

indication of that affirmation than those facts which you know—whether they be about abortion or other problems.

At no time have we ever been more rapidly and completely inundated by the communications media. At no time in the past have the opinions of the people been so heavily influenced by professional opinion makers and purveyors of mass hysteria. Here I might say, not from personal experience but from what I know of juries second hand, that it takes only one or two members of a jury really to orient a decision in one direction or the other. There is no doubt about that today. It may not have been the case years ago, but today it is different.

I have lately been following the experience of some of my friends who have been members of juries. With regard to one of them, I knew how he felt, I knew he would influence the jury, and he did in fact influence the jury, and it brought down the verdict that he thought it should. It would be incredibly arrogant and naive to presume that Canadians are immune from such influences and that our juries would always, unfailingly, guarantee justice that would be recognizable as such, not only today but also in the future.

The jury system, as I have said, provides valuable checks and safeguards, but it is by no means foolproof. If justice is to be done, we must not leave the jury system unprovided with the necessary checks and safeguards against abuse.

Using abortion as an example, supposing a case came to court in which all the evidence clearly indicated the guilt of the accused. Suppose further that the evidence were uncontested, and that the judge made no mistake in admitting evidence or in charging the jury. I repeat: the evidence is clear and uncontested; it points to the guilt of the accused, and no error in law is made by the judge. Yet let us suppose the jury comes in with a verdict of acquittal. According to current jurisprudence, though this verdict is unreasonable and is unsupported by the evidence, it does not constitute an error in law, and the court of appeal will not hear an appeal against it. This worries me.

The question I want to put before you, and I think it is probably the main question, is, where does the jurisdiction of a jury that has mastered the facts end, and where does the question of law commence? According to the jurisprudence up to now—and this is what I disagree with—a jury cannot make an error in law. I say, however, that it can. I say that in a case where the facts are admitted, where the defence is based only on arguments in law, and where there is no error on the part of the judge in instructing the jury, if the jury finds the man not guilty, it means one of two things: either the jury did not understand the law or it did not want to apply it. In my thinking there is an error in law in both cases.

This particular problem, I suggest, should not be corrected by depriving the court of appeal of the right to substitute a verdict of guilty in the case of an acquittal when an error in law has been made by the judge; but I would allow an appeal to a higher court, and would uphold the power of the court to change even a verdict of acquittal, where there has been no error in law on the part of the judge but where the error in law is really one that has been made by the jury. I do not object to the idea of ordering a new trial every time. A new trial will prevent the problem from recurring, but if that point arrives at which it will be

impossible, in the opinion of the court, to find a jury that will uphold the law, that will observe the law, and will restrict itself to its role, which is simply to weigh the evidence, I say to you that we should give the power to a court of appeal to intervene. I would say this not only as in the present case where there is an error in law made by the judge, but also where there is an error in law made by the jury, in the sense that I have just outlined. Otherwise, the enforcement of the law will be an unpredictable thing. In one region of the country someone may be found guilty on the basis of certain facts, and, on the basis of the same facts, in another part of the country another person may be acquitted. I think it is precisely the role of the courts, particularly of the courts of appeal, to intervene and to bring about uniformity in the enforcement of the law all across the country.

● (1440)

I shall not at this time enter into examples or hypotheses since you can all find such examples and hypotheses as readily as I can. In this particular case what I regret is that the decision of the government, or of the Minister of Justice, was made only because of pressure brought to bear by a certain element of public opinion—and a relatively small element at that, I suggest. They did not go into or consider the basic problems posed by the *Morgentaler* case.

Let me at this stage point out that whether this particular case turns out one way or the other does not really concern me, but I do think that it should have given rise to a thorough study of our jury system. I do not have the slightest objection to giving the utmost protection to the accused, but at the same time I do not want to put the law into the hands of the jury. The jury system is based on giving to the jury jurisdiction only in matters of fact, and where a court of appeal finds that the jury has gone beyond its jurisdiction, then it should be able to intervene.

I should like this problem to be thoroughly discussed in committee, because in my view this amendment goes only in one direction. And while it might solve the problem in one particular case, it would still leave the main problem, the most important problem, unresolved. If that problem is not resolved, then I would rather see the law remain as it is because if we give way on this, then we will never be able to come back and correct the main problem which I have outlined to you, and which should be given serious attention, particularly in the Senate. This is particularly our role, honourable senators.

The other day I was dining with Madam Speaker when she received a Mexican delegation. She distributed to us a little paper setting out the meaning of the mural inscriptions in the Speaker's chamber. They are all in Latin, but I should like to quote one which is translated into English and French. While you might have difficulty understanding my English translation, you certainly would not understand the inscription if I were to read it to you in Latin.

**Senator Lamontagne:** I am sure we would.

**Senator Flynn:** Well, let Senator Lamontagne try this:

*Plus apud nos vera ratio valeat quam vulgi opinio.*

Anyone who wants to translate it is welcome. At any rate I shall give you the official translation. It is a quotation from Cicero, and it says: "Let reason prevail with me more than popular opinion."