

*Criminal Code*

ministers participate, one taking one side and one taking the other, not an unusual circumstance in a government that apparently does not recognize the principle of cabinet solidarity.

I go back to 1956 when this question was before the United Kingdom parliament by means of a private member's bill, with the government allotting time for its discussion, and I point out that on July 9, 1956, the then Lord Chancellor, Lord Kilmuir, stated:

Her Majesty's Government are clearly and unequivocally of the view that capital punishment must be retained. I endorse fully today what my right hon. and gallant friend the Home Secretary has said in another place about the dangers of this bill. However, I have said that this will be a free vote and I do not withdraw from that statement in any way. The government do not expect or wish that any noble lord should speak or vote against this bill out of a sense of loyalty to the government and least of all from party feeling. At the same time—

Here is the constitutional practice in the mother of parliaments, the constitutional practice which we follow here under the British North America Act:

—no government with any sense of responsibility could abstain from expressing their view on such an important matter.

Then also there is the reference to what was said in 1956, when the matter was before the House of Lords, by the Marquis of Salisbury:

Of course, the government have their own view and I think it is right they should have their own view. That view was stated to Your Lordships yesterday by my noble and learned friend the Lord Chancellor. That was the position in another place and that is the position here.

In other words, there must be a declaration by the government as to its attitude regarding a bill of this importance even though there is a free vote. That was the course followed in the previous presentations in the British parliament.

You will recall, Mr. Speaker, that the matter came up for the first time in recent years in 1948 when a British House of Commons which had a Labour majority passed through all its stages a bill to abolish capital punishment. At that time it was done against the advice of the government. The government made its stand very clear in 1948 in that even though there was going to be a free vote the Labour government of that day was opposed to abolition.

The same thing happened under the Conservative administration in 1956. A predominantly Conservative British House of

[Mr. Diefenbaker.]

Commons passed through all its stages a bill to abolish capital punishment, and in the house at that time it was made clear by the government, through the intervention of the Home Secretary—who had the responsibility for considering the death penalty and recommending to the Crown whether or not there should be a reprieve—that the government's attitude was against abolition. That was the attitude of the Home Secretary in particular, who was responsible for the protection of the public.

We in the Canadian parliament are in a strange quandary in this matter. Constitutionally the government should make its view clear and it has not done so. It has put forward two ministers, each of whom has expressed diametrically opposing views, instead of following the constitutional practice whereby the government decides on its views collectively and then follow those views.

The Prime Minister may say, "Well, I have made my view very clear." In that connection one has only to go back to what happened on May 24, 1961. At that time, on third reading of the motion by the hon. member for Kamloops (Mr. Fulton) for amendment of the Criminal Code on the question of capital and non-capital murder, the Prime Minister of today did not vote. The only time he voted was on an amendment proposed by one of the opposition members to the effect that the matter should be referred to a special committee for the purpose of further study and examination and that such select committee should have the power to send for persons, papers and things. On that occasion the present Prime Minister, then leader of the opposition, voted in favour of the question being submitted to a committee, and when it came to third reading on June 6 he did not vote.

To begin with I point out there can be no question that constitutionally the government should have made its position clear on this matter.

Having said that, I now come to deal with the matter that has been before parliament on a number of occasions. I say to those who sponsored this resolution that they individually and collectively have made a worthy contribution to a problem that is of transcendent significance.