Criminal Code Bill. [27 September.]

with all he said, and I shall vote against the motion made by the hon. member for Brisbane South, and vote for the retention of the clause.

Mr. KIDSTON: Before we go to a division I would like to say this: Both from the statement as given from the Chair and from the statement made by the previous Speaker in 1895, quoted by himself here this afternoon, it is evident, I think, that both the previous Speaker, Mr. Cowley, in 1895, and you yourself, Sir, at the present time, consider that the method of introducing these things has been a bad one.

Mr. DAWSON: It was not indicated or even circulated.

We never saw it.

Mr. KIDSTON: I would very much have preferred if the House would have permitted the Treasurer to have withdrawn the Bill, and have had the matter brought in in a way more regular, more in accordance with the precedents of the House. I think that if the House rejects this clause a very great wrong will be done.

Mr. DAWSON: What about the Standing Orders?

Mr. KIDSTON: I am not troubled about the interpretation of the Standing Orders. The question is whether this clause is important to the Bill—what I raise that point is that there is a danger that this Bill may be used for the purpose of carrying out a work of this sort or leaving it alone.

As I see by the tone of the discussion that it is quite evident that if the motion of the hon. member for Brisbane South is carried this Bill will be passed without the 6th clause, I think it is advisable to vote against it. Although I am convinced, from what I have heard, that the amendment was introduced in an irregular form. I think the Bill should not be put in a less effective form, because it might have been in a better form. It is a pity it should be mutilated by striking out clause 6.

Question—That clause 6 be omitted—put and the House divided.

Aye—22.


No—35.


Aye—Mr. Speaker. No—Mr. Bell.

Resolved in the negative.

On the motion of the TREASURER, the third reading was made an Order of the Day for to-morrow.

CRIMINAL CODE BILL.

SECOND READING.—RESUMPTION OF DEBATE.

Mr. LESINA (Glenelg): As a layman I feel a certain amount of difference [5.30 p.m.] in getting up to criticise a measure of this character. It would appear that the necessary qualification for dealing with a matter of this character is the possession of a legal mind. I think we are all agreed upon the necessity for the codification of our laws. Attempts have been made in various parts of the world to codify the criminal law, and they have been more or less successful. Attempts have been made in the old country, but so far they have not been the success which the friends of codification would like to see result from their efforts. There are various digests made in England of the criminal law, and very excellent works of reference on the subject, but so far the English Parliament has not seen its way clear to adopt any of these codifications. There is always a danger in codifying the laws of a country—especially the criminal laws—of errors creeping in through the framing of those laws in an entirely new language. In an Assembly like this, composed as it is chiefly of laymen, when passing such a Code as is now submitted to us, errors might easily be overlooked, which in the course of time would do a considerable amount of harm. We have to a large extent to depend upon the speech of the Attorney-General, and we have also to depend upon the report of the Commission, which was composed of eminent gentlemen like Sir Samuel Griffith and men of that type. There are one or two points which I say at the outset we may take for granted. They are based upon the speech of the Attorney-General and the report of the Commission, and with them I think the majority of hon. members will agree.

For instance, there is the question of the expediency of such a Code. That is agreed upon. But it would be much better had the codification of the criminal law of Australia been left entirely to the Federal Parliament. When it was proposed here the other day that this Parliament of Queensland should pay old age pensions to aged workers, the Premier pointed out that that was the method which should, and might very well, be left to the Federal Parliament, which could deal with a comprehensive measure in a statesmanlike fashion. In the matter of the codification of the criminal law, there is even a greater necessity for its being left to the Federal Parliament.

Mr. LEIGHTON: But the Federal Parliament has no power to deal with this.

Mr. LESINA: But it may. It is quite possible to give it power to deal with the codification of the criminal laws for the whole of Australia.

The Hon. SECRETARY: Is it likely?

Mr. LESINA: In our Queensland laws we have some half-dozen offences in which the death penalty is inflicted, while in New South Wales they have the most bloodthirsty code in Australia at the present time. In the time to come the necessity will undoubtedly arise for dealing with those laws on a comprehensive and national basis, and not leave it to each colony to do the work for itself. However, the expediency of having a Code of criminal law is admitted, and if this colony undertakes the work for itself. So far, it is only the colony which has attempted to codify its criminal laws. One argument which was used the other night by the Attorney-General which appealed to me was this: He drew attention to the fact that there were upwards of 1,000 offences to be dealt with, which were scattered over the pages of about 250 statutes, which, to Sir Samuel Griffith, exposed glaring inconsistencies and incongruities. He mentioned one specific offence—forgery—which was dealt with in no less than sixty-four statutes, sixteen of which were Imperial; and pointed out that the fact that it was necessary to take out of these various statutes the law dealing with this one crime showed the necessity for codification.

I said in commencing that a laity might have a certain amount of difference in dealing with a matter of this kind, but I do not know that a legal mind is specially qualified for dealing with the task. It has been pointed out by one able writer in speaking of lawyers—and it is lawyers and judges who composed this Commission, and it is lawyers who have the best knowledge of things—that the truth is that lawyers are rarely philosophers. He says—

The truth is, lawyers are rarely philosophers; the history of the heart, lead only in statutes; and in cases, presents the worst side of human nature; they are apt to consider men as wild beasts.
And that to a large extent accounts for the rather cold-blooded fashion in which lawyers deal with the cases of this kind. Possibly the law mind can shed light on the subject in a manner which a legal mind is not in a position to do. As to the completeness of the Code, the Commission which has furnished us with their report on the Code point out that it is very complete. In judging of the completeness of the Code we have to be guided by the Commission, and their work is well done. Well, if you asked a builder who has just completed a building by contact to report upon that building, he would give you an excellent report. The Commission tell us that this work has been well done, but it we enter into committee, to find out whether the judgment of the completeness of the Code we have to be guided by the Commission, and which to a large extent accounts for the excellence in their work, is well done. Well, if we investigate whether the work has been well done,

The ATTORNEY GENERAL: The cases are hardly parallel. The builder's work in this case is completed. The Commission tell us that this work has been well done, but it is for this House to judge whether the work is well done.

Mr. LESAINT: I say we have largely to be guided by the report of the Commission—who say that the work has been well done—and by the speech of the hon. gentleman; but there is internal evidence in the Code itself which influences me in the belief that the Code can be improved in one or two respects which I will point out. The additional principles in the Code are not necessarily expressed in section 59, section 390, section 650, and section 400, dealing respectively with obstruction to the legislature, unlawful assembly, and trial by agents. There are also certain amendments proposed in the Code which are very important. For instance, there is the abolition of the death penalty in the case of rape and in the case of robbery under certain circumstances. These are two very far-reaching reforms with which I am in hearty accord. Then we have suspension of punishment by the application of the First Offenders Act to offences, and a modification of the law dealing with public attacks on religious creeds. These amendments proposed in the Draft Code by the Commission are, to my mind, very important, and will be far-reaching in their effects; and I want, if possible, in the course of my argument, to carry hon. members with me so that they may see the necessity of pushing these reforms even further still, and entirely abolishing punishment by mutilation, floggings, and the death penalty. My address to-night will be devoted generally to an amplification of the argument in favour of the abolition of punishment by mutilation and those other punishments which are still retained in the Draft Code. I notice with a great deal of pleasure that a large number of obsolete laws are abolished by this Code, and also many others under which any judge, who strictly adheres to the law as it exists in Queensland, might insist on citizens found guilty of certain crimes the most atrocious and barbarous penalties. In the draft of the criminal law recently proposed by the Chief Justice, Sir S. Griffith, reference is made to the punishment to be inflicted upon anyone found guilty of high treason, according to 30 George III., chapter 48, and 54 George III., chapter 146. These laws exist in Queensland to-day, though I am pleased to find that they are to be absolutely abolished. Under those laws a person found guilty of high treason is treated thus:

- If he be a man, that he be drawn on a hurdle to the place of execution, and there hanged by the neck until he be dead, and that afterwards his head be severed from his body and the body divided into four quarters and disposed of as the government may think fit.
- If she be a woman, that she should be drawn to the place of execution, and there hanged by the neck until she is dead.

In the case of a man, Her Majesty may by warrant under sign-manual countersigned by a principal secretary of state, direct that the offender not be hanged on a hurdle, and that he be not hanged by the neck, but that his head be severed from his body while he is alive, and may, by warrant, direct how his head, body, and quarters shall be disposed of.

That is a nice piece of legislation to have in force in a colony in such a high state of civilization as Queensland, and shows in what a high regard we should hold those legislators who have sat on the other side of this Chamber for so many years, and permitted this barbarous law to go unabolished. It is satisfactory to find that this vestige of a bygone day is no longer to appear on our statute-book. Then there is another pretty item in the "Draft Code" prepared by Sir Samuel Griffith, which should intensify the feeling of regard which we feel at present for the legislators sitting on the opposite benches. It is as follows:

- Any person who, being assembled together to the number of more than ten, repair to the Government or either House of Parliament, upon purpose, or with intent to procure others to repair thereto, for the purpose of preventing or obstructing, by means of any statute law, the doing of any lawful act, or the performance of any lawful duty by any person, whether public or private, shall be guilty of a misdemeanour, and shall be liable on conviction to a fine not exceeding £200, and to imprisonment for the term of three months.

