

Criminal Code

Mr. Knight: In order to keep the record straight, may I ask the hon. member if it is not a fact that that royal commission did not deal with the question of capital punishment as such.

Mr. Fulton: I am coming to that, if the hon. member will just give me a moment. The hon. member for Saskatoon (Mr. Knight) is perfectly correct in saying that by its terms this royal commission was not invited to consider whether or not capital punishment should be abolished but only to consider the modifications which might be made in the law of the United Kingdom with respect to capital punishment, with respect to murder and with respect to the imposition of the death penalty.

Nevertheless it did make a most comprehensive and detailed investigation, not only of the law relating to murder and capital punishment in the countries which I have mentioned but of the number of murders, the number of executions and also as to whether or not there was an automatic imposition of the death penalty in those countries or whether the imposition of the death penalty was within the discretion of the jury, the court or the judge once a person had been found guilty of murder. As I said, it is one of the most comprehensive and masterly surveys of the whole field which have been made.

Looking then at the experience of other countries as found and reported upon by the royal commission in the United Kingdom, we see that in forty-two of the forty-eight states of the United States capital punishment is retained for first degree murder, although in forty of those forty-two states the jury has some discretion as to the sentence, as to whether death or life imprisonment will follow. They summarize their findings at pages 460-461 and I think it might be convenient for the purposes of this discussion if this summary were put on the record. It reads:

In three states, the juries are authorized to recommend mercy but the recommendation is not binding.

In fifteen states, the jury must specify whether the sentence should be death or imprisonment for life and there is no verdict unless the jury reach agreement on both guilt and sentence.

I might say that this deals exclusively with the situation which arises in those states of the United States where a verdict of guilty of murder in the first degree has been brought in. I continue:

In eight states, the death penalty is automatic unless the jury recommend life imprisonment; thus, if the jury cannot agree, the death sentence is pronounced.

[Mr. Fulton.]

In two states, a sentence of life imprisonment is automatic unless the jury recommend death; thus, if the jury cannot agree, the sentence is imprisonment for life.

In nine states and the federal jurisdiction, the jury may qualify their verdict by the words "without capital punishment", though it is not certain whether the jury's decision is binding on the court. It appears that the jury must reach a unanimous decision and there is no verdict unless the jury reach agreement on both guilt and sentence.

In two states a recommendation by a majority of the jury is sufficient.

That, then, is the situation in the United States where in forty-two of the forty-eight states capital punishment is retained. In all commonwealth countries the death sentence is retained. In Australia generally speaking, in Canada, in Ceylon and New Zealand the death sentence is mandatory following a verdict of guilty of murder.

It is interesting to note, also, that for a period of time they abolished capital punishment in New Zealand but they have recently re-introduced it. The same holds true of the United Kingdom where after a trial period in which it was agreed that no one convicted of murder would be subjected to the death penalty, and where when the time limit for the trial period expired the experiment was not continued, the death sentence is mandatory following a verdict of guilty of murder.

I am sure that the committee, in addition to considering the experience and present practice in other countries, will want to give some consideration to the question of the very nature of punishment itself. Here I think we cannot do better than consider the words used by the British royal commission in their discussion of the question of the nature of the death penalty as a punishment, with respect particularly to its deterrent effect and as to whether it is justified because of that effect. On that question they had this to say, as reported at page 18, where they quoted the words of one of their witnesses, Lord Justice Denning, as follows:

The punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishment as being deterrent or reformative or preventive and nothing else . . . The ultimate justification of any punishment is not that it is a deterrent, but that it is the emphatic denunciation by the community of a crime; and from this point of view, there are some murders which, in the present state of public opinion, demand the most emphatic denunciation of all, namely the death penalty.

They continue with this statement by the commission itself:

The Archbishop of Canterbury, while expressing no opinion about the ethics of capital punishment, agreed with Lord Justice Denning's view about the ultimate justification of any punishment. By reserving the death penalty for murder the criminal law