

*Criminal Code*

October, 1961. This event is perhaps unique in commonwealth parliamentary history, an event which saw the death penalty in that country abolished again as a result of a free vote which took place in that assembly. I shall describe it in some detail later. At the moment I shall say only that it involved unique action on the part of members of the government party and in particular on the part of a member of the cabinet.

The bill introduced by the Minister of Justice (Mr. Fulton) last year, as the house will recall, was not proclaimed until September 1, the reason for that, of course, being that the cases under consideration in the spring assizes in the various provinces were not to be brought under the act or else there would have been a retroactive pattern evolved. The act was proclaimed some time in September, as I recall, in anticipation of the fall assizes and cases of murder which occurred in the interval were brought under the new legislation.

One of the most interesting developments from my point of view in connection with public opinion about capital punishment and the abolition thereof has been the fact that for the first time in history the percentage of people who advocate the retention of the death penalty has dropped below the magic figure of 50 per cent.

There are those who claim that 50 per cent of the population, plus one, speak with the authority of the voice of God. I am not prepared to subscribe to that statement. However, it is interesting that in 1960 when this matter was the subject of extended debate in this house the percentages at that time were as follows: 51 per cent were in favour of retention of the death penalty, 41 per cent favoured its abolition and 8 per cent had no opinion on the matter.

Going back a few years, the figures for 1943, for example, were as follows: 73 per cent favoured retention of the death penalty and 18 per cent favoured its abolition.

Since the new measure came into effect and the number of categories of murders which are punishable by death was reduced, public opinion has undergone an interesting and perhaps understandable change. The figure for those favouring retention dropped to 47 per cent. The figure for those having no opinion or who were undecided on the question increased to an all time high of 27 per cent indicating in my judgment a "wait and see" reaction on the part of the Canadian people. This indicates to me that the public is willing to give this measure an opportunity to prove itself, to demonstrate its effectiveness or lack of it.

I remind the house that when this new legislation was introduced I described it as representing a more intelligent and effective compromise than the attempt which had been made in 1957 in England.

In my view it would be meaningless to attempt to evaluate the experience under the new legislation in view of the fact that it has been in operation only a short time. Perhaps in another year we will be better able to conduct a more searching examination into the question of the effectiveness of the present legislation.

The experience in England which as I said is based on a far less effective attempt to reach middle ground between the abolitionist position and the retentionist position has produced figures which do not differ greatly from those I placed on the record last year and the year before. A report of a publication issued by the home office analysing the types of murder which have taken place during the past ten years in Great Britain stated in part that the publication—

—although it provides no heavy ammunition for those either in favour of or opposed to capital punishment... does give some fascinating statistics on murders, who commits them and why.

Let me deal with the fundamental point of the abolitionist argument. Those who contend that the death penalty is a unique deterrent—and this is the nub of the retentionist argument—argue that when capital punishment is abolished the expected and anticipated increase in the murder rate does not take place. I have always been careful to avoid falling into the trap of arguing in reverse fashion that if you wish to reduce the incidence of murder, one means of bringing it about is to abolish the death penalty.

However, as I have always done, I now challenge those who would retain the death penalty to demonstrate that, when it is abolished, the murder rate increases as they anticipate. As you know, Mr. Speaker, they argue that the murderer has selected his victim, accumulated his motive and planned his method and is only restrained by the threat of the death penalty in one of its many forms. They argue further—and it certainly follows from the first one—that if that threat of the death penalty is removed, then these people who have selected their victims, accumulated their motives and worked out their methods will, when released from this restraint, proceed to commit their murders.

Last year I put on the record the most recent experience in the United States. In the state of Delaware which abolished the death penalty a few years ago the murder rate in the full year prior to the point at which it was abolished was 12. In the full year following that date the murder rate