This atrocious Act was not passed away back in the dark ages. It was the year of the reign of Queen Victoria, right in the middle of the present century. And some two or three years ago, when a number of citizens came here to present a petition, they would hardly have ventured to do it had they been warned of the known fact that such a law was in existence. That also is to be abolished, as also is the notorious 6th of George IV., chapter 129, the Act covering conspiracy, under which the union prisoners were sent to St. Helena. But there is some doubt as to that. There are some five or six points laid down in clause 543, under which a person may be found guilty of conspiracy, in one of which it is stated distinctly that interfering with a person following his trade for a livelihood is one. That clause provides that it is conspiracy:

1. To prevent or defeat the execution or enforcement of any statute law;
2. To cause any injury to the person or reputation of any person, or to deprive the value of any property of any person; or
3. To prevent or obstruct in the free and lawful disposition of any property by the owner thereof in fair value; or
4. To injure any person in his trade or profession;
5. To prevent or obstruct, by means of any act or acts which if done by an individual person would constitute an offence upon his part, the performance of any lawful exercise by any person of his trade, profession, or occupation; or
6. To effect any unlawful purpose; or
7. To effect any lawful purpose by any unlawful means.

If a strike took place, I am under the impression that by the 4th subsection, or the 5th, a person interfering as I stated would be found guilty of
conspiracy, and sent to St. Helena, where the unfortunates were, with regard to Sir
S. W. Griffith, it has often been remarked
what a number of his judgments have been upset
by the Pulp Court, and that many of the Acts he
has drafted have been a source of endless litiga-
tion. Therefore, in the case of a Draft Code like
this, where no doubt at all should exist, it
behaves us to look into this matter very care-
fully. I am very doubtful whether the abolition
of this 6th of George IV. is sufficiently well provided
for, and I should like to see some amendment made
in the clause when the Bill reaches committee.
I have already spoken of the barbaric enactments
which will be repealed as far as Queensland is
concerned if this Code is carried. The abolition
of these brutal and barbaric relics of an age of
darkness, these remnant of the prison gong laws,
should be a tremendous advance we have made,
and it is in accordance with the humanitarian
spirit of the age, which is beginning to make
itself manifest even among lawyers, who are not
very much amenable to the movement. I trust
that no member of this House will object to the
abolition of the death penalty for certain offences
committed if this Code is carried. The abolition
of the death penalty was the ordinary punish-
ment for:
Edward III.-Stealing lead or iron bars; returning
from transplantation, bankrupts refusing to
or concealing their effects, value 40s.;
destroying river or sea banks; cutting hop
hinds; desolating turnpikes or faggot-lots;
setting fire to coal mines; stealing cattle or sheep;
stealing bonds, bills, bank-notes, etc.;-gilding a ship or
frigate; stealing linen from bleaching ground;
smuggling by persons armed and under
enoughs; stealing over 40s. on a river; attempting
to receive a murderer; refusing to perform
security stealing from ships in distress; making false entries
in receipts relating to marriages; agreeing to enter into
foreign service—
Every one of the Irishmen in the Transvaal who
have volunteered to assist the Transvaal Republic
of the British Government would be hanged under
that if they were brought to England—
forcing women's wills; forcing the hand of receiver of
port fines.
George III.—Stealing naval stores; coining a half-
penny or a farthing; selling cottons with forged stamps;
destroying silk or worsted in the loom; robbery of
the mail; stealing hack-notes from letters; uttering
counterfeit money, third offence; frame-breaking, etc.
For all those offences, with the exception of
piracy, murder, and treason, the death penalty has
now been abolished, and the abolition of the death
penalty in those numerous cases has been due to the active and persistent agitation of men
who believed that the proper way to suppress
crime was not to mutilate the offender, or sub-
ject him to cruel punishments. In the abolition
of the death penalty for such offences as
those I have enumerated we see the results of
the self-denying labours of the friends of humanity, the beating reformers who, during the
last century, have done their share of the work
of abolishing the detestable and unwarrantably
cruel brutalities, then called judicial punishments. And at every stage of the battle, the abolitionists were met with the cry that the proposed change would subvert morality, sap the foundations of society, and, as Bowell said of the proposal to abolish the slave trade,

"But the gates of mercy on mankind."

I have pointed out now a list of offences and crimes for which the death penalty was the ordinary punishment during the past 400 years. I have referred to a number of petty offences for which that was the penalty, but through the spirit of humanitarian feeling and modern Christianity, and the influence due to the teaching of moral philosophy, we have come to regard human life as a much more sacred thing than it was regarded in the past, in consequence of which our criminal laws have undergone many very far-reaching changes. Concerning that subject, I would point out that, not only in the case of a number of important as well as trivial offences has the penalty of death been abolished, but there are other offences to which it was originally attached, but which now we not only apply no punishment whatever, but we actually treat them in the kindest possible fashion. For instance, it was the custom in the times to which I refer to flag bunatics and persons suffering from infectious diseases, such as smallpox—to treat them as if they were the most cold-blooded criminals. All were treated as criminals. To go mad was crime; to express heterodox opinions was crime, and the heretic was either hanged, flogged, or tossed alive. The infliction of penalties by "law and order" upon lunatics and people suffering from various kinds of diseases was not only a regular practice, but it was profitable, and deemed a fairly honorable thing to do. I will quote a case in point to show how these things operated amongst the people. I have here a reeking tale taken from some old document relating to the municipal affairs of Canterbury, and dated 1655—

To bring one heretic from London, 1s. 6d.
One and a half loads of wood to burn him, 2s.
Gun powder, 1s.
One stake and staple, 5s.
Total, 17s. 6d.

That is the cost of putting to death one heretic. We do not treat heretics in that way now. Public opinion has got ahead of that method of treating people who hold different opinions to our own. Then, as we have made progress in that direction so we have made progress in other directions, and taken steps in the direction of reform which were urgently needed. To acquire an infectious disease or an infectious complaint a couple of hundred years ago was a very serious offence.

At five minutes past 7 o'clock,

Mr. MOORE called attention to the state of the House.

Quorum formed.

Mr. LESINA: I was saying that to acquire any infectious disease or complaint was a very serious offence. Giving way to delirium was regarded as a crime, and the victim suffering from such disease was put upon a wheel and beaten, or was subject to the penalty of whipping. In the parish constable's account of 1710 at Great Stainon in Huntingdon there was this entry of punishment:

"Pd Thomas Hawkins for whipping two people that had smallpox, 8d.
and in 1714—
Pd for watching, victuals, and drink for Mary Mitchell, 2s. 6d.; Pd for whipping her, 6d."

Yet the people were half-starved and performed these atrocities were not destitute of humanity, but were gravely wanting in perception.
murder alone. Here in Queensland we hang them for murder, for treason, and for piracy. I can quote at least a dozen countries in the civilized world where the death penalty has been abolished, without any increase in crime—indeed, there has been an absolute decrease, as figures can show. Who can say that if we abolish the penalty of hanging, that we might not be as well off as we are to-day. I would like to point out to the gallows advocates in this House—to those who advocate the rope, the cat, and the triangle—to those who advocate torture and punishment by mutilation, that all down the centuries, as history shows, we have been slowly, gradually, but surely and quietly redeeming our reputation for the imposition of the cruel punishments practised by our forefathers. We have been gradually lessening the severity of punishments. Whereas, in olden times, we burned men, boiled men, hanged, drew, and quartered human beings, now we simply hang them. I would like to point this out also to the gallows advocates in this House, and I would like to ask the Hon. the Attorney-General whether he can say that the repeal of this last penalty—the death penalty and the floggings of criminals—will not be as wise as the previous abolition? Had we the same moral courage as our ancestors, we would certainly abolish all forms of punishment. It was not only for ordinary offences—for petty offences against property and the person, or for great crimes like murder and treason—that the death penalty was imposed. We have evidence that the most atrocious penalties were imposed for offences—so-called—which we might not regard as offences at all, and which would be regarded by a philosophic mind as a distinct advance in our modern civilization. For instance, in the reign of Charles I., instances are recorded which really equal in flagitiousness the deeds of Nero. The pillory, whipping, branding, cutting off the ears, grew into use by degrees. I may refer to one well-known historical case—that of Frynne, who was mutilated for printing a puritanical book—a religious case. The punishment inflicted on Prynne by the Star Chamber was that he should stand twice in the pillory, to be branded on the forehead to lose both his ears, to pay a fine of £5,000, and suffer perpetual imprisonment. And why? Simply because he published a religious book—which contained principles adverse to the ruling religious principles of the day. We don't do that kind of thing in our day. And is it the worse off? When it was proposed in those days to abolish that kind of punishment, there were no doubt scores of people—men like the Secretary for Lands, the Secretary for Agriculture, and the Attorney-General, whose breasts throbbed with the milk of human kindness, but who thought that all civilized society would be subverted; that social chaos would follow if these punishments were abolished. But the world is more civilized now; at any rate, it is no worse off by the abolition of these barbarous penalties. Again, others for small kinds of offences were whipped, their cheeks slit open, and red-hot brands applied to their faces twice a week for a fortnight. There are cases on record in which these extremes were reached. I will cite one case, which the Attorney-General, no doubt, being a lawyer, will be well acquainted with. A child was sentenced to death for stealing an orange valued at 2s. 3d.

