

*Amendments Respecting Death Sentence*

them. I content myself with the finding of the royal commission on capital punishment in 1953, which said:

We agree with Professor Sellin that the only conclusion which can be drawn from the figures is that there is no clear evidence of any influence of the death penalty on the homicide rates of those states, and that whether the death penalty is used or not, and whether executions are frequent or not, both death penalty states and abolition states show rates which suggest that these rates are conditioned by other facts than the death penalty—

And again:

The general conclusion that we have reached is that there is no clear evidence in any of the figures we have examined that the abolition of capital punishment has led to an increase in the homicide rate or that its re-introduction has led to a fall.

I appreciate that the subject of capital punishment arouses very strong emotions, but it seems to me that if the deliberate taking of life by the state cannot be shown to have the effect of deterring potential murderers, then it cannot be justified. That it has no such effect I think is shown beyond any reasonable doubt. The plain fact of the matter is that when one examines the records of murder cases one sees that the vast majority of murderers act without deliberation. Frequently they are mentally unbalanced, although not legally insane. On the other hand, those who murder with calculation are usually convinced of their ability to evade detection and often, I think, do succeed in evading detection, and they are no more influenced by the fear of capital punishment than by the fear of life imprisonment.

There is another point which requires the attention of the house, and that is that even in those communities which retain the death penalty it is practically never applied. In an article which he wrote on February 7, 1965, Professor Sellin pointed out that it was conservatively assumed that at that time there were about 2,500 capital murders annually in the United States and only 20 executions. Therefore, even where the principle is accepted in fact it has been allowed to lapse in practice.

From this it is hard to argue that capital punishment under these conditions can be a uniquely effective means of protecting the community. Nor should it be overlooked that in the nature of things capital punishment does not fall equally and inevitably upon all classes of those who commit murder. It is far more likely to fall on those who because of their poverty are unable to secure an effective means of defence, or on those whose

[Mr. Brewin.]

crimes are attended by a maximum of horror and publicity.

There is a further cogent argument against capital punishment. The Solicitor General has already mentioned it and I will not dwell on it. It is that mistakes are bound to occur in the administration of justice. A penalty so final as death should not be imposed where there is no chance of the mistake being later rectified.

Some people are of the opinion that to suggest that the courts of justice in a country such as Canada can make errors is a reflection on the administration of justice. This is not so. Courts, as the Solicitor General said, like all other human institutions make mistakes, and there are many well-authenticated instances of this. The Solicitor General referred to the Timothy Evans case. I will refer to one other case that occurred in New York recently. A man named Whitmore was awaiting execution on the charge of murdering a girl when the actual murderer was apprehended and confessed to the killing. This is what someone on the district attorney's staff said about the matter:

I was one of those who was absolutely sure that Whitmore had killed the girl; there was no doubt in my mind—reasonable or beyond a shadow or any other kind. Now I am satisfied Whitmore is innocent. If this had not been a celebrated case, if this case had not received the tremendous publicity, if this were just a run-of-the-mill murder, Whitmore might well have slipped into the electric chair for something he didn't do.

I think the consciences of all members of the house should be affected by the fact that there are well-authenticated cases of error, even in capital murder cases. All members of the house who have practised at the bar will know of cases where decisions of courts were backed up by appellate courts and, on the discovery of later evidence, were shown to be erroneous. It is not necessary to show that this is a frequent occurrence. It does happen, and therefore the finality of the penalty of capital punishment should be avoided.

● (4:50 p.m.)

I now turn to the bill before us. As I have said, what the bill proposes in effect is to abolish capital punishment in the vast majority of cases. It does so by narrowing the definition of capital murder. The form of the bill is an amendment of section 202A of the Criminal Code which defined capital murder for the first time in 1960, that is to say, capital murder as distinct from non-capital murder. Section 202A is merely a defining section. The operative section is section 206