

*Criminal Code*

charged with the offence in one corner like a boy who is put in the corner as a dunce in the schoolroom and say that he is separate and distinct from society because the punishment which is inflicted upon him is bound to have an effect on society as a whole.

The measure of that effect is difficult to estimate accurately, but there is no doubt that over a period of time it could have a serious effect upon his family, his business associates, his friends, all the people with whom he might come in contact, not only at the time but for many years afterwards. I consider, therefore, that any such punishment could not effectually achieve any beneficial result which would overcome the bad results.

From time to time I have also had occasion to discuss this question with judges. My experience has been that the question of infliction of punishment is one of the most onerous of the responsibilities of any judicial officer. Once the verdict has been brought in, the question of what should be done is one which I think greatly exercises the minds of all those who sit upon the bench. I have always found that they have been willing and anxious to go into all aspects of the background of the individual and the basis of the commission of the crime. In fact, they will discuss any matter at all which may have any bearing on the question of punishment. As a result of this discussion and my own experience I feel quite definitely that there is no beneficial effect to the retention on our statute books of this particular punishment.

May I say this, sir? Usually when a request or a suggestion is made that a certain enactment should be deleted or abolished the onus largely lies upon those who make the suggestions; but I would say that is not the case here. Here is a question of a form of punishment which is so repugnant to our sense of what is normal in human behaviour, so opposed to what we consider as being the concepts of decency and propriety, that I would suggest that, in assessing the various arguments, the onus lies upon those who suggest that the punishment should be continued to convince this house that this is so, and they have a difficult argument to carry.

The basic purpose of punishment, of course, is deterrence. You say, in effect, that if such and such a crime is committed, then the individual committing the crime shall be punished for it. I would suggest, sir, that every illustration of the commission of that crime is an illustration of the failure of that punishment to achieve its objective. I may be met with this answer: how many cases may there

[Mr. Baldwin.]

not have been where the commission of that crime was prevented by the fact that there was in the statute books a provision that if you commit the crime you would be punished. The answer to that, of course, is a difficult one to ascertain. I would suggest that even the late Dr. Kinsey, with his peculiar propensity for eliciting unpleasant information for statistical purposes, would find it difficult, if not impossible, to obtain from individuals the fact that they had contemplated committing a crime but had failed to do so because they realized there would be certain punishment. I would suggest that you might possibly divide those people who commit crimes, or contemplate committing crimes, into two classes. This is an over-simplification because I am inclined to the opinion that there are as many types of criminals as there are crimes committed. But let us suggest for the purpose of argument that you might divide them into the class of hardened or callous or professional criminals on the one side and on the other those people who through stress of emotion, without premeditation, have come to commit some act which is contrary to what our laws prescribe. In the first instance I doubt very much whether those criminals carry around with them a copy of the Criminal Code and consult it prior to the commission of any offence. I would suggest that if they did the only effect would be to make them more careful, more cautious, more inclined to take measures to prevent detection. As for the second class, the crimes which they commit are not those which are committed with previous thought being given that they would be committed. They are not the type of persons who have knowledge that a certain act is punished in a certain way and therefore that knowledge would prevent the commission of that offence.

I am reinforced in that opinion by what I have read in a book entitled "The Gallows and the Lash". The author is Mr. W. T. McGrath. I should like to read briefly from it because it sets forth in a more concise and apt way the sentiments I have tried to express here. On page 72 there is the following:

With the co-operation of the Home Office and New Scotland Yard, we have been able to analyze the subsequent records of 440 persons who were convicted of robbery with violence during the period 1921-1930, and in appendix III of this report the subsequent record of those flogged is compared in detail with that of those who were not flogged. Of the 142 flogged, two have subsequently been convicted of a second offence of robbery with violence and in a third case a charge of robbery with violence was dropped when the offender was sentenced to ten years' penal servitude on another charge founded on the same facts. Of the 298 who were not flogged, three have since been re-convicted of robbery with violence; but two of these men were mentally unstable and it seems very doubtful whether either of them would have