

*Criminal Code*

When they come to quote scripture to me I ask them, where do you begin and where do you end? A moment ago I mentioned the Judaic principle in Exodus where the following are capital crimes: striking or cursing one's parents, slave procurement, a fatal attack by an ox, witchcraft and sacrifice to any god other than Jahweh. Then Leviticus added adultery and Deuteronomy added criminal assault in a city, a rebellious son and an unchaste bride.

In the southern United States from 1830 to 1860 my religious denomination argued that slavery was necessary and that it had received the inspiration of divine scripture. In the argument in the book entitled "The Death Penalty" this appears:

The issue of slavery will serve as a clarifying illustration. By a proof text method, there is no direct Biblical warrant for the abolition of slavery. It is clear to us when we take the position that we are striking back at the spirit, and slavery is unjust and evil.

Canadians conceal their pride in their country. We do not boast about it. How many of us pridefully point out that it was here in Canada that slavery was abolished for the first time in all the western world in 1803? It is an amazing record. It was 40 years before it was abolished in the United Kingdom and many more years before it was abolished in the United States. The argument that slavery was divinely appointed was still used in the days of Webster, Choate, and the other giants of the 1830's and 1840's.

● (4:10 p.m.)

Let me deal now with these various arguments, Mr. Speaker. So far as the religious argument is concerned, I am not going to get into a theological discussion at all; I am not qualified to do that. I also realize what are the consequences of a lawyer trying to interpret the Scriptures. We lawyers recall very well some of the descriptions of us in the New Testament. But I say that the doctrine of an eye for an eye, a tooth for a tooth and a life for a life, if carried out literally, would mean that nobody would have eyes to see with; and there would be nobody with teeth. That was the view expressed by one of the Lord Chancellors of the United Kingdom.

Is capital punishment a deterrent? There is a strong feeling widely held that it is, though there is no proof in any statistics I have ever read. It has been argued that if capital punishment is abolished there will be an increase in the number of murders. The United Nations report of 1962 came to the

conclusion that there has been no notable rise in the number of murders.

May I interpolate at this time that one of the best pieces of work ever produced on this subject since I have been in parliament is the recent White Paper on capital punishment. Whoever prepared it gave both sides in a way that could not but be beneficial to all of us.

If capital punishment is a deterrent, Mr. Speaker, then why is it that since 1956, when the United Kingdom divided homicide into capital and non-capital murder, there has not been a percentage increase in either category? Their system of dividing murder into capital and non-capital murder has produced some of the most extraordinary anomalies that could be imagined.

For example, if an old woman is criminally assaulted and during the course of the assault is killed, the assailant would be charged with non-capital murder. If a little girl is criminally attacked and she dies, that would be non-capital murder. But if her assailant picked up a sixpence which she had dropped the crime would then become capital murder. That is the danger of dividing.

We also introduced a division in 1961 when the hon. member for Kamloops as minister of justice introduced legislation to provide for a division between capital and non-capital murder. Some say that this division has not had a fair chance to work. It certainly brought about a decrease in the number of capital cases. But the other day I was amazed to read that a Supreme Court Justice in Ontario—his name I am not going to mention—trying a case of capital murder, when told the accused would like to plead guilty to non-capital murder, said he was not going to waste time trying him on a capital murder charge because he would be reprieved in any case by the present government.

When I asked at the beginning what was the stand of the government on this issue I did so in regard to the constitutional responsibility. I now say that the manner in which there has been a disregard of the law in the last three years by the executive has brought about the abolition of capital punishment in this country by executive order. There is no other conclusion. I say that Her Majesty's ministers ought not to break the law. They ought not to have authority to override it, except where the exercise of mercy becomes appropriate, any more than the Supreme Court of Canada or any of its judges have jurisdiction over what happens