The Attorney-General: Why harrow our feelings with those horrors? They have nothing to do with the Bill.

Mr. LESINA: They have, and I will tell you why. The judges and magistrates inflicted these punishments because they thought they were doing the right thing; that by their action they would terrify the people into keeping the peace—"to keep "law and order," and they carried out those laws relentlessly. I want to show that by the abolition of these cruel punishments society has not suffered. So, why should we not go further and abolish mutilation, flogging, and hanging. If we do that, we will take our place among the most civilized nations of the world. There is another case on record, which happened in the year 1757, in Worcestershire, England, where thirteen men and women were convicted to the gallowes one bright morning and hanged, not one of whom had committed murder. Yet in Queensland, if you hang one man, it creates a sensation. Does not that show our progress? The inferior punishments I will briefly refer to—In the borough towns there were much put to death for such things as pilfering millers, the cucking stool for scolding wives, the branck for taking shews, the cage or pillory, the skimmington, and the stocks for all. Immorality was punished sometimes by the same制度 whipping. But that does not complete the list of horrors our ancestors inflicted on their unfortunate fellow creatures. For instance, for the stealing of a sheep or the killing of a deer, hosts of excruciating tories were inflicted on the convicted persons. History tells this. Besides the "boot" and the rack there were a number of inferior engines of oppression. In that connection, it will be remembered that Cardinal Wolsey was at one time placed in the stocks for drunkenness—a man at the minute whose name most of us would be inclined to raise our hats. There were also punishments of the dark house, or dungeon, the drunks' clock, the whipping post, entries in the Hustings book, branding, and all sorts of arbitrary fines and imprisonment. Coming down to our times in New South Wales, Victoria, and Tasmania, during the present century—forty, fifty, sixty, or seventy years ago—we find that it was not an uncommon thing for numbers of men to be hanged before breakfast on Gallow Hill, or on the site of the Cuckoo Race Hotel, Castlereagh street, Sydney. There enterprised human beings were launched into eternity—their old friends about, drinking, smoking, cursing, and swearing—a public and a public benefit for the maintenance of public order, and in the sacred cause of the protection of property. We have abolished that. Here we don't always carry out the death penalty, and juries are loth to convict on circumstantial evidence. That is a result of the wide spread of education and the greater regard for human life. If the Government don't show regard for human life, then the average man will take the Government. I am glad to see the elimination of sections 466, 467, and 470, relating to the Game Laws, as being unnecessary in Queensland. These laws were for many years a fertile source of punishment in the old country. Even in recent times in England there have been a great many cases under this head. If a man took an egg out of the nest of certain birds he was visited with the imprisonment of a year and a day, Killing or wounding any deer in any park or enclosed ground was by a statute of George I. punished by transportation to the plantations for seven years. Scores of human beings for a petty offence like that, which we smile at to-day, or which would be punished, if at all, by the infliction of two or three months' imprisonment—scores of people were sent to the unhealthy plantations in South America for a period of five, six, or seven years. All these laws had an object. Their object was to reform men's morals;
to make them better by deterring from crime or frightening them into living virtuous lives and respecting the civil code. But it did not succeed. Where we hang one man to-day, they hang seventeen then. They hung a man for stealing a horse. We do not hang a man for stealing a horse; and I do not know that the crime is committed any oftener than it used to be. I say that society is the gainer by the change. The legislators of that day, very much like those of to-day, in some instances, were moral reformers who believed, like the Secretary for Lands, that the faggot, the black cap and sentenced a young girl to be hung for stealing goods from a shop in the daytime, they hung seventeen then. They did not succeed. Where we hang one man or greater severity. I have said that the brutality of these inhuman laws gradually excited a deep impression of sympathy, and a feeling of compassion and this feeling was not only confined to England; it went also throughout the continent of Europe, and in many parts of Europe, like France, this feeling took such hold upon the public mind that, sided by men like Victor Hugo and reformers of that calibre, attempts were made to reduce the severity of the penalties imposed upon criminals guilty of all sorts of offenses against property and the person.

The SECRETARY FOR PUBLIC LANDS: You do not think I would advocate anything of the sort.

Mr. LESINA: The judge who doomed the black cap and sentenced a young girl to be hung for stealing goods from a shop in the daytime valued at £6, or the man who killed a deer or destroyed a tree in an orchard or an avenue, or was guilty of any other petty offence which we now dismiss with a few months' imprisonment, doubtless considered that he was upholding the fabric of social order—preserving society against the forces of anarchy. And he and his fellows in and out of Parliament that day up to the present time fought like Trojans against the proposals to mitigate the severity of the English Criminal Code. Did they succeed? Did they make men more moral or greater repecters of law and order? Did punishment by mutilation, hanging, flogging, burning, boiling, slitting the cheeks—did any of those things succeed in checking crime? Did those brutal and detestable judicial punishments in the old days ever deter men from stealing? We know that they did not; we know that they had a different effect altogether, as I have shown above. In the early days we find the grossest practices resorted to for the punishment of offenders against the then civil code; and the Attorney-General and the Secretary for Lands, as students of Roman and Greekian history, are well aware of the awful agonies suffered by the law-breakers in those times. But as the world progressed and the philosophers and moral reformers began to have a widespread influence in elevating human character, these severe penalties were in some degree reduced. Yet as we have seen for many hundreds of years, those judicious and lenient penal systems were then curtailed; judicial punishments, were committed on offenders. England, which is the freest of all the nations of the world from cold-blooded, wicked laws, still had as incidents to her policy provisions for punishment which a later age condemned as detestable and unwarrantably cruel. In France, and many other continental countries, precisely the same kind of things prevailed—the most brutal punishments were inflicted for all sorts of petty offences.

Mr. Stewart: So it is in Spain to-day.

Mr. LESINA: Yes—Spain, Italy, Russia, and other places. Those punishments, inflicted with such extreme cruelty, gradually excited a deep impression of sympathy and resentment in the nation. From the time of the glorious revolution, when, as I have already pointed out, King Charles lost his wooden head, the nation began, after the Prince of Orange had condemned punishment by mutilation as foreign to right and British feeling. They recognized—as we must recognize—that we are not what we ought to be. I hope the Attorney-General will recognize—that, apart from the lowering of the nation itself, the sufferer is perpetually debased. It also became acknowledged—and I think this much will be admitted even by the Secretary for Lands—as a constitutional principle that the natural consequences of harsh and cruel restrictive laws is to aggravate the crimes or disaffection which have paved for their pretext, and that the legislatures has still to pass on any longer. A great man of that calibre, attempts were made to reduce the seriousness of the penalties imposed upon criminals.

The SECRETARY FOR AGRICULTURE: They can stand more reform, Mr. Dawson.

Mr. LESINA: Undoubtedly; but reformers are met by men who won't move forward. Victor Hugo, when he wrote about it, said it was impossible.

The SECRETARY FOR AGRICULTURE: Victor Hugo is dead now.

Mr. LESINA: Victor Hugo is dead, but Victor Hugo lives in his works, as is well known by those who have read Victor Hugo's "Les Misérables"; and we cannot help loving and reverencing the man for the work he has done. Some admirers of the Hugo were not so wise as to learn from the story of what induced him to take up this work, and I will give it in his own words—:

At Paris, he says, in 1839 or 1840, on a summer's day towards 12 o'clock at noon, I was passing by the square of the Palace of Justice. A crowd was assembled there around a post. I drew near. To this post was tied a young female with a collar round her neck and a writing over her head. A chafing dish full of burning embers was set on fire, and the face of a woman who was carried to a woman being heated there. The face of a woman who was carried to the palace of justice.

I was when a woman might be partially undressed; a man quickd the store at his back, expecting the woman's back as far as her waist, seized the iron which was in the fire, and applied it, leaning heavily on her shoulder. The woman then drew aside the jacket, removed the collar, and a river of white smoke. This is not as it was forty years ago, but there still rings in my ear the horrible shriek of this wretched creature. To see one was my greatest horror of this wretched creature. To see one was my greatest horror of this wretched creature.
appealing for the abolition of the last two vestiges of punishment by mutilation, the lash and the gallows; I would like to see them abolished.

