LEGISLATIVE COUNCIL

Wednesday, February 24, 1971

The PRESIDENT (Hon. Sir Lyell McEwin) took the Chair at 2.15 p.m. and read prayers.

QUESTIONS

AGRICULTURE DEPARTMENT

The Hon. C. R. STORY: I direct my question to the Minister of Agriculture. Recently, an announcement was made that there would be a reconstruction of the Agriculture Department. Has the Minister anything to report to the Council on what has been done so far?

The Hon. T. M. CASEY: No. I am at a loss to know exactly what information the honourable member requires. If he will tell me later, I shall be happy to supply the information.

The Hon. C. R. STORY: I seek leave to make a statement before asking a further question.

Leave granted.

The Hon. C. R. STORY: The Chairman of the Public Service Board, I think, announced a couple of months ago that some new appointments would be made under the Director of Agriculture, such as Assistant Directors. Can the Minister say whether those appointments have been made or are likely to be made in the near future?

The Hon. T. M. CASEY: The situation is that these appointments have been advertised by the Public Service Board throughout the Commonwealth. So far, it has not been finalized. We are hoping that the people we require for the positions will be forthcoming. As soon as they are, I shall inform the Council of them.

MEAT

The Hon. A. M. WHYTE: I ask leave to make a short statement before asking a question of the Minister of Agriculture.

Leave granted.

The Hon. A. M. WHYTE: Last November 3 I asked a question of the Minister about the regulation of imported tinned meat from Uruguay. The Minister at that time gave a reply that did not quite answer my question. He has told me that after conferring with other State Ministers he now has further information he can pass on. Has he it with him today?

The Hon. T. M. CASEY: I told the honourable member that I would take the matter to the Agricultural Council, and I did this when the council met in Melbourne earlier this month. Other Ministers present, particularly the Minister from Queensland, were very concerned about it. Tinned meat is coming from Paraguay as well as Uruguay, and there is quite a considerable quantity involved. The Commonwealth authorities assured us that if tinned meat is correctly processed this will kill any bacteria likely to be transmitted in fresh meat, but the Minister for Primary Industry, Mr. Ian Sinclair, said he would take up this matter with his department to see whether it was necessary to import this tinned meat.

NATURAL GAS

The Hon. R. A. GEDDES: I ask leave to make a short statement prior to directing a question to the Minister representing the Premier.

Leave granted.

The Hon. R. A. GEDDES: The Peterborough Businessmen's Association has suggested that natural gas from the Gidgealpa field could be railed to Sydney and other places in New South Wales from Peterborough, thus avoiding the expenditure of about $100,000,000 on a pipeline from the field to Sydney. Will the Premier indicate whether his department can make a feasibility study of this proposition, which would be a means of assisting Railways Department revenue?

The Hon. A. F. KNEEBONE: I will convey the question to the Premier and bring back a reply when it is available.

AIRCRAFT OFFENCES BILL

Adjourned debate on second reading.

(Continued from February 23. Page 3470.)

The Hon. C. M. HILL (Central No. 2): I support the second reading of this Bill, which was introduced yesterday by the Chief Secretary. He pointed out that offences involving aircraft are increasing, and we have all read of these new crimes taking place, mainly in the international field and in other countries. They revolve around problems of hijacking, placing explosives on aircraft, and similar criminal acts, necessitating the introduction of legislation to combat such offences.

In most instances the legislation has involved very severe penalties, and most people have been in agreement with that. Special powers have been provided for the captain of an aircraft, and one can readily understand the necessity for this when there is trouble whilst

it is in the air. In Great Britain legislation known as the Tokyo Convention Act, 1967, has been brought down. That Act gives effect to the international convention on "offences and certain other acts committed on aircraft". The convention was signed in Tokyo in 1963.

The British Act also gives effect to parts of the Geneva convention of 1958. The Act establishes an aircraft commander's right to take reasonable measures, including restraint, to ensure the safety of his craft when someone or some persons on board are jeopardizing or may jeopardize the craft. On landing, the commander must notify the authorities and deliver that person to them.

In the United States of America on September 11, 1970, President Nixon ordered that armed Government guards were to be on all international flights from America and on selected domestic flights. In Australia after the Tokyo convention of 1963 the Standing Committee of Attorneys-General considered all the proposals from that Tokyo convention, and all States agreed to take action to implement that convention. As a consequence of that meeting the Commonwealth brought down the legislation to which the Chief Secretary referred yesterday. That Commonwealth legislation is the Crimes (Aircraft) Act, 1963.

