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CRIMINAL CODE

Bill to Amend—Second Reading— Debate Continued

On the Order:

Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Tardif, for the second reading of Bill S-204, An Act to amend the Criminal Code (protection of children).

Hon. Céline Hervieux-Payette:

Honourable senators, I will try once again to demonstrate the need to amend the Criminal Code in order to ensure that our country shows greater respect for children and does more to reduce violence in our society.

We all agree that the incidence of violence must be reduced, but we do not always agree on how to go about achieving that goal. Personally, I regret the fact that, since 2006, Canada has chosen a "tough on crime" approach, while overlooking one aspect that I think is crucial: prevention.

Honourable senators, I genuinely believe that violence cannot be reduced through the use of violence. I have no doubt that honourable senators also agree with the principle that it is impossible to put an end to incivility and violence through punitive measures.

However, that is the reasoning that underlies child rearing. In child rearing, violence is ostensibly used to deal with inappropriate behaviour — even behaviour that is not necessarily violent itself. I am talking about children usually between ages of three and six years.

In short, we want a peaceful and safe society over the long term. We need to recommit to prevention and to deal with the root of the problem. This root is called parenting education.

That, very briefly, is one of the reasons I would like to see section 43 of the Criminal Code repealed; this section authorizes the use of force in order to teach our children good behaviour, or so it is said. And whether that force is reasonable or not, the scientific community agrees that one cannot put out a fire by throwing oil on it. I will come back to this point.

Then there is the question of the state's intrusion into the private lives of families. I will also expand on this point later. However, I would like to speak to you about two issues at this time: first of all, it is entirely legitimate — and this has already

happened many times — for legislators to intervene to protect the public and ensure that the society they administer remains non-violent; and second, the goal of my bill is to educate parents and guardians, rather than punish them.

Those who say this provision would result in the criminalization of parents or guardians for so-called "trifling" reasons are arguing in bad faith. Section 34 and section 37 of our Criminal Code already allow people to use reasonable force to defend themselves or anyone else in their care. Furthermore, "*de minimis*" and "necessity" defences in common law already protect parents independently of section 43. Not one of the 26 countries that have thus far banned the use of violence in child rearing has experienced this result.

But perhaps, honourable senators, you are still perplexed at the idea that using force such as slapping or spanking, which may seem harmless, can be the root cause of the violence in our society and that child rearing violence can have such far-reaching consequences.

Let us start by asking ourselves a question: does violence lead to the use of force, or does using force lead to violence?

This is a fundamental question as we study this bill, and the answer from man — intelligent man, which also includes women — has changed. In fact, it has just been reversed in light of recent scientific discoveries.

For centuries, religious concepts held sway in the absence of any scientific knowledge about child development. The doctrine of original sin led those raising children to see in children's souls a mixture of good and bad tendencies. In other words, according to the

religious precepts of Christianity, violence was innate in man — and I must say, women also.

From this basis, people believed that the worst thing in child rearing was to spoil children, thus losing control over them and allowing their bad tendencies to win out. This meant that the proper way to raise them was to submit them to parental authority, and to control them through authority rather than through argument in order to bring them under control or domination.

Therefore, it was believed that the virtue of obedience at all costs would give children the strong personality and strength to overcome their passions. A harsh upbringing would prepare them for the harshness of life. The Church and, beyond that, society itself felt that it was legitimate for parents to strike their children and they acknowledged parental corrective action to be effective.

But, honourable senators, the whole centuries-old concept of upbringing, the whole concept of parental authority is based on religious beliefs — we all know the old saying "spare the rod and spoil the child" — and on empirical knowledge whose basis was laid down long before we began to understand the psychology of child development.

Since then, science has worked wonders, if I may put it that way.

It was not until very late in the 19th century, in 1898, that Alfred Binet — a French psychologist who invented the test to measure intelligence that is now known as the IQ test — announced that scientific observation and analysis of child behaviour would supplant the empirical knowledge of previous generations. Binet made the connection between child rearing violence

and behavioural problems, developmental disorders and psychosomatic illnesses.

