

*Amendments Respecting Death Sentence*

penalty under the statute is not a sufficient deterrent, the onus is on those who seek a higher penalty to prove that this is necessary. For the state to act otherwise is a violation of the very principles of our democracy and a mockery of justice.

The trouble with the existing legislation concerning capital murder is that it starts the other way around. We start with the maximum penalty, capital punishment. The retentionists claim that the onus is on the abolitionist to show that capital punishment should be reduced to life imprisonment. This violates the basic principles of our criminal law.

Those who favour retention face another grave responsibility when they consider the defence of insanity set out in the Criminal Code. The defence of insanity is based on the M'Naghten rule which was enunciated in the last century. The M'Naghten rule is based on the Victorian concept of *mens rea*. The accused is legally sane under our Criminal Code if, at the instant the wrongful act was committed, he knew what he was doing. If capital punishment is retained, we must face the fact that we are willing to hang those who are medically insane and do not come under the defence in section 16 of the Criminal Code.

Hanging is a fixed penalty. It is a penalty which is imposed solely on the finding of guilt of the accused. In other crimes, after the finding of guilt there is a further inquiry in order to determine the most appropriate sentence with regard to all the circumstances of the case.

We all realize that the facts adduced at the trial to determine the guilt or innocence of the accused are by no means all the facts which are necessary for the judge to determine the proper sentence for the disposition of the offender. Yet if the accused is found guilty of capital murder he is immediately sentenced and the judge is required by law to sentence him to be hanged by the neck until he is dead.

A capital murder trial is always a difficult experience for the accused. What is to follow in the months ahead is even worse. After he is sentenced the convicted offender is led from the courtroom to his small cell, a light is placed outside the cell door in such a position that a guard can keep the neck and wrists of the accused in full view at all times, even when the condemned prisoner goes to the bathroom. If the conviction is appealed to the court of appeal of the province in which the accused was convicted and

then to the Supreme Court of Canada, the months wear on. If the appeals are lost the accused is either reprieved or hanged.

I have never seen a hanging, but I have seen a condemned man facing the prospect of the gallows a few hours before the actual hanging. The torture of the condemned man waiting for such a brutal event is shared by his family, friends and everyone in the jail, including the other prisoners, the turnkeys and the guards. It reaches its peak as the hangman walks into the condemned man's cell where he has been held since his sentence. The final moments arrive, the hangman ties the prisoner's hands behind his back and leads him to the gallows. The hood, the rope—the rest is beyond description. The dead man is cut down; for him the terrible torture of months of waiting is all over. To the retentionist, justice has been done. To the abolitionist, injustice remains.

Retentionists continue to minimize the possibility of a man being wrongfully convicted for capital murder. No system of justice is perfect. The possibility of error in the disposition of any accused is ever present and murder is no exception. It is always difficult to rectify a wrongful conviction in any case, but the difficulty of such rectification is rather obvious when a man has been hanged for capital murder.

I remember hearing a report on the radio when I was a boy about a young American who was to be executed for murder in the United States. Just before his execution he prayed in his cell, not for himself but that his mother would live long enough to learn he was not guilty. Years later an uncle of the murdered girl confessed on his deathbed to the killing. His mother learned the truth, but this was small consolation to her son who had been put to death years before. A look at page five of this morning's *Globe and Mail* will provide hon. members with a recent example of a wrongful conviction in another country.

I would ask hon. members to study these cases and ask themselves, can we afford to hang those convicted of capital murder when the possibility of error is always present? Lord Sankey once said words to the effect that it is better that ten guilty men go free than that one innocent man be convicted.

Show me that the death penalty is a unique deterrent to capital murder and I shall vote for retention. None of the 57 members who spoke in favour of retention in the last debate gave any convincing statistics that capital punishment is a more effective

[Mr. Stafford.]