

tion, any of the public to which they thus open their doors, is to exempt theatres alone from the responsibilities attaching to most if not all other businesses which are charged by their proprietors with a public use.

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In the Metcalfe case there is still another consideration. Inasmuch as several managers conspired to exclude Mr. Metcalfe from all the theatres they represented, a question of conspiracy as well as revocable license was involved. In an English case, for instance, it was once decided that any spectator at the theatre may freely express disapproval by hissing, and consequently that the whole audience may do so; but that a conspiracy to hiss for the purpose of personal injury would not be tolerated. Applying that precedent to Mr. Metcalfe, it might be said that even if the theatres could lawfully exclude him at will, each for reasons of its own, they could not conspire to exclude him pursuant to a general purpose to injure him. But the broad ground of criticism of the New York decision is its treatment of a place of business so notably of a public character as the theatre, as if it were a purely private and personal place like the front yard of a cottage.

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#### Extending Capital Punishment.

It is characteristic of the brutal mind to meet brutishness with brutality. There is excuse for this, it may be that there is justification, when the brute in man breaks out in the momentary excitement of an assault; but when in cold blood, after the excitement, and out of the malice of revenge, law-makers set about devising brutal penalties for brutal crimes, there is neither justification nor excuse. Yet this is what the City Council of Chicago has undertaken to induce the legislature of Illinois to do. It has appointed a committee to secure a law inflicting the death penalty upon assailants of women and children. If such an assailant were killed upon the spot, it could be said that he had got his deserts. But that is not the proposition. What is proposed is a reactionary extension of the death penalty to crimes to which it has in nearly all civilized communities ceased to be applied.

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The only possible justification for the death penalty is prevention of crime. It cannot be justified at all as punishment in the sense of revenge. But nothing in penology is better proved by experience than that the death penalty

does not prevent crime. True enough, crime cannot be repeated by the convict after he is dead; but his execution does not prevent the commission of similar crimes by others. On the contrary, capital punishment tends to foster capital crimes. And this should be expected, for capital punishment is essentially immoral, and immorality naturally breeds immorality. Not only is capital punishment immoral and inexpedient, whatever the crime, but the greater the number of crimes to which it is extended the greater the probability of legally killing innocent persons.

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Advocates of capital punishment often ask why its opponents have so much sympathy for the convict and so little for his victim. This exhibits a superficial apprehension. Eagerness to kill a convict is no evidence of sympathy for his victim; it is evidence rather of a revengeful and brutal disposition, which would lead to murder under temptation. Moreover, sympathy for the convict is not necessarily sympathy for the criminal; the actual criminal may be a different person from the convict, for judges and juries and prosecutors and even witnesses are not infallible. But all this aside, the controlling reason for opposing capital punishment is neither doubt of guilt nor sympathy for the guilty, but solicitude for social morals. The spirit that insists upon capital punishment is essentially murderous, and the society where it is tolerated is to that degree morally degraded. Law-makers who are so poorly equipped for their work that they are never capable of thinking of any other deterrent for crime than revengeful and deadly penalties, would do more to check crime by resigning than by legislating.

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#### A Harsh Criticism Considered.

With reference to what we regard as the fair and thoughtful editorial letter from Prussia, which we published on the 7th (p. 316) over the signature of Gustav Buescher, we have received the following criticism from the editor of the *International Socialist Review*, Mr. A. M. Simons, who may reasonably be ranked as the American leader in what is distinguished as "scientific socialism." Mr. Simons writes:

As I can scarcely believe that you would knowingly circulate so ridiculous a falsehood as appears in the first paragraph in the second column of page 316, I write to place before you some of the facts. I do this because this same thing has been continuously circulated by the daily press of this country. I patronize a clipping bureau which sends me every-