We have excellent precedents established by various other countries of the civilised world; precedents to go upon. We have not only the humanitarian spirit of the age which urges every man of right feeling to strive for the abolition of these brutal punishments, but we have the precedents established by various other countries of long ages. Knowing people like ourselves sprang from somewhat the same stock as ourselves, and who to-day have abolished this last dread penalty, the death penalty. The criminal code has been humanised by the efforts of these men, and the best proof I have that the work is still going on and is working a quiet revolution in the hearts and minds of judges, magistrates, and legislators is to be found in the Draft Code submitted for the consideration of this House by the Attorney-General to-night.

Splendid progress has been made. [7.30 p.m.] There can be no question about that. Is not it to be attributed? The domestic warfare of our forefathers, the fire of the forward movement, the love of justice and mercy have brought the English Criminal Code to-day without hard labour; 3, imprisonment without hard labour; 4, imprisonment in irons; 5, imprisonment with hard labour; 6, imprisonment in a penitentiary or reformatory school; 7, whipping; 8, fine; 9, finding security to keep the peace. It is expressly provided in this Code—it is a long step in the broad road for reform—that whipping may be inflicted on a woman. Yet less than 100 years ago women were flogged and branded like steers openly in public. But they will become rarer as time goes by. The Dunishments of a moral idiot—is, to my mind, inexpressibly shocking, and in direct opposition to the trend of modern thought and usage when dealing with the modern industrial society. It is due to the great breeding conditions and our industrial conditions are reducing crime. I have said that crime is a social product, and that its great breeding grounds are the highly-centralised cities of modern industrial society. Because of certain economic causes, offences against the person, against property, drunkenness &c., are more numerous in big cities. Ignorance is also a fruitful cause of crime.

The Secretary for Public Lands: It is all in the library.

Mr. LESTINA: Yes, they are authors who have written on the subject. I am one of those who believe that the Minister for Lands, if he has read these works, is not more inclined to feel leniently towards.

The Secretary for Public Lands: If I did not feel very leniently I should have gone out of this Chamber long ago.

Mr. LESTINA: The criminal is not a wild beast, although that appears to have been the view taken of him all through history. It may be a subject of considerable humour to the Minister for Lands as well as to other members of this House by the Attorney-General to-night.

An Honourable Member: Some want flogging yet.

Mr. LESTINA: I now see the law expressly provides that they shall not be flogged—it does not matter what they may be guilty of. Is not that a long step in advance? Though this Bill expressly provides that they shall be exempt from this hideous punishment, the backs of their brothers may be mutilated.

The Secretary for Public Lands: Where is that said?

Mr. LESTINA: But they will become rarer and rarer as time goes by. The punishments of boiling alive, eating alive, drawing and quartering, branding, torturing, dismembering, beheading, flaying the skin, cutting the ears, the tongue, the nose, blinding, cutting, and certain nauseous forms of mutilation prescribed on wretched criminals by our well-meaning but barbarous forefathers have disappeared from our statute-book, but we still retain the lash and the gallows—two relics of cruel, barbarous, and detestable ages. Yet all the others were considered necessary for the welfare and continuance of society. I suppose that if anyone had got up and proposed that the law which permitted women to be mutilated for petty offences should be abolished, persons like the Hon. the Minister for Lands would have said, "You want to upset society, overturn things in general, and destroy the guarantee of our peace and property now given by this law!" but the groans of thousands of the character were allowed to pass unnoticed, and these hideous forms of infliction were abolished once and for all. Still, society goes contrary to the law on society, and we are no worse off, if we are no better. Then the infliction of such horrors, judicial punishments—the calm, cool, deliberate strangulation of a human being, or the cutting off of limbs from the quivering back of a moral idiot—is, to my mind, inexpressibly shocking, and in direct opposition to the trend of modern thought and usage when dealing with crime. Lombe and Professor Carrara say:

Yes, they are authorities who have written on the subject. "Queensland Past and Present" for 1897, which undoubtedly proves this. It says:

Ignorance is apparently a greater cause of crime than poverty. The records of the magistrates’ courts show that of the 11,899 males and 1,258 females taken into custody during 1896, nearly one-half of the males and more than one-third of the females possessed no education, or only that of a most rudimentary character.
shown that to punish habitual criminals of either reformative institutions, showing that heredity man whose pathological condition is one of experts in the new science of criminology, have and thus place him beyond the reach of good evil for all eternity, is not the proper way of crime and dealing with criminals until we make assert that we will never settle the problem of habitual criminals must be dealt with in a.3 the case of Luccheni, the anarchist, who lately extraordinary criminal. And that the man is no son of a prostitute; his father is a criu~inal; and criminologist-discovered that Luccheni is the to peel pieces off his back, or to "scrag" him, He ismorally diseased. He may be in other respects a perfect man, hut he is intellectually little more to a large extent helped in the production of this assassination the Austrian Empress. Now, Lom-ditio~~ than the man who sickens of smallpox or typhus fever, and yet he is punished by some punisher such as we propose in this Code. He is just as much diseased as the lunatic whom the population, there were

The ATTORNEY-GENERAL: What would you do with him?

The ATTORNEY-GENERAL: That is punishment.

Mr. LESINA: He committed the crime in one of the Cantons of Switzerland, where capital punishment has been abolished, and he has been imprisoned for life in a dungeon.

The SECRETARY FOR AGRICULTURE: You say he is not responsible—he cannot help it.

Mr. LESINA: But it does not follow that because you recognise that a criminal is morally irresponsible for the crime which he commits that you must let him loose on society. I recognise that the tiger is irresponsible, and that he obeys certain natural instincts in attacking the first person or animal that he comes across, but that is no argument why I should let him obey those natural instincts. I must place it out of his power to do so, and the way to do that is to place him in perpetual imprisonment of That is what society should do, acting in the light of science, because crime is largely the outcome of our social conditions. Our laws have produced large numbers of criminals; and to make these criminals responsible for their crime and dealing with criminals until we make by hanging, flogging, or torture is about as sensible as punishing the lunatic or a smallpox patient for his affliction—a thing which our ancestors used to do. We show that habitual criminals must be dealt with in a scientific manner. Our treatment to-day is largely punitive instead of being also reformative. Modern experts in the science of criminology assert that we will never settle the problem of crime and dealing with criminals until we make our punishments not only punitive but reformative, preventive, and scientific. To lash a man, to peel pieces off his back, or to "scrag" him, is as a crimina.

Mr. MAXWELL: Slow policeman.

Mr. LESINA: Perhaps they are an element, but the statistician has not taken them into consideration, but these people were not too fast for the police. We have what is called the habitual criminal—the man who has, as Mr. Gladstone put it, a kink in his moral organisation—the man whose pathological condition is one of habitual criminality. Dr. Caesar Lombroso, his pupil, Mario Carara, Professor Pellman, Surgeon-Captain Buchanan, Havelock Ellis, and other experts in the new science of criminology, have shown that to punish habitual criminals of either sex by hanging, flogging, or torture is about as sensible as punishing the lunatic or a smallpox patient for his affliction—a thing which our ancestors used to do. We show that habitual criminals must be dealt with in a scientific manner. Our treatment to-day is largely punitive instead of being also reformative. Modern experts in the science of criminology assert that we will never settle the problem of crime and dealing with criminals until we make our punishments not only punitive but reformative, preventive, and scientific. To lash a man, to peel pieces off his back, or to "scrag" him, is as a crimina.

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to the Secretary for Lands and the Secretary for Agriculture — Herbert Spencer refers to this case:—

The saying of Emerson that most people can understand a principle only when its light falls on a fact induces me here to cite a fact which may carry home the above principle to those on whom, in its abstract form, it will produce no effect. It rarely happens that the amount of evil caused by fostering the vicious and good-for-nothing can be estimated. But in America, at a meeting of the State Charities Aid Association, held on Tuesday, the case of a girl was given in detail by Dr. Harris. It was furnished by a county on the Upper Hudson, remarkable for the rate of crime and poverty to population. Generations ago there had been a family called “gutter-child,” as she would be here called, known as “Margaret,” who proved to be the prolific mother of a prolific race. Besides great numbers of idiots, imbeciles, drunkards, lunatics, paupers, and prostitutes, “the county’s records show 200 of her descendants who have been criminals.”

Was it kindness or cruelty which, generation after generation, enabled these to multiply and become an increasing curse to the society around them.

Herbert Spencer says:

For particulars see “The Jukes: a study in crime, pauperism, disease, and heredity.” By R. L. Dugdale.

