

*Amendments Respecting Death Sentence*

than 50 years ago in these terms, "The life of the law is experience, not logic." The bill now before the house is a compromise which I believe brings us closer to a legitimate objective.

• (3:40 p.m.)

Parliamentary history will show that the controversy today is the same controversy that has always arisen whenever capital punishment has been put into issue. For the most part it is between those who believe that capital punishment is a special and unique deterrent and those who do not hold to that belief. It is necessary, therefore, that I traverse familiar ground in the course of my remarks.

At the outset I wish to say something about the burden of proof. No one, I believe, will contend that the state has the right to take human life unless it can be shown clearly and convincingly that it is necessary for the protection of society. The fact that over the years we have steadily reduced the number of offences attracting the death penalty and the fact that we have now restricted the death penalty to capital murder illustrate our fundamental respect for human life. In my mind it is beyond the reach of controversy that the burden of proof falls clearly upon those in favour of judicial execution. It is for them to prove that the death penalty is such a special and unique deterrent that there is no other way by which society can be protected from murderers. It is upon their shoulders that the burden of proof clearly rests, and in my view they cannot escape that duty.

I believe we ought to take note of the fact that some 45 jurisdictions have abolished the death penalty in whole or in part. Those jurisdictions include the United Kingdom, Norway, Sweden, Denmark, West Germany, Holland, Belgium, Portugal, Switzerland, Italy, Israel, Venezuela, New Zealand and New South Wales in Australia, and a great many states in the United States. In 1965 New York state, with a population almost equal to that of Canada, amended the penal code in terms not dissimilar to the bill I now offer the house.

The changing spirit of our time is well illustrated by the sharp decline in total executions in the United States. Total executions have declined steadily from 56 in 1960 to 47 in 1962, 15 in 1964 and 1 in 1966.

Two years ago in a letter to congress, the now attorney general Ramsey Clark wrote:

We favour the abolition of the death penalty. Modern penology with its correctional and re-

[Mr. Pennell.]

habilitative skills affords greater protection to society than the death penalty which is inconsistent with its goals.

I believe it is a useful exercise to look back to the royal commission on capital punishment in Great Britain. The report is unquestionably the most able document which has been produced on this difficult subject. It followed four years of patient and exhaustive study of the statistical evidence and experience in the abolitionist jurisdictions.

I anticipate that I will be met by the argument, and quite properly, that statistics should be ignored on the ground that there is no way to determine the number of persons who have been prevented from committing murders because they were afraid of being hanged. I concede that I cannot number the occasions when the death penalty might have been a deterrent. Indeed, I do not claim that statistics are proof conclusive but in my view it is indisputable that the report of the royal commission has seriously undermined the proposition that the death penalty has a special and unique quality of deterrence.

The royal commission found that in two adjoining states of a similar nature in the United States, one of which had removed the death penalty and the other had not, the rate of murder in the state retaining the death sentence was almost identical with that in the state that had abolished the death penalty. I may refer in this connection to paragraph 64 of the royal commission report:

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 these states, and that whether the death penalty is used or not and whether the executions are frequent or not, both death penalty states and abolition states show rates are conditioned by other factors than the death penalty.

I now wish to deal with the argument that these statistics should be dismissed because they relate to other countries and are not relevant to the conditions in Canada. This is precisely the point I wish to make. It is not a case of the abolitionist countries being alike to each other and being different from Canada. The statistics were gathered from different countries, different from each other different in their general customs and economic conditions, different in their general laws; yet there is a striking similarity in the experience and the evidence revealed by the statistics from all these countries.

To sum up, these statistics show with remarkable consistency that the abolition of the death penalty did not lead to an increase in the rate of murder. I do not suppose