The John Howard Society of Alberta
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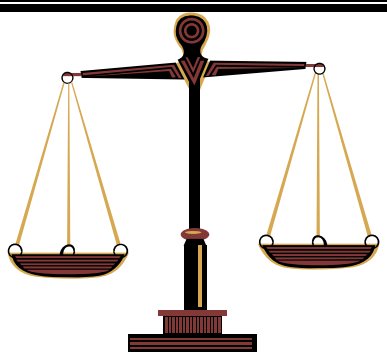
Community Issues in Criminal Justice

"It is never right to do wrong or to requite wrong with wrong, or when we suffer evil to defend ourselves by doing evil in return."
Socrates 469-399 BC



JOHN HOWARD SOCIETY OF ALBERTA

The Reporter

Of Rights & Responsibilities

"*With rights come responsibilities.*" It is likely that most Canadian citizens would wholeheartedly agree with this statement. We have many rights in a free and democratic society, but they are accompanied by the many responsibilities that we are obliged to fulfill in return for those rights. For example, we have a right to ownership of real and personal property, and the responsibility to not take the property of others. The majority (but not all) of our fundamental rights and freedoms are set out in *The Canadian Charter of Rights and Freedoms (Constitution Act 1982)*, while our responsibilities are set out in the hundreds of federal and provincial statutes and the common law all of which forms the basis for "The Rule of Law" that is the foundation of our society. And, of course, there are our societal norms which, while not having the force of law, nonetheless guide how we conduct ourselves with each other in a civil society.

The English philosopher, Thomas Hobbes, in his treatise, Leviathan, published in 1651, was the first to describe the "social contract", the essence of which is that without society we would all live in a state of nature where we would each have unlimited natural freedoms. But the natural consequence of this is that each and every one of us has the right to all things, and thus the freedom to harm anyone else to obtain what "is rightfully ours", or to "preserve what is rightfully ours". There are no positive or community rights (there is no community), only the laws of nature leading to an endless "war of all against all." To avoid this state of affairs, each of us has implicitly agreed to a "social contract", whereby we receive certain civil rights and protections from the state, in return for which we agree to relinquish some of our unfettered rights and freedoms and to honour the rights of others. Thus we give up certain rights and freedoms, and take on certain responsibilities, in return for which the state (i.e.: the government) provides us the protections and other services that we deem necessary for, not just our survival, but our comfort and well-being.

The "social contract" is a philosophical construct – it does not actually exist as a written document. But it serves the useful purpose of helping to conceptualize the relationship between the state and its citizens; or more particularly, the basis for the legitimate exercise of authority by the state over its citizens. In return for the protection of certain rights and freedoms, the state has the authority to enforce compliance with responsibilities, and failure to comply with these responsibilities allows the state to take punitive measures.

It is a *quid pro quo*; rights and freedoms (and protection) in return for compliance with, or living up to, responsibilities. It seems to make perfect sense – you can't have one without the other.

The embodiment of the state is the people who form the government. In Canada today, for the most part, that is people who range in age from 40 years to 70 years. When they were children, the age of majority in Canada was 21 years. That meant that, at law, anyone under the age of 21 years was "an infant at law" – a child. In the late 1960s and early 1970s, the Canadian provincial governments "lowered" the age of majority to (in most cases) 18 years. Since that time, those under the age of 18 years are considered, at law, to be children.

And children do not have quite the same rights and freedoms as adults but then, neither do they have quite the same responsibilities. So the balance is maintained – fewer rights and freedoms, but fewer responsibilities.

Not only does it make sense logically, but it also makes sense scientifically. There is ample scientific evidence to support the proposition that children are simply not sufficiently intellectually developed to participate in society as adults. And of even greater significance, there is a growing body of neurological evidence that adolescent brains function very differently from adult brains.

