

Criminal Code

Bill to Amend—Second Reading—**May28/09 S-209 reintroduced Jan/09** Debate Continued

On the Order:

Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Carstairs, P.C., for the second reading of Bill S-209, An Act to amend the Criminal Code (protection of children).

Hon. Céline Hervieux-Payette: Honourable senators, I must now turn your attention to a rather less exciting matter, but one that, in my opinion, will have a much greater impact on our future as a society, a country, and a world leader.

There are some things that people refuse to see, but later regret having ignored.

As honourable senators know, in 1633, Galileo was condemned by the Catholic Church and forced to recant his scientific belief that the Earth was not the centre of the universe. The scientific community recognized its error a century later. The Catholic Church took somewhat longer and did not acknowledge its error until 1992.

Honourable senators, we have our own Galileos today, those with a scientific conviction that child-rearing violence is the cause of many more ills than we are prepared to believe.

What if the dark side of human nature were the result of standard child-rearing violence?

What if human nature were originally good but was corrupted by totally inappropriate child-rearing techniques?

That is what I will attempt to demonstrate, honourable senators.

[*English*]

According to Olivier Maurel, author of the book entitled *Oui, la nature humaine est bonne!*, published at the beginning of this year, standard child-rearing violence is a set of violent actions that have been and continue to be used, tolerated and often recommended for raising children and making them obey.

Why do we use child-rearing violence? Parents use violence, although often well-meaning, because they think that little taps, spankings and other blows or punishments will have an impact on children's reasoning, attitude and memory. They believe that children will not misbehave in the same way again because they were punished for their incorrect behaviour.

That is what today's society thinks of our modern Galileos.

Slightly more than 50 years ago, in 1957, many child development experts working in the fields of psychology, paediatrics and neurobiology developed scientific theories that shed new light on old beliefs. These contemporary Galileos believed that standard child-rearing violence causes varying degrees of disruption to a child's personality that has a ripple effect throughout our

society.

[*Translation*]

And how did they reach that conclusion? For some 16 centuries — yes, honourable senators, 16 centuries — it was thought that human nature was inherently evil, that it had to be beaten and tamed, that children had to have evil driven out of them and replaced by good by dint of blows, spankings, whippings and strappings.

That has been our civilization's prevailing paradigm for centuries: the inherent wickedness of human beings, and therefore of children.

To keep things simple, I will focus only on how children are seen in Christianity because that is the faith community to which I belong, but most religions are similar in that regard.

It all starts with a Biblical proverb, "Foolishness is bound in the heart of a child; but the rod of correction shall drive it far from him", and our interpretation of the word "foolishness."

According to scripture, it is said that "Blessed are the poor in spirit" — they were not talking about senators — "for theirs is the kingdom of heaven." That is from Matthew 5:3

The poor in spirit were therefore respected in Scripture, and in the proverb, "foolishness" did not mean dementia or mental illness, but lack of wisdom.

But if it takes violence to instil wisdom, then you will see, honourable senators, that that is contradictory. That would amount to saying that wisdom means submitting to the father's or mother's will, the parent's will.

Originally, child-rearing violence was intended not only to correct the child's misbehaviour, but to remove the child's original sin so that he or she could find wisdom.

In the first three centuries, there was still some uncertainty about the state of human nature before baptism, and this was the case again following Vatican II.

But in the 5th century, based on the interpretation of Holy Scripture, Catholicism invented the doctrine of original sin, according to which:

God, the creator of natures, not vices, created man pure, but man, corrupted by his own will and rightly condemned, begat corrupt children condemned like him.

Saint Augustine later theorized that the proof of original sin lay in a baby's cries when it wanted to be breast-fed. Thus, the most natural possible behaviour became a sign of original sin.

Olivier Maurel writes that all over the world, even in Christian countries, where the cult of Baby Jesus was developed, children have been — and in many countries still are — treated with contempt.

In fact, in contrast to the parable of the prodigal son, where compassion and the son's freedom triumph over punishment, Christian churches have always called for child-rearing violence,

which was probably the only method that existed at the time and was passed down from generation to generation. And as a Quebecer, I could talk about how the Duplessis orphans were mistreated.

[*English*]

This **belief in original sin** has been resurrected many times over the centuries, either by Christianity, as I have just discussed, Darwinism or psychoanalysis.

The theory of the child-animal grew out of our understanding of Darwinism. This assimilation of the child and the animal gave rise to the idea that human violence is rooted in our animal nature and that children's instincts must therefore be tamed or mastered. Morals must be instilled in them through a form of child rearing that is itself violent.