I have not yet checked whether all States have introduced legislation on this matter but I believe that South Australia is either the last State or one of the last to do so. I have read the New South Wales legislation, which was introduced as an amendment to that State's Crimes Act, 1967. So, this Bill is part of a necessary world-wide trend. Because Governments must deal with this problem we now have this Bill before us.

It has not been easy for Governments to legislate in regard to this matter, for two principal reasons. First, the issue has been complicated by interpretations of international law in regard to piracy in the air. Whereas the law is relatively clear in regard to piracy at sea, the question of piracy in the air has presented many problems. The second reason why this has not been an easy matter on which to legislate is that many hijacking attempts have been made by belligerents and others for political reasons.

No doubt honourable members have been aware of the problems associated with cases where this political aspect has been involved. Part III of the Bill deals with the actual crimes affecting aircraft, and clauses 6 and 7 of that Part deal with the various examples of offence that can occur in regard to a person exercising control or endeavouring to exercise control over an aircraft.

The first of the three approaches is the taking or exercising of control of an aircraft without any other people being aboard it. This would mean that the aircraft would be on the ground. The proposed penalty for that offence is imprisonment for seven years.

When one endeavours to take or exercise control over an aircraft upon which another person who is not an accomplice of the person involved is on board, the penalty is 14 years, and if force or violence is involved in that endeavour to take control the penalty set down is 20 years. The most severe penalty is involved with the question of the destruction of an aircraft with intent to kill. This matter is dealt with in clause 9. For this offence, a person is liable to be imprisoned for life.

I believe that most of the other clauses are fairly straight-forward. However, clause 14 gives me considerable concern. It is one about which I am still making some inquiries, and I may have something more to say on that matter in Committee. It deals with the question of carrying or delivering dangerous goods to an aircraft or to an aircraft operator for the purpose of those goods being placed in an aircraft. The penalty provided is imprisonment for seven years. Subclause (2) sets out the circumstances in which the section shall not apply, and subclause (3) states:

> In this section, "dangerous goods" means—
> (*a*) Firearms, ammunition, weapons and explosive substances; and
> (*b*) Substances or things that, by reason of their nature or condition, may endanger the safety of an aircraft or of persons on board an aircraft.

It seems to me that there is certainly an obligation on the part of the airlines themselves to inform people who freight cargo by air of the dangers and of the penalties that are involved. In quite good faith certain goods could be delivered to an airline depot (I have in mind particularly some chemicals that might be packed in a manner which is deemed to be a safe manner and which might, for one reason or another, be classed as dangerous goods), and even if they are not placed aboard the aircraft it seems to me, from my interpretation of this clause, that an offence would be committed and consequently a penalty of seven years imprisonment might follow. Although we hope that this would never happen, we know that such a thing is possible.

It is quite easy to say that the onus must be on people who send goods to the airlines for freighting purposes. However, I think that a

certain amount of publicity should be given to this matter and that almost a contractual obligation should be placed on the airlines to warn customers adequately not only of the danger but also of the penalties that might follow.

Of course, the let-out, if I may call it that, is that if dangerous goods are carried with the knowledge of the airline an offence is not committed by those who send that cargo. But it is a very serious matter.

I am not suggesting that it is not a serious offence or that the penalty written into the legislation should be reduced, but it worries me that some innocent person acting in good faith may be caught up in the web of this legislation and be subjected to such a severe penalty. I wonder, too (and I should like the Minister, when replying to this debate, to give a reply to this question), whether or not the penalty would apply not only to the actual consignor but also to the person who actually delivered the goods; that is, the person who actually drove the truck might also be caught up in this legislation as it is worded at present.

I intend to make further investigations, which I have already set in train, into this clause and may have something further to say about it in the Committee stage. I have not had time to conclude my investigations, because the Bill was introduced only yesterday. That is the only clause that gives me concern. In general, I believe it is necessary that a law of this kind be introduced into South Australia, and it follows agreement of the Attorneys-General reached in about 1963. They based their uniform decision to proceed with the legislation throughout Australia on the Tokyo convention, and other nations have also followed the terms and conditions set down at that international meeting. I support the second reading.

The Hon. C. R. STORY secured the adjournment of the debate.

CONSTITUTION ACT AMENDMENT BILL (VOTING AGE)

Adjourned debate on second reading.

(Continued from February 23. Page 3471.)

The Hon. V. G. SPRINGETT (Southern): I ask myself: if I were a teenager, what would my reaction be to the world of today and to things that I am expected to understand in order to take my place in society? In one breath I find myself saying that at one time we talk about young men and women of 18 years of age, and in the next breath I find myself saying that they are immature youths who are not fit for responsibility. We say they need, because of their youth, immaturity and inexperience, protection from some of the nasty things of the world.