Mr. LESINA: I am trying to show that instead of hanging criminals and flogging them—basical punishments which were very good probably 300 or 300 years ago, but which are totally out of touch with the humanitarian spirit of nineteenth century civilization—you should place them in correctional institutions, and prevent them from propagating their kind, and leading society with a whole host of criminals, such as those I have mentioned. There can be no perfect cure for the ultimate argument. If the Attorney-General wants to know my object in drawing the attention of members of the House to these important facts it is this: we are asked to adopt a Draft Code of criminal law which, instead of providing for the scientific treatment of these abnormal types of humanity, provides for their punishment by mutilation, flogging and hanging. That, I maintain, is cruel, barbarous, and detestable, and utterly opposed to the humanitarian spirit of the age. Surgeon-Captain Buchanan, an eminent authority on this question, has an article in a recent number of the Cuticute Review, in which he elucidates the signs of the born criminal. I will read them, so that those in charge of our prisons and penal institutions will be in a position to carefully study the characters of the inmates of those institutions. Surgeon Buchanan says these are the signs of the born criminal:

- A special shape of skull; a pale, prematurely-wrinkled face; outstanding or otherwise deformed ears; a marked preamping of teeth, and a mouth hung in a deformed way.
- He is constantly lazy, and incapable of sustained work. His muscular strength is weak, but capable of great spasmodic effort. He is usually ugly, the fixed look in the eye may be an indication of cruelty during effort. He is liable especially to debase the lungs and heart. He comes of a mother or a grandfather who is addicted to meadobum. He frequently tattooed himself; the transfix reifies are absent. He shows a deficient sensibility to pain. While his eyesight is keen, his other senses are usually inferior. He is remorseless and indifferent to suffering. His intelligence is below the average. He has a strong craving for excitement and change, and a love of orgy.
- Is he not just as likely to kill anybody else to get rid of the onl witness. The criminal class forms a class moves as an honourable member of it. The criminal class consists of:

- A drunken father probably beget children with a predi-pension to alcoholism, and the social conditions that surround them induce them to commit actual crime. I am going to deal finally with the questions of flogging and capital punishment.

All these things lead up to the objections I have to the Bill. The purpose of punishment is to cure the offender. How can you cure a criminal by flogging or hanging him? My first objection to flogging is this—and it is a very important and democratic objection: I object to flogging because it was never intended to be used on the backs of men wearing a broadcloth coat and a tail. Flogging is an institution specially reserved for Bill Smith, the sodden carrier, and John Brown, the wharf-jumper, for the man who wears moleskin trousers and burlong boots. There has never been a man in a cloth suit tried up to the triangle yet. It is an anti-democratic institution, specially reserved for the use of the working classes. When you find a man tried up to the triangle who has stolen $20,000 from a bank I shall begin to think you are sincere in your attempt to reform society by the use of the cat. I object to flogging, secondly, because it is an instrument of torture. I do not think it is necessary to torture people nowadays. I object to it, thirdly, because it degrades and brutalises for ever and all time the victims; fourthly, because it degrades and brutalises society; fifthly, because it further degrades the already debased wretched of the lash; sixthly, because it does not act as a deterrent. If it acted as a deterrent, how is it that people who have been getting flogged for centuries commit crime? If you were to allow the Press to be present at floggings—I do not know whether they are now—then you are to publish snapshot photographs of the bleeding welts on a criminal’s back, and depict his agony in glowing language, the man who is a criminal would immediately become a martyr in the society in which he moves. The criminal class forms a fair percentage of society, and every member of that class moves as an honourable member of it. If flogged, he is looked upon as a martyr, and the result is that others emulate his example. Now, as to hanging, when that was carried out in public in the old country or in Sydney, and men smoked their pipes and cigars and chatted round the gallows, hanging had no deterrent effect. It brutalised the spectators. In the adjoining public house they would tell how game a man had died. I contend that it has no deterrent effect under any circumstances. Yet the Attorney-General only proposes to abolish hanging for rape.

The ATTORNEY-GENERAL: I gave you the reason the other night.

Mr. LESINA: Because a man is likely to kill his victim in order to get rid of the only witness. Is he not just as likely to kill anybody else to dodge the punishment?

The ATTORNEY-GENERAL: I think the punishment is too great for the nature of the offence.

Mr. LESINA: I think any punishment is too great which takes a man’s life [8 p.m.] away, or brutalises him for life. If your object is to reform a criminal, why brutalise him by flogging?

The SECRETARY FOR PUBLIC LANDS: Your argument is that he cannot be reformed, and that he should be locked up for life.
Mr. LESTINA: Yes, if he cannot be reformed. But if your object is to deter criminals from committing offences, why resort to flogging? If that is your argument you would be justified in boiling a criminal, because that would be a greater deterrent than flogging. Why not boil him alive, or beat him in the public square? That would terrorise every criminal throughout the country, and it is used to be done at one time. Why not break him to those old English customs? Under the Code death by hanging is the penalty for three offences—murder, treason, and piracy. At present that is the penalty for some five or six offences. Is that not so?

Mr. LESTINA: I object to the infliction of the death penalty for certain reasons. (1) Because it is not necessary for the security of human life; (2) because it is not necessary for the security of human life; (3) because its abolition increases the security of human life; (4) because the abolition, in the great majority of cases, has been, and remains to be, a marked practical success; (5) because the collective and united experience of those countries in which the death penalty has been abolished affords strong and sufficient proof of this; (6) because if in practice these countries had found that abolition was a failure, they would have resumed executions; (7) because the arguments in favour of the death penalty are equally strong if used in defence of boiling in oil or roasting at the stake; (8) because there is every likelihood of a decrease in the number of murders where the law sets the example of reverence for human life; (9) because where the danger of occasionally executing innocent persons is removed by the death penalty, so an irreparable penalty, convictions become more certain, and the murderers apprehended are far more sure not to escape than under another system; (10) because the growing distaste for the death penalty induces jurors to refuse to convict and many murderers thus escape; (11) that hanging does not deter; (12) because life imprisonment is a more certain penalty, and is therefore more deterrent; (13) because the abolition of the death penalty would result in a more diffused sense and intelligence of the sacredness of human life, in its spiritual and eternal relation; (14) because the retention of the capital punishment is attended with far more impediments to the repression of atrocious crimes than the substitution of a wise and uniformly severe secondary punishment; (15) because its application in Queensland is irregular and fortuitous; (16) because innocent men may be hung! Here is proof that the application of the death penalty in Queensland is fortuitous and irregular, and has not been carried out as the law instructs magistrates and judges to carry it out. In 1877 there were ten cases of murder tried, and there were five acquittals and seven convictions, but there were no executions during that year. You see, seven men were found guilty of murder.

The ATTORNEY-GENERAL: Probably it was not a willful murder in the sense in which the Code now proposes to define willful murder.

Mr. LESTINA: There were seven convictions for murder in 1877, and none of the men so convicted were hanged. Does that not show that the death penalty was carried out irregularly and fortuitously?

The ATTORNEY-GENERAL: The Code draws a clear and united experience of those countries in which the death penalty is carried out irregularly before willful murder and murder without malice aforethought.

Mr. LESTINA: In England, I suppose, that out of every 100 murders committed 90 per cent. of the offenders are not executed, and in the countries of Europe the same thing occurs.

The ATTORNEY-GENERAL: You don't quarrel with that?

Mr. LESTINA: No, I do not quarrel with that, but I ask why, if the death penalty deters people from the commission of murder, do we not carry out the thing regularly and fearlessly, and not with this fortuitous evasion? The real reason why it is not carried out regularly is that modern sentiment is against the hanging of criminals. There is growing sentiment all over the civilised world against hanging criminals, but it is only beginning to manifest itself here. We have been alive to the growth of that sentiment, but our jurymen have, because rather than have a man's blood on their heads they bring in a verdict of not guilty. If they knew that a criminal charged with such an offence as that for which the punishment is death would only be imprisoned for life, they would have no scruples about bringing him in guilty, but they will not shed a man's blood, and you cannot quarrel with jurymen for that. But there is another argument against the death penalty, and that is that an innocent man may be hanged. I do not think that will be disputed, for innocent men have been hanged. My opinion is that it is better that ninety-and-nine known murderers should escape than that one innocent man may be hanged. You can never give him his life again, and the taking of it is a more judicial mistake, for which society, the judge, the jury, and legislators are responsible. They can make no amends to that man, for he has, as far as we know, only one life, and when that is taken from him it is gone for all time and eternity. Therefore, if there is a possible chance of innocent men being hanged we should not inflict the death penalty. Juries will not convict on circumstantial evidence, and I I was a jurymen tomorrow morning I would not hang a man on circumstantial evidence; and that is the kind of evidence on which men charged with murder are unequally convicted.

You have to prove that the victim was poisoned or shot, or that he met his death in some other way at the hands of the person charged with the offence, and to do that you have to go on entirely circumstantial evidence, and that may lead you into convicting an innocent man. I shall refer you to an authority on this subject. There is a case of circumstantial evidence that I should like to impress upon the Attorney-General, because this is an argument which needs to be emphasised. In a book published in Melbourne, and entitled "Fifty Years of Colonial Life," Mr. J. W. Curran, an old Melbourne colonist, gives a case in which a man was hanged innocently on circumstantial evidence.

The SECRETARY FOR THE ASSEMBLY: What was that year was that?

Mr. LESTINA: Mr. Elliot gives the year, and you can get the book in the library. Mr. Elliot was on a jury that tried a case of murder heard before Chief Judge Forbes.

The ATTORNEY-GENERAL: That was in the old days.

