

*Criminal Code*

respect to (a) capital punishment; (b) corporal punishment; and (c) lotteries; and if so to suggest how it should be altered. It seems to me that in approaching this question we have always to bear in mind that we are dealing here with facts and not with theories. Murder is one of the headings that the committee is to be invited to consider. It deals with a set of facts. Each one of these headings arises out of the circumstances of the subject matter with which the criminal law on that subject is dealing. It is a subject matter which exists in fact and not in theory. In other words, murder is a fact, and hanging is a fact. Unfortunately, people do kill. So that we are not considering the question of capital punishment in an atmosphere of abstract theory but in an atmosphere of unfortunate fact, that in society as we have it today killings, murders, do take place. In the same way, people do commit the crimes which are now punishable by whipping. Corporal punishment being confined in this country to whipping, it is necessary that we carry on a discussion of that branch of the motion both here and in the committee in the light of the unfortunate fact that horrible crimes which at present call for the penalty of whipping are in fact committed.

The same thing can be said of the law with respect to lotteries. People in Canada do in fact carry on and take part in lotteries. I have reference here, and will have throughout the discussion of this branch of our criminal law, not to the question of the law regarding the keeping of gaming houses or institutions of that kind where roulette and fan-tan and games of that sort are played for the profit of the owner, but to the conducting of sweepstakes and lotteries in public and games of chance for charitable purposes.

While the considerations and recommendations to be made on these subjects are matters which the committee will decide for itself, there are I think certain considerations which it might be suggested should be before the committee in the light of which it might approach its decisions on these various branches of the criminal law. I should like to deal with them in series, starting first with the question of capital punishment.

It seems to me that here the committee will have two branches of the law in this regard to consider. First there is the question of whether or not capital punishment should be retained as part of our criminal law, or whether it should be abolished. Second, if the committee should decide to recommend that capital punishment be retained, then they would have to consider whether or not there should be certain modifications of the law of murder in order to restrict the number or

types of cases in which the death sentence will be automatically imposed. I should like to deal with these two branches of consideration.

First, then, in connection with the question of whether capital punishment should be retained or abolished. I can only express the hope that the committee when appointed will approach this matter with open minds and not with preconceived notions either one way or the other. Although one hears quite a number of expressions of opinion that capital punishment is an outrage and should be abolished, it seems to me that we have to study the matter somewhat more deeply than that. I would suggest for the consideration of the committee that at a time like the present when the incidence of crimes of violence is not diminishing, when the tendency I might say is not for murders to become more simple but rather to become more horrible, we cannot lightly say that capital punishment should be abolished.

There are other arguments or factors which I think the committee should bear in mind and on which they should ask for evidence and statistics before they reach their conclusions. I think there are quite a number of factors which urge that this is not the time to make that radical change in our criminal law which the abolition of capital punishment would involve. I refer to the atmosphere in which we live in which crimes of violence, murders and killings are certainly not becoming less in number.

Then I think the committee should look at the experience in other countries, particularly those whose legal systems and criminal law are based by and large upon our system of the common law. I have in mind particularly the United States, and the other countries of the commonwealth. Perhaps I might interpolate here to say that most of the statistics which I shall refer to have been compiled by the royal commission on capital punishment which sat recently in the United Kingdom. This royal commission was appointed in 1949 and brought down its report in September, 1953. In my opinion this document is one of the most masterly and comprehensive studies of the whole question of capital punishment that have ever been made.

Not only did they look at the situation and experience in the United Kingdom; they looked at the experience of practically all countries outside the iron curtain on the continent of Europe, of other countries of the commonwealth, and of the United States. In the United States they considered not only the federal jurisdiction but many if not all of the states.