1927 statute is that it is a valid exercise of the police power of the state. "The term 'police power' comprehends the power to make and enforce all wholesome and reasonable laws and regulations necessary to maintain the public health, comfort, safety, and welfare." *Frazer v. Shelton, supra; State ex rel. Short v. Riedell, supra.* A citizen has the right to pursue ordinary trades or callings, subject, however, to the reasonable exercise of the police power. *Allgeyer v. Louisiana* (1897), 165 U. S. 578, 41 L. Ed. 832, 17 S. Ct. 427. The question in each case is whether the business regulated affects the public health, comfort, safety, or welfare. It is undisputed that such professions as medicine or law do affect the public welfare. As for accountancy, can it be said to create any perceptible effect upon the public? True, an audit of a municipal corporation is a matter of public concern, but the work of the accountant in a private business does not ordinarily affect the public welfare. Thus, the effect of the 1925 statute was to restrict the right of the owner of the business to make a private contract (that business being only of private concern) and also to deprive accountants not certified of the right to follow the occupation for which they qualified themselves by the expenditure of time and work.

The 1927 statute attempts to limit the scope of the earlier definition of a public accountant. So far as it concerns the making of audits for municipal corporations, it is no doubt valid. Once it goes beyond that each section must be carefully scrutinized to determine whether the business does in fact affect the public welfare. "In order to say that private business must, in the interest of public welfare, employ one certified by the state, it must appear that the effect of an audit of that business is a matter of public welfare and not of private concern." *Frazer v. Shelton, supra.* Applying this test, it is possible that (a) and (b) of (2) may be held invalid, and portions of (1) are near the border line. J. N., '29.

CONSTITUTIONAL LAW—VALIDITY OF DEATH PENALTY FOR ROBBERY.—The increasing severity of recent punitive legislation is evidenced by an act of the Missouri Legislature making robbery with a deadly weapon punishable by death. This recent addition to the similar legislation of other states providing for more severe punishment for the convicted felon reads as follows:

> Sec. 3310. Every person convicted of robbery in the first degree by means of a dangerous and deadly weapon shall suffer death, or be punished by imprisonment in the penitentiary for not less than ten years. Laws of 1927, p. 174.

Previously, Sec. 3310, R. S. Mo. 1919, had provided for a sentence of imprisonment in the penitentiary for not less than five years for any person convicted of robbery in the first degree. Several states have laws providing for the infliction of the death penalty as the maximum sentence for persons convicted of robbery with a deadly weapon. Okl. Comp. Stat. Ann. 1926, Secs. 1793-1801; Tex. Revised Crim. Stat. 1925, Sec. 1408. Alabama, however, does not distinguish between robbery with or without a deadly weapon, making this crime punishable "at the discretion of the jury, by death, or by

imprisonment in the penitentiary for not less than ten years." Ala. Penal Code 1923, Sec. 5460.

A Kentucky statute makes burglary punishable by death at the discretion of the jury, but limits the maximum sentence for robbery to ten years. Stat. Ky., Sec. 1159, as amended, March 24, 1922. The constitutionality of this statute was attacked as imposing cruel and unusual punishment, but the Court in *Gibson v. Commonwealth* (1924), 204 Ky. 748, 265 S. W. 339, held it not unconstitutional, declaring that the discretion of the legislature in determining adequacy of punishment is almost unlimited. *Commonwealth v. Hitchings*, (1855), 5 Gray (Mass.), 482; *State v. Williams* (1883), 77 Mo. 310.

The legislature has the greatest latitude in determining the severity of punishment for crimes committed within its jurisdiction, *State v. Dowden* (1908), 137 Ia. 573, 115 N. W. 211. The death penalty for robbery by use of a deadly weapon, an axe, was upheld in *Thompson v. State* (1922), 91 Tex. Crim. 234, 237 S. W. 926. The infliction of the death penalty as a punishment for crime is not in itself "cruel" within the meaning of the word as used in the Constitution. *In re Kemler* (1889), 136 U. S. 436, 34 L. Ed. 519, 10 S. Ct. 930.

In view of the above decisions, the constitutionality of the new Missouri Statute, *supra*, can scarcely be questioned.

California, New York, Illinois, Massachusetts, Colorado, and Florida, permit the maximum penalty of life imprisonment to be imposed for robbery, at the discretion of their courts. Cal. Penal Code, 1923, Sec. 213; N. Y. Penal Law, Sec. 2125, as amended 1926; Ill. Rev. Stat., Ch. 38, Sec. 501, as amended 1927; General Laws of Mass., 1921, Sec. 149; Comp. Laws Col., 1921, Sec. 6718; Comp. Gen. Laws of Fla., 1927, Sec. 7157. The statutes of Georgia and Pennsylvania limit the maximum sentence for robbery to twenty years imprisonment in the penitentiary, Pennsylvania further specifying a fine not exceeding $5,000 and separate or solitary imprisonment for any term of years up to twenty. Pa. Stat. 1920, Sec. 8035; Ga. Penal Code, 1926, Sec. 149. Iowa provides for one punishment for robbery, arbitrarily setting it at 25 years imprisonment. Code of Ia., 1924, Sec. 13038.

The effect of the Missouri statute as a deterring force on prospective criminals cannot be foretold. To quote one of the most eminent students of legal psychology, "the hope of escaping justice in the concrete case will easily have a stronger feeling tone than the opposing fear of the abstract general law. The strength of the fordidden desire will narrow the circle of associations and eliminate the idea of possible consequences. If the severity of cruel punishments has brutalized the mind the threat will be as ineffective as if the mildness of the punishment had reduced its pain." Hugo Munsterberg, ON THE WITNESS STAND, pp. 258-260. N. B., '29.