

Criminal Code

bears on this particular point. I might say to the minister that its main thesis is the deplorable tendency of centralized government to attract potential delinquents to positions of power. This is the paragraph that I think has a bearing on this suggestion:

Since the advent of penal psychiatry, punishment as a means of dealing with delinquents has come to exist at two levels. On one hand we have the attempt to rationalize existing legal and administrative penal methods; on the other, the prisons and the courts as they are. The attempts to apply science to the prevention and cure of delinquency, so long as they are institutional and official attempts, have to be ingrafted on a system which assumes that social misconduct is the outcome of deliberate and malicious choice, and that such choice is best deterred or altered by confinement in the company of other delinquents, under conditions of squalor and idleness, and under a discipline designed to undermine self-respect and sociality.

I suggest that this broad criticism of our method of handling criminals is particularly applicable to these cases now under discussion and that we might well consider the suggestion of the hon. member for Oxford and refer the matter to the royal commission which is to deal with insanity and psychological imbalance.

Clause agreed to.

On clause 136—*Punishment for rape.*

Mr. Shaw: Is it proper for us to proceed with these sections that involve whipping? Was that not to be the subject of special consideration?

Mr. Garson: Yes, it is proper. With respect to all those matters that are to be considered by the joint committee of the house and the other place on the one hand, including corporal punishment, and, on the other hand, with respect to insanity as a defence to a charge involving criminal responsibility which is to be considered by the royal commission, the understanding was that we would pass the sections in the present code in order that we might have laws in effect regarding these offences. When the reports of these other bodies become available the government will take the responsibility of introducing legislation to reflect those reports or, if it does not think fit to do so, it will be open to members of the opposition to do so.

Mr. Knowles: I believe this point has been answered before but I am not too sure. Is it clear that these punishments are maximum punishments and that it is not necessary for the court to impose the full punishment in all cases?

Mr. Garson: That is quite right. That is quite an important point. They are all

maximum punishments and there is no minimum so that the court has very wide discretion in all these cases.

Mr. Knowles: And where two punishments are named, for example, imprisonment for life and whipping, it is within the competence of the court to impose one without the other? The word "and" does not require that the punishment shall include both?

Mr. Garson: They are liable to either or both.

Mr. Johnston (Bow River): Should the word "and" not be "or"? I can see that the word "liable" leaves it to the discretion of the court, but from the way the clause is worded it does seem to me that once a life sentence is imposed it automatically carries whipping with it. The conjunction "and" certainly indicates that the court has no option.

Mr. Garson: No, I think this is the proper interpretation. They are liable to life imprisonment and they are liable to be whipped, but that liability is governed by the discretion of the court and the court can impose either life imprisonment or whipping or both.

Mr. Knowles: To come back to the other point raised a moment ago, it is understood that the committee in agreeing to these sections involving whipping is not really enacting these provisions in the normal sense. We are just carrying forward what is now the case subject to the report of the committee. Perhaps I might qualify that to some extent. Imprisonment and whipping actually represent a reduction in the punishment from what previously was in the code.

Mr. Garson: Yes. I spelled it all out very carefully when I moved second reading of the bill, and it is all on the record. I said that we would pass these sections, and then I outlined the responsibility that the government was taking in relation to the reports of the joint committee and the royal commission. My hon. friend will see the whole thing set out there *in extenso*.

Mr. Ellis: Would it not be more convenient to allow these sections to stand?

Mr. Garson: No. I explained that before but probably I had better do so again. When we are bringing in a consolidated code we have to repeal the existing code in order to put the new one into effect. We cannot have them both in effect and—

Mr. Knowles: You do not like leaving a vacuum.

Mr. Garson: No—if we do not continue these sections involving corporal punishment,