

individual with murder, the hearings and 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 on, Canadians have regarded the taking of life—even the life of a criminal—as a serious and awesome responsibility, and certainly not as a sentence or sanction to be applied routinely.

Professor Black, professor of jurisprudence at Yale, in his book "Capital Punishment: the Inevitability of Caprice and Mistake" states:

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.

Professor Black also states that the English judges of about 1800, administering capital punishment for some 250 crimes, became "terribly fussy about the exact wording of indictments." Professor Black interprets this pattern of surrounding the death punishment with procedural safeguards as saying, in effect, and I quote:

Though the justice of God may indeed ordain that some should die, the justice of man is altogether and always insufficient for saying who these may be.

This sentiment has been expressed in different words by many of the constituents who wrote me individual letters or who, as a group, signed letters with other members of churches in my constituency. In addition, in their letters many people raised the point that a sentence of death is the only final and irreversible sentence for which there can be no redress if an error is made.

In conversations with constituents who initially represented themselves as being in favour of retention of the death penalty, I have found that many of them also had some misgivings about the taking of life. Their position was less one of wanting retribution than one of wanting protection for society from dangerous, callous murderers, and on reflection they were often satisfied that the sentences proposed under Bill C-84, together with the measures proposed under Bill C-83 and the measures enacted under Bill C-71, will provide that protection.

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.

Most murders in Canada are family murders, or murders between people who have some kind of emotional attachment to each other. Statistics Canada figures show that of a total of 4,658 murders over the 14 years from 1961 to 1974, 1,842, or 39.5 per cent, were domestic murders, a further 247, or 5.3 per cent, were described as "love triangles or lovers quarrels," and a further 364, or 8.6 per cent were "close friends." Many of these murders occur in association with misuse of alcohol or drugs or in cases of mental illness. They are sudden and unplanned, and it seems highly unlikely that people who kill in those situations take into account the existence or otherwise of capital punishment.

Family murders are tragic for the people concerned, and it is urgent that society address itself to the problem. However, those who consider seriously the retention of capital punishment do not advocate it for family murders but for contract murders or murders committed in the

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course of a criminal act; in other words, the calculated, deliberate act which threatens society in general rather than a family.

Does capital punishment serve as a deterrent to hired killers or those who carry out planned and deliberate murder? The evidence so far is that it does not, that these are people whose life style includes acceptance of the risk of being killed by police if they resist arrest during commission of a crime or being killed by their criminal associates during disputes.

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A 1968 United Nations document assessing international data on capital punishment reads:

With respect to the influence of the abolition of capital punishment upon the incidence of murder, all the available data suggests that where the murder rate is increasing, abolition does not appear to hasten the increase; where the murder rate is decreasing, abolition does not appear to interrupt that decrease; where the rate is stable, the presence or absence of capital punishment does not appear to affect it.

I am convinced that, in the short term, the most practical and effective deterrent is the certainty of detection and conviction.

Sir Robert Mark, Commissioner, Metropolitan Police, London, has reasoned as follows:

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, of convicting criminals.

The commissioner also provided the following quote from Lord Devlin:

If the success of a criminal prosecution is to be measured by the proportion of criminals whom it convicts and punishes, the English system must be regarded as a failure. Far too many people who have in fact committed crimes escape punishment. When a criminal goes free it is as much a failure of abstract justice as when an innocent man is convicted.

It is my considered view that, since there is no evidence that capital punishment is a deterrent, and some evidence that, in fact, its existence creates difficulties in convicting criminals, not only in cases of homicide but in other criminal acts, there is no logical reason to retain it.

Sir Robert Mark also said:

I am opposed to the death penalty and so are most of my senior and most experienced colleagues simply because its continuance prevents the reforms necessary to increase the effectiveness of criminal justice.

The establishment of the truth rather than the determination of technical guilt ought, in my view, to be required of everyone involved in a criminal inquiry once irrevocable punishment has been removed from the statute book. If, as our lawyers in Britain, maintain, the objectives of justice are now the protection of society, the deterrence of crime, the rehabilitation of the offender and the compensation of the victim—with punishment or retribution playing only a secondary part—it seems not unreasonable to suggest that the credibility of the suspected or accused person should be related at least to some extent to his spontaneity rather than to that period of reflection and consultation between interrogation, arrest and trial which continually produces some of the most ingenious, plausible and highly paid forensic fiction of our time.