

*Criminal Code*

substance to the promise of punishment. The ultimate protection therefore comes from the ultimate promise.

One of the arguments used for promoting the abolition of the death penalty is that mistakes have occurred in assessing guilt, and there is danger of an innocent person being executed. The weakness of this argument lies in the fact that if we accept it in connection with capital punishment we should be consistent and accept it in relation to all punishment. All punishments carry the same risk or error. Danger of error applies all across the board. Are we to withhold punishment for all wrong-doing because an innocent person may suffer?

The possibility of error in assessing guilt is a matter for the courts. Every person under our law is presumed innocent until he is proven guilty beyond a reasonable doubt. The possibility of error in assessing guilt calling for capital punishment is no more valid as an argument in favour of abolition than is the possibility of error in assessing guilt for any other kind of crime, a reason for outlawing all punishment.

I believe that our present laws concerning capital punishment are as close as we can get to a fair balance between the exercise of mercy and the imposition of a penalty severe enough to discourage the crime of murder. In July, 1961, parliament revised the Criminal Code with regard to the crime of murder. Murders were divided into two classes, capital murder and non-capital murder. The list of killings coming under the heading of capital murder, for which judges are compelled to impose the death sentence, is very limited. It includes planned and deliberate murder and encompasses the murder of police officers and prison guards. All other killings are classed as non-capital murder and carry a mandatory sentence of life imprisonment.

Every death sentence must be reviewed by an appeal court and by the cabinet. The cabinet has the power to commute any sentence of death. Very few executions have taken place since this change in the Criminal Code was made.

I have no criticism to offer in this respect. I hope that governments can frequently find sufficient reason for commuting the death sentences that are imposed by our courts. I hope that some redeeming features and some hope for rehabilitation can be found in all murderers, but I remain convinced that the ultimate penalty should remain on our statute books to be used in the discretion of the

government when necessary to stay the hand of those who would deliberately kill their fellow men.

Penalty is the price for wrong-doing. The ultimate penalty is the price for the ultimate crime. Everybody pays. The guilty one, the family of the guilty one, the friends and neighbours of the guilty one, the police, the judge, the court officials, the sympathetic people of the nation. Everybody pays.

Our laws are a legacy from all the generations of mankind that have preceded us. Our laws are designed to promote the happiness and well-being of our generation and generations yet to come. They are the product of experience, of trial and error. They are made to fit human nature—not to fit human nature as we hope it might be, but to fit human nature as it is, as it has proved to be.

I wish to support the capital punishment law as revised in 1961. I believe it is good law and should be continued for a much longer period before further change is considered.

There is one matter I should like to place before this house, and I do so in all humility. I have not had the advantage of legal training but it does seem to me that a situation has developed which should be given serious consideration. An editorial in the *Globe and Mail* of Friday, March 25, outlines the attitude of a court dealing with a charge of murder. It states:

Mr. Justice Eric G. Moorhouse (the judge in the case) agreed to a reduction of the charge to one of non-capital murder after this had been requested by counsel for the defence and concurred in by the Crown. The accused pleaded guilty to a lesser offence.

This particular case involved the man charged with the rape murder of a five-year-old girl. The editorial continued:

There is nothing particularly unusual about this course until one considers the factors by which Judge Moorhouse apparently allowed himself to be guided. He commented: "I think this court is bound to take notice of the fact that the penalty for capital murder has not been exacted for some time, and in view of this I can see no useful purpose in proceeding with this case in the hope of obtaining a verdict of capital murder."

● (9:10 p.m.)

I quote this in order to indicate that there is uncertainty in Canada today concerning the policy of applying our laws in this area of capital punishment. The death penalty is provided for in our Criminal Code, but there is doubt in the public mind about the extent to which it is being used. The judge's statement at Bracebridge indicates this. This debate and this decision by parliament is being