

*Criminal Code*

Before doing so, however, I should like to say that I was greatly struck by something the hon. member for York-Scarborough said while reading a newspaper article from a New Zealand paper. He referred to the fact that the newspaper said the procedure which was then being taken there constituted a triumph for democracy. Well, Mr. Speaker, it seems to me that the way in which we have proceeded in this house over a number of years is an excellent example of the democratic process at its best. Here is an issue in which a great many people are involved, an issue which some years ago was referred to a special committee composed of hon. members from this house and from the other place. This committee undertook to hear a great many witnesses and upon completion of their proceedings brought in a report which, amongst other things, recommended the retention of the death penalty.

One might have thought, then, that would be the end of this issue for many years to come. On the contrary, the hon. member for Vancouver East (Mr. Winch) who, as he says, has lent his abilities to the promotion of the principle of this bill for a long time, and subsequently the hon. member for York-Scarborough having had a personal experience while serving as part of the judicial set-up, brought their minds to bear on the issue and introduced this measure. As a result of the persistence of these and other members, as a result of the debate which was of a high calibre and in which all members participated, the government in due course introduced legislation which was passed last year. I regard this legislation as a sort of halfway house on the way to a final solution. That is justification for my remark that here is an illustration of democratic processes in operation and still functioning in the hope that ultimately the desirable consummation many of us look forward to will be achieved.

I mentioned something about the proceedings of a joint committee. I have often been asked why it was that in the proceedings in that committee, and in other committees, so many of the law enforcement officials have been opposed to measures of this kind, and have been opposed to any interference with the retention of the death penalty as it now exists. There is a rational explanation for that. Those who are concerned with the enforcement of law in relation to offences of this kind are divided into a variety of groups, each one of which might be called a watertight compartment.

The police officers who investigate a crime of this kind, and who are possibly called as witnesses, have a definite and limited function. From there the matter is usually referred to an officer of the attorney general's

department whose duty it is, if he performs it properly—and most of them do—to take the evidence which has been obtained by the police and, without passion or prejudice, to adduce that evidence before a jury and before a court. At the conclusion of the court the function of the crown prosecutor or agent of the attorney general ceases.

Then you have the jury whose function is limited to the simple—simple in terms of principle—task of determining whether an accused person is guilty. You have a judge whose duty it is to decide what is the law, to tell the jury what is the law and, if there has been a conviction, to pass the sentence. You have the courts of appeal and finally, over and above all, you have the cabinet which deals with the question of commutation. These are the various functions. Each one is fairly limited and very rarely do you find a case where there is the over-all picture presented, as it would be to one who acts as counsel for an accused person from the time he is first arrested until either acquittal, execution or imprisonment, as the case may be. That is the accounting I have given for the reason why law enforcement officers generally take the position which they do.

Now, Mr. Speaker, I said we had come to the half way house. This is an emotional issue. It is my sincere belief that this is an illustration where a legislative body should not operate and should not act in advance of public opinion. This has been the case in other countries, in other states, in other units both geographical and political. Quite frequently, because of emotional involvement the death penalty has been discarded at a time when people are intellectually not prepared for it. This is frequently followed by a crime of a repugnant nature which has the result of invoking a clamour on the part of many people for the restoration of the penalty. Once it is restored it frequently happens that a long period of time may elapse before it is finally and irrevocably discarded.

For that reason I would not like to see the death penalty completely abolished unless and until it becomes quite clear that the people are ready for that particular issue.

The hon. member for York-Scarborough (Mr. McGee) referred to the trend in public opinion. That is quite right. During the last few months I believe one of the churches in Canada has made a declaration of its view in regard to the matter, in the course of which, as I recall it, the statement was made that this church favoured the abolition of the death penalty.