This Bill is linked with two other Bills, one of which is on the Notice Paper for today, namely, the Age of Majority (Reduction) Bill. The latter Bill deals with all the Acts that will have to be amended if that Bill is passed. Regarding the present Bill, there are certain things I should like to draw to honourable members' attention. A young person of 18 years of age, until the Bill is passed, does not have the right to undertake purchases of certain materials, to make decisions regarding wills, and all the other responsibilities and privileges that come with the attainment of majority. One of the problems I would find as a youth at present is that in society I am allowed to call the tune and, up till now, the elders have paid the piper. If this Bill passes, I shall call the tune but I shall have responsibility to pay the piper as well.

In one breath, they say we manage as well as they did; but, at the same time, we have not the depth of character of our forefathers—and so it goes on. Yesterday, the Hon. Mr. Hill, when dealing with another Bill, linked it with the one we are discussing now, the Constitution Act Amendment Bill. The Bill he was dealing with concerned the age of majority. It seems ironic to me that we push young people into accepting responsibility whether or not they want it and then wonder why they get into trouble. All through the last decade or so, youth has been pushed around considerably and, because of that, some of these young people have become "way out", difficult to deal with and disturbing to the whole community.

Coming back to the point of enrolment for voting at the age of 18 on the Assembly roll (which is the basis of this Bill), I find that most young people I speak to are not all that keen on it or interested in Parliament. Certain people at university are interested, but even there many of them think that 18 is not an age at which students are really fit for the responsibility they will have to take under the provisions of this Bill. Present-day 18-year-olds may be more physically mature than those of the previous generation, but one does not necessarily want a lot of men built like Hercules going to the polls. Their sagacity, wisdom, experience and balanced judgment are not the immediate fruits of a modern education system. Prolonged schooling cuts them off for

a longer time from the opportunity of acquiring more wisdom and early experience. All over the world there is this movement to give youth its head, assuming that it is fit and ready to assume authority.

The Leader of the Opposition in the Commonwealth Parliament, referring to the 18-year-olds, said they had voted wisely and well in Western Australia. I think the 18-year-olds voted equally wisely and well in the United Kingdom last year, where they have the great benefit and value of a voluntary voting system. Under our system, 18-year-olds would be given the right to vote and, if they once expressed that right by placing their names on the electoral roll, they would then be forced at the risk of punishment to go on voting, whatever they thought or did not think about things political.

A Bill such as this should contain a clause to the effect that people of this age should not be compelled to vote, whether or not they have registered, until the age of at least 21 is reached. I have made inquiries about a provision along these lines, but I understand that this is not the correct Bill in which to do this. I shall make further inquiries and, if it is correct to do so, I shall put an amendment to that effect on honourable members' files. Voluntary voting is an important part of true democracy. It is not provided for in this Bill, but it should be. A provision to this effect should be in all Bills concerning elections. I hope yet that South Australia and her sister States will adopt voluntary voting.

The Bill also deals with giving officiating ministers of religion the right to stand for Parliament. I do not see why they should not. Nowadays, the Christian church seems to have as big a social component in its work as it has a spiritual and truly religious component, so I fail to see why ministers of religion should not be able to enter Parliament if they wish to. It may be that pulpit politics will be a little more practical.

As far as I am concerned, I am prepared to support this Bill but I shall continue probing the possibility of introducing an amendment to provide for voluntary voting, certainly for young people up to the age of 21 and preferably above that age, also. Without that qualification, I would think again about supporting the Bill.

The Hon. C. M. HILL secured the adjournment of the debate.

AGE OF MAJORITY (REDUCTION) BILL

Adjourned debate on second reading.

(Continued from February 23. Page 3482.)

The Hon. R. C. DeGARIS (Leader of the Opposition): I do not intend today to speak for long on this Bill. Yesterday, we heard the Hon. Mr. Hill speak on it at some length. We must admit that he researched his subject diligently and he deserves the appreciation of this Council for presenting such a complete case for honourable members' attention. Whilst the base research has been done by the Hon. Mr. Hill and he has made available that research to us, the Bill is virtually a Committee Bill. Its first four clauses deal with the removal of a disability on persons over the age of 18 and under the age of 21. This means that the age of majority becomes 18. Then follows a series of Acts in the schedule that are amended accordingly by reducing the age of majority from 21 to 18. So we are really dealing with a series of Acts that are being amended in this way.