Alice Miller, a French philosopher and sociologist, called this authoritarian pedagogy spread by the Church "black" or "poisonous" pedagogy, where obedience was expected at all costs, in contrast to reasoned child rearing, where the child is considered a reasonable being.

In Quebec, mental hygiene began to develop in the 1920s and psychology in the 1930s. In place of the old ideals of obedience and virtue, psychologists suggested new ones: normalcy, happiness and more democratic relations within the family. It was not until the mid-1940s that experts in psychology and psychiatry began teaching parents how to use the new knowledge in psychology to raise their children properly.

Thus, for barely 100 years, if not less, science has been trying to reverse child rearing practices rooted for centuries in our beliefs.

Science has recommended an about-face. Contrary to the postulations of the Church, it is becoming increasingly clear that aggression is not innate in man. According to animal behaviourist John Paul Scott, Professor Emeritus at Bowling Green State University:

All of our present data indicate that fighting behaviour among higher mammals, including man, originates in external stimulation and that there is no evidence of spontaneous internal stimulation.

Similarly, the idea that observing or participating in violence provides an outlet for our aggressive energy, according to the catharsis theory that dates back to antiquity, has been demolished. "Engaging in

aggressive play just strengthens the disposition to react aggressively," concluded psychologist Leonard Berkowitz, in his classic 1962 work, *Aggression: A Social Psychological Analysis*.

As for the widespread notion that animals are aggressive and that humans must naturally be aggressive because we cannot escape the legacy of our evolutionary ancestors, science has disproved this too. The truth, according to anthropologist Ashley Montagu, quoting a colleague, is that: "There is no more reason to believe that man fights wars because fish or beavers are territorial than to think that man can fly because bats have wings." Furthermore, animals are nowhere near as aggressive as we might believe, but that is another subject.

Scientists tell us that external stimuli play such an important role in the origin of violence that talking of an "innate" tendency to be aggressive makes little sense for animals, let alone for humans. According to Alfie Kohn, parenting education author, "It is as if we were to assert that because there can be no fires without oxygen, and because the Earth is blanketed by oxygen, it is in the nature of our planet for buildings to burn down."

For several decades now, science has given us an opportunity to alter our perception of man, improve our understanding of human development and, accordingly, change our child rearing practices. Based on recent discoveries, we should not be teaching children virtue by forcibly repressing their bad tendencies when they are little. Rather, we should promote the growth of their personalities in tune with the various stages of their development. In this new environment, the boisterousness of children is no longer attributed to wickedness and it is no longer necessary to deal with

disobedience through the use of physical or mental suffering.

However, beliefs are slow to die and churches do not intend to surrender so readily to science. You will remember that it was not until October 1992 that the Vatican officially rehabilitated Galileo, who was unfairly condemned by the tribunal of the Inquisition three and a half centuries earlier for stating that the earth revolved around itself. In 1929, Pope Pius XI was also opposed to psychology. In his encyclical on Christian education and youth, which is still relevant, he stated that original sin leaves bad tendencies in the soul of a child, even one who has been baptized, and that they must be corrected by education. Although this encyclical made a distinction — common at the time — between mistreatment and deserved corporal punishment, it nevertheless gave legitimacy to the use of a certain amount of violence for the purpose of education.

But in 1917, science began to report on the disastrous consequences of corporal punishment. The following signs were evident in children: rebellion, hypocrisy, a taste for cruelty, vengeful feelings, anti-social tendencies, onset of nervous illnesses, loss of activities, and loss of capacity to enjoy and to act. All these phenomena are reported in a very broad study carried out by Statistics Canada, which indicates all the negative effects which I discussed in a previous speech.