Mr. LESTINA: Never mind. Mr. Elliot says that near Campbelltown one evening two men were riding one horse on their way home from work, and they were heard quarrelling as they jogged along. Next morning the front man was found dead, and his mate declared he had been shot by some unknown person in the scrub. But the medical expert swore that the wound was just the kind that a gardener's knife would make, and as the living man happened to be a gardener his first was fixed at once. Judge Forbes told the jury that circumstantial evidence was just as good as direct evidence, and the unlucky gardener was thereupon found guilty and duly hanged. Twelve months later a bushranger named Curran was condemned to be hanged, and in his dying confession he declared he had shot the gardener's mate from behind cover. Then the remains of...
the murdered man were exhumed, and the bullet wound was found in them. The post-mortem doctor did not feel too well, the jury did not feel well, and probably the judge did not feel too well at that discovery. Mr. Elliot says that the blunder had a lasting effect on him, and that he vowed he never would believe circumstantial evidence again:

The ATTORNEY-GENERAL: No Executive worthy of the name would hang a man on such facts.

Mr. LESINA: But they did hang him.

The ATTORNEY-GENERAL: They were unworthy of their positions.

Mr. DAWSON: What about the man who was hanged?

Mr. LESINA: There is another case, too. Of course the death penalty has been abolished for this offence in some colonies. In New South Wales there was a man named Butner who was sentenced to death for rape upon a woman who came from Queensland and took lodgings at his place. She came there late at night, and at 1 o'clock in the morning she was seen hanging from a spout and shrieking for help. A man passing by secured a ladder, erected it against the house, and rescued the woman from the cupola. She once went to the police station and laid an information against Butner for rape. He was duly charged with the crime and found guilty. The judge was perfectly satisfied that a case had been made out, and by Mr. Crick, one of the present Ministers of the Crown in New South Wales, took up the case. He communicated with the Queensland police and discovered that the woman had been a licensed woman for about twelve months in Brisbane, and on the very morning on which Butner was to be hanged he received a pardon, £200 by way of compensation, and was discharged. There is what sworn expert evidence does for you at times.

The ATTORNEY-GENERAL: That would be impossible.

Mr. LESINA: I know that, and I say that in spite of yourselves you are being dragged along by the Executive. You have to give way and abolish some of the cruel and barbarous punishments, unless you desire to be perpetually making mistakes and punishing the wrong men. I say that murder is murder under all circumstances. It is just as much murder when sentenced to death or by the employment of the flogger or hangman.

The ATTORNEY-GENERAL: They are not the same.

Mr. LESINA: Then, again, only a short while ago I saw a cablegram in the papers to the effect that a pauper in one of the London workhouses had confessed to having murdered a man for whose murder another man had been hung. This Code makes no provision against cases of that kind, and that is why I should like to see capital punishment abolished. Perpetual imprisonment is more effectual in many ways. It is a greater deterrent, I believe, and if capital punishment were abolished juries would have less hesitation in convicting. There is another matter to be considered in connection with hanging and flogging, and that is the employment of the man who wields the lash and the man who draws the bolt. I think it was Lord Brougham who said that the worst use you could put a man to was to make him hang him. There are any number of people who agree with that sentiment. I think that the next worst use you can put him to is to make him a flogger or hangman. Romilly says:

"One of the most curious and instructive facts in modern society is the sort of moral and social blight which attaches to the executioner of criminal condemned to death by the laws of the country, for if the punishment be such as to deserve our respect and approbation, the office is in a high degree useful and honourable. No such obloquy rests upon the officer carrying out any other description of punishment."

I read an article some time ago in the "Fortnightly Review," written by Major Arthur Griffiths, in which he asks:—"Why have a hangman?" He describes the baleful, brutal, horrible occupation of a human butcher who carries out the last dread sentence of the law. He speaks of the hangman as concentrating in himself immeasurable shame and disrespect, an abject, degraded being, whose name is universally re-guised as synonymous with that of the ignominious post he occupies. This occupation degrades the executioner and degrades society. The hangman degenerates into a callous, cold-blooded ruffian. This vile being is universally execrated. Is it a correct thing to deliberately make
allow a man to follow an occupation which brutalises and degrades him and the society in which he moves? As Major Griffiths truly observes—

An executioner, constantly and exclusively engaged in the taking of human life, must, by the very nature of his occupation, become brutalised. This is established beyond doubt.

The abolition of the gallows would lead to the abolition of these degrading offices which no human being, morally responsible, would hold. These are my chief objections to the Code, and I would like to see these two propositions entirely wiped out. I would like to say to those persons who believe in capital punishment that they must assume the following four propositions, and then prove their own case:

(1) The fear of death is the only fear which is sufficiently intense to deter from the commission of murder. (2) Juries are never led by their dislike of capital punishment to give false verdicts. (3) Innocent men are never hanged. (4) A week or two of professed penitence for a great crime will secure the offender’s pardon in the next world. If, as Romilly says, they can only succeed in persuading themselves of the truth of these four propositions, they will then prove their own case.

The article goes on—

Those in which the death penalty is abolished are—


It appears that the death penalty is absolute in twenty-four jurisdictions, that it has been abolished in five, and qualified in six.

The following extract from Mr. Curtis’s report shows the state of legislation in foreign countries:

Capital punishment is retained in Austria, China, Colombia, Denmark, Eire, Ethiopia, France, Greece, Haiti, Hawaii, Honduras, Japan, Korea, Liberia, Mexico, Peru, Porto, Rumania, Spain, Sweden, and Turkey.

It has been abolished or qualified in the Argentine Republic, Australia, Brazil, British Guiana, Chile, Costa Rica, Guadeloupe, Holland, Italy, Norway, Portugal, Russia, Switzerland, and Venezuela.

The article goes on—

Another eminent practical consideration is the state of our prisons, which is constantly and increasingly being taken by juries against finding a verdict of murder of the first degree on circumstantial evidence when the death penalty is to follow. It may be urged that the position is one to which juries in this respect is illogical, since the effect is to absolve from punishment in exact proportion to the successful acuity with which a crime has been concealed. It is useless to argue; juries will find the most absurd verdicts of insanity where none exists. If, for example, anything which they believe the prisoner to be guilty, but they will not take the responsibility of inflicting a punishment resting upon the correctness of their conclusion upon a train of circumstances that puts the man beyond the pale of restitution should move and modifying circumstances come in to light. The result is that the worst criminals escape under colour of law, not because a reasonable doubt exists as to their guilt, but because of the unwillingness of juries to assume the responsibility in view of the extraordinary and irresistible effect of their verdict.

Again, we have cases to show that juries will not convict on circumstantial evidence and they cannot be quarrelled with for so doing. Innocent men have been exonerated in the same case as the one discussed, and which some hon. members hold up as an example to Australia with regard to federation—so why should we not imitate them in this case?

The experience of all these countries goes to show that the abolishment of the death penalty does no harm, but infinite good. To draw my argument to a conclusion, I think I have shown, going back 400 years, that all sorts of punishments were inflicted for petty offences because the legislature, the judges, and the public at large believed that only in that way could crime be put down. Torture, burning, branding, boiling, hanging—these were the means adopted to try and teach men to lead a moral life. It was contended that these punishments were necessary for the welfare of society; that if they were abolished society would not last a single day. It is hardly necessary for me to give the lie to all these "prophets of doom." We don’t hang, draw, and quarter, boil, rack human beings now. We have risen above all the terrors and horrible punishments of our forefathers, and the best evidence of this is the abolishment of many of the old laws and the repeal of many Acts quite out of date, which is in harmony with the enlightened spirit of the times. Capital punishment has been abolished in many civilised countries, and I object to the hanging and flogging ourselves for the offences mentioned in the Code. I think society would be just as secure without these punishments. Let us obey the dictates of common humanity by abolishing this out-of-date punishment.

[S.90 P.M.] men, and by establishing punitive, reformative, preventive, and scientific treatment of our criminals; and I shall do my utmost, when the Bill is passing through Committee, to remove those provisions. Whether I fail or whether I succeed, I shall try to have them struck out of the Draft Code. I would like to see once for all in this new land, where we are building up a new civilisation which we hope to ground upon humanitarian principles—I would like to see these things done away with for all time; and I shall earnestly strive and use what little influence I can bring to bear upon the matter to have them struck out. If I should fail I can only fail and somebody else, as surely as the sun will rise to-morrow, will take the matter up where I leave it. I feel perfectly satisfied that it will not be many years longer before the humanitarian feeling now spreading through the colony to all civilised communities, will demand once and for all the abolishment of flagging and the death penalty.

Honourable Members: Hear, hear!

After a pause,

Mr. DUNSFORD: [Charters Towers]: I think it would be almost a pity if we did not take an unusually early hour to permit the Bill to go through.

The Attorney-General: Do not talk for the sake of keeping back. We want all the time we can give to it.

Mr. DUNSFORD: I know there are some hon. members who are desirous of talking on the matter, but I do not see them present. There is the hon. member for Fassifern, the Hon. G. Thorn.

The Attorney-General: Oh!

