

*Criminal Code*

**Mr. Fairweather:** No, I shall let somebody else do it with more authority that I have.

St. Thomas Aquinas in *Summa Theologica* wrote:

In this life punishment ought to be medicinal rather than retributive.

This exhausts my store of doctrinal statements to support my point of view but I am sure there are many other hon. members who have a much more lengthy catalogue than I.

We must not, to paraphrase Arthur Koestler "allow ourselves to be commanded by blind belief, or to instinctively recoil from any new departure as a blind experiment...".

My hon. friend from Hochelaga gave a much more eloquent exposition of this than I can.

Until 1955, in Canada the offence of rape was punishable by death. The repeal of the death penalty for rape has not led to any increase in this offence, that is, in the ratio by population, which is the only way in which we can consider any of these issues. G. Arthur Martin Q.C. put it this way in the February 1966, edition of *Chitty's Law Journal*:

One would think that the death penalty would be less likely to operate as a deterrent to murder than to other offences. If the death penalty does not deter a man from stealing, is it more likely to deter a man from committing murder?

Those who favour the retention of the death penalty accuse those who favour its abolition of making society the subject of reckless experiment and thereby endangering the lives of its members. The short answer to this is that the death penalty has been abolished for murder in some 40 jurisdictions.

I say "40" in the sense of jurisdiction meaning country. There is a much wider abolition if one considers the individual states of the United States, but this particularizing does not interest me although it might interest some other members. In any event, there are 40 jurisdictions which have abolished the death penalty. I continue the quotation:

Some of those countries are thinly populated; some thickly populated; some are agricultural; some industrial; some consist of a homogeneous population; some of a heterogeneous population; some are composed of Scandinavian people, some of Latin people; some of Slavic people; some have a culture similar to our own, as for example, New Zealand, Michigan, Wisconsin, Rhode Island.

In the United Kingdom the report of the royal commission on capital punishment, which commission sat from 1949 to 1953 and was presided over by Sir Ernest Gowers who entered upon his responsibility as a retentionist and after sifting the evidence became a

[**Mr. Fairweather.**]

convinced and eloquent abolitionist, had this to say:

We agree with Professor Thorsten Sellin that the only conclusion which can be drawn from the figures is that there is no clear evidence of any influence of the death penalty on the homicide rates of these states and that "whether the death penalty is used or not and whether executions are frequent or not both death penalty states and abolition states show rates which suggest that these rates are conditioned by other factors than the death penalty—

Again, the royal commission report said:

The general conclusion we have reached is that there is no clear evidence in any of the figures we have examined that the abolition of capital punishment has led to an increase in the homicide rate or that its re-introduction has led to a fall.

● (4:30 p.m.)

This is the crux of the case, Mr. Speaker. Although there are other areas which I am sure other hon. members will be pursuing, this is the basis upon which our arguments are advanced. Hanging does not prevent killing.

Let me offer another example close to my own home. The state of Maine abolished capital punishment in 1887. As a matter of fact it did so because an innocent man was hanged in that state. Maine and my province of New Brunswick share a common border for many miles. In every respect we are the same people, a mixture of Anglo-Saxon and French stock. We have common economic problems largely because of location within our respective countries. There is a healthy flow of people back and forth across the border, to which the hon. member for Charlotte (Mr. McLean), I am sure, can agree; at least, I am sure he can agree in respect of the healthy flow back and forth across the border.

The murder ratio per unit of population as between Maine and New Brunswick is not appreciably different; yet one jurisdiction has not had a hanging in 80 years and the other jurisdiction clings to the myth, based largely on emotion, that the retention of hanging will have a measurable effect on the murder rate. The state of Maine last had a hanging in 1883. In New Brunswick there were one or two, I think, in the late 1950's. I might tell you right now about the one in 1957. It occurred just before I became attorney general of the province. It disturbed me very greatly because of the situation in the jail where the hanging occurred.

The jailer who had been responsible—he and his wife, as often is the case in small