In his second reading explanation given last year, the Minister of Lands set out to demolish the reasons underlying the choice of 21 as the age of majority. I read this with, I must admit, some humour, because every argument is used to point out how ridiculous is the reasoning behind choosing 21 as the age of majority. One must admit that the reasons do seem archaic and ridiculous—including the bearing of armour, and other things. It is interesting to read this:

> The present age of majority is fixed in an entirely arbitrary manner and is unrelated to sociological realities and the rights and obligations appropriate to free and democratic societal organization.

This argument is put for an 18 years age of majority. I find it just as ridiculous (and not infallible, of course) that this reasoning should suddenly be accepted as the right reasoning why the age of majority should be 18 and not 21. I do not mind what arguments one uses in this matter: it is impossible to have any watertight argument for choosing any age as the right age of majority. Therefore, in effect we are simply guessing. The age of majority for one person may be valid at 16 years, and for another it might not be valid at 25 years.

The Hon. Sir Norman Jude: Or even 40 years.

The Hon. R. C. DeGARIS: That is so. We have to decide what society requires and what is the right thing for society. I agree that in many cases majority at 18 years is reasonable; indeed, in some cases it is possibly

all right at 17 years or even 16 years, but in other cases I do not agree that it should be 18 years.

One Act altered by this Bill is the Juries Act, which is to be amended to allow people to serve on a jury at 18 years. Although the age of majority is now 21 years, Parliament has insisted that a person under the age of 25 years shall not be eligible for jury service, yet this is now being reduced to 18 years.

The Hon. Sir Arthur Rymill: Would you like to be tried by a jury consisting of all 18-year-olds?

The Hon. R. C. DeGARIS: At my age I would not mind at all. If we went around South Australia asking the parents of children of 18 years of age whether they wished their children to serve on juries at that age, I am quite sure the answer would be overwhelmingly "No". I am quite convinced too, that most 18-year-olds would agree that they should not be required for jury service, yet this Bill provides for an across-the-board reduction, for all these things, of the age of majority to 18 years. The old arguments used for 21 years have been completely put aside, and suddenly we say that 18 years should be the age of majority.

Recently we dealt with the Succession Duties Act Amendment Bill, which provides that proportionate rebates would apply to children under the age of 21 years. That legislation is not to be altered by the present Bill, so, even if it passes we will still have anomalies because, under certain Acts, people under the age of 21 years will be regarded as children. I agree that in many cases the age of majority should be 18 years. In the second reading explanation reference was made to its being dealt with by the New South Wales Law Reform Committee, and the matter was dealt with in the Latey report, as mentioned by the Hon. Mr. Hill, on the question of contractual matters as affecting 18-year-olds. I agree that in this field 18 years should be the age of majority, but I object to insisting that 18-year-olds in South Australia should serve on juries. I do not think the two points can be related. Also, I do not think that we solve any problems by saying that the age of majority shall be 18 years for all matters.

I am opposed to lowering from 20 years to 18 years the age at which a person may drink in a hotel. In our hotels today we see many people who, I am certain, are in the 18 to 19 years age group. If the age is reduced to 18 years we will have 16-year-olds and 17-year-olds in hotels, and I do not think most South Australians want that. If the age is reduced to 18 years, we must do something to protect the publican. Very often he tries to do the right thing, and it is difficult enough to determine whether a person is 20 years of age, but I believe that is somewhat easier than determining whether a person is 16, 17 or 18 years of age.

I will support the second reading of the Bill, but I am not completely satisfied that the reduction in the age of majority across the board in all these matters is justified.

The Hon. A. M. WHYTE secured the adjournment of the debate.

BUILDING BILL

Adjourned debate on second reading.

(Continued from February 23. Page 3474.)

The Hon. E. K. RUSSACK (Midland): In his second reading explanation, the Minister has pointed out that this Bill repeals certain Acts and portions of Acts from 1923 to 1965. Also, he mentioned widespread concern among manufacturers of building materials, builders, architects and councils. An interstate committee has discussed uniformity and is preparing an Australian uniform building code. I agree that some standard of building, particularly in council areas, is necessary, and the Bill will assist in bringing about Commonwealth uniformity which otherwise would not be possible.

I congratulate the Hon. Mr. Dawkins on his speech, and while I do not desire to repeat many of the things he said, I agree with his comments. It is necessary to have a standard for building, particularly in built-up and municipal areas. One reason is health, another is aesthetics or appearance, a third is environment, and another is to maintain a standard so that adjoining buildings will not affect values in the immediate neighbourhood. Also, there must be some control for the sake of safety.

