

*Criminal Code*

stigmatises the gravest crime by the gravest punishment; and it may be argued that by so doing, the law helps to foster in the community a special abhorrence of murder as "the crime of crimes", so that the element of retribution merges into that of deterrence. Whatever weight may be given to this argument, the law cannot ignore the public demand for retribution which heinous crimes undoubtedly provoke; it would be generally agreed that, though reform of the criminal law ought sometimes to give a lead to public opinion, it is dangerous to move too far in advance of it.

Now, with respect to the argument as to whether or not the retention of capital punishment is justified on the basis that it is a deterrent to the crime of murder, the royal commission came to the conclusion, and I think I am summarizing their conclusion fairly and accurately, that the evidence was inconclusive either way. In other words, that one might compile a set of statistics to show that the existence of the death penalty had in certain cases or in certain countries a very great deterrent effect, and on the other hand one can turn to countries in which there is no death penalty in existence and can argue from statistics gathered there that the incidence of murder was no greater there than in countries which retained the death penalty. The royal commission, however, uses this sentence: "We can number its failures. But we cannot number its successes." That is for the very reason that it is obviously impossible to say in how many cases a person tempted to commit murder has been deterred by the fact that he might expose himself to the possibility of the death sentence.

It is pointed out, however, that they feel a good deal of weight has to be given to the opinion of responsible police officers, and I think perhaps the most impressive summary they gave of the police officers' evidence is to be found at page 38, where they say as follows:

The representatives of the chief constables' association and the police federation were strongly opposed to any changes in the existing law.

Then they go on:

... they had no doubt that if liability to be convicted of murder and to suffer the death penalty were limited, criminals would take more risks, use more violence and more often carry firearms.

While we of course in this country are not in any sense bound by the opinions or necessarily by the experience of any other country, I would nevertheless suggest that these opinions and similar opinions, which I hope our committee will have an opportunity of hearing from similar organizations in Canada, will carry the greatest weight with the committee when it commences its deliberations.

There is, it seems to me, another reason for caution in considering this first aspect of the matter as to whether or not capital punishment should be abolished. It appears to me that to a very great extent the arguments of those who favour an immediate embarkation on the abolition of capital punishment are met by the fact that we have under our system of law the jury method of trying persons accused of murder. I make no bones about it, nor do I have any hesitation in saying that by and large I have complete confidence in the jury system in producing correct and just verdicts in murder trials.

My conclusion is based on my experience, limited as I immediately confess that experience has been, compared to the experience of some others in this house and many others outside who have had a wide experience in criminal trials. But, based upon my experience—and I have been on different sides in different murder cases—and based upon the reading I have been able to do on the matter, my conclusion is that the jury does not often go wrong.

I think it is an established fact that juries will not convict if they feel a man should not hang, and it does not matter what the judge may say to them. The judge may say to them that there do not seem to him any grounds upon which the jury can bring in a verdict of manslaughter. If the jury do not think the man should hang, they will not convict him of murder; and this is true in the vast majority of cases. Other hon. members may have had a different experience, and of course individual cases differ; but by and large it seems to me that that is the experience of most people and that that fact is the greatest assurance that could be given that the existence of the death penalty does not lead to unjust or unmerciful results.

I was glad to find that my conclusions in this regard were similar to those of the royal commission in the United Kingdom to which I have referred. I think the passages of their report dealing with this tendency of juries to reach merciful verdicts where they feel the circumstances of the case do not warrant conviction, even though technically the crime may be murder, are extremely interesting. They say, and I am reading now from page 8, paragraph 28:

After giving full weight to the consideration that juries rightly demand a very high standard of proof before they are willing to convict on a charge so grave as murder, we formed the impression from the evidence that juries do from time to time return a verdict of manslaughter, and more rarely of guilty but insane, or of acquittal, in cases where there is little ground for reasonable doubt that the accused was in fact guilty of murder. (A typical case,