

*Criminal Code*

• (4:20 p.m.)

Certainly, those of us who have great respect for human life and who abhor crimes of violence, feel this might not be a very powerful deterrent. If we look back on history we will find that the attitude of government and of society has always shown this great belief in the deterrent power of the death penalty. We need only look back in British history 100 years or so to find that there were between 100 and 200 crimes for which people could be put to death. There was such faith in the power of the death penalty as a deterrent that on each occasion when an attempt was made to remove it as a punishment for one offence or another, the cry went up: Crime will increase.

I should like to quote from an argument put forward by Mr. G. Arthur Martin, Q.C. of Toronto who used to be a believer in the death penalty but who came to think, after studying the question, that capital punishment was unnecessary in our society. He tells us that in 1810 Sir Samuel Romilly introduced a bill into the House of Commons to abolish capital punishment for the theft of five shillings or over from a shop. Mr. Martin reminds us that this is what Chief Justice Lord Ellenborough said when that bill was discussed in the House of Lords:

I trust your lordships will pause before you assent to an experiment pregnant with danger to the security of property, and before you repeal a statute which has so long been held necessary for public security. I am convinced, with the rest of the Judges, public expediency requires there should be no remission of the terror denounced against this description of offenders. Such will be the consequences of the repeal of this statute that I am certain depredations to an unlimited extent would be immediately committed.

Later in the debate the Chief Justice of that day continued:

My Lords, if we suffer his Bill to pass we shall not know where to stand; we shall not know whether we are upon our heads or our feet. Repeal this law and see the constrast—no man can trust himself for an hour out of doors without the most alarming apprehensions that, on his return, every vestige of his property will be swept off by the hardened robber.

This is consistent argument. It is perfectly true that capital punishment is a deterrent. Often we shall hear people say when discussing this subject that it is not a deterrent. They say this loosely, meaning that it is not a greater deterrent than, for example, life imprisonment. I do not think any of us who ask for the abolition of capital punishment deny it is a deterrent. We simply say that other deterrents are just as effective.

[Mr. Nugent.]

Throughout the history of England, and indeed the history of Canada, as time went on and as the death penalty was removed from more and more offences, the same cry was raised—that crime would increase and offences be encouraged. This represents a consistent feeling throughout society. Not just in Great Britain or in Canada but throughout the world, there is this belief in the efficacy of capital punishment as a necessary stem to wrongdoing.

What we should do, I suggest, is consider what happened as we removed various offences from this category. In no case has there been that great increase in the number of those offences which was so direly predicted. We have come a long way. I submit we have come almost to the point where we are a completely civilized society—that we might reflect, as we ask the would-be murder to do, on the sanctity of human life which is, to me, so sacrosanct that society itself does not have the right to take it away.

The question again hinges on this: Are we now at that stage where we can once again consider the argument whether capital punishment is still a necessary deterrent and whether, if that deterrent is taken away, there would be an increase in the number of murders, or increased encouragement to commit murder? Again, Mr. Martin has summed up this situation in reasoning which I think illustrates the type of thinking we must bring to bear on this problem. The arguments are well known. Familiar arguments are put to us many times; we hear them and hear them again. But occasionally something clicks or makes a special appeal to us, and we see things in a new light. I have never found anything which is as effective as the manner of putting the argument which Mr. Martin uses. He expresses it this way:

Those who favour the retention of the death penalty sometimes ask "Can it be proved that capital punishment in no case deterred a person contemplating murder who would not have been deterred by the threat of life imprisonment?"

I think a frank answer to this question must be in the negative. It is by its very nature a proposition incapable of proof, but it may be confidently asserted that such instances must be very rare. The question, no doubt, has its origin in the mental processes of a normal person who brings his mind to bear upon the problem in the abstract. He asks himself, "If I were contemplating murder would I be more deterred by the penalty of death than the prospect of life imprisonment" and he feels that he would. If he explored the problem fully in his mind he would also find that he would also be sufficiently deterred by the prospect of life imprisonment. The question presupposes a man normal enough to contemplate