

*Criminal Code*

But they finally found a way. It was called the "neck verse" test. Anyone that claimed the benefit of clergy was asked whether they could read Psalm 51, verse 1. If they could not read it and did not have enough education, they were not accorded the benefit of clergy. It was surprising the number who learned how to memorize that verse in trying to get away from the harshness of the law. At one time they tried branding on the left cheek. In 1699 parliament had to decide on this question which was submitted to them:

The said punishment of burning on the cheek hath not had its desired effect, by deterring such offenders from the further committing such crimes and offences, but on the contrary, such offenders being rendered thereby unfit to be intrusted in any service or employment to get their livelihood in any honest and lawful way, become the more desperate.

• (4:00 p.m.)

They decided branding was not the thing. There were 200 varieties of offences for which you could be executed up to 1810 or 1815. In 1688 there were 50; George II added 30 more; George III added 60 and by 1819 there were 223 capital crimes. Do you know why they did it, Mr. Speaker? They said, if we make the punishment hard enough there will be no offences committed. They had public executions. A gala day was had and everybody came. Everybody enjoyed the festivities.

In Ontario many years ago, they hanged a boy of 16 for picking pockets. While the hanging went on, four people in the audience had their pockets picked. The argument is that hanging is a deterrent, but history does not support that argument. Will anybody say that it was because of weakness that these horrible punishments were changed? The reason was that juries began to seek reasons to acquit. About 150 years ago the theft of five shillings was punishable by death. Many said this punishment was salutary, that it was punitive and above all a deterrent.

I come back to the various royal commissions and I only mention those which have not been placed in *Hansard*. The head of one royal commission, whose views have already been placed before the house, was Sir Ernest Gowers. He spent three years of hard work on this subject in the 1950's. He said that he was a retentionist when he started this study. Read what he says in, "A Life For A Life". He changed his mind. I quote:

Before serving on the royal commission I, like most other people, had given no great thought to this problem. If I had been asked for my opinion, I should probably have said I was in favour of the

[Mr. Diefenbaker.]

death penalty, and disposed to regard abolitionists as people whose hearts were bigger than their heads. Four years of close study of this subject gradually dispelled that feeling and in the end I became convinced the abolitionists were right in their conclusions; though I could not agree with all their arguments, and that so far from the sentimental approach leading into their camp, and the rational one into that of the supporters, it was the other way about.

He changed his opinion. There were three Home Secretaries in a row who changed their opinions, two of whom had been strongly in favour of capital punishment. They changed their views between 1946 and 1956. I refer, of course, to Lord Chuter Ede and Heward Brooke, as well as the incumbent Home Secretary in 1965 these men have studied the problem not on the basis of emotion but on the basis of experience.

What are the arguments? I have read the speeches. One of those who indicated the attitude of many judges was the hon. member for Royal (Mr. Fairweather) in his description of what his father went through. I have known other judges who have had the same experience. If it is a deterrent, Mr. Speaker, why not have public executions? They used to have them. Read the descriptions of Dickens and Thackeray. These things were abolished about 1860. My great grandfather used to speak of attending executions held near Aurora north of Toronto. Everybody went.

Have you ever lived in a small town or a small city in which there has been an execution? Prince Albert today is a place of about 26,000 or 27,000 but for many years the population was around 9,000 or 10,000. On the day of an execution the people are silent. They are filled with awe and are relieved when they see the black flag go up. If execution is a deterrent, let us make it public. It has not deterred in the past.

The arguments for capital punishment as I read them are as follows: First, it is based on the Scriptures. Second, it operates as a deterrent. The third argument is that police forces and custodial workers require its continuance for their protection. The fourth is that some time in the future abolition will be appropriate but not now when crime is on the increase. The fifth is that murder having been committed there is no hope of rehabilitation or redemption for murderers. To me, to you, sir, and to all of us, the Christian religion is a religion of redemption, of compassion and of mercy. I have no sympathy for murder. I do not forget that an innocent person has been obliterated by the wrongful action of another.