

*Criminal Code*

principle and this is what I would especially like to discuss during my allotted time.

May I say, at the outset, that I will refrain as much as possible from citing an exaggerated number of statistics because I think that their usefulness is considerably restricted. They can indicate some trends, but I believe that great caution must be exercised in their use, for hon. members know pertinently that people with different opinions can use statistics to make their point.

Mr. Speaker, I think the Canadian Criminal Code should be amended so as to abolish corporal punishment, as it is indicated in the bill proposed by my hon. friend.

I am happy to outline here the main facts and considerations that lead me to believe that abolition of corporal punishment would be in the best interest of Canada. I am convinced that before the prescriptions of criminal law can be determined in detail, the purpose of the legislation must be clearly defined in the light of the philosophy governing the treatment of delinquents.

I also think that in the years that followed the original drafting of the Canadian Criminal Code, the changes that occurred in our social morals and in the judgment of behaviour were significant enough to require a new definition of the object of our justice system.

In general, countries of the civilized world recognize that corporal punishment of delinquents is in itself indefensible. As an indication of the revengeful feelings of society, it must face individualized justice systems, aimed at the efficient protection of society through methods of delinquents rehabilitation.

It must be pointed out, Mr. Speaker, that such a change in attitude did not stem from a feeling of disgust for the psychic pressures that may have been inflicted upon the delinquent as a penalty. Modern thinking in that field has evolved, especially as a result of the findings of society with regard to the legal penal system, and a better understanding of the causes of human behaviour, and more particularly abnormal behaviour. This enlarged field of knowledge, mostly the result of research in social science, has been useful in the study and therapeutics of mental illness throughout the civilized world. More recently, a good part of it has been used to some extent in the treatment of delinquents.

We cannot ignore the verdict of history which has repeatedly led to the conclusion that crime seems to have developed to a larger extent when and where punishment was most severe.

The high rate of relapse in our country and the increase in cases of degenerate conduct among discharged delinquents have led responsible persons to conclude that our jails are schools of crime. Since a generation, the study of social sciences and research in that area have succeeded in giving to mankind a pertinent knowledge of the cause and meaning of human behaviour from which it is possible to draw conclusions on the propriety of a social or antisocial behaviour.

Although there are still in that field many unknown factors which are subjected to experiments and studies,

[Mr. Marceau.]

there is a sufficient number of data, the accuracy of which has been shown and which remains pertinent in any consideration of the delinquent, so that criminal law can take them into account.

The delinquent is not solely responsible for his criminal conduct. I recognize that all human behaviour stems from motives which urge the individual to try and satisfy some often unconscious needs. It is recognized that this concept is not as simple as were the more ancient and naïve interpretations of behaviour, which admitted the innate presence of a demon that could only be expelled through physical mutilation.

Having admitted that behaviour is influenced by the interaction of inherent individual characteristics and by the individual's experience in his surrounding and in the prevailing cultural environment, it was deduced that the possibility of changing the behaviour may exist, through a modification of the conditions which determine it.

Since the system of justice administration aims at protecting the collectivity against violation of its laws, and that vindictive punishment does not seem to have afforded such an effective protection to society, and also as the possibility of modifying the delinquent's attitude and behaviour so that his crimes will end or become less frequent, it seems to me that criminal law should not practise social vengeance but improve the protection of society in submitting the delinquent to treatments which, according to medical science, are most likely to ensure his rehabilitation.

It is my view, Mr. Speaker, that the abolition of corporal punishment would eliminate from the Canadian judiciary system certain provisions which, in spite of the intentions of the court, are nothing else but means of revenge which do not contribute in any way to the rehabilitation of the delinquent.

Mr. Speaker, I had the opportunity, as soon as I heard that I would have to speak on the legislative proposal submitted by my hon. friend, of doing a bit of research on statute law, and I have discovered principles that I consider fundamental and which I shall endeavour to define and to summarize briefly.

[*English*]

I am respectfully of opinion that there are three principles of criminal justice requiring earnest consideration in the determination of punishment, *viz.*, deterrence, reformation and retribution.

● (5:30 p.m.)

The governing principle of deterrence is, within reason and common sense, that the emotion of fear should be brought into play so that the offender may be made afraid to offend again and also so that others who may have contemplated offending will be restrained by the same controlling emotion. Society must be reasonably assured that the punishment meted out to one will not actually encourage others, and when some form of crime has become widespread the element of deterrence must look more to the restraining of others than to the actual offender before the Court.

Reformation is the most hopeful element in the question of punishment in most cases, and it is in that direction that the efforts of those concerned with criminal justice will be more and more directed. But reformation, too, has its distinct limitations. It has been found in England that many who have passed