

Capital Punishment

ishment as the logical legal conclusion, juries, no matter how clear it was when lawyers would say that it was either murder or nothing, would reach to find a manslaughter verdict, a verdict which avoided capital punishment in the specific case before them when they were looking at the individual to whom it was applied, and perhaps when they also had in mind from time to time the issue of whether or not there was serious doubt about the guilt of the man, however probable it was that he was in fact guilty. I think this is the kind of issue which must be before hon. members as they look at this over-all issue.

Recently the supreme court in the United States was discussing the issue of capital punishment. I was surprised to hear the right hon. member for Prince Albert (Mr. Diefenbaker) suggest that we, too, in this country should shift this important and fundamental question from the forum of Parliament to the courts for a decision. I, for one, have always been of the view that it is Parliament, the elected representatives, who should decide fundamental questions, and not a court of nine men, however appointed and wherever sitting. It may be that in some other systems the inflexibility of their constitutions allows for some tolerance of decisions by a small group of men rather than by the parliament of the land. That is not true here. We, as the elected representatives, have the power and the ability on behalf of the people all across the country to decide this issue, and that certainly ought not to be shifted from here to a court.

● (2040)

But I do think it is interesting to notice the reasoning of the Supreme Court in the United States in deciding that in fact capital punishment was no longer to be tolerated within their constitution. They noted the fact that it was not a punishment which was following automatically in cases for which it was defined; that just as here, juries would find ways around it, or appellate courts would find reasons here and there to set aside the punishment, and that in fact, as one of the nine U.S. justices said, it got to the point that whether or not capital punishment applied was like lightning striking. He noted that in fact in some cases it was applied because of the combination of a particular judge, jury and circumstance, while in much worse cases it was not applied because of the particular combination of judge and jury. That was our experience in this country as well; any lawyer knows that that was the experience, that it depended more on the particular judge, jury and circumstance, not related especially to the case which let to the application of capital punishment in a particular situation.

With that kind of random way of applying capital punishment, whether or not we have to maintain the executioner and put into the hands of some individual the termination of a life, without completely to all satisfaction at all times resolving the horrific question of whether or not that person was guilty beyond peradventure, and whether indeed the man himself deserved some further consideration, is the question that has to be decided. The issues of whether or not we should have different, moderately or greatly different systems according to our view of imprisonment, and of whether or not parole should be less easily granted, are conflicting issues; but they are issues

[Mr. Lang.]

which are separate from the main issue of capital punishment itself.

Therefore I say, Mr. Speaker, that we ought not to want to have capital punishment in our country because there is no evidence of any substantial weight that it has a real deterrent value, and that on the other hand the very dignity of our human existence inevitably is involved in the fact of execution itself, and therefore on simple pragmatic grounds in terms of the dignity of man we ought not to have capital punishment here. And I say to the hon. member for Abitibi, who will in other contexts speak in terms of the dignity of the human person, that he should remember that it exists, too, for any person who has been accused.

I will not speak of the problems of rehabilitation and the problems of parole that relate to how our penal systems will be governed. These are the kinds of questions which can be dealt with in the committee. What I do suggest to hon. members is that in this debate we are now on second reading of the bill, and the question which surely hon. members have to consider is whether or not this matter goes to the committee at all. If they think that the law as it stood before 1967, and as it stands again for a time after the five-year temporary law has lapsed, is perfect, beyond improvement, it is only then that they ought to vote against this bill on second reading.

There are, indeed, in the bill some rather minor elements which deserve the serious deliberation of the committee and deserve to be made a part of the law. I think, for instance, of the change from the expression "non-capital murder" to the phrase "murder punishable by life imprisonment." I believe that the expression "non-capital murder" has tended to grate upon people because murder, they say, is always capital, looking at the victim as they do in those circumstances. To treat it somehow as non-capital sounds as if one is treating it lightly; yet life imprisonment is not a particularly light penalty. So the change of words is suggested to improve the way in which we view these particular offences, even if they remain the way they were. I suggest to hon. members that the serious issue of whether or not we need the execution apparatus, of whether or not adequate deterrents are not available without it, is one that deserves their serious discussion in the committee and that this bill should now go to committee and have the considered judgment of members upon it.

As I have personally made clear, Mr. Speaker, I believe that without any fundamental argument about the right of society, of the state, to take a life, in practical and pragmatic terms it is not necessary from a deterrent point of view and that, therefore, the balance shifts in favour of no longer taking those lives and in favour of the argument that avoids execution, in favour of the argument that strikes all of us and that is so fundamental to our whole democratic process, that the dignity of the human being be upheld wherever possible and that that should apply in this area as well.

The Acting Speaker (Mr. Boulanger): Does the hon. member for Vancouver South (Mr. Fraser) rise for the purpose of asking a question?

Mr. Fraser: I do.