

appeal system before the final sentence is passed. The meticulous carefulness of the procedures together with the use of commutation make it clear that from the time of Confederation onward Canadians have regarded the taking of life, even the life of a criminal and a murderer, as a serious and awesome responsibility; certainly not as a sentence or sanction to be applied routinely.

A professor of jurisprudence at Yale, Professor Black, wrote in his book *Capital Punishment: The Inevitability of Caprice and Mistake*:

The Law of Moses is full of the death penalty. But as time went on the Court in ancient Jerusalem, without of course touching one syllable of this law, devised procedural safeguards so refined, so difficult of satisfying, that the penalty of death could only very rarely be exacted.

This is the point I am making; when we have capital punishment on the books, the state in a civilized country will have such procedural safeguards and extensive appeal procedures, and in the case of Canada, the right of commutation, all built in to protect against the risk of putting an innocent person to death. That is the case because, as somebody has aptly said, though the justice of God may indeed ordain that some should die, the justice of man is altogether and always insufficient for saying who those may be.

● (1330)

Capital punishment was considered as a last resort in the defence of society before we had statistical evidence to show that it is not a deterrent. The evidence seems to be, in all the countries that have abolished capital punishment, that murders do not increase. Of course talking about murders in the plural is always unsatisfactory because even if one person is killed that is one person too many. If I had any evidence to show that capital punishment would stop one person from murdering, then we would have to look at the debate again.

Self-defence has been an acceptable defence in our society for a long time, but to say that killing one person who has murdered will protect or prevent further murders is not held up by the evidence. By the same token, I do think that life sentences should mean a very long sentence and that our parole procedures need to be tightened. Parole should only be granted when there is clear and incontrovertible evidence that this person will not kill again. Prediction studies are not well developed. A lot of available information is not being used. That situation certainly has to improve. Again, I repeat, that I cannot see capital punishment as offering better protection to our society in any way.

A former commissioner of the Metropolitan Police in London, Sir Robert Mark, has made the argument that I made at the outset, which essentially is in three parts. To prevent what he called the "awful possibility" of putting an innocent person to death, procedural rules of interrogation and trial require an exceptionally high standard of proof of guilt and it naturally makes the task of prosecution difficult. People who have been involved in murder trials have also pointed out that juries are most reluctant to convict when the conviction will be

followed by capital punishment and, in fact, there is more likelihood of a murderer walking away for this reason.

Sir Robert Mark's three points are:

1. To prevent the "awful possibility" of putting an innocent man to death, procedural rules of interrogation and trial require an exceptionally high standard of proof of guilt and it naturally makes the task of prosecution difficult;
2. One cannot have two systems of investigation and trial, one for the handful of capital murders, and another for the other two million offences recorded in England and Wales each year, and
3. Accordingly, the practical effect is inevitably to lessen extensively the effectiveness of the criminal law as a deterrent to crime or as a means of catching and, most important of all, convicting criminals.

In my view the most important deterrent is the certainty of capture and conviction, a certainty which I think is interfered with rather than aided by the existence of capital punishment.

**Mr. Allmand:** Mr. Speaker, I want to congratulate the Hon. Member for Trinity (Miss Nicholson). Is she aware that if this House were to vote for this motion and restore the death penalty in Canada, Canada would be the only country in the western world, including Australia and New Zealand, to have the death penalty?

It is true that in the United States the decision of whether to have the death penalty is a state matter. Since the U.S. Supreme Court reversed its decision and permitted the death penalty in 1976, executions have been carried out in only 12 states. If we were to pass this motion, we would be the only country in the entire western world, including Australia and New Zealand, to have the death penalty.

Has the Hon. Member considered that fact, and does she think it is appropriate that in Canada where we pretend to be a civilized country that we should go in the opposite direction, in the direction of South Africa, Iran and some other countries, rather than following the principle set forth in those countries with which we have most in common, namely, western Europe and Australasia?

**Miss Nicholson (Trinity):** Yes, Mr. Speaker, I am aware of the information which the Hon. Member has adduced. I do not particularly wish to see Canada in company with countries like South Africa and Russia which have kept capital punishment. Indeed, as the Hon. Member points out, the countries with which we feel we have common ground on matters of public morality and public principle have long since abolished capital punishment.

**Mrs. Finestone:** Mr. Speaker, I always listen to my colleague with a great deal of interest and that situation has not changed. I listened to her concern about the criminal element, what is happening and how perhaps we might change the end result with other policies. Does the Hon. Member have some observations with respect to family violence and the number of murders that occur in family situations?

**Miss Nicholson (Trinity):** Mr. Speaker, I thank the Hon. Member for Mount Royal (Mrs. Finestone) for her question.