

*Government Orders*

pursuit of logical interpretations divorced from what happens in the daily lives of citizens.

In its creative period the common law was a law in full evolution. By the 19th century it had decayed into a rigid formalism. This is from what Cardozo had wanted to break away, and this is what those countries that followed him, in a very belated way the United States, have tried to achieve.

The law is more than the study of precedents. Precedents can be studied by law students cramming for examinations. However our society is evolving. In fact at the turn of the century, we lived in a revolutionary period in the world community as dramatic as the Thirty Years War and the late 17th century western European society, a world in revolutionary change with laws that are increasingly out of date.

I think one of the ironies that I encountered in my pre-parliamentary career, visiting many countries that sought my advice, was the knowledge that with the help of visitors from other countries and experts provided by the Canadian International Development Association, CIDA, their laws would probably end up more up to date and more relevant than Canadian laws.

We advise countries abroad because we believe in the free market economy and we believe the free market economy to be properly achieved with liberalization and rationalization of the legal system. We advise many other countries on how to update their laws. The curious thing is that dynamic element sometimes produces commercial law, laws on transactions involving foreigners, that are better and more up to date than our own, than American laws or the laws of other countries exporting their economic ideas. That is a sort of contradiction that frankly is unacceptable in our society.

I spoke of the period of legal positivism, the pursuit of the black letter law, the pursuit of precedents at the cost of reason, which is fortunately behind us as a legal theory taught in law schools.

• (1100)

The legal realist movement focused on the gap between the law in books and the law in action; the law as written in some bygone age and the law in action and how it was actually applied. It is a movement that is peculiarly North American although there are continental European counterparts.

It leads directly into the school of sociological jurisprudence whose founder was the great Dean Roscoe Pound of the Harvard law school followed by the Commonwealth writer Julius Stone and by the man who had the distinction of teaching two American presidents, Gerald Ford and Bill Clinton, and Bill Clinton's wife, Myres McDougal. The notion is that law exists to do other things than to give a pre-defined answer to new

problems, that it is in constant evolution, that law exists to solve social problems, that there is a necessary policy element inherent in law and that the only way to get good legal decisions and good laws is to study society.

The intellectual framework of a good jurist today includes much more than logic and much more than the study of precedents. It includes a necessary acquaintance with economics, a necessary acquaintance with the driving forces in commerce, in business in our society, a knowledge of the sociology of the state, of human relations. This is the necessary intellectual equipment of a good lawyer today and it is basically what Cardozo spoke of when he referred to the need for creating ministries of justice.

Legal research would have to be carried on anyway. I asked the Minister of Justice two days ago what had happened when the Conservative government made the decision to cancel the law reform commission, whether he had buried research. He said no, they had to carry it on within the department.

In terms of cost saving we are dealing with essentially the same thing, civil servants. However, civil servants do not have that freedom from the exigent here and now of daily departmental practice that Cardozo said was a necessary element in the process of law reform.

In looking to the formation of the law reform commission again we are responding to the challenge today of a law responsive to society, Canadian society and the society of the world community, in continuing almost revolutionary change in terms of the social forces moving within us. It requires a group of people independent from the government and of high intellectual distinction.

I said to the minister when he introduced this bill: "Your big problem is *cherchez l'homme* or *cherchez la femme*, look to the right people. Whom are you going to get?" He said: "Whom can you think of?" He recognizes the need for creative appointments. This is where opposition party members can help. Give the minister names. I said I could give him a couple of names from the past including Mr. Justice Rand, our greatest liberal judge on the Supreme Court of Canada. He gave us a bill of rights before we had the 1982 charter; somebody like that in his creative periods.

I also took the opportunity to cite somebody well known to many members of the House, the late Jean-Luc Pepin who died only a couple of weeks ago in the prime of his life. He was a non-lawyer. This is one of the valuable things in this bill. We do not limit the choice of members of this commission to lawyers. We recognize, as the French have done and the Germans have done, that even on supreme courts, constitutional courts, non-lawyers have a role to play and should be included, and they are.