Fortunately, children can sustain punitive measures without many of the effects lasting into adulthood. In the 1880s, a gifted and spirited nine-year-old boy was beaten repeatedly because he would not submit to the discipline of the school where he was studying. Later, this boy wrote, "Where my reason, imagination or interest were not

engaged, I would not or I could not learn." Incapable of understanding the psychology of a young child, the educators beat this young, sensitive boy because they interpreted his contrariness as disobedience. He had such welts on his back that his parents decided to remove him from this institution. He said:

"My teachers saw me at once backward and precocious, reading books beyond my years and yet at the bottom of the Form. . . They had large resources of compulsion at their disposal, but I was stubborn."

Despite his rebellions, petty vengeance and running away — the direct consequences of this absurd and ineffectual treatment — this young boy managed to rise above the mistreatment and to take his place in history. That boy was Winston Churchill.

However, reaching adulthood relatively unscarred by child rearing violence obviously does not justify the use of force in education.

All the more recent studies have shown, not only that force is ineffective in child rearing, no matter what level of force is used, but also that its consequences are counter-productive in the medium and long term. The most recent study conducted by the American Academy of Pediatrics and published in April 2010, investigated the risk of aggression that may develop in five-year-old children when they have been raised with spanking from the age of three. The study was conducted between 1998 and 2005, with 2,461 respondents.

The results are unequivocal. As I mentioned earlier, external stimuli have a considerable impact on the development of aggression and no matter what scenarios were developed for the study, spanking three-

year-old children significantly increased the probability of engendering higher levels of aggression by the age of five. The study went on to say that these findings were consistent with dozens of other studies of the subject, including the Canadian one. It concluded that children learn to become aggressive when they are treated aggressively.

Children who are beaten will fuel repressed anger. According to Alice Miller:

“How is repressed anger very often vented? In childhood and adolescence: by making fun of the weak. By hitting classmates. By humiliating girls. By annoying the teachers. By watching TV and playing video games to experience forbidden and stored up feelings of rage and anger, and by identifying with violent heroes. In adulthood: by perpetuating spanking, as an apparently educational and effective means, often heartily recommended to others, whereas in actual fact, one's own suffering is being avenged on the next generation. By refusing to understand the connections between previously experienced violence and the violence actively repeated today. The ignorance of society is thereby perpetuated.”

Very few civilizations have escaped this custom of child rearing violence, so much so, as certain archives point out, that the French missionaries who arrived in Canada in the 18th century were astounded to find that the Amerindians never hit their children. I took that from a book by Denise Lemieux, entitled *Les petits innocents. L'enfance en Nouvelle France*, published by the Institut québécois de la recherche sur la culture in 1985.

Unfortunately, we know how much Amerindians have since been influenced by western practices, which themselves were

influenced by Christian concepts, and to what extent they have suffered, especially children entrusted to our so called "religious" institutions.

Not all corporal punishment leads to mistreatment, but all corporal punishment, regardless of the degree of intensity — I repeat, regardless of the degree of intensity — is ineffective and counterproductive. Physical pain simply is not educational.

That is why, when you use force with a child, you will be under the impression that you are being obeyed, but instead you will be developing that child's submissiveness. By exercising force, you will have a feeling that you are maintaining order but will be developing a feeling of fear. Using force will give you the impression that you are raising a child but you are really teaching aggression and humiliation. The potential social consequences of such child rearing methods must be borne by the whole community, society and country.

Alice Miller summarized this effect as follows:

“... when you nurture a child, the child learns to nurture. When you reprimand a child, that child learns to reprimand; when you warn a child, you teach that child to warn others; when you chew them out, that is precisely what they learn to do; when you mock them, they learn to mock; when you humiliate them, they learn to humiliate; when you kill their interiority, they learn to kill. Once you have reached this stage, all they have left to do is decide whom to kill: themselves, others or both.”

Is it so difficult to raise children without raising our hand against them? Sometimes. That is why parents should have guidance. Bill S-204 provides for a campaign that

would help them find alternative child rearing practices. Knowing the repercussions of child rearing violence, we cannot take the easy way out.

Twentieth-century science has shown us that men and women are not aggressive by nature, but that they become aggressive because of forces in their environment.