Mr. DUNSFORD: We know that he is a law reformer; he has brought Law Bills before the House, and I think it is a pity that he has not been promoted. Is it possible that the Bill should have its second reading, though probably there are some matters to which some hon. members on both sides may take exception? It is not a country in which we can go to look at the size of this Criminal Code, containing as it does 216 pages, a large number of schedules—and I
believe there are something like 708 clauses—when you look at the formidable nature of this Criminal Code, we may well ask ourselves how it is that any man is at liberty at all? It appears to me that if we consider these in the light of so many traps into which we are all liable to fall, it is really surprising how many of us have managed to escape. Of course I am speaking in a general sense, because we must remember that these 708 odd clauses have been scattered through Acts of Parliament, and the public cannot have known what the law was; the land has been—what the living criminal laws have been—because the public do not hunt through the statutes. They have not the time or the opportunity, and how people are to obey the law of the land without knowing that such laws are in existence must be to us a puzzle.

The ATTORNEY-GENERAL: The Code will minimize the difficulty.

Mr. DUNSFORD: Yes, it does to some extent, because if it does nothing else it will enable the public, if they like to peruse it—at any rate it will enable members of Parliament to see how much behind the age the living criminal laws of our land are. I believe it was—I do not know whether it was or not—the Attorney-General who first gave it the name of the living criminal law.

The ATTORNEY-GENERAL: Hear, hear!

Mr. DUNSFORD: It may be in one sense a living criminal law, but those on whom its punishments are inflicted will come to the conclusion that criminal law, especially when we consider the large number of cases where capital punishment is inflicted, and flogging is inflicted, and iron may be put on the criminal, and where solitary confinement may be ordered—I say, when we consider all these things, it almost makes one believe that instead of being a living criminal law it will have the effect, to some extent, of making men morally, and physically killing those unfortunates of society who are termed our criminals. I do not wish to go into details in this matter but I want to point this out: Going through this Code, I have discovered that there are no less than sixty-four clauses under which there are thirty-eight different crimes where the individual has been the sufferer in the first place. There are a number of clauses where solitary confinement and whipping are inflicted during life sentences, and provision has been made for prisoners being ironed. On page 178 there is a clause providing for the lodging of prisoners. All these things are, in my estimation, inhuman, and would have been better left out of the Bill and when it comes to the committee stage I shall make some effort at any rate to improve it from my standpoint, and lessen these things. But I do not wish to follow up the matter any more, because the speech or lecture delivered by the hon. member for Greenwich must have been interesting to hon. members. He has covered all the ground—certainly all the ground I intended to cover. I had made notes of matters on which he has touched; but I think it would be almost an infliction if I were to come to the ground he has already and so ably gone over. While entering my protest against the inclusion in this Code of so many proposals of the police in bygone centuries, I must, at the same time, give credit to the hon. member who has introduced the Bill for the very clear manner in which he placed it before the House, and to those who have had the matter in hand from the start. The Code will simplify matters for everybody. It will make the law much more easily understood. If we are to get any good out of our criminal laws we should have them all under one Act. I hope the Code will pass its second reading, and I am of opinion that when a member sees an amendment introduced they may think f5 in the committee stage.

Mr. FITZGERALD (Mitchell): It is really astonishing to see the interest which appears to be shown by the members on the other side of the House. The members of the profession, because it is a question much to the point outside the profession as well as inside it. Reference has been made to the gentleman who drew up this Code, and to those who revised it. We know who the gentleman is who drew it up in the first instance. But I notice that all who have had anything to do with it are leading legal gentlemen. Not a single layman has been asked to consider it or look over it. Yet when it comes to the trial—when it comes to bring these laws before the courts—it will be the layman, the ordinary business man, who will be asked to go into the jury-box and find out the facts, come to a decision on the facts, and find out whether the prisoner is guilty or not guilty. The whole theory of the jury are always reminded that they are the country, and the whole responsibility, when the judge sums up, is placed on them. The ordinary intellect, and men of ordinary business experience, and they are asked to bring their ordinary business experience and their ordinary intellect to bear. So I should have liked to have seen some persons on the Commission outside the profession.

The ATTORNEY-GENERAL: For a codification?

Mr. FITZGERALD: Yes, for a codification. This is not simply bringing together the old law; it is another clause, and there are eleven clauses and another clause, and there are eleven clauses and thirty-eight crimes. All of these make it possible for the punishment of solitary confinement, and though the prisoner is suffering a life sentence I think that is rather inhuman. Then there are clauses where solitary confinement and flogging can be imposed. It cannot he for the protection of society, it cannot be for the reformation of the criminal that flogging and solitary confinement are added to the punishment of a criminal who is incarcerated for life. The effect cannot be to improve them in any way, and the effect must be to brutalize them. Of men it must be to make them worse, and if they do, after undergoing these inhuman punishments, get turned loose on society, worse luck to society, because society will be the sufferer, though the individual has been the sufferer in the first place.
The ATTORNEY-GENERAL: A few—comparative few.

Mr. FITZGERALD: As far as putting it into the ordinary legal phraseology, if that had been all that was required, leave it in the hands of Sir S. W. Griffith, and even a good draftsman, and the work is done. I admit that; but when the Government go to the trouble of codifying the law and of bringing a big thing like this before us, they might as well have gone a step further, and considered whether a great many of the principles of the present law should not have been amended. There are many things which want amending. Take it from a jurymen's point of view. The ATTORNEY-GENERAL, in moving the second reading, said the Code was not only an attempt to cover the whole ground of the law itself, but of the procedure. There is one question of procedure which ought to have been considered more carefully than it has been—one which affects jurymen or laymen very much. I will give a few instances which will show why I should have liked to have been a layman on the Commission. How many times have we seen a judge attack and actually insult jurymen? How many times have we seen a judge actually tell them, after they have given their verdict, that they ought to be ashamed of it? In many cases they deliberately insult them after telling them they are the country. There are many things besides codifying the law which require looking into. Jurymen do not get the rights as they come out in evidence, the jury will not only have the responsibility of bringing in the verdict, but, if they should find the prisoner, they must say that my sympathies are a great deal in the same direction as those of other hon. members who have spoken on this side. I am glad to see that in several instances the death penalty is taken away, but I would really like to see it further safeguarded. Every hon. member knows of cases, either from reading of them or they are cases which have come under his own observation, where persons have been condemned to death under circumstances which gave rise to a suspicion that the sentence was unjust. If I have any support, I intend to bring the matter up in Committee to see if some safeguard cannot be devised whereby the jury will not only have the responsibility of bringing in the verdict, but, if they should find a man guilty, they will have the privilege of recommending him to mercy, and also have the right of saying to the judge, "We find that the prisoner should not be sentenced to more than so many years."
Mr. FITZGERALD: The judge is not there to convict the man. The judge is there to advise the jury of the law, and to tell the jury that the responsibility for the verdict rests on the conscience of the jury. If the judge was there to find the facts, and find the verdict, it would only be right that he should also be the man to give the sentence; but the wings of the judges should be clipped just as much as anyone else's wings. Especially in the case of capital offences the jury ought to bring in as a part of a verdict of guilty, their decision as to whether the extreme penalty should be inflicted or not. Of course, even if they recommend the infliction of the extreme penalty, the Executive would still have the power to examine the matter again. If a power was inserted in the Code that in the case of a capital offence in which the death penalty is still to be inflicted the jury may add a rider of this description, it would take away the responsibility from the judge. Jurymen have often told me that if they had thought that the judge would inflict such heavy sentences as they have done, in cases in which the jury have brought in a verdict of guilty with a recommendation to mercy, expecting the man to get off with a couple of years. We have heard a great deal lately about a man the benefit of the doubt and release him. But the slur is still there. His name is still on the books as having been convicted of murder or larceny, or whatever it is, even though he be the most innocent man in the world. It was found out that a mistake had been made five minutes after sentence was entered—if the real culprit came to the judge and swore on oath that he was the guilty party, and that the other man was innocent—there is no possibility of amending that verdict. That is one instance in which our law is much in need of amendment. Another is with regard to witnesses for the defence. The Crown get their witnesses down to Rockhampton or Brisbane, but the defendant has to hire his own. It would be better if, to Rockhampton for trial, has to subpoena his witnesses, and get them there at his own expense; and, as a rule, he is too poor to do so. The result, very likely, is that the man never has a fair show. I remember a case of an old man who was charged with shooting at his wife. There was a whole crowd of persons in town, and the police magistrate was half inclined not to commit the man for trial, but there was sufficient evidence to send him for trial to the Rockhampton Circuit Court. The man was so poor that he could not get anybody to defend him or bring down witnesses. If he had brought any witnesses at all the jury would have laughed the case out of court. But the Crown had their witnesses there, and he got three years. In other cases also a good deal might be done by the Government in their new Code.

The ATTORNEY-GENERAL: I have always advocated a Crown defender in very serious cases.

Mr. FISHER: Why not in all cases?

Mr. GLASSBY: The late Attorney-General gave a distinct promise to me that a Crown defender would be appointed.

