

*Criminal Code*

traditional criminal theory there must be a relationship between the harm to be prevented and the behaviour punished. With vagrancy offences, the essential elements of criminal theory, that is, conduct and causation, are ignored or distorted in an attempt to prevent crime through the punishment of vagrancy. The customary *mens rea* and *actus reus*, the guilty mind and the guilty act, are clumsily passed over in an arbitrary and inefficacious attribution of criminal responsibility. The results are nothing short of catastrophic.

Police forces are able to use the vagrancy provisions with unparalleled ease. First, with respect to a substantial proportion of suspects, and despite existing legal aid plans, the utter impotence of the accused is usually ample guarantee that he will not employ lawyers or otherwise annoy the police. Second, the vague definitions of "vagrancy" confer on an officer a discretion so broad that technically he can seldom be held not to have had reasonable and probable cause for the arrest. Arrests on suspicion, discriminatory enforcement and capricious administration are all made possible by the continued existence of the offence of vagrancy. There is probably not a member in this chamber, and certainly no lawyer, who does not know of abuses under the present vagrancy laws.

This then is the extent of the problem. What are the solutions? It is undoubtedly necessary to give the police some residual power to prevent crime in its inception and to apprehend persons who in the police officer's opinion are seeking the opportunity to commit crime. In my view this is a justifiable purpose of the criminal law, but it is also ill-served by present legislation. What I would suggest is something along the lines of the American Uniform Arrest Act, permitting the detention and questioning of persons whom a peace officer has reasonable and probable grounds to suspect of committing, having committed or being about to commit a crime.

This detention and questioning would be for a limited time—two hours under the Uniform Arrest Act—and would not be recorded as an arrest in any official record. At the end of the detention the person detained would have either to be released or arrested and charged. The advantage of such a system, hopefully, would be that it would be confined to the true criminal element in society and would inhibit harassment by police of those who now fall under section 164 (1(a) or (b)). Furthermore, the principles of arrest would be consistent with those of traditional criminal theory.

With regard to the other elements of society who have the great misfortune to fall within the purview of the present vagrancy laws, there is no justification for dealing with them under the criminal law. Either they commit a crime or they do not. For these people the vagrancy conviction is an unpleasant though generally brief interference with an otherwise undisturbed pattern of life. If it provides anything at all, the process of arrest, conviction and sentencing provides only minimal temporary assistance. Recidivism rates for vagrancy demonstrate that no more than short-term help is provided.

• (4:50 p.m.)

The obvious way to treat these people is not through the criminal process, which is already greatly overburdened both in terms of case loads and in terms of inadequate facilities for treatment, but through adequate social legislation. A master of social work thesis completed at the University of Toronto in 1960 and entitled "Public Attitudes Toward the Criminal Transient" states:

The work-shy constitute only a minute fraction of the whole population of tolerably able bodied and able minded men and women. It appears that if jobs are available, most people have shown a readiness to try them out. If you exclude the obviously unfit, the number of near unemployable is practically negligible, and idleness has proved to be far more a matter of faulty social and economic organization than a personal shortcoming.

Failing the introduction of an adequate social organization, it can still be argued that attribution of future criminality to vagrancy is for the most part unfounded in fact. The only conclusion I can reach is that there is no justification for the unique treatment now afforded so-called vagrants under the Criminal Code. My conception of criminal law does not encompass the serving of aesthetic sensibilities by removing an unsightly and often unattractive group of individuals from public view, and yet in my opinion this is, on analysis, the only possible rationale for the retention of vagrancy offences in the Criminal Code.

In conclusion I should like to thank hon. members present for their attention. Section 164 of the Criminal Code does not include the specific reference to the person who "lives without employment" that was contained in section 238A of the old code. Yet, Nelson and Steele are forced to conclude that in effect the section still deals with the down and out, the unemployed and the unemployable. In my opinion the vagrancy provision forms the catch-all when no more specific offence can be pinpointed. It is the direct ancestor of a long series of penal enactments ordering imprisonment, flogging, enslavement and death whereby the English legislature strove some 700 years ago to grapple with a steadily mounting migratory population. It was legislation designed to correct, among other things, the evils arising from the mendicancy of such wanderers as did not obtain employment and the dishonesty of many of those who did not even seek it. It has now become an anachronistic survival of a past age, unjustified in principle and abusive in application.

Mr. Speaker, I submit that a criminal sanction to enforce an Elizabethan Poor Law concept is grotesquely out of step with the current evolution of criminal justice. Surely in this twentieth century it should no longer be a crime to be poor. I hope all hon. members will support me in this bill.

**Some hon. Members:** Hear, hear!

**Mr. Knowles (Winnipeg North Centre):** Carried.

**Mr. D. Gordon Blair (Grenville-Carleton):** Mr. Speaker, I am sure we are all indebted to my hon. friend from Lakeshore (Mr. Robinson) for raising this important question. Society has advanced greatly in the past few