Honourable senators, a solemn declaration to reflect a global scientific consensus was written in Seville, Spain, in 1986, and was made public during UNESCO's general conference in Paris in 1989. The entire global scientific community say to us:

- That “it is scientifically incorrect to say that we have inherited a tendency to make war from our animal ancestors”;
- That “it is scientifically incorrect to say that war or any other violent behaviour is genetically programmed into our human nature”;
- That “it is scientifically incorrect to say that in the course of human evolution there has been a selection for aggressive behaviour more than for other kinds of behavior”; and
- That “it is scientifically incorrect to say that humans have a 'violent brain'... because how we act is shaped by how we have been conditioned and socialised.”

Since the start of the 20th century, we have also witnessed — and observations and studies have shown, time and time again — the ineffectiveness of child rearing violence and its social and human costs.

Should legislators intervene in family matters? In fact, legislators are becoming increasingly involved in family issues, particularly when it comes to the education and well-being of children, and this is not

being called into question. And so, in 1943, the Quebec government passed a compulsory education law. In 1944, the federal government adopted the Family Allowance Act, recognizing a child's right to education and minimum level of well-being. And then there were the government interventions to impose women's rights and to limit the rights of men towards women.

Since we now know that the way today's children are raised will map society's future and since we know that the community can pay dearly for parental use of force, state intervention is apparently not only justified but necessary. The use of force in child rearing, spanking for example, is not a problem that affects only families. It also affects society as a whole.

That is what Sweden understood. Sweden, a fiercely warlike society by tradition, is now one of the least violent of the industrialized countries. This is no accident because Sweden was the first country to prohibit the use of force in child rearing some 30 years ago.

On the basis of what rule, then, ought Parliament to fail to protect the physical integrity of children in our country — as it has protected women — after taking action to require parents to provide them with schooling and basic welfare?

What rule is there to prevent Parliament from attempting to build a safer society now that we are aware of the impact of child rearing on the level of aggression in future adults?

Parents do not own their children. Children are individuals. Their protection should therefore take precedence over the protection of adults and over the imaginary risk of legal action against them —

something that has never come to pass in the 26 countries in the world that have taken this path.

Honourable senators, I will conclude with this question asked by Olivier Maurel:

No one would think it was normal if a man or woman were to slap their mother or father who, due to age and diminished mental faculties, refuses to eat or to wash. We do find it normal, however, to slap children for similar behaviors that are just as much a function of their age and immature brain. What justifies this blatantly unequal treatment?

The answer lies in our unfounded belief that we have ownership of a person who, in reality, has a right to physical integrity. The answer also lies in our archaic belief that violence begets good behaviour and obedience. The answer lies in our subconscious that reproduces devastating child rearing techniques, as all the experts have shown.

In study after study, year after year, the experts have said that the solution is to change our educational practices. Canada — and we as parliamentarians — must blaze a new trail and prohibit the use of force once and for all, and we must offer alternative child rearing and support measures for parents.

In September 1998, the European Court of Human Rights concluded that a provision in English law — similar to section 43 of the Criminal Code of Canada — violated section 3 of the European Convention on Human Rights. In May 2010, the 47 member states of the Council of Europe released guidelines to encourage states to establish legislation banning the use of force in child rearing. Without even waiting for these

guidelines, 21 European countries have already banned the use of force in child rearing, and other countries are following suit.

Honourable senators, in conclusion, not only should violence not be part of raising children to adulthood, it is also known to be the way aggressive behaviour is taught. It is therefore essential and realistic to eliminate it completely.

If we wish to build a peaceful and safe society, repressive measures will not do the job. We must take action at the source, which means helping parents to raise their children in a way that reflects the discoveries of modern science.

Laws reflect our beliefs and our values. Child rearing beliefs and values are based on outdated concepts.

There is no reason to keep allowing ourselves to believe the traditional argument, under the guise of religious beliefs or some kind of empirical knowledge, that authoritarian child rearing, which includes physical violence, is necessary or more effective.

Consequently, honourable senators, I urge you to fully support Bill S-204.