

*Criminal Code*

maximum to fit the penalty to the moral obliquity of the offence committed, murder is the only one in which the court has no discretion but to impose the mandatory death sentence. Yet it is true, and it seems to me that this is one of the important branches of the problem that we must consider carefully before the joint committee, that there are few offences in any country which vary so widely as murder in character and in culpability.

I do not want to refer to any facts in Canada, because those are facts which will doubtless come before the committee. I do not want to say anything here tonight that will in any way prejudice the committee's ability to give this matter the most careful and judicious consideration. I have, however, abstracted from the British report these facts: Of 50 cases of murder that occurred in the United Kingdom during the 20 years from 1931 to 1951 the convicted persons were men, women, girls, youths, and some hardly older than children. Some were normal, some neurotic, some epileptic or insane. In each case the mentally abnormal differed in their abnormality. So far as the crime itself was concerned it varied all the way from a crime which called more for pity than censure to other crimes of the most brutal and callous character. They may have occurred in the heat of passion, or they may have occurred with the greatest premeditation.

I think it was my hon. friend the member for Fort William (Mr. McIvor) who asked what were the causes of murder. In this study which was prepared by the British commission it showed the following motives "springing from weakness as often as from wickedness": cupidity, revenge, love, jealousy, anger, fear, pity, despair, duty, self-righteousness, political or religious fanaticism. In some cases they were unable to find any intelligible motive at all. I think, therefore, that we have here a matter of very great difficulty indeed. We have to consider in what way and under what circumstances we can, with safety to society and fairness to those upon whom the crime of murder has been committed and their relatives, make this rigid and mandatory death sentence more flexible to fit the crime and the culpability of the individual accused.

When I say that, I would be leaving quite a wrong impression if I did not indicate that there are some modifying factors to the rigidity of this punishment at the present time. There are four important factors. First of all the crown prosecutor of the provincial attorney general's department can consider

the facts which have been laid before him, and has discretion to choose between laying a charge of murder or some lesser offence such as manslaughter or criminal negligence.

**Mr. Deputy Speaker:** Order. I listened with great interest to the point of order which the Minister of Justice raised while the hon. member for Winnipeg North Centre (Mr. Knowles) was speaking. I am wondering if the minister does not agree that he is transgressing his own point of order?

**Mr. Knowles:** Is this a case of hanging Haman on the gallows he built for Mordecai?

**Mr. Garson:** I would be the first to admit, Mr. Speaker, the validity of the point which Your Honour has raised. I believe however that in this debate the record has been rather heavily loaded with what from my point of view I must regard as erroneous material. It would be in the interest of all concerned that these points should be corrected. Moreover I claim this additional measure of validity for what I am now saying, that this is the question which is to go before the joint committee, and not some of the things that have been said by opposition members.

**Mr. Knowles:** The resolution does not say that.

**Mr. Garson:** Yes, it does. If the hon. member will read it he will see that it says the committee is to consider the law relating to these subject matters and to say in what way that law shall be changed.

It is quite true that the judgment of the crown prosecutor in that respect is not necessarily final because the magistrate can commit for murder, even although the offence charged was a lesser offence. In practice, however, the crown prosecutor's judgment usually prevails.

Then the jury not only has the opportunity of exercising its judgment with regard to whether the offence has been committed beyond a reasonable doubt. If it has any doubt at all it can acquit completely. But if the jury have convicted, perhaps reluctantly, they have the power which the hon. member for Regina City left out in his remarks, and a very important power, of making a recommendation for mercy. This is a recommendation which carries a great deal of weight indeed, especially if concurred in by the trial judge. It goes to the Minister of Justice, who takes careful note of it in his recommendation to the governor general in council, as to whether or not capital punishment will be actually inflicted, or commuted to life imprisonment. Then the accused has the right to appeal the conviction registered against him. This appeal can be taken to