I maintain that local government is the obvious organization to administer an Act such as this. According to my investigations, corporations have usually enforced the Building Act as it now stands throughout the whole of their area. It appears from my inquiries that, in the main, district councils apply the Act to townships in their areas, but do not enforce it in relation to rural properties. I consider this to be reasonable and understandable. Clause 5 provides:

(1) Subject to subsection (2) of this section, the provisions of this Act shall apply throughout each area within the State.

(2) The Governor may, by proclamation, declare—

(*a*) that this Act shall not apply within an area or portion of an area specified in the proclamation;

I would expect that a district council would have to apply for the exemption of an area. The Bill provides that the Governor "may" approve the exemption of an area: there is nothing certain about this matter. Being closely associated with an area, the local council is best equipped to decide where such legislation should apply and where building standards should be enforced. Clause 14 provides:

(1) For the purposes of this Act the council of each area shall appoint a building surveyor and may appoint such building inspectors and other officers and servants as it thinks fit.

In clause 6 the definition of "area" is as follows:

"area" means a municipality or district as defined in the Local Government Act, 1934-1969, and includes an area in relation to which any body corporate is, by virtue of any Act, deemed to be, or vested with the powers of, a municipal or district council:

That definition means that every corporation and every council will be obliged to employ a building surveyor. Clause 14 (4) provides:

The council shall provide and maintain an office for the building surveyor.

I should like the Minister later to clarify whether each corporation and district council will have to employ a building surveyor and house him.

The Hon. Sir Norman Jude: I take it that, if the council is unable to obtain a surveyor, it will not be able to approve any building project.

The Hon. E. K. RUSSACK: That is correct. Some councils and corporations receive such a small amount of rate revenue that, even if they could acquire the services of a qualified building surveyor, they would not be able to employ him. I do not know whether this provision is aimed at forcing councils to amalgamate; if it is, I point out that to force amalgamation is a dangerous step, although I am not saying that it would not be desirable in some areas.

The Hon. R. C. DeGaris: It depends on who is in power.

The Hon. E. K. RUSSACK: When a Labor Government is in power there is always a tendency for things to be done by compulsion. Perhaps in some areas it would be wise for councils to amalgamate voluntarily for the sake of economy, if not for many other reasons. Clause 61 provides:

The Governor may, upon the recommendation of the Building Advisory Committee, make such regulations as are contemplated by this Act or as he deems necessary or expedient for the purposes of this Act and without limiting the generality of the foregoing, those regulations may—

(*a*) prescribe the qualifications that must be held by persons to be appointed building surveyors or building inspectors for the purposes of this Act and make any provision for the education, training and examination of persons who desire to obtain the qualifications necessary for appointment as a building surveyor or building inspector;

I am concerned about the plight of smaller councils and corporations. The qualifications referred to in clause 61 would be standard, whether the local government body was small or large. Perhaps the remuneration, too, would be at a standard rate, again making it more difficult for the smaller councils and corporations. I am concerned that authority is being whittled away from local government. In many fields there has been an unwise tendency for local government not to have the same authority as it had in the past. Because local government is the form of government that is closest to the people and most familiar with local conditions, it should have authority. The present Building Act provides that councils can set the fees that arise under the Act. Clause 61 of the Bill provides:

The Governor . . . may—

(*k*) prescribe and provide for the payment and recovery of fees, and expenses, in connection with any matter arising under this Act.

We see here another instance of power being whittled away from councils; they are losing the right to determine the fees applicable to their areas. Because this is a Committee Bill, I do not desire to say any more at present, except to repeat that it is necessary to have some building standards. However, it is also necessary that those standards should be applied through the local council so that the standards may be maintained at the local level. In order that further consideration clause by clause can be given to this Bill in the Committee stage, I support the second reading.

The Hon. R. A. GEDDES secured the adjournment of the debate.

CAPITAL AND CORPORAL PUNISHMENT ABOLITION BILL

Adjourned debate on second reading.

(Continued from February 23. Page 3486.)

The Hon. F. J. POTTER (Central No. 2): This Bill involves one of the difficult matters that have appeared before this Parliament in this session. We have

had before us several Bills proposing quite radical changes in the laws relating to our society. For some honourable members this is a difficult matter on which to make a decision. Fortunately, it is not like some of the Bills that we have had before us as it is not pioneering legislation. We are, in fact, able to take note of advances that have been made in penal reform, throughout the western world particularly, and by no means are we the first Parliament to have to turn its attention to debating the issues involved in this legislation.

