

*Criminal Code*

If lawyers fail society legal care will creep forward as a reform, and God help us then because lawyers are the main bulwark against the encroachment of the state upon individual rights. The rules should be amended. The M'Naghten rule in respect of insanity, which is more than 100 years old, should be re-examined immediately. The test is, did the accused know the nature and quality of his act or did he know the act was wrong? That test is totally inadequate. Today we have new scientific developments and we have not kept pace with science. We know that surgeons can operate today on persons who are suffering from schizophrenia or paranoia. The rules should be changed or modernized.

Although the Criminal Code has been amended in reference to 18 year olds in so far as murder is concerned, juveniles should not be subject to the same procedure as mature people. Visualize a boy of 12 or 13 who is subjected to cross-examination. What would happen?

In dealing with this subject I say we need legal reform. Professor Jacques Barzun says in one of the books which have been referred to us:

The failure to see that this is the great task reflects the sentimentality I spoke of earlier, that which responds chiefly to the excitement of the unusual. A writer on death and the Supreme Court is at pains to point out that when that tribunal reviews a capital case, the judges are particularly anxious and careful. What a left-handed compliment to the highest judicial conscience of the country.

We must cure judicial error. What about deterrence? I will be brief on this. I say that no one can produce an irrefutable argument to prove that capital punishment is a deterrent nor can they prove it is not. The only simple illustration I can give is that of a lighthouse on a rock. We read about the ships which ran into the rock but we do not hear about the ships which passed by safely.

We could use figures and analogies from states in the United States where there are different groups of people in different states, different climates and other different factors. You can find figures to prove any point. I do not know whether capital punishment is a deterrent. I do not think anybody in this house can prove it is or is not.

What about life imprisonment? The abolitionists now are asking for life imprisonment meaning life except at the discretion of the executive. Parole would then become a political football. You only have to read Oscar Wilde to realize that life imprisonment until death is a pretty horrible thing to face. The

[Mr. Woolliams.]

man who is incarcerated today for life believes there is great hope for parole and re-entry into society, but take that specific hope away from him and he is then confronted with a life with no hope. Let us not think about capital punishment in the sense in which we have heard about it today. I am not going to go into the mode of murder. Some writers have said that if men were given a choice some would answer that rather than remain in the penitentiary for life until death they would prefer death now.

Reform is always necessary. Dickens said, "The law is an ass". Shakespeare said, through Hamlet, "Long delay drives me insane". We must always have a strong and vigorous police force. Remember that the trained and skilled R.C.M.P., and the local police are the only people who stand between us and a criminal jungle.

Remember too that the rule of reasonable doubt operates more strongly and more favourably for the accused charged with capital murder, with a death penalty, than for any other offence. There will be less chance of judicial error in such cases. I should like to make this point more strongly. When a man is charged with capital murder today the jury knows—and they know it through the medium of communication—that the penalty will be death. This is an important thing. If a jury knew that person would only get imprisonment, would they exercise the kind of care and reasonable doubt which I should like to see a man have when he is faced with that particular crime?

I thought the house might appreciate some of my remarks as a lawyer but I will not go on very much longer because I know everybody wants to have a chance to speak. I would like to make two or three more points. Crown prosecutors must be trained not to be protagonists but men who know their duty is to set out the facts and not try to win cases. There are many people whom I could call as witnesses to strengthen my argument, but I do make this appeal. I hope there will be some compromise between our ideas.

This problem bothers me. No other problem has bothered me as much. I have listened to the retentionists and I have listened to the abolitionists. It is a very serious problem. A newspaperman said to me that he had not made up his mind but another man had tried to get him to make up his mind. I say it is a greater responsibility for a lawyer who has seen and felt these things. Maybe the time