

Amendments Respecting Death Sentence

old laws for the sake of retention. I do not know of any leading North American criminologist who is in favour of capital punishment. Thorsten Sellin, professor of sociology at the University of Pennsylvania and perhaps the leading criminologist in the United States, speaking in Toronto on February 7, 1965, on the subject of capital punishment said:

It is an archaic system of primitive origin that has disappeared in most civilized countries, and is withering away in the rest.

In the debate much was said of the law as it existed in England 100 years ago when 200 offences were punishable by death. As civilization advanced, juries refused to convict simply because the death penalty imposed was out of line with any concept of the minimum necessary to act as a deterrent. So there was an incredible situation in England during the last half of the nineteenth century when one might say unquestionably that juries fraudulently acquitted persons appearing before them. For example, a man charged with stealing 20 shillings, a crime punishable by death, was convicted of stealing 19 shillings and sixpence. Nevertheless, each bill which was introduced in the British House of Commons in those days to abolish the death penalty was opposed by retentionists using the same arguments as we hear today.

A similar situation exists in Canada today with regard to capital punishment inasmuch as juries sometimes compromise and convict an accused of the lesser offence of non-capital murder. Surely critics of this bill would prefer that juries should properly convict, bearing in mind the added safeguard it would provide in that the accused would be imprisoned for life; he could not be released without cabinet approval. As long as capital punishment is retained, juries will decline to convict in many circumstances where they ought to convict. Persons thus found guilty of non-capital murder may be prematurely released under National Parole Board regulations.

I cannot agree with the hon. member for Prince Edward-Lennox when he stated in his speech:

There is no record and there is no proof that an innocent man has ever been executed for murder.

In the 98 speeches made in this house during the last debate on the abolition of capital punishment, numerous instances were given of innocent men who had been executed. Many volumes have been written on the

[Mr. Stafford.]

execution of innocent people. The pardon granted to Timothy Evans a dozen years after he was hanged may have been a very admirable gesture by the British House of Commons, but it was of little practical value to Mr. Evans. Two eminent British jurists, Lord Birkenhead and Lord Shaw, both agree that innocent men have been convicted of murder and executed.

Many persons convicted of capital murder cannot afford the cost of an extensive investigation, and in most cases such an investigation comes to an abrupt halt on the execution of the offender. I would think the possibility of wrongful conviction for capital murder would provide a strong incentive for hon. members to support this bill, especially since we heard so much about the sanctity of human life from the advocates of retention during the last debate.

I certainly do not agree with the member for Saint John-Albert when he said:

—the onus of proof is still on the abolitionists.

I maintain that the onus is on those who advocate retention to prove that capital punishment is an effective or unique deterrent to murder. Criminologists are against capital punishment because it has not been demonstrated that it is more of a deterrent than the lesser punishment of life imprisonment.

The Wolfenden committee on homosexual and prostitution offences in 1957 was the first real effort to determine the fundamental basis of the criminal law. The whole thrust of criminology since then has been founded on the proposition that the criminal law is a sociological device to prevent acts which are harmful to the community. The second thrust is that, given the harmful act, parliament must decide the most civilized minimum penalty which is a sufficient deterrent against the commission of this offence. A penalty which goes any farther than this is barbaric and is punishment merely to punish.

During this century we have seen the development of many new laws which were non-existent before, for example, those affecting highway traffic, drug addiction, aviation and liquor control. The principle evolved for devising penalties for infractions of these laws is to decide the most just, sensible and economical penalty which will serve as a deterrent.

Mr. Speaker: Order. I regret to have to advise the hon. member that it is one o'clock