I said a moment ago that I thought it posed some difficult questions. I think the difficulty arises in trying to cope with the ethical problems that emerge and the philosophy behind the concept of the legislation. This philosophy involves not only religious aspects but also social and legal problems as well. I personally do not take any emotional attitude on this question, as I know it is so easy to do. I try to adopt an objective attitude and to look particularly at what members of my own profession feel about this problem. I think I can say that the great majority of my legal colleagues feel as I do, namely, that capital punishment should be abolished.

Consequently, I intend to support the Bill. However, members have to make up their own minds on this question; they have to face up to making a decision on the aspects involved, and I doubt whether there is very much I could say that would sway them from an attitude that they may have taken quite a long time ago. Therefore, I do not intend to speak at length. On the other hand, there are some aspects of the matter that I think should be examined and mentioned to the Council.

First, it is overwhelmingly obvious that capital punishment is now extremely rare in the whole of the western democratic world. It was a statutory penalty in all the States of Australia until 1922, when Queensland abolished it. Then, in 1955, it was abolished in New South Wales. The statistics that I have unearthed in this matter are very cogent and have some force in themselves, though I know that sometimes statistics do not count for very much. However, when we consider that nobody has been hanged in New South Wales for 31 years, that nobody has been hanged in Queensland for 38 years, that nobody has been hanged in Victoria (except the notorious escapee, Ryan) since 1951, that Tasmania has hanged nobody for 25 years, that only two people have been hanged in the Territories of the Commonwealth since Federation, and that we in South Australia have not invoked the death penalty since 1964, I think we must pause and say, "What useful purpose is served by having the penalty of capital punishment on our Statute Books?"

I stress that the matter we are really considering is the imposition of a penalty or punishment for a particular loathsome crime. Before such a penalty can be applied (indeed, I suppose before any penalty of any kind can be applied) there must be a conviction for guilt, and there must in fact be guilt of a crime. Of course, here we are dealing with the guilt involved in the very worst of crimes, perhaps involving the very worst of circumstances. But that guilt always endures, irrespective of whatever punishment the law imposes. Although we often hear the expression "paying a debt to society", there is no such thing. The only people who use that kind of expression are the criminals themselves. As I say, there is really no such thing as paying a debt to society, and there is no such thing as wiping out the guilt of any crime.

Many philosophical writers have dealt with this question of penalty. When I was a student at university we spent a whole term, I think, on philosophy on the theory of punishment. I know that one could fill an entire wall of a library with books dealing with the theory of punishment and the philosophy behind it. There are three aspects of any penalty which the law seeks to invoke. First, there is the deterrent aspect, which is linked, I would suggest, with certain social aspects of the problem. Secondly, there is the reformative purpose of the imposition of penalties, and that is uniquely linked with the instrinsic worth and rehabilitation of the individual in society. Finally, there is the retributive aspect of punishment which, of course, is linked with legal and perhaps religious aspects of the problem.

I have mentioned those three aspects because they are the fundamental division of penalty, particularly the penalty of capital punishment. I will deal with the first aspect at a little greater length than the others because I fear that this is one we will probably hear a good deal about as this debate proceeds. We have heard the suggestion that capital punishment is the ultimate deterrent and that it has a particularly unique quality about it. One aspect of the deterrent feature of punishment is that it looks naturally to the future: it is there to prevent the commission of further crimes. It is asserted, as I said earlier, that capital punishment has a particularly unique quality

about it, but I remind honourable members that it was not so many years ago, indeed at the time the Australian colonies were being founded and perhaps even later, that capital punishment was imposed in England for the crime of stealing. This did not deter people from stealing then and, I submit, it is less likely (and I realize I am talking about a different historical situation and generation) that it would deter people now. The real threat of deportation to Tasmania and New South Wales did not deter people from committing minor crimes, fearful though those penalties were.

It is less likely now in this day and age that capital punishment would deter anyone from committing the crime of murder, particularly when we find that that crime is usually committed by people under some psychological disturbance. When saying that, I put aside the kind of people whom the Hon. Mr. Springett mentioned yesterday, namely, those who were mad, because obviously a good number of people who commit murder in our society are in that category. I think all honourable members would agree that anyone who was certified insane or was badly mentally disturbed should not suffer the death penalty.

If they are not mad but are reasonably normal people, one usually finds that murder is committed under the stress of some sudden psychological emotion. A very strange aspect of it, too, is that it is usually committed when there is a relationship of some kind between the attacker and the victim; it is either a relative who is murdered, an employer, or someone with whom the attacker has come into some emotional conflict. It is only a very rare case indeed where murder is committed for the sole purpose of achieving possession of goods or something of that kind; even then it usually arises because far more force was applied than was originally intended or certain intervening circumstances occurred that caused the death of a person.

