

remedial aspects of law are regarded in modern criminology as more important than the punitive and deterrent. How much more should this be so in the case of children?

In a publication of the Home Office in Great Britain, presented in April, 1968, to the British parliament by the Secretary of State for the Home Department, entitled "Children in Trouble," it is stated that juvenile delinquency has no single cause, manifestation or cure, and the range of behaviour which it covers is equally wide. At some point it merges almost imperceptibly with behaviour which does not contravene the law. The child's behaviour is influenced by genetic, emotional and intellectual factors, his maturity, and his family, school, neighbourhood and wider social setting. It is probably a minority of children who grow up without ever misbehaving in ways which may be contrary to the law. Frequently such behaviour is no more than an incident in the pattern of a child's normal development. But sometimes it is a response to unsatisfactory family or social circumstances, a result of boredom in and out of school, and indication of maladjustment or immaturity, or possibly a symptom of a deviant, damaged or abnormal personality. Early recognition and full assessment are particularly important in these more serious cases.

This report says, and I want to stress that this is at the very core of my argument, that variety and flexibility in the measures that can be taken are equally important if society is to deal effectively and appropriately with these manifold aspects of delinquency. The social consequences of juvenile delinquency range from minor nuisance to considerable damage and suffering for the community. An important object of the criminal law is to protect society against such consequences, but the community also recognizes the importance of caring for those who are too young to protect themselves. In recent years these two quite distinct grounds for action by society in relation to young people have been moving steadily closer together.

It has become increasingly clear that social control of harmful behaviour by the young, and social measures to help and protect the young are not distinct and separate processes. The aims of protecting society from juvenile delinquency, and of helping children in trouble to grow up into mature and law-abiding persons, are complementary and not contradictory. It is my complaint that in the present legislation before us, according to the best advice I can get, these principles are overlooked. Emphasis is on the protection of society by means of criminal law, and imposition of penalties or other punitive measures.

The present system, despite its defects, is flexible enough to deal with individual cases under indeterminate provisions for probation and detention in training schools. This enables the social measures to help and protect the young, as well as the interests of society, to be taken into account and the remedy to be fitted to the individual case. If a person is adjudged ready to be released from training school in three months, he is released in three months. If he is adjudged not ready to be released he can be detained, if necessary, for another

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six months. The present legislation would require that detention be for a fixed, determinate term, and I say that the most retrogressive feature in this legislation is this return to determinate sentences. I understand the reasons for the change suggested. I believe that it is to try to encourage uniformity of sentences, which may be desirable in dealing with adults but is entirely inappropriate when dealing with children.

I have had the advantage, Mr. Speaker, of consultation with Professor Stuart Ryan, Q.C., of the Department of Law at Queen's University. He has pointed out what he feels to be a lack of sufficient attention to the experience in other countries in the drafting of this bill. In West Germany the minimum age of criminal responsibility is 14, and in Sweden it is 15. The Kilbrandon Committee report, now implemented by legislation, forbids prosecution of a child under 16 in Scotland, except for homicide.

The committee report upon which the legislation before us is based seems to have been greatly influenced by the fact that in England children were charged with specific offences. Perhaps that is why it recommends specific offences here. Up to the time of the preparation of the committee's report, no indication of intention to change this practice had been given in England. But later, in August, 1965, a white paper entitled "The Child, the Family and The Young Offender" announced a change in policy. It was proposed to remove young people as far as possible from the penal jurisdiction of the courts, and to authorize local authorities to appoint local "family councils" to deal with each case, as far as possible, in consultation and agreement with parents, and with the power of reference to family courts where agreement could not be reached.

After more than two years of review and criticism of this proposal a new white paper in England entitled "Children in Trouble," to which I have already referred, was published in August, 1968. This paper proposed that no criminal or penal proceedings should be taken against a child under the age of 14. No proceedings should be taken against a young person between 14 and 17, without a special order to be made by a Justice of the Peace after hearing an application to show cause why a prosecution should be commenced. This proposal has been implemented by the Children and Young Persons Act of 1969, United Kingdom Statutes, Chapter 54.

● (4:40 p.m.)

I say that whereas the British, both in England and Scotland, having clung so long to the legalistic "young criminal" approach to the misconduct of children, have now completely abandoned that principle in England for children under 14, except for homicide, and almost completely abandoned it in Scotland, it seems strange that we in Canada are being asked to turn the clock back and pick up a method of dealing with the problem that has been cast aside. At the very least, if the new bill is accepted, the minimum age of criminal responsibility should be placed at 14, and children under that age should be dealt with under provincial care and protection legislation. In my view, Mr. Speaker, it is wrong to