

*Criminal Code*

House. In this enlightened era of the 'seventies, these details must come as a shock to all those who believe we have travelled some distance in our understanding of how to deal with those who commit criminal offences. On the other hand, we may feel that the kind of program which has been described is only of limited interest. Yet more than one psychologist and observer of the human scene has suggested that the exercise of corporal punishment, as instituted under statutory authority in this country, people get a vicarious, masochistic pleasure from knowing that some person is being dealt with in this barbaric fashion. It may be true, and it is certainly true according to statistics, that there are not many people in our country today who will have to face a sentence of corporal punishment in the year 1971. However, if even one person must undergo this kind of barbaric sentence without any objection from any of us, what does it say about our society generally?

I am impressed by the fact that in 1956 a committee of the House of Commons met to consider questions related to capital punishment, lotteries and corporal punishment, and made certain far-reaching recommendations. It is of interest that since that day Parliament has substantially changed the law with respect to both capital punishment and lotteries, but it has yet to act on the recommendations of that committee with regard to corporal punishment. Let me read just one of the recommendations which was contained in the report of that committee.

The Committee kept two considerations in mind throughout its inquiry into corporal punishment as a part of the sentence of the court. The first was whether it deters those subjected to it from further crime and, secondly, whether it deters the public generally to a greater extent than other methods of punishment. The evidence did not justify the view that it will exercise any special reformative or deterrent influence on individuals upon whom it is administered and, on the whole, it appears to have the contrary effect. The Committee concluded that the existence of corporal punishment affords no unique deterrence to crime. Accordingly, the Committee recommends that corporal punishment be abolished for any of the offences for which it is presently prescribed in the Criminal Code.

It seems passing strange that we should be able to act in connection with many other matters during the past 15 years and yet have failed to take the necessary action to remove from the statutes of this country authority for the administration of corporal punishment. It is to be noted that in the United Kingdom, which is often held up as an example to this House, corporal punishment was abolished as far back as 1948, nearly 25 years ago. Since that time, studies have been carried out to establish whether there is any relationship between the non-use of corporal punishment and the records of crime, and it has been conclusively found that there is no relationship. Indeed, it might well be that the abolition of corporal punishment has had a positive effect on the level of violent crime in Britain.

It seems to me the time is long past when Parliament should act on this subject. As long ago as March 18, 1968, I introduced a bill to this end and argued that it should be acted upon either as separate legislation or along with appropriate amendments to the Criminal Code. Unfortunately, the then minister of justice, now the Prime Minis-

ter (Mr. Trudeau) and his successor have not yet taken action to end a method of punishment which is retrograde and out of harmony with the changes which have been made in our Criminal Code.

Why have we not taken steps to abolish corporal punishment? Presumably one must take account of the argument which is still being used by those who contend that the institutional use of whipping or flogging has a positive value. In the first instance, there are many people who would say that there is a definite deterrent, that the very fact it is known that for specific crimes a person will suffer the sentence of being whipped or flogged will in some way deter him from the acts that he is about to enter upon.

● (5:10 p.m.)

The argument of deterrence is a well worn one and is often used, but it is not one that has ever been, in my experience, reasoned or thought out at length. It presumes, in the first instance, the kind of rational pre-consideration of some violent or anti-social act. It presumes that the person who is going to commit some particularly offensive crime—and the provisions of the Criminal Code with respect to corporal punishment refer, in the main, to crimes of a moral nature respecting the violation of a child or some form of sexual offence—would take into account during the time of determination to commit this kind of offence that indeed he might suffer corporal punishment as a penalty. I suggest this proposition makes some very great and really hard to accept assumptions. I think that if one were able to penetrate the minds—the sick minds, for the most part—of those who contemplate such events, we would find that anything that might act as a deterrent would primarily be related to the fear of being caught.

In this regard let me refer to the report of a review of corporal punishment in Great Britain published by the Advisory Council on the Treatment of Offenders and presented by the British Home Secretary to parliament in 1960. I quote from the report:

It was clearly concluded that corporal punishment was not an especially effective deterrent immediately before its abolition, and they—

That is, the statistics.

—show that its abolition did not result in an increase in the offences for which it was previously imposed.

Having had some 12 years experience with the non-use and non-application of corporal punishment, it is their conclusion that the deterrent value of such punishment is impossible to prove. I think the fact that the courts of this country have generally dispensed with the use of corporal punishment is the result of the experience of the judiciary that it no longer makes any sense whatever in the name of justice to sentence offenders to this form of punishment.

Others would argue that there is an aspect to this punishment that allows for the reform of the individual and that perhaps the particularly difficult criminal, the offender who has not been handled successfully in any