An analysis will show that psychological disturbance is often involved. Consequently, the question of the penalty as a deterrent has less effect than one might think. Statistics (which I will not quote, because they are available to honourable members to examine) and experience show that in countries that have abolished the death penalty, the death penalty never had any special deterrent effect. There is no basis for assuming that the abolition of the death penalty leads to an increase in violent crime.

The Hon. Mr. Springett said that there had been an increase in crimes of violence, and I agree with him. However, if one looks carefully at the figures, particularly in Australia (and, after all, we are talking about our own home country and home State), one will see that crimes of violence have increased proportionately with the increase in population. They have not taken a sudden leap up on the graph for any reason other than that, except perhaps that our Police Force is not as strong numerically in relation to population as it was some years ago. I have not checked that, but my impression has been that the force has perhaps not kept pace with the increase in population.

We all know that the force these days is distracted by having to do many duties other than track down criminals. I am not in any way trying to discredit the force, which does a very good job and which tries to do its best. In the current report of the Commissioner of Police one can see that the success of the police in bringing to justice people who are engaged in crimes of violence is not bad, although detection in cases of stolen property is down as low as 35 per cent. All I am saying is that one cannot be too dogmatic in saying that the increase in crimes of violence is linked with the ultimate deterrent, because I submit that the chief deterrent against crimes of violence or murder is not the awfulness or, as some people would say, the barbarity of the punishment but the certainty of detection and conviction.

As the proportion of convictions for crimes increases, the crime rate in the community goes down. It is a notorious fact that many leading judges, both here and in England, in the past have tended to be against the abolition of capital punishment. It is also a remarkable fact that some of these judges, some of them very eminent indeed, who were vehemently opposed to abolition, have swung round the other way. I think this was largely because there was originally little or no evidence that judges had as to what would be the consequences of abolition and also because, since that time, there has been an opportunity for justice to be administered without the existence of capital punishment in England and elsewhere.

Indeed, I suggest that judges, in themselves, should not be regarded as experts on the matter of deterrence any more than sociologists or, for that matter, philosophers. After all, judges deal only with the cases that come before them and those people who stand before them in the dock. They know little more than the other

members of the community—politicians, sociologists, etc.—of what really moves people to do or not to do certain things or to commit or not to commit crimes.

For every person they see before them in the dock, there are countless thousands with whom they, as judges, do not come into contact. Consequently, they are not to be regarded with awe as experts on deterrents. I submit that the mere retention (and I make this point strongly) of the death penalty on our Statute Book as the only penalty that can be imposed for murder after a conviction by a court has no deterrent effect at all. This has been borne out by all the investigations that have been made into this problem in other countries, and particularly in Great Britain, and all the results that have flowed from the abolition of the death penalty in Great Britain and elsewhere.

There were two long hearings in that country. There was the Select Committee hearing in 1929-30 and then there was the big Royal Commission of 1949-53. The Chief Secretary in his second reading explanation of this Bill quoted from the report of the British Royal Commission. I will repeat that because it was last December that the Chief Secretary gave his second reading explanation and it may not be as fresh in honourable members' minds as it might otherwise have been. The general conclusion of the British Royal Commission was this:

The general conclusion which we have reached is that there is no clear evidence in any of the figures we have examined that the abolition of capital punishment has led to an increase in the homicide rate or that its reintroduction led to a fall.

I go back a little further to the Select Committee's report. It came to the same conclusion, and this is what it said:

Our prolonged examination of the situation in foreign countries has increasingly confirmed us in the assurance that capital punishment may be abolished in this country without endangering life or property or impairing the security of our society.

Statistics (which I shall not quote now) show that the abolition of the death penalty has made no difference to the actual number of murders committed.

The Hon. A. M. Whyte: Have you any idea what the figures of crimes prevented would be?

The Hon. F. J. POTTER: We do not know what dissuades people. We do not really know what motivates people to do anything or dissuades them from doing it. A man may form the intention to rob his neighbour's house. He may decide, after weighing up certain matters, that he will not do so. I am sure that, if we pursue that aspect of the problem, we shall get away from the real point at issue, because what I am saying is this: it is shown (and both these bodies were satisfied on this) that the death penalty has no unique deterrent effect at all.

