

*Criminal Code*

Code and, last week, the bail bill. He appears to be tiddling with regard to essential reforms of the criminal law. Surely he can bring forth a mini-bill covering such matters as the abolition of corporal punishment, the abolition of vagrancy as a charge, the right to counsel, uniformity of sentencing procedures and legislation with regard to dangerous offenders. All these matters have been dealt with in the Ouimet report and they have been dealt with in committee. It is high time we had legislation.

I hope that the Minister of Justice will not wait for the Law Reform Commission to bring forth its report concerning these matters. We have had so much study on these matters that it is time we had action. I hope the hon. member for New Westminster (Mr. Hogarth) will exert his influence on the Minister of Justice to adopt this measure to abolish corporal punishment. He is quite right that an amendment to the Penitentiary Act is required to give it more strength.

It is very easy for me to speak for the abolition of corporal punishment. Perhaps because of my background and experience in the law I have tremendous abhorrence for the infliction of corporal punishment. Just before I spoke this afternoon I was contacted by the hon. member for Pembina (Mr. Bigg) who, as a former RCMP officer, wanted to participate in the debate. He said he supported 100 per cent the bill put forth by the hon. member for Egmont. It is his experience as an RCMP officer that the infliction of any type of corporal punishment is wrong in principle and in practice. He said that the only type of punishment with which he would agree would be punishment inflicted by a mother or a father, because that has love as its basis. These are the views of the hon. member, and he made them part of his maiden speech back in 1958. Thus far there has been no action. Not only do I support the hon. member for Pembina but I support other experts, because it is very easy for us to become emotional on this subject, as I am partly because of my experience, my Irish background and my emotional nature.

I direct hon. members' attention to an expert on this subject, Mr. A. M. Kirkpatrick, executive director of the John Howard Society. In an article in the Canadian Welfare magazine of July and August, 1968, he said that the Criminal Code provides for sentencing by the court to whipping for rape and attempted rape, sexual intercourse with a female under the age of 14, indecent assault on a female, incest, indecent assault on a male, choking or using drugs on a victim who attempts to resist the commission of an offence, robbery and armed burglary. Juvenile offenders under the age of 16 years and females are not subject to corporal punishment. He goes on to say as follows:

Most of the offences listed above are sexual offences presumably carried out during an emotionally aroused state or as a result of a disordered mind. Corporal punishment would not be considered appropriate in the treatment of mentally disturbed persons and therefore should not be considered in sex offences which are manifestly psychological in derivation.

This is the view of Mr. Kirkpatrick. He says that in respect of most offenders there is no deterrent value

[Mr. Gilbert.]

in whipping for these offences. With regard to the argument—this is one of the arguments put forth by the hon. member for Egmont—on the salutary effect of whipping for these offences, he says:

The view is often expressed that corporal punishment would have a salutary effect on youths who have persisted in their criminal activities despite reasonable efforts to change their behaviour by probation or reformatory treatment. The United Kingdom departmental committee on corporal punishment in 1938 recommended abolition of caning young offenders. In 1948 this recommendation came into effect. By this time caning had in any event become obsolete as a method of treatment or punishment as it had been found to be ineffective.

Corporal punishment is regarded by the recipient not as treatment but as retribution which breeds violence and perpetuates hostility. The use of corporal punishment on young offenders would reinforce the view so many of them have that they are not wanted and have no place in society and would further add to the hostile and aggressive behaviour they have developed through home and environmental experiences. Any positive efforts made toward their reform and rehabilitation would be rendered more difficult by such reinforcement of negative behaviour patterns.

Then he sets forth the concept with regard to criminal law as follows:

The common objective of all concerned in this whole process should be the protection of society by the rehabilitation of the offender. But no one can rehabilitate another person. Opportunities and inducements may be provided but the desire to change must come from within the individual. The use of fear aroused by physical punishment is based on a concept of wilfulness and may have some immediate value while the threat is imminent but has little permanent effect in the reintegration of character which is essential for life in the free society in which the offender has already demonstrated failure to adapt.

He also points out that corporal punishment breeds a great deal of bitterness.

In April, 1955, the counsel to the committee interviewed in the offices of the John Howard Society of Ontario a number of men who had been strapped in the institutions. A verbatim report of these interviews was made and revealed general hatred by the recipient of the officers involved in his strapping, a determination to get even when released from the institution, and an attitude of greater caution in the institution in infringing rules without getting caught. These interviews revealed that the strap had not been a deterrent as most of these men had experienced it several times and most had returned to prison on sentences subsequent to their having been strapped.

Some of our institutions house intractable human beings whose hostility and aggression create serious problems of disciplinary control. Newer methods are proving that it is wiser not to counter such hostility by unnecessary force which breeds bitterness; but rather to divert it by work and training programs, by the loss of "good time", and by the creation of privileges which may be withdrawn. Such might be short leaves for home visits and work-out opportunities. Sanctions may be progressively increased with minor penalties achieving great results in the prison setting. Basic to such methods is the individualizing of the inmate and getting at the causes of his incorrigibility. All penal institutions are by nature self-contained social units in which grave abuses of human life and personality have occurred in the past. This must be avoided in any progressive penal system.

• (5:50 p.m.)

With the changing approach to penology now being made in the penitentiary system, the development of an educational, vocational, religious and cultural program should provide a basic undergirding for a more positive meaning to life in the institutions. The provision of amenities and the anticipated inauguration of short-term leaves for family visiting offer vastly