

*Capital Punishment*

the kind of reports that come to us from time to time of brutal and tragic crimes.

By and large Canadians are a law-abiding people. The *de facto* experience we have had for almost a decade and a half has not greatly endangered Canadian society. It can be argued that the very fact that there has been a gradual understanding of and experience with *de facto* abolition has led some people to realize that there is perhaps more to be gained by declaring once and for all that capital punishment is not acceptable than there is by lingering in the kind of twilight zone that faces us under the present law.

Second, there have been growing comments and criticisms in recent years about the government not obeying the law. I have heard that somehow or other, with the partial abolition established in 1967, and renewed in 1973 for a second five year period, the government had failed to obey the law. Having passed a law to the effect that capital murder is now confined to the killing of a police officer or prison guard, persons who were convicted of those charges were not executed and so people felt the government had failed to live up to its responsibility. I find this very strange on a number of points.

The practice of commutation by the cabinet did not commence in 1967 or 1960; as hon. members know, it goes back beyond the history of our country. Even before the new act was proclaimed in 1968 there were many more commutations under the old law. Before the act came into effect in 1968, 17 people received commutations under the old law but the government has not been criticized for that. Since enactment of the new law in 1968 only five commutations have taken place. I am concerned that members of the government have done so little to explain this to the people who do not realize the difference between what the law states in regard to sentences for particular crime and the responsibilities of the government and of the monarch in the circumstances.

According to the 1975 version of "Martin's Criminal Code," Article 684 (1) states:

The Governor in Council may commute a sentence of death to imprisonment in the penitentiary for life, or for any term of years not less than two years, or to imprisonment in a prison other than a penitentiary for a period of less than two years.

That states very clearly that in each and every case of a capital sentence the government not only has the right, it has the duty to make a decision whether it will allow the sentence of death to stand. In the five instances since the new law came into effect in 1968 the government said in effect it would commute in almost every instance to life imprisonment. As has been said by the previous speaker, this has usually resulted in longer sentences than were imposed prior to that time.

It seems to me that when the public or individuals complain the government has not obeyed the law, it is because they do not understand the law. The law makes it clear that the government has an obligation to consider commutation in each and every case. If that were not sufficient, according to "Martin's Criminal Code" article 686 states:

Nothing in this act in any manner limits or affects Her Majesty's royal prerogative of mercy.

[Mr. MacDonald (Egmont).]

This means quite simply that since 1968 if people wish they can criticize the judgment of the government on whether in each and every instance it should have exercised commutation. I think it is really playing fast and loose with the truth, however, to say that the government has not obeyed the law in those instances. If there are members in this Chamber who take that view I would point out that by the end of the first five year period in 1973 when no executions had taken place under the partial ban of 1967, I do not recall that any individual member advocated or put forward an amendment for the removal of article 684. Considering the number of lawyers we have as members of the House I am surprised that no one has challenged the legality of the government's action in the courts. If there are some who feel the government has not acted according to the law, let them take the matter to the courts and have it resolved. I just make those two points by way of introduction, Mr. Speaker.

● (1610)

I want to come now to the central part of the consideration of what is before us in this bill. First let me say I am delighted that the government has finally taken the issue in hand to make *de jure* what has been a *de facto* situation for about 14 years, that of abolishing the death penalty once and for all. I realize the government has in some ways created some difficulty for itself in doing this.

While having exonerated it to some degree with respect to its actions under the law, I take strong issue in terms of tying in with this abolition the punitive and, frankly, irresponsible aspect with regard to sentence which is related to this abolition of the death penalty. I find it difficult to believe that the Solicitor General (Mr. Allmand), the Minister of Justice (Mr. Basford), their colleagues and advisers spent very much time talking to the people involved in the criminal justice system, particularly the penitentiary system, with regard to the implications of this part of the act in terms of its acceptability, enforceability, viability and, perhaps most important, the aspect of security for the Canadian public.

Many members here have had the opportunity to examine in some detail our present penitentiary system. It is not a happy situation. I am sure many on both sides of the House will admit that the reason we have a high rate of recidivism is, indeed, the whole penitentiary system. However, to argue in this legislation that we can trade-off the removal of one barbarous, cruel, and unacceptable form of punishment for one that is not equally as bad but is certainly moving in that direction, I find the rationale difficult if not impossible to understand.

I believe that the government has in a sense weakened its own presentation by representing to us in this bill the fact that the real protection is to ensure the people are locked up for such an enormous length of time that they will never be in a position to again be at large and be able to commit a subsequent and similar crime.

I do not have to quote statistics to the minister. However, they indicate to a very large degree that people who serve prison terms for capital crimes in many instances offer some real hope and possibility of rehabilitation. However, by this particular approach we even deny that to be a fact. While the substance of abolition is fundamental and I