I have said something about the theory of punishment. I will briefly mention the other two aspects, one of which is the reformative aspect which, like the deterrent, looks to the future because its object is to change the disposition and behaviour of man, and in particular the criminal himself. Consequently, it is very much concerned with the individual and seeks the future rehabilitation of the criminal. That process of rehabilitation cannot possibly be achieved suddenly. Certainly we cannot achieve it at all whilst a criminal is facing a sentence of death.

The third and final aspect is retribution. This does not look to the future: it looks to the past because it seeks to penalize an individual for something that has occurred, an incident that has happened and cannot be changed or recalled. For this aspect of the problem, strangely enough, the strongest philosophical case can be made out, but it is not greatly favoured in our modern social thought because it seeks somehow to measure and exact penalty for a death. It comes back to the old question, really, of an eye for an eye and a tooth for a tooth: in other words, we go back to the law of Moses or to the *lex talionis*, as the Romans called it. I am told, and I accept, that the modern authorities on the ancient law said that this was particularly restrictive, that it was meant that one exacted only an eye for an eye and only a tooth for a tooth. It is obvious to us all that society has moved well away from that kind of concept, because we do not burn down a man's house if he is an arsonist; we do not assault a person because he has assaulted somebody else.

I return to the point from which I started: all the Western democracies have abolished the death penalty. I think the only two countries that retain it are France and Spain. In the United States of America there is no national policy at all on this: it is left to the States, as it is here. There have been no executions in the United States for some considerable time, and I think the Minister mentioned that quite a number of the American States had completely abolished it.

The Hon. V. G. Springett: There are 14.

The Hon. F. J. POTTER: Yes. The other point was the question of merely leaving it on

our Statute Book as a deterrent, and my submission that it had no effect in that way. I do not think it is right that a judge should have no option in all the cases that come before him and in all convictions for murder, whatever the background, but to pronounce the death sentence and leave the ultimate fate of the person to Executive Council. I do not think it is right that Executive Council, in exercising the prerogative of mercy—because, after all, that is all it is doing, or ought to be doing, and there is some authority to say that the exercise of mercy should be done only in the most extreme circumstances and in very rare cases—should be sitting as a quasi-legal body, going into all the circumstances and the background, and endeavouring to make a decision on whether or not a sentence is to be carried out. This is a role it must fulfil at the moment because our system makes it mandatory on the judge to pass the only sentence prescribed.

Nor do I think—and this is a strong personal belief—that we should leave a man's life hanging in the balance for a period of 28 days, or whatever is the statutory period, while we make up our minds. This is one of the worst aspects of the entire system of capital punishment. I will not elaborate on it, but we all know that this continual putting off and keeping in suspense must have a devastating effect not only on the criminal himself but on all persons concerned with the ultimate decision.

I believe we have reached the point where we could very well follow in the steps of those who have led the way in other countries. At the last legal convention held in South Australia we had, as the principal guest at a very big gathering in the Adelaide Town Hall, the Master of the Rolls, Lord Denning. He came to us at a time when the three-year period was in force in England, with a limited application of the death penalty for certain crimes against warders and policemen. Lord Denning, who occupies the third highest judicial office in England, told the gathering, "You know we have abolished capital punishment in England. I was strongly opposed at the time to its abolition, but I am certain that we will abolish it completely at the end of the three-year period. I am equally certain that we will never impose it again, and I believe that decision will be right."

I read again very carefully the submissions of the Minister when he spoke on the second reading of this Bill in December last, and I would like to quote from what he said on one aspect, because I think it puts the argument very completely and very succinctly for the abolition of this penalty. He quoted first of all from a leading British abolitionist, Mr. Sydney Silverman, M.P., who spoke during the debate on the Abolition Bill in the House of Commons in 1965. I will read it again, because I think it sums up pretty well what should be said. Mr. Silverman said:

> I can well understand people saying that in the face of all our anxieties it may not matter whether we execute or do not execute two or three wretched murderers every year. It is impossible to argue that the execution of two people in England every year can make a very great contribution to improving a dark and menaced world. Yet we could light this small candle and see how far the tiny glimmer can penetrate the gloom.

The Minister went on in his address to say:

> The formal abolition of capital punishment may not save many lives, but it will be an affirmation by the Parliament of South Australia of its belief in the worth and dignity of human beings. It will be a renunciation of the power to destroy life and an emphatic assertion of the values of a humane and civilized society.

I agree with those words of the Minister; consequently I have no hesitation in supporting the Bill.

The Hon. G. J. GILFILLAN secured the adjournment of the debate.

ADJOURNMENT

At 3.48 p.m. the Council adjourned until Thursday, February 25, at 2.15 p.m.