

*Amendments Respecting Death Sentence*

up against the feelings for the sanctity of human life?

I want to say, Mr. Speaker, that intellectually and emotionally I advocate the abolition of the death penalty, but I recognize the deep instincts of what I believe still to be the majority of the people of this country for retribution for the heinous crime of murder. I believe that although we in this chamber do have a duty to lead public opinion we must not move too far in advance of that opinion. I believe that the ordinary person in this country has the right to expect that the law will be respected and crime punished. I believe also that many people in Canada will not easily be convinced that the abolition of the death penalty will not offend against that principle.

My vote, sir, the last time this measure came before the house on April 5, 1966, was cast against the main motion but in favour of the amendment introduced by the hon. member for Cartier (Mr. Klein). The amendment introduced by that hon. member, for which I voted, called for the abolition of the death penalty except in the case of the murder of a police officer or a prison guard acting in the course of his duty.

The substance of the hon. member's amendment has been substantially reproduced in the Solicitor General's bill, subject of course to the additional rider that no one in respect of whom a death sentence has been commuted to imprisonment, or upon whom a sentence of imprisonment for life has been imposed as a minimum punishment, shall be released from prison without the prior approval of the governor in council, and subject to the additional rider, as the Solicitor General now reminds me, of the five year trial period. I do not particularly fancy substituting for the discretion of the National Parole Board the judgment of the governor in council, but I do recognize that if this is to be a trial period and if we are to assure the people of Canada that commutation will not be lightly undertaken and this law lightly based, then perhaps during this trial period the judgment of the parole board should be substituted by that of the cabinet.

I supported the amendment of the hon. member for Cartier. I now support the bill of the Solicitor General as being a progressive step toward the abolition of the death penalty within the limits of the present climate of public opinion, within the present climate of opinion within the House of Commons and within the current state of our laws and practices in penal reform.

[Mr. Turner.]

• (4:30 p.m.)

I believe I owe it to the members of this house and certainly to my own constituents to give my reasons for supporting the abolition of the death penalty within the context of this bill. First of all, I think the statistics advanced on either side of the argument do not prove anything one way or the other. I, therefore, am reasonably persuaded that capital punishment does not act as a deterrent. It may be that the deterrent factor may operate in the case of protecting prison guards or police officers, particularly where the prisoner has nothing to lose.

I do reject, however, the argument recited from time to time on behalf of those who support the abolition of the death penalty that because the deterrent value of capital punishment has not been proven the burden of proof is on the retentionists in view of the enormity of the crime and the fact that the taking of life is so unnatural and repugnant. I do not think the burden of proof argument adds anything. I believe the answer is that the burden of proof is on anyone who wishes to change a law regarding the protection of society or the isolation of crime. In any event I feel that capital punishment has not been established as a deterrent to murder sufficient to justify its retention.

As a lawyer I must also admit that despite the improvements in our legal procedures, including exhaustive appeals, there is always the possibility of error. There is always the question of the fallibility of human judgment. There is always the possibility of the execution of an innocent man, and I need do no more than cite the case of Timothy Evans which was brought to our attention by my colleague the Solicitor General. I admit that this is rare; thank God it has not happened too often. When it does happen, however, the consequences are beyond redemption and beyond our contemplation, because when an innocent man is so wronged there is no possibility for society thereafter to redeem itself to him.

It has been an old principle of common law that it is better that 99 guilty men go free than for one innocent man to be hanged. This was the basis for the burden of proof as it still exists in our criminal law, "beyond any reasonable doubt." It is because I question whether it is ever beyond any reasonable doubt that I support the abolition of the death penalty. No human institution is perfect. Society does not have the type of perfect organization which can judge properly