Who would agree to the provincial governments lowering the age of majority from 18 years to 14 years? Doing so would mean that those 14 years of age could lawfully:

- Enter into and enforce contracts;
- Initiate lawsuits on their on behalf;
- Marry and have children;
- Own property and lawfully enter into pool halls;
- Enter licensed premises and consume alcohol;
- Purchase and smoke tobacco products;
- Quit school; and
- Vote in municipal, provincial, and federal elections;

to name but a few of the many rights that adults possess; for as we have already pointed out, for adults, along with their rights and freedoms go responsibilities.

The social contract demands that adults exercise their rights and freedoms in a responsible manner and if they don't the state, with all its power and authority, will step in to enforce compliance.

So clearly if the state, as embodied by the people who form the government, lowered the age of majority to 14 years, anyone 14 years of age and older would be entitled to all of the rights and freedoms, and all of the responsibilities, of anyone of the age of 18 years, or the age of 21 years, or whatever age is set out in law to be the age at which one becomes an "adult".

It follows logically, and the *quid pro quo* is maintained.

Of course, our governments are not so foolish as to even contemplate lowering the age of majority to 14 years. They know full well that children are physiologically, psychologically, and emotionally incapable of functioning as adults. In fact, in apparent recognition of this, the federal government has proposed legislation [*Bill C-22*] to increase "the age of consent" [*CCC s. 150.1 ff.*] from 14 years to 16 years. The stated purpose of this Bill is, in particular, to "protect our children from adult predators" – on the face of it, a most worthy intention.

And this same federal government (with the support of several provincial governments, including the Alberta government) is also proposing amending the *Youth Criminal Justice Act* in two (2) very important ways. Now one might reasonably expect, in light of the clear desire to" protect our children", that such proposed amendments would be directed at doing just that when it comes to children who are in serious trouble with the law.

An example of such an amendment might be to direct that seriously troubled children are placed in a caring and supportive environment where they receive the psychological and emotional attention they need to change their patterns of behaviour from the negative to the positive, and then further providing explicit provisions that the funding necessary to achieve this will be provided by the government on an on-going basis.

A reasonable expectation, particularly when considering that as recently as January 11, 2007, the federal government announced that $16.1 Million was being directed to assisting "youth at risk".

The uses to which this funding is to be put are described on the web site of the Canadian Ministry of Public Safety and Emergency Preparedness[1] as follows:

> *The funding supports Canada's new government's commitment to help communities prevent youth crime with a focus on guns, gangs, and drugs. The funding will be allocated as follows:*
>
> - *$11.1 M to create a Youth Gang Prevention Fund at the National Crime Prevention Centre (NCPC); and*
> - *$5 M to enhance the Youth Justice Fund at the Department of Justice.*
>
> . . . .
>
> *The Youth Gang Prevention Fund provides funding for anti-gang initiatives in communities where youth gangs are an existing or emerging threat. It supports the development and implementation of local interventions aimed at youth who are in gangs or at risk of joining gangs.*
>
> *Under this fund, the NCPC works with provinces and territories to identify those communities most affected by gang-related problems. Funding will be directed to community-based organizations and municipalities that are addressing these issues.*
>
> *The enhancements to the Youth Justice Fund will support initiatives to implement tailored approaches for individual youth identified by the justice system or by their parents/legal guardians as currently or likely to be involved with guns, gangs and drugs."*

For more than a decade, the John Howard Society of Alberta and various Local John Howard Societies in Alberta have from time to time engaged in projects funded by the NCPC, and it is indeed welcome to see the majority of this new funding directed to assisting youth being administered by the NCPC.

It is within this context that the two (2) proposed amendments to the *Youth Criminal Justice Act* [*YCJA*], appear to be in complete contradiction. For what is being proposed is that:

- The age at which a young person may be tried in adult court and receive an adult sentence, for certain "serious or violent crimes" be lowered from 16 years to 14 years (perhaps even 13 years or 12 years); and
- The decision whether to have a matter tried in adult court be within the exclusive purview of the Crown Prosecutor [as, for example, the decision whether to proceed by summary conviction or indictment in hybrid offenses rests exclusively with the Crown Prosecutor], rather than with (as it presently is) the presiding Judge.

