

to have protection from tyranny—from the elite. In legal jurisprudence, they have always been the final judge of the facts.

The uniqueness of the Morgentaler case is that, under the provisions of the Criminal Code, the Supreme Court of Canada found that a court of appeal can superimpose not only its verdict on the law but also its verdict on the facts. That becomes an extremely dangerous legal precedent for those of us who cherish the jury system in this country.

● (2210)

In the jury system you perhaps deal with 12 prejudices. With a judge, you may deal with one. I am convinced that, in any fair judgment of the facts when we want to find out what the community standards really are, and in terms of the ordinary experience and ordinary human beings, when we depart from the principle of relying on 12 men good and true, we depart from one of the fundamental cornerstones of democracy in this country. Therefore I urge the government to give serious consideration to that section of the Criminal Code which has been under such severe attack in the Morgentaler case.

There is another aspect to that case. That is not the only thing that is unique about the Morgentaler case. In that case the Crown proceeded with preferred indictment and not in the normal way by preliminary hearing. The defence therefore lost one of the usual opportunities one has in these kinds of cases.

There is something else unique about that case. The court of appeal ordered the lower court judge to impose a sentence upon Dr. Morgentaler before the Supreme Court of Canada had heard his subsequent appeal.

We are looking at a unique situation, one that admittedly rarely occurs. In spite of that, no consideration is being given to a free pardon. I have to ask some questions.

The evidence in the Morgentaler case was that between 5,000 and 6,000 abortions had been done by that doctor. The reason he did so many was because of the confidence the medical profession in the Montreal area had in him. Why were charges not laid in Montreal against any other member of the medical profession for counselling an offence? I think that is a very serious question. I realize the federal minister does not have direct responsibility for this. However, I would ask that his ministry make proper and appropriate inquiries of the Quebec minister of justice as to why other Criminal Code offences have not been proceeded with, investigated, or pursued.

The suspicion remains that this doctor has been made a martyr. I recognize the position of Dr. Morgentaler. Perhaps he wants to be a martyr for a cause in which he sincerely believes. Nevertheless it is wrong for the state to attempt to create this kind of legal precedent and create a martyr in these circumstances.

Again I ask the very serious question, why only Dr. Morgentaler? I am sure there is overwhelming evidence of many others who have done exactly the same. I ask that proper inquiries be made. I ask why more charges have not been laid in the Morgentaler case. Last but not least, why is Dr. Morgentaler not being given an opportunity to receive the American humanist award? There is ample precedent for this.

#### *Adjournment Debate*

There is no need for vindictiveness. Admittedly, it is a controversial case. People have very deep feelings on either side of the issue. The unnecessary harshness of the Quebec minister of justice the other day, suggesting that he got what he deserved, is incredible. Surely it is not for him to pass comment on sentences imposed by the courts. That is an incredible statement.

Dr. Morgentaler has requested leave from prison in order that he may receive the American humanist award. On receipt of this reward he will be in such company as Dr. Margaret Mead and the previous Canadian recipient of the award, Mrs. Grace MacInnis. I realize that that is not the direct responsibility of this ministry, but not to allow this man to go from prison to receive that award is a disgrace.

[*Translation.*]

**Mr. Gilles Marceau (Parliamentary Secretary to Minister of Justice):** Madam Speaker, the Morgentaler case has become a leading case that will go down into history. Its implications are not only personal but collective. This decision involves human aspects and challenges fundamental principles liable to affect the future of all Canadians. Therefore the legislator must act with care and restraint to avoid taking sides in a case where ethics and the law overlap and we legislators often have to make this important distinction.

Madam Speaker, as the Minister of Justice said earlier in the House, regarding the pardon for Dr. Morgentaler, hon. members will understand that any action by the executive about pardon or the commuting of a sentence must be limited to the rare cases where it is a matter of maintaining the integrity and power of justice. The executive's general power of clemency should not be confused with the power to grant a reprieve in the case of capital punishment where the Criminal Code stipulates an examination of the sentence by the cabinet. The general power of clemency is very rarely used; if it were not, the cabinet would become a court of appeal from the decisions of the Supreme Court.

Naturally, the government studied the consequences of the judgment of the Supreme Court of Canada, which has the power of a court of appeal to reverse a jury's verdict of acquittal and substitute a verdict of culpability, with a view to deciding whether the law should be changed in this regard. According to the government, the decision of the Supreme Court in this case obviously proves that this power of appeal is very rarely resorted to and, consequently, that there is no reason to fear the ruling of the Supreme Court will harm the jury system. The Supreme Court pointed out that this was the first time the power of appeal had been invoked in Canada and that it can be resorted to only in very exceptional cases.

As to the investigation asked by my hon. friend, I think he raised a very interesting point, and without wanting to give an opinion on the decision of the attorney-general who prosecuted Dr. Morgentaler, I am very sympathetic towards someone who is thrown in prison, but I am perhaps a little less so when this person boasts about having violated the law and claims he is proud of it.