This, too, is an incorrect interpretation. Darwin says that our moral sense emerges as a consequence of evolution and does not run counter to it. Furthermore, no animal has ever equalled the barbarity of humans. Need we remember that the worst crimes committed in 20th century Europe emerged from the most civilized society on the continent?

We do not humiliate and beat children or raise them using violence because of our innate nature or brutishness. No, honourable senators, this is a learned behaviour that is specific to our culture.

[*Translation*]

I said earlier that psychoanalysis played a significant role in this belief in original sin. I would like to refer to Freud's correspondence, which clearly attests to the fact that his own theory on the Oedipus complex was biased. Unable to incriminate a father who commits incest — as many fathers did at the time — Freud completely distorted Sophocles' tragic play from which he drew his theory.

In Sophocles' tragedy, Oedipus is convinced that his adoptive parents are his real parents and learns of an oracle's curse that he will kill his father and marry his mother. That is what happens.

It is worth noting, however, that in that tragedy, Oedipus does not know that the person he killed is his father or that the person he married is his mother. He is a victim. Remember that Oedipus was abandoned because his father wanted to escape the oracle's curse, after having fallen in love with the son of the king who had welcomed him in his home, abducting the king's son and raping him.

On the other hand, in the Oedipus complex theory, Freud transformed Oedipus into a killer. For Freud, Oedipus is driven to kill his father in order to commit incest. According to Freud, it was a subconscious desire, of which there is no trace in Sophocles' tragedy or in the original myth.

(1530)

How did such a deformation come about? Freud retold Sophocles' tragedy when he reversed his own position. In January 1886, Freud wrote to a friend about his discovery: the neuroses of his patients could be traced back to the sexual abuse they experienced. But he also talked about the "hostility" engendered by this "truth." In February 1897, in another letter, he stated that the neuroses observed in his brothers and sisters must have resulted from the actions of their father,

which he euphemistically termed "seductions." It should be noted that Freud was particularly fond of his father. However, in September 1897, Freud called into question his theory because, in every case examined, the father had to be accused. Freud believed that this recurrent accusation was not intolerable, just simply impossible. It was impossible to generalize to that extent the culpability of fathers, including his own.

Thus the Oedipus complex theory was born and, oddly enough, it became quite possible to generalize the culpability of children. I must add that Freud did not analyse children, even though he is known as the father of psychoanalysis and played an extremely important role in the 20th century.

Hence, as Olivier Maurel wrote:

The more one believes that sin is inherent in a child, the more one believes that it is necessary to expunge it and the less one believes in his innocence, the less one acknowledges and respect him, and the deeper the child is plunged into violence.

[English]

Honourable senators, I have spoken at length about Christianity, **Darwin** and Freud to demonstrate that the conscious and unconscious way in which we view our children and our child-rearing methods is based on mistaken interpretations and misinformation that has been circulating for centuries. It is only since 1957, with the discovery of the traumatic origins of duresmatoma among infants, that our own awareness has grown.

I would remind honourable senators that the world "maltreatment" was coined at the end of the 20th century, not so very long ago.

[Translation]

How can such an error in judgment about human nature have persisted throughout the ages? How can some of us support it even now? Because these practices, honourable senators, which have been passed down both orally and in writing, are considered sacred. Because child-rearing violence has been an accepted part of all societies for as long as humankind has walked the earth. Once we began to believe that children were innately violent, child-rearing methods became secondary. Because, for generations, children have denied what they have been subjected to in order to protect their parents, and sometimes have behaved just as their elders did. Both society and scientists have either denied the facts they observed or interpreted them to their advantage. Parents have always claimed that they are simply exercising their parental rights and that children deserve corporal punishment.

As Olivier Maurel wrote, the custom of beating children led to, then spread and cultivated a negative notion of the child, who then reinforced the belief in the need for violent discipline and even preventive punishment.

Studies have shown that, in addition to manifesting all of the psychological, sexual and learning disorders that can result from standard child-rearing violence, adults may also lack a sense of empathy and compassion and exhibit a certain inclination to submit to authority.

It is worth noting that some of the worst atrocities have taken place in societies with brutal child-

rearing methods, such as Germany and Rwanda.

As Maurel pointed out,

The groups of people who have allowed themselves to be seduced by warped and demagogic discourse that led them to catastrophes have almost always been those accustomed to authoritarian, violent child-rearing practices

Obviously, violent child-rearing does not necessarily produce future humanitarians.

