precedent may have existed. For if precedent is proof of nothing except its own existence, and if proof, why is it not also proof that we should kill thieves or any other criminals, as well as murderers, for the precedent is as strong in the one case as in the other. It cannot be maintained unless it be clearly shown that the death penalty deters from the commission of crime, and that no other penalty would. But does it deter? All experience proves clearly that it is not the degree of the penalty, but the certainty of its infliction that deters. As an illustration the following is in print: A few years ago garroting, a peculiar form of assault for the purpose of robbery, was ripe in many of our cities. For some months it prevailed, but as the victim of the assault could clearly see most of his assailants, and could generally identify them when they were

arraigned for trial, conviction pretty certainly followed, and this form of assault and robbery is now almost unknown. It arose and spread rapidly, and as the victim was easily and expeditiously relieved of his valuables, it bid fair to become a general mode of robbery of the person. But it was also peculiarly open to detection, and arrest and punishment almost invariably followed, so garroting fell into disuse as quickly as it arose. It is a recognized fact that society still has a permanent element in its midst—a criminal class—a mass of citizens over whom the police must and do have a constant surveillance. *This class is a constant menace to the lives and property of all members of society.* They fill our jails, prisons and reformatories, and crowd the dockets of our criminal courts with every conceivable phase of crime. Upon such a class the fear of punishment is not a fear of any particular kind of punishment, but of the certainty of detection. Experience in this State has shown that juries will seize upon every doubt which can be made to tell in favor of the accused, when the penalty is death, will give him the benefit thereof. Our courts charge juries in a manner to encourage them to do this. The well-known doctrine of the law that every one shall be regarded as innocent till he is proven guilty also sustains juries giving the prisoner the benefit of every reasonable doubt in capital offences. Sharp counsellors, in the course of cross-examination, intensify every possible doubt which can be raised, and often courts, in the haste and confusion of a hotly contested trial, rule wrongly as to the admission or exclusion of evidence; and if conviction follows a new trial will be granted; and a new trial, in more than 50 per cent. of the cases, ends in an acquittal, and in many other cases in a disagreement of the jury, or in a verdict for some lesser crime, so that more than 75 per cent. of all those who are tried for murder either escape entirely or suffer only