Enclosure 5

Extract from "Textbook of Criminal Law" by Glanville Williams, London Stevens & Sons 1978, pp 588-589

What is the magic of the age of 10? Why not 12, or 14, or 16?

The age at common law was 7. It was raised to 10 in 1933, and general opinion is now against raising it further.[5]

Of course any age must be arbitrary. The governing considerations are pragmatic. At what age does one wish to be able to administer legal punishment to a child? Even if it is only to be a fine, or sending the youngster to an attendance centre or detention centre, still if the outcome is to be punitive in intent this implies that the offender must be legally responsible. Precocious children get to know the age of criminal responsibility and are quite apt to say to a policeman: "You can't touch me. I'm under 10." Even if punitive sanctions are intended to be used only for particularly bad offenders, they still imply that criminal responsibility must be attributed to offenders of that age. (It is true that punishment could be meted out in nominally civil proceedings, or by way of school discipline under legal auspices. But the abandonment of criminal procedure would carry some danger of both injustice and ineffectiveness.)

Although children are criminally responsible from the age of 10, those under 14 receive the benefit of the rule at common law that a child in this age-group cannot be convicted, however uncontrollable he is, unless he knew that what he was doing was wrong—which seems to mean either legally wrong or morally wrong.[6] The rule is a survival from a time when children were treated punitively by the courts. Fortunately, juvenile courts pay little attention to it, though it occasionally achieves prominence when a child is tried in the Crown Court for homicide and the judge has to direct the jury. The objection to the rule is that if a child has been brought up without a knowledge of ordinary moral notions he needs control the more, not the less. Courts in dealing with children and young persons are enjoined by statute to "have regard to the welfare of the child or young person,"[7] but this does not say that such welfare is the *only* consideration. The courts look, or ought to look, to the protection of society, but an effort is made to eliminate punitive aspects, except, sometimes, in relation to particular deterrence.

A great deal of law limits the use of adult punishments for juvenile offenders and provides special forms of disposal for them. In order to limit the size of this book questions of disposal (sentencing) are in general being excluded. Consequently, nothing further need be said here on juveniles.

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[4] CYPA 1969 s. 6 as amended; CLA 1977 s. 34.

[5] CYPA 1969 s. 4 makes it (generally) 14, but that provision has not been brought into force owing to a change of policy since the Act was passed.

[6] [1954] Crim.LR 493.

[7] CYPA 1933 s. 44 (1) as amended.