Mr. FITZGERALD: There are yet other matters in which the Code is imperfect. One is with regard to false pretences. In the far Western districts there is no such thing as gold passing from hand to hand as if it is gold. It is usually cheques. Drovers and others come into the towns and give cheques on banks in Brisbane and elsewhere, and by the time they have been sent for collection the persons giving them have disappeared. The offence is very hard to prove, and the result often is that these men go scot free. I should like to see some summary method adopted for dealing with those people, because it concerns the protection of business men. There are men in my district, storekeepers and business people, who have been brought to the verge of insolvency through such action as I have indicated, and I hold that there should be some attempt made to prevent it. There is a peculiar clause in the Vagrancy Act which may be used in some cases, but I really think there should be some summary way of getting at such people. Again, on the question of jury, the Code might be made more complete. I do not think a single day passes in any police court in the colony on which perjury is not committed. One witness on one side will swear black, and one witness on the other side will swear white; so that there must be perjury on one side.
Mr. FITZGERALD: I do not know that it is. I sometimes suspect my own witnesses. The Attorney-General knows how hard it is to get a conviction for perjury under the present system, and I think there should be some summary way of dealing with that offence by magistrate, not by the magistrate before whom the offence has been committed, but by other magistrates, who are giving an entirely different version of the matter, I know that one of them must be telling a deliberate falsehood, and I say our present system of swearing witnesses should be abolished at once. It is only making a mockery of religion. Taking the oath has become a mere matter of form, and when a man kisses the book he does not think of the solemnity of the occasion. A constable, for instance, who has often to go into the witness-box does not think of the swearin to tell the truth, the whole truth, and nothing but the truth, and nothing but the truth. If a man is not bound by his conscience when he makes such a promise, and by the knowledge that the telling of an untruth may hurt an innocent man, no oath in the world will prevent him telling a falsehood; and that is not a great deterrent, because it is so hard to get a conviction for perjury. If the oath were abolished, and there was some way of calling perjurers to account, there would be no difficulty at all in finding out what is the law on a particular matter. The hon. gentleman said that wherever serious cases were concerned he was in the habit of seeing three magistrates were called in, and a defendant counsel. But I do not think it should rest with him to say what are serious offences, because what might not appear a serious matter, I do not know that it is due to the people of the colony that deal of kudos is due to Sir Samuel Griffith in codifying the criminal law, and I really think it is due to the people of the colony that all the laws of the land should be codified. I quite understand the very difficult task it would be, but notwithstanding its difficulty if it was once done it would be of great benefit to those who come hereafter. There have been two or three things touched upon to which I wish to refer. The first is the matter of juries. My hon. friend the member for Clermont touched upon that and put it in a very clear light. If a jury are intelligent and competent enough after the judge has pointed out the law to bring in a verdict of guilty, they should surely be intelligent and competent enough to be able to say what the law was. I think if we think that ought to be left to juries. Then in reference to the Crown appointing counsel for defendants. The Attorney-General said that wherever serious cases were concerned he was in the habit of seeing three magistrates were called in, and a defendant counsel. But I do not think it should rest with him to say what are serious offences, because what might not appear a serious offence to the Attorney-General might be very serious in its effect upon the accused person. I think it is the duty of the Crown when they find counsel to prosecute to also find them to defend accused persons. The man who is put upon his trial for an offence is contributing, like all other members of the community, towards the cost of maintaining a gallant prosecutor, and in all justice to him, as well as to the whole community, he ought to be supplied with the services of someone to defend him. When you go into a court of law and see a man standing in the dock, it is a very hard thing to hear him say "there is no doubt he looks as if he were guilty." Just put the Secretary for Lands in that position.

The Secretary for Public Lands: Try one of your own side.

Mr. MAXWELL: I am quite sure if people saw him in that position they would say he looks guilty enough.

The Secretary for Public Lands: Look at yourself.

Mr. MAXWELL: My hon. friend, the member for Clermont, referred to the British and French laws. I think our laws are equally as good as those of France, and I am sure that no British community would for a moment tolerate the trial and sentence of Dreyfus. I, therefore, firmly believe that our laws are equal, if not superior, to the French laws. I do not intend to oppose the second reading of this Bill, but when it goes into Committee there are two or three things I intend to do my best to have struck out, even if I stand alone on division. One of them is the everlasting whip. I am not going to indulge in such strong language as was used by my predecessor, who represents the constituency that I now have the honour to represent, but I firmly believe that if a man who is put upon his trial for an offence is contributing, like all other members of the community, towards the cost of maintaining a gallant prosecutor, and in all justice to him, as well as to the whole community, he ought to be supplied with the services of someone to defend him. When you go into a court of law and see a man standing in the dock, it is a very hard thing to hear him say "there is no doubt he looks as if he were guilty." Just put the Secretary for Lands in that position.
of any man or serves any good purpose whatever. I shall do my best when the Bill is in Committee to have those two items struck out.

Question—that the Bill be now read a second time—put and passed; and the committal of the Bill adjourned to-morrow.

ABORIGINALS PROTECTION AND RESTRICTION OF THE SALE OF OPIUM BILL.

The HOME SECRETARY (Hon. J. F. G. Foxton, Carningwurah) : Mr. Speaker, I move that you do now leave the Chair.

Mr. BROWN (Croydon) : I do not wish to cause any delay, but I would point out that only this evening I have handed to the Clerk an amendment which I wish to move in the Bill; and which, of course, has not yet been printed or circulated. The amendment is only a small one, but if we go on with the Bill I intend to move it when we are in Committee.

Mr. BROWNE (Chesapeake) : Clause 4.

Mr. Speaker, I move the insertion of a proviso at the end of clause 3, which reads as follows:—

Provided that no such permit shall be issued to any Asiatic or African alien.

There were many good reasons for this addition. It would not only prevent coloured aliens going into competition with whites, but it would prevent a lot of very serious abuses. This Bill was introduced mainly to restrict the sale of opium to aboriginals, and he was sorry he had not got the returns he had asked for showing the importation and consumption of opium, which he had been led to believe had increased in the colony since the passing of the Act. It had been represented to him that when aboriginals got the taste for opium, which was generally supplied to them by these Asiatic aliens, white men could not get them to work at all, although they treated them far better than these Asiatic aliens. The white men paid them well and treated them kindly, but they would not work or believe them. The Home Secretary had visited Thursday Island, and had received deputations on this subject, and he would probably know something about it himself. He believed that the Hon. John Douglas was against granting these permits, and the matter did not only concern the pearlshelling industry; it concerned the employment of aboriginals by anybody. They found that Chinamen had these aboriginals, both male and female, round about their places for all sorts of purposes, and by granting permits to these aliens the same evils would be perpetuated. For these reasons he begged to move the amendment.

* The HOME SECRETARY admitted that the amendment of the hon. member for Croydon had his sympathy in some degree. Besides going to Thursday Island, he had gone to various other centres of the pearlshelling industry, and had received several deputations on this subject, but he had thought the Europeans who appealed to him were actuated by a desire to benefit themselves rather than the aboriginals. That was natural on their part, and no doubt the average white man treated the aboriginals far better than the Asiatic aliens, but, nevertheless, abuses were practised by both classes of employers. Some of the Asiatic aliens had become well-known citizens in the North; in some cases they were married to Europeans, and their sympathies were with the whites, in most cases. The amendment would entirely exclude this class from employing aboriginals in this class of work—the pearlshelling industry. There was also this further objection that while it would be perhaps doing that it would also not have entirely the effect the hon. member desired to see brought about. There were many Europeans who would employ these men, but who would have and who had at present in charge of their boats nobody but Asiatic aliens, and the consequence would be that in a large number of cases the very men who waited on him at Torres Strait in regard to the question would practically be evading the provision the hon. member sought to import into the Bill—that was to say, they would be nominally the employers of "binghis," but actually the employer would be the Asiatic alien.

Mr. BROWN : The white man will be responsible for anything that happened.

The HOME SECRETARY : That was very little satisfaction to the unfortunate aboriginal.

How could a man be held responsible for something that occurred, perhaps, two or three hundred miles from where he was?

Mr. BROWN : I take it that the holder of the permit is responsible.

The HOME SECRETARY : But what could be done? He admitted that he rather liked the amendment, but he feared that it would not have the effect the hon. gentleman desired to attain, and he was certain that it would deprive many aboriginals of humane and excellent employers.

He thought, on the whole, that discretion should be left to the protector to discriminate between those who belonged to the class of Asiatic aliens, who were in every way estimable citizens, and that other class about whom there was no absolute certainty of treating the "binghis" with humanity and consideration.

It was chiefly in deference to the experience and opinion of the Hon. John Douglas that he had refrained from inserting in the Bill the amendment proposed by the hon. member, and he still had his doubts whether it would be entirely for the benefit of the aboriginal if the amendment were carried; however, if it was the desire of the Committee generally that it should be accepted, he had no serious objection.

Mr. BROWNE (Chesapeake) : Mr. Speaker, I move, and the Committee will probably accept it.

Mr. Speaker, I move that the Bill be now read a second time.