

Criminal Code

particular decision as to whether to abolish hanging or not. It seems to me that it involves one in a personal and conjectural position, and that it uses the wrong approach to this whole problem. If there should be an approach at all it must be a dispassionate one; that you imagine somebody's wife or child being raped or murdered about 5,000 miles away and what particular remedy you think the law should exact on the rapist or the murderer.

On this particular point of revenge, it is suggested that there is revenge in the hanging of a man or woman for murder. I ask myself the question, who is obtaining the revenge? Is it the judge? There have been cases in the past of the hanging judge, men like Judge Jeffreys of 300 years ago. Even in modern times we hear of such and such a jurist having the mentality of a hanging judge, but I think we will all agree that most, if not all, of those on the bench go there with the proper qualifications. It is not revenge on their part that hangs a person for murder.

What about the jury? They come into court, 12 good men and women true, and are sworn to render a solemn verdict after hearing the evidence and to adjudicate on one fact only, whether the crown has made out beyond reasonable doubt and with moral certainty that the accused did in fact commit murder. Surely it cannot be revenge on their part if they so decide and the accused is hanged. It is not their task actually to determine whether an accused hangs at all. They simply decide whether the accused has or has not committed murder.

What about the role of the prosecutor? Is there revenge there? I suggest not. I suggest that a crown prosecutor's calling involves the presenting of the facts of the case that are in his possession, whether those facts are favourable to the crown and against the accused or whether they are not. This is a professional obligation on the part of the crown prosecutor and I am sure there are remarkably few, if any, who neglect that very basic duty. Surely there can be no revenge by them.

The defence lawyer is in a slightly different position but his relationship with his client must never override his professional duty to the court.

Finally, we come to the man at the end of the line, the hangman who actually carries out the hanging. Is there revenge on his part? Surely I can answer no again for the very obvious reason that he has been commissioned to do a particular duty. He carries out the will and determination of society and, indeed, the accused does not come into his hands at

[Mr. McCleave.]

all for this final act until the due and awful processes of the law have been completely gone through. Where then is the revenge, the eye for an eye and the tooth for a tooth that the abolitionists speak about?

I suggest that if they make any attack at all on the ground of revenge they are directing that attack toward society. I suggest that if they reproach society thus, including themselves, they are in effect conceding that in thousands of years civilization has not really advanced at all, that we are no better off today in our attitude toward the law than the Babylonians were. In short, Mr. Speaker, I suggest that when they say that hanging is based essentially on revenge they are in effect saying that civilization cannot flower, that the minds of men are not capable of advancing from a primitive state of emotion, a primitive attitude toward murder and hanging, to something advanced and civilized.

There I have my main quarrel with them. I believe that in retaining hanging we do not do so because of revenge. We do so because our law has developed to the point that those responsible for the administration of law and society in general are saying that if a man does commit murder upon another man it is a decision of society that the murderer is not fit to live among mankind. I think it is a civilized approach. In making this decision to retain hanging as part of our system of punishment I do not think that people nowadays really regard it as a matter of revenge at all. Just as the eye for an eye and tooth for a tooth theory has pretty well vanished out of the warp and woof of law, so too I think that any notion of revenge has vanished as well.

Mr. C. W. Carter (Burin-Burgeo): Mr. Speaker, I should like to say a few words in support of the bill, the purpose of which is to substitute life imprisonment for the death penalty as the punishment for murder. This is a very controversial subject largely because our concepts of justice and the basis on which justice should be administered have changed throughout the years. In the old days referred to by the hon. member for Halifax (Mr. McCleave) when justice was based on the concept of retribution or revenge as embodied in the phrase, an eye for an eye and a tooth for a tooth it was very simple and logical. But even that basis was capable of being distorted and we had situations only a few centuries ago when the death penalty was imposed for crimes such as stealing. We are reminded of that in the old saying that has come down to us and which we use frequently even today that one might as well be hanged for a sheep as for a lamb.

But as time went on scientific and industrial progress created a large middle class of people