If this method worked, given that far more parents have employed child-rearing violence over the past 16 centuries than have not, our societies should be much more peaceful by now. But they are not. On the contrary, the fact that individuals exposed to repeated violence as children are far more likely to engage in delinquent behaviour, vandalism and sexual abuse proves that child-rearing violence does not create more peaceful societies.

What is more, standard child-rearing violence has negative economic impacts: increased spending on health, school dropouts, and increased spending on prosecutions and arrests.

No, honourable senators, child-rearing violence is not innate. No, it is not programmed into our genes. It is said to have appeared when prehuman communities became more sedentary. But child-rearing violence has been the most commonly used child-rearing practice for thousands of years.

Olivier Maurel asks this question, which I would ask you in turn, "Throughout history and still today, do we know men as they are or as they became after being traumatized in childhood by the upbringing they endured?"

[English]

Honourable senators, it is time for us to listen to our Galileos. It is time to assess the little-known yet devastating effects of the child-rearing practices we have wrongly maintained for centuries.

In Bill S-209, I propose that section 43 of the Criminal Code, which authorizes parents to use force to correct their children, be repealed and replaced with a new section. This new section was passed by the Senate in the previous Parliament, based on events in New Zealand — a Commonwealth country that abolished section 59 of its criminal code in 2007 — and unanimously adopted by our Legal and Constitutional Affairs Committee.

Under this new section of Canada's Criminal Code, parents would be authorized to use force in only three cases: to prevent harm, to prevent criminal conduct, and to prevent excessively offensive behaviour.

[Translation]

As 25 countries have already done, it is time Canada entered the modern age and carried on its tradition as a peace-loving country that honours human rights.

Honourable senators, it is time we abolished standard child-rearing violence, and above all it is

time we enabled Canada to fulfil its responsibilities under the Convention on the Rights of the Child, which Canada ratified a number of years ago but has not implemented.

For the love of our children and future generations, I encourage you to support Bill S-209.

[*English*]

Hon. Sharon Carstairs: I would like to ask the honourable senator a question, please.

The Hon. the Speaker *pro tempore*: Will the honourable senator answer a question?

Senator Hervieux-Payette: Yes.

Senator Carstairs: In April, honourable senators, I was in **Ethiopia** attending a meeting of the Inter-Parliamentary Union. I chair its Committee on the Human Rights of Parliamentarians. I was presented with the Constitution of Ethiopia and read it with great interest. The Constitution — the most fundamental law of the country — prohibits the corporal punishment of children.

Would the honourable senator explain to me, because I find it inexplicable, why a country like Ethiopia can ban the corporal punishment of children but we cannot do it in Canada?

Senator Hervieux-Payette: There was a motion in the European Union Parliament stipulating that each of the 27 countries modify its laws to prevent any violence toward children, and so far over 20 countries have adopted it.

(1540)

In Latin American countries like Costa Rica, I have seen signs similar to those one sees for traffic violations; red signs with a cross on them and the hand of a parent, indicating that they should not mistreat their children. In fact, they have campaigns about it. We need to educate people here.

Honourable senators, this is the third time that I have spoken about this subject. That is why I decided to go back to the origin of this question. Historically, we have been programmed to do that, but we have the scientific knowledge that this has created damage to our population and has caused a lot of problems for couples. By teaching harmony and by educating children without violence, we would serve the best interests of Canada. We would certainly be prouder when we meet our colleagues in the rest the world because we would be abiding by the principles of the United Nations Convention on the Rights of the Child.

Hon. Percy E. Downe: Honourable senators, I received correspondence from the Prince Edward Island Teachers' Federation indicating that they are concerned that the loss of section 43 in the Criminal Code, without replacement in the form of some sort of protection for teachers, would put Prince Edward Island teachers at great risk of assault charges for as little as breaking up a fight or for protecting a student from harming herself or himself or others. Can the honourable senator comment on that, please?

Senator Hervieux-Payette: My two previous bills purported to repeal the whole section and not replace it with what I have submitted to the chamber now, which we adopted in the last Parliament after very extensive consultations.

First, the judgment of the Supreme Court does not give the right to teachers to correct children. They established many limitations therein; for example, teachers cannot physically touch a child before the age of 2 and after the age of 12. Right now, it is only between the ages of 2 and 12 that a child can be hit.

The study conducted by Statistics Canada shows us that children are violently and physically touched mostly between the ages of three and six. As far as I am concerned, this is when a child's personality, identity and relationship with the rest of the world are forming. This is the worst age to touch a child physically. It is prohibited in this country.

