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Vicarious Criminal Liability of Parents for Offences Committed by their Children?

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A worrying new Private Member's Bill – the Young Offenders (Parental Responsibility) Bill 2013 (www.publications.parliament.uk/pa/bills/cbill/2013-2014/0034/14034.pdf) introduced by Mr Phillip Hollobone and sponsored by a few other MPs – made its appearance in Parliament on 24 October 2013. It consists in essence of the following two paragraphs:

- (1) A person commits an offence if a child or young person for whom they have parental responsibility commits an offence but is not charged or subjected to a penalty.
- (2) A person guilty of an offence under subsection (1) shall be liable to the same charge or penalty as is specified in law for the offence committed [*sic!*] by the young person.

As far as matters of public policy go, this Bill seems to be an expression of a loathing of, and of a staggering ignorance of the specific risks connected with the upbringing of, children, as well as the role and responsibility of parents in society. In keeping with the current excessively punitive attitude of conservative politicians, parents shall now apparently become criminally vicariously liable for acts of their children. This Bill is an attack on the traditional understanding of the value of children's education and family life in the wider societal context, and violates a number of fundamental principles of English law. It is also drafted very poorly.

The manner in which the offence is stated does not measure up to the normal requirements of certainty and fair labelling.

- The wording does not mention any *mens rea* requirement and it is thus in theory possible to read strict liability into it. If that were to be the case, it would establish a degree of liability that even military commanders under the principle of “command responsibility” in international criminal law would not face for actions of their subordinates where at the very least a reason to know of offences about to be or having been committed is required. It is highly doubtful that this form of liability would survive ECtHR scrutiny under the principles of *Salabiaku v. France* ((1988) 13 EHRR 379).
- If the Bill was to require (merely) a reason to know, it would sanction criminal liability for simple negligence, something English law does not generally subscribe to.

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- Will it be enough if the parents are negligent/reckless – as to what exactly? – to establish liability for an offence which requires intent in the direct perpetrator?

The Bill imposes a sanction on parents if the child or young person is “not charged or subjected to a penalty”. This extremely broad formulation presents a plethora of legal and theoretical quagmires:

- A young person is defined as someone between the ages of 14 and 18 (Section 99 of the Criminal Justice Act 1991) i.e. ages where a child normally is beginning to attain more self-awareness and social responsibility and when parents actually could reasonably expect to be allowed to keep their offspring on a “longer leash”.
- Yet the Bill also includes children, i.e. persons under 14 years (ibid.). Does that mean starting with the current age of criminal responsibility of 10 years or possibly even younger children who for that reason cannot be “charged”? If the latter is meant, how can the parents’ criminal liability arise and in effect be greater than that of the direct perpetrator?
- What if the child has a serious mental health and/or learning disability and is thus not liable to be charged or penalised?
- What exactly is to be gained for society if the parent alone is held criminally liable, as opposed to under civil law – where no liability might lie in the first place?
- How will the “offence” committed by the child/young person be determined – as a trial within the trial of the parent?
- Will the child’s confession have an effect on their parent’s case?
- Will the parent be able to advance any defences his or her child may have had to their offence as a defence in their own case?
- Is an absolute discharge given to the child a penalty for the purposes of the Bill?
- What if the child/young person committed the offence while on holiday with e.g. a church retreat or at a Brownies camp, maybe even in another country when the parents had no control at all over their child’s actions?
- What if the offence is not an offence under English law but under the law of the country in question or vice-versa?
- What if the offence is committed in England but the parents live abroad and are foreign nationals – will they now be subjected to a European Arrest Warrant under EU mutual recognition rules even if the offence is not one in their home country?
- Have the MPs even begun to consider the consequences of the equalisation of the penalties for young people with those of adults? In the case of murder, the mandatory minimum sentence for adults is life, but children and young persons from 10 – 17 shall be detained during Her Majesty’s pleasure.
- What if the absence of a charge or penalty is based on prosecutorial discretion – can the CPS legitimately decide not to prosecute the child or young person but to go after the parents?
- What if there is a choice of charges – can the child/young person be charged with a lesser one and the parent with a more serious one with which their child is not charged, i.e. is the absence of a charge meant to be a total one or can it also be a partial absence?

These are just a few of the problems surrounding this not even half-baked piece of draft legislation, which seems to be in keeping with an emerging recent trend of introducing legislation that has not been properly thought through and lacks a coherent or evidence-based policy, such as, for example, the householder exception vis-à-vis the use of force in self-defence in s. 43 of the Crime and Courts Act 2013.

Furthermore, the Bill seems completely out of step with liability of parents for torts committed by their children. Torts are the civil law side of the coin of unlawful and harmful acts. Tort law does not know vicarious parental liability merely qua being a parent under s. 3 of the Children's Act 1989 as referenced by the Bill, but requires some form of a breach of a duty under the principles of negligence – see only the cases of *North v Wood* ([1914] 1 K.B. 629), *Newton v Edgerley* ([1959] 1 W.L.R. 1031) and *Donaldson v McNiven* ([1952] 2 All E.R. 691). How can criminal liability, which carries a much higher moral opprobrium and social stigma, be easier to establish than civil liability for damages under tort law? This “upgrading” of civil liability to the criminal level seems to fit into the wider picture if one remembers the ASBO system, which made the violation of a civil order into a criminal offence, with all the attendant problems caused by the difference of standards which apply in civil and criminal procedure.

This Bill – although one can only guess – seems to be pandering to some base instinct in certain sections of society who care little for the joys and pains of raising children in society as a natural process of life. Rather, the drafters' intention seems to be to establish a moral sanction of the highest order – maybe because a neighbourhood child once kicked a football through their window.