

Criminal Code

countries to allow them to enter the world and then to look after them upon a basis of national justice and decency? Nothing is more urgent than that something should be done about the situation of children in this country. Some people call them unwanted. No child in Canada should be unwanted and it is not through the removal of the right to live that we shall solve the problem without other changes.

It is regrettable the government has not seen fit to allow the division or sequestration of the various propositions inherent in the bill. Had this been done voluntarily by the government, it would have been possible to vote in favour of some of the amendments which are reasonable, while opposing those which may well open the door to a host of evils. As it is now, the government has condemned those who vote for the bill to be presumed to be favourable to each and every proposal included therein.

Some hon. Members: Hear, hear.

Mr. Nielsen: That is the position in which the government by its customary intransigence has placed its own members. They will adopt the easy course of going behind the curtains rather than vote because of a lack of courage to stand up and express their moral convictions and oppose those portions of the bill to which I am sure a number of them must be opposed. By adopting this position the government has made it more difficult for others who favour a measure of reasonable reform to accept this omnibus approach.

An hon. Member: Ominous!

Mr. Nielsen: As my friend said, it is an ominous approach. There is still time for the minister to reconsider and convince his colleagues that the right and moral thing to do, in fact the only thing to do, is to have a free vote on this measure. If it is to mean anything the government must remove the suffocating umbrella which they have placed over their members by calling it a government bill and telling them how they are to vote. There are only four important moral portions in the bill. I urge the government to adopt the reasonable course of allowing members to vote on each portion separately and apart from the mechanical and purely routine amendments contained in the bill.

Mr. Mark MacGuigan (Windsor-Walkerville): Mr. Speaker, I do not intend to canvass the whole of this vast bill before us but to make comments only on certain aspects, in

particular those aspects which deal with sexual morality.

I believe the omnibus bill reflects an entirely new governmental approach to the criminal law. The criminal law, as that part of the law which regulates conduct in the broadest way and in the most fundamental matters, is the area of law which is most closely related to people's moral beliefs. Moral beliefs, in turn, are largely, though not exclusively, formed by religious beliefs. Whatever the relationship of morals to religion, and there are many theories on this subject, criminal law has traditionally been thought to be merely morals codified and backed by the authority of the state.

Since people's views as to what is sinful change slowly and almost imperceptibly, one would expect that the criminal law would change at the same pace. In point of fact, because of the unavoidable inertia in the legislative process, legal changes usually lag far behind moral changes in society, even though they ultimately come to reflect them. This is emphatically the case with the criminal law in Canada. The first Canadian Criminal Code, enacted in 1892, merely codified the existing common law on crimes. Changes made over the years were relatively minor and there was no general revision of the Code until the 1953-54 session of parliament at which time the revision was more remarkable for its rearrangement and consolidation of existing law than for its innovation. It is no exaggeration to say that the omnibus bill would, if passed, effect the most important change in the criminal law since it came into effect in the form of a Code in 1892.

The bill would bring about a change not only in criminal legislation but also in the philosophy behind it, for it apparently indicates a determination that law shall no longer be thought of as a mirror of morals, and that from now on crime and sin, law and morals, must be distinguished.

If this bill is passed, homosexual acts committed in private between consenting adults will no longer be prohibited. In other words, homosexual acts which do not involve the imposition of an adult will on a child's, or which do not offend against sensibilities through a public display, will be beyond the purview of the law. Similarly, unusual sexual acts will no longer be against the law if they are performed in private between two persons. The rationalization of these changes has been stated to be that the state has no business in the bedrooms of the nation.