

in cases where the risks involved in judgment are so high. No human institution is capable of objectively analysing the motives of men, the provocation they may be under or the pressures to which because of environment they may be subjected, or the extent to which these factors affect the action or conduct of every man and woman. Without this objective analysis no one can be sure that the ultimate punishment—death—is a proper one. With that punishment and that risk the judgment would have to be perfect.

I believe that surely we have now reached the degree of civilization which enables the community to protect itself against murderers by means other than the death penalty. Is capital punishment the only method of prevention? If one discards the theory of retribution, and if one dismisses the effectiveness of the deterrent, then the question remains whether capital punishment is any longer the only indispensable protection against murderers. As the hon. member for Hochelaga (Mr. Pelletier) said during the last debate, this is more than a police matter. It is a problem of civilization, it is a matter of social progress, moving away from the horrible resort of society's collective execution of one's fellow human being.

Although I say this reluctantly as a lawyer, because we are taught in the practice of law to believe that everyone is equal before the bar, I also feel there is some risk that the penalty may be applied unequally. The lawyers in this chamber know that the conduct of any trial, whether it be civil or criminal, depends a good deal on the mood of the community. It depends, if it is a jury case as a capital case is, on the composition of the jury. It certainly depends on the competence of the judge and depends very much on the skill of the advocates on either side at the trial, whether for the prosecution or the defence. It depends a good deal upon the bearing, conduct or appearance of the accused. It depends also a good deal upon the resources of the accused and whom he is able to retain, although I am glad to say that legal aid in most of our provinces will tend to minimize that. Judge Jerome Frank used to say that a trial was the product of the witnesses' prejudices and the court's state of indigestion. I never went so far as to accept that cynical view of the law, but it brings home in rather a startling way what I was trying to say, that is, that there are unequal risks before the bar. The law does inflict its penalties unequally upon us.

Amendments Respecting Death Sentence

These arguments seem convincing and persuasive to me. They are not overwhelming because, as many members have pointed out during the course of this and the last debate, no one is really absolutely certain of the position to take. The decision is as much intuitive as rational. I also admit that these arguments I have recited out of the collective intuition of my mind should lead us to vote for total abolition. I feel as I felt last time that the arguments carry persuasive weight, but I recognize that for a great part of the population of Canada—and this is reflected in the views of hon. members who disagree with what I am saying—probably the majority of the people of Canada, the death penalty symbolizes the moral repugnance of society for the most heinous act a person can commit—murder. Retribution is a profound instinct which is difficult to dislodge. I agree with Father Kelly of St. Michael's College who said that retribution is no longer a ground for punishment, but for a great many people that will take some convincing.

There is also a profound feeling in many people that the death penalty is a deterrent. That feeling is very deep-rooted in many people and we ought to respect that belief particularly in view of the possibility that it may be right. What I am saying is that there is no moral absolutism or certainty about this question. The police and prison officials are particularly strong advocates of retention. Law enforcement authorities almost unanimously entertain the view that the death penalty is an effective deterrent to murder. They believe that the death penalty protects the police against the criminal. I do not agree, but they believe it. In the mind of the law enforcement officer the time-proven deterrents to crime are sure detection, swift apprehension and proper punishment. To his mind each of those elements is a necessary ingredient. Proper punishment for murder, in his opinion, is the death penalty. I believe that in view of the difficult and dangerous responsibility we place upon prison guards and police officers we have a duty to deem them deserving of support and respect. They do have a special knowledge, they do have a special feeling, and they have delicate and dangerous responsibilities.

● (4:40 p.m.)

There is also a very wide public feeling—it was expressed in the house just recently by the hon. member for Lotbinière (Mr. Choquette)—that it is premature to abolish the death penalty until substantial reforms in