Interestingly enough, he was supported in his argument by Earl Jowitt, who had been the lord chancellor in the Labour government until Churchill was re-elected. Lord Jowitt agreed with Lord Simon that the recommendation of the British royal commission was not sound. Their objections were based mainly on the contention that it is not proper to give to the jury a discretion as to sentence. Their argument was that under our system the matter of sentence has always been reserved for the judge, that the jury are the judges of the facts, they are the judges of the question of whether or not the accused is guilty as charged. That is all it is proper to place upon the jury. Once they have exercised that responsibility, then it is not fair to go back and ask them to accept another responsibility by saying, "How shall this man be punished as a result of the verdict you have brought in?"

I was impressed by the objections raised in the House of Lords to this particular recommendation, and I am certain it will be agreed that if the objections are valid they would be as valid here as they are in the United Kingdom. But it seems to me it may not be necessary for us in our consideration, if we do feel it desirable to make some change in the law of murder, to feel driven to adopt such a course as the British royal commission recommended. I put this forward as a suggestion only. It seems to me that one of the reasons for the British royal commission coming to the conclusion it did and making the recommendation it did was that it felt impelled to reject the suggestion of a statutory definition of the different types of murder, as first degree or second degree murder. Having rejected that suggestion, they were left with but one alternative, the recommendation they introduced.

In Canada, I think we are fortunate in that we have established for ourselves a codification of our criminal law. We have had our Criminal Code since the 1890's. The British appear to have almost an abhorrence for codifying their criminal law. Theirs is embodied in a great mass of common law and over 150 separate statutes relating to the criminal law. It seems to me that the objection to making statutory definitions of murder does not apply in this country to the same extent as it does in the United Kingdom; at any rate, we do not have the same objection to it. I think we should not shrink from introducing a statutory definition of different degrees of murder, if that is felt desirable, merely because they did not adopt that course in the United Kingdom. I do not think their objection to it applies here at all. I believe that if we decide that some solution along these lines is desirable, then the creation of different types of murder would be found to be preferable to giving a discretion to the jury.

Mr. Garson: Will the hon. member permit a question? When he refers to types of murder, to what has he reference?

Mr. Fulton: To first and second degree murders.

Mr. Garson: Not to constructive murder?

Mr. Fulton: No. Our code has already established in statutory form that which in the United Kingdom is referred to as constructive malice.

Mr. Fleming: Not political murder.

Mr. Fulton: I shall conclude my remarks on this phase of the matter by saying that it may be there is no need for a change in Canada at all. I have already expressed my confidence in the jury system, and in juries in general. I would also point out that, at least in any case within my knowledge, the jury has always had laid before it most thoroughly by defence counsel any extenuating circumstances. And having before them the knowledge of those extenuating circumstances such as might be calculated to arouse their sympathy, juries, I am sure, will not find accused persons guilty of murder if they do not think those persons should hang.

I cannot think of any defence counsel who would not take every advantage of placing before a jury every extenuating circumstance, or who would fail to place before a jury every suggestion alternative to the idea of murder, or who would fail to place before them anything which might be calculated to arouse their sympathy. Once the jury has gone through the process of arriving at a verdict, and having decided that an accused person is guilty of murder, I cannot conceive their being asked to go back and to consider all over again whether there are any extenuating circumstances.

Had they felt that there were such extenuating circumstances, they would not have found the accused person guilty of murder in the first instance. Perhaps they would have found insanity, or brought in a verdict of manslaughter. I would therefore urge the committee now to be set up, when it is considering this subject, to keep in mind the fact that there is a distinct and strong possibility that the necessity for change in our law concerning murder in Canada is not as urgent as is sometimes suggested.

I can imagine some people saying that I am a typical Conservative or, if you like, perhaps that I am a typical lawyer because I am