The Supreme Court has interpreted section 43 and I propose to make modifications. These modifications were accepted by Senator Andreychuk and other members of the Standing Senate Committee on Legal and Constitutional Affairs. My hope is that our colleagues here will help us move forward so that Canada will be able to report to the United Nations that we now abide by the Charter of Rights.

Senator Downe: I have also received correspondence from the Canadian Teachers' Federation. They outline, as you correctly pointed out, the changes that you are proposing. I would like you to comment on their position.

They state that the impact of the amendment contained in Bill S-209 would create more problems than it would resolve. They believe that the amendment introduces new concepts such as "excessively offensive or disruptive behaviour" and a definition of "reasonable force" that suggests a far greater degree of exposure to prosecution under section 43. They further state that the proposed amendment throws the current defence afforded by section 43 into disarray and removes the essential protection afforded to teachers in Canada. Could you comment on that as well?

Senator Hervieux-Payette: That is not the only teachers' federation that has written to us on this question. I think the committee will hear their arguments, but I would like to differ with their opinion.

Honourable senators, when a definition is too broad or when there is no definition, it is important to clarify. That is why I supported modifying the definition. We have the New Zealand experience. We can certainly contact them again, as this is now 2009. When we had these exchanges with our New Zealand colleagues, they brought forward the same amendments and repealed the same section to provide more clarity.

We have other defences. We have the defence of *de minimis*, which means that if, in a gesture of impatience, you push your child because he or she is being too nasty, you will not go before the court; no judge will hear a case like that. Also, if two children are fighting each other and could be harmed, you have to use a certain amount of force. That is covered now, and I think there is a limitation on the kind of violence. The phrase "reasonable force" was too broad.

A case was reported either this week or last week in Alberta. A school bus driver was driving a disabled child who was a bit nasty. The bus driver put one of his stockings into the child's mouth, taped his mouth and then taped him to his seat. The judge said that was reasonable force. As a mother, if I had a disabled child and he was treated like that, I would certainly not think that it was appropriate to react in such a violent manner. The child has already had difficulty adapting to life. Moreover, you are brutalizing that child, which is totally unacceptable.

Honourable senators, I would like to pass along an anecdote. I was celebrating the anniversary of a friend who is a judge. I invited 15 judges to the celebration. Most, who were over 60 years of age, had been spanked when they were younger. That is why I went back into history to explain the origin of this behaviour. It is not because it was done before and has been done for centuries. We now have scientific evidence that this behaviour traumatizes children and has a bad influence not only on the individual but also on society as a whole in terms of creating a shadow of violence.

Honourable senators, we are not being innovative here. We are 20 years behind Sweden and several years behind most OECD countries.

Senator Downe: I appreciate the senator's comments. I am not in any way advocating violence towards children; I am raising the concerns of the Canadian Teachers' Federation and the Prince Edward Island Teachers' Federation as they have been relayed to me.

My understanding is that the Canadian Teachers' Federation is opposed to this bill because they are concerned, as is the P.E.I. Teachers' Federation, that there are more likely to be false accusations and teachers being accused of offences. This will be damaging for the teachers and their families. I hope these issues are fully covered in committee.

Hon. Joan Fraser: I was out of the chamber at the beginning of the Honourable Senator Hervieux-Payette's speech, so she may have already answered the first of my questions and perhaps both. For the sake of clarity, I will ask them anyway.

First, can she confirm that this is the same bill, except for dates and what not, that was presented to the Senate after it went through the committee the last time?

Second, since I was part of the committee that worked hard on that bill, can she confirm that the fundamental thrust of the amendments that were made was to enable people like teachers to use reasonable force where it is necessary to control a child who needs, for one reason or another, to be controlled, but not to allow the use of force as a punishment? Is that a fair summary of what we did?

Senator Hervieux-Payette: We worked with a very good committee and individuals with a lot of expertise. Children who are in school have spent at least five or six years at home. Today, we deplore the fact that there is a lot of bullying and violence in schools. That proves exactly what I have been trying to explain, namely, that when you are treated with violence by your parents, you deduce that it is permissible to do so and that you can do the same. You think, "If an adult is doing it, why can I not do it?"

(1550)

I would like to have hearings with the teachers' federation.

My bill is the same as the one we adopted. I have not changed one comma in it. The amendments were made to clarify interventions to protect a child from violence. "Reasonable force" was not sufficiently specific and could lead to some abuse. The way it now reads provides protection for both the children and the teachers.

(On motion of Senator Wallace, debate adjourned.)

