

*Criminal Code*

It is my view, Mr. Speaker, that the basic issue which we all have to consider and solve is whether or not the retention of the death penalty is necessary for the protection of society and in order to deter potential murderers. It is my conviction after consideration of all the evidence I have been able to find that the conclusion reached by Mr. W. T. McGrath, in his book "Should Canada Abolish the Gallows and the Lash", is a correct one. He states:

The conclusion to be reached after a thorough study of the statistics relating to murder in those countries that have abolished capital punishment is that they provide conclusive evidence that the death penalty does not deter potential murderers and has no effect on the murder rate.

I say quite frankly to you and this house, Mr. Speaker, that if I and others who take the same view I take were convinced that capital punishment was shown to be the most effective deterrent to murder, no matter how repulsive it might be to us we would be compelled to support the continuation of capital punishment; but all the evidence points in another direction.

Others in this debate will expand and develop this point. For myself, I am content to put my view on this aspect of the matter in the words of a very great man, the great spiritual leader Archbishop Temple, who wrote this:

I believe that the example of the state taking life, even when it does so in return for a life already taken, does more to lower the value of human life in the mind of its citizens than the deterrent influence of this penalty can do to protect the lives of its citizens. In this way, I believe that the main influence of the retention of the death penalty is rather to increase than diminish the number of murders.

If you agree with me and what Archbishop Temple has said then you can only resolve this problem in one way. But, the argument against the retention of capital punishment, to which I wish to direct the attention of this house, is on a different point and it is this. The administration of justice, being a human institution, is bound sometimes to make mistakes. Although these cases of error may be few, it is I think repulsive to our moral sense that the state should execute innocent people so as to make rectification of the mistakes impossible.

I do not make this argument to condemn our courts or our judiciary. I do, however, underline the fallibility of human judgment and human procedures, and I urge upon members of this house that it would be a monstrous injustice if, through the legal processes of the

state, however well-intentioned, the life of an innocent person should be taken away. I assert that it is no figment of the imagination to say that even the most mature systems of the administration of justice can be mistaken, even in such solemn matters as capital cases.

Professor Borchard of Yale University, in a book called "*Convicting the Innocent*", has collected 68 cases from England and the United States in which innocent persons have been convicted of crimes, and 25 of these cases involved murder.

In Koestler's "*Reflections on Hanging*", the evidence of Sir Fitzroy Kelly to a royal commission in 1864, is summarized as follows—and I may say that Sir Fitzroy Kelly was the attorney general and solicitor general of the British government. The summary states:

After careful consideration and examination, he has come to the conclusion that it is not in any way reasonable to be doubted that in many instances innocent men have been capitally convicted, and in certain numbers of instances, few of course but yet formidable numbers have been actually executed. Well remembers that there were, between the years 1802 and 1840, 22 cases of capital convictions, seven of which resulted in the execution of the convicts, and in the rest of which the sentence was mitigated or a pardon granted. But in the whole of the 22 cases the innocence of these persons was established or at least established satisfactorily to those who investigated the matter, and in most of the cases to the satisfaction of the advisers of the Crown.

Mr. Speaker, I propose to confine myself to three more recent cases which have taken place in jurisdictions where, admittedly, the administration of justice has reached high levels of fairness and efficiency. I refer to England, the United States and Canada.

● (5:00 p.m.)

There is the well known case in England of Timothy Evans who was hanged in 1954 for the murder of his daughter known as Geraldine Evans. Lord Birkett, a very famous judge who may be known to some hon. members, said this in discussing the case in the *Observer* newspaper on January 15, 1961:

The case against Evans at his trial on the facts as they were then known was quite overwhelming. There was no failure in the administrative machinery of the criminal law. No human skill could have prevented the conviction and no human judicial system, whatever its checks and safeguards, can ever provide complete security against the exceedingly rare and utterly exceptional case such as that of Evans.

The accused Evans made what was said to be a free and voluntary confession. One of