As to the second of these proposals, it is clear that if enacted, this provision has the potential to produce considerable disparity (i.e.: inequality) in the way in which children coming before the Courts in Canada are treated. It will mean that whether a child is tried and sentenced as an adult will rest entirely at the whim of the Crown Prosecutor having conduct of the case. Now of course, we are not so naïve as to suggest that the Attorneys General in each Province and Territory will leave the matter entirely up to prosecutorial discretion – certainly they will establish policies that will guide how such cases are handled.

But we must remember that there is considerable difference of political philosophy at the provincial/territorial level in Canada – what the Attorney General of Alberta might decide is an appropriate policy may vary quite considerably from that considered to be appropriate by the Attorney General of Saskatchewan, or British Columbia, and so on. With the inevitable result that a child facing prosecution in Saskatchewan will almost certainly be treated differently than the child facing the same circumstances in Alberta, or B.C. or wherever else in Canada. Further, and in some respects even more fundamental, it necessarily means that any decision as to whether a child is to be tried as an adult will be based on policy (or political expediency) rather than on law – for if it is to be based on law, then by our constitution that is within the sole jurisdiction of our judges.

"How", it might be asked, "can this possibly be viewed to be in accord with the rule of law that is the very foundation of our democratic society?'

As to the first proposal, that which precedes it in this discussion clearly demonstrates that there is no conceivable justification in logic – it flies in the face of according responsibilities with rights. Quite simply, children will not have any of the rights of

[1] http://www.psepc.gc.ca/media/nr/2007/nr20070111-en.asp

adults, but are to be treated as if they are adults if they fail to abide by standards set for, and by, adults. It is clearly an abrogation of the "social contract" insofar as such may be said to apply to all (including children).

It also flies in the face of medial science insofar as it implicitly rests upon the premise that children are capable of the same level of intellectual functioning as adults, when medical science says unequivocally that this is just not possible.

If, as is the avowed purpose of this proposed legislation, the intent is to "reduce crime", then it also flies in the face of criminological evidence. Quite simply:

- there is no credible evidence to support the proposition that harsh laws deter crime (whether youth or adult crime);
- there is no credible evidence to support the proposition that high rates of incarceration (of youth or adults) have any correlation with reduction in crime;
- but, there is considerable evidence to support the proposition that children are susceptible to the adult role models with whom they spend the majority of their formative years; and
- there is considerable evidence to support the theory that labeling a child as a criminal more often than not has the effect of that child adopting that identity and retaining it (and the behaviours that go with it) well into adulthood.

The John Howard Societies in Alberta and Canada are dedicated to safe communities. Whenever considering a program or project, or analyzing proposed government policy of legislation, we always start with the same question:

"Will this, at the end of the day, make our community safer?"

Consider the implications of locking little children (and how else refer to those aged 12, 13, or even 14) in prisons with hardened adult criminals for decades.

At the end of the day, when those adults who have spent the majority of their formative years and adult life in prison finally are released, are they likely to be kindly disposed towards a society and community that has put them through that in the first place?

Are they likely to have attained the equivalent of post-graduate degrees in criminality?

Are they likely to have had among the very worst examples of our society as their daily role models?

And will we, at the end of the day, have done something positive to make our communities safer?

These are somewhat rhetorical questions in the sense that answers are, or ought to be, self-evident.

So why would we even be contemplating such proposals?

The Reporter, a publication of the John Howard Society of Alberta, is distributed free of charge to a wide audience of citizens, educators, agencies, and criminal justice staff. Our goal is to provide information and commentary on timely criminal justice issues. We welcome and encourage your feedback on The Reporter.

The John Howard Society of Alberta is an agency composed of citizens in Alberta who are interested in criminal justice reform and preventing crime in our communities. We recognize that dealing with crime is the responsibility of the community as well as public agencies.

We gratefully accept donations to help offset the costs of our efforts in criminal justice reform and crime prevention. Donations are income tax deductible.

To make a donation or provide feedback please contact us at the address on this page.

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