

Young Offenders Act

person under the age of 21 who commits an offence—we are thinking here of an offence that involves capital punishment or life imprisonment, not just narrowly defined as homicide, but a number of other things defined in the Criminal Code as warranting this severe penalty—can it be said that he understands the process of law?

There are other offences which according to the code warrant these penalties, including rape, sedition and treason. I am sure if we examined the Criminal Code closely, we might find others. Are we, then, saying that children who commit these crimes must in the first instance be detained for a period of time that may be as long as 11 years, whereupon when they have reached the age of 21 they are to be tried and sentenced for the crime which they committed earlier but to which they may not have been able to give sufficient recognition? That is certainly not the law as it applies or will apply to adults. Are we prepared to bring that law into force for children?

One can take this kind of legislative provision to its extreme to illustrate the utter unreality of this proposition in law. We have gone through a very difficult and serious time in respect of the crisis in the province of Quebec. At the moment we have a public order bill which, hopefully, will shortly expire. Under that bill we are told that people can be arrested for membership in or attendance at meetings of a certain organization. What would be the position in law under this new measure if an 11-year old walked in off the street and, through chance, took part in a casual way in a meeting of the FLQ or like clandestine organization? Under this bill, I presume he would not only be detained but after a period of some years, perhaps until he reached age 21, he might be sentenced and then serve his time. How utterly foolish and ridiculous that is. That demonstrates how utterly foolish and ridiculous is this particular provision in the legislation.

The legislation attempts to be a screen giving, in essence, a sense of being fair-minded, positive and progressive. But when this screen is removed and the veneer is scraped away, we discover underneath that there is a heavy punitive element. For instance, we are told in one clause of this bill having to do with young people who may commit an offence under section 387 of the Criminal Code, which would be the abuse of animals, that the judge in the disposition he makes of the case may prohibit the young person from owning or having custody or control of the animal or bird during any period not exceeding two years.

• (8:30 p.m.)

We might consider the example of a young person who at the age of 11 or 12 may, without knowing it is more than a childhood prank, carry out some form of cruel activity which if committed by an adult would be considered to be criminally sadistic. This might not be the case, however, in respect of an imaginative youth of 11 or 12 years of age. This bill would remove any imagination in respect of the positive rehabilitation of a child, such as guidance, counselling and the establishment of relations

[Mr. MacDonald (Egmont).]

with the child and his parents and, perhaps, with members of the animal kingdom.

There is no recognition in this legislation of the positive value of trying to redress the aberrations or perhaps fears which may exist in a child's mind. Throughout this bill it would seem that the drafters of the legislation have attempted to narrowly define the limits under which justice can be served, to the extent that one would think that in a sense they have entered the world of Lilliput and are following Gulliver in one of his travels, and that in dealing with children who commit acts regarded as offences by adults, they consider these children to be pigmy sized adults who in the final analysis are to be treated in that manner.

There is no recognition of the process of growing up or of maturity which, surely, is one of the most basic processes of life itself. There is no awareness, in the concept of this legislation, that relationships, particularly basic relationships in family and community, are vital to the healthy development of young people between ages 10 and 17. There would appear to be a stereotyped concept in this legislation. One wonders, in fact, whether the drafters of the legislation were ever children themselves or whether they had much acquaintance with children.

An hon. Member: That is a sick argument.

Mr. MacDonald (Egmont): That is a sick argument, an hon. member says. It is a sick argument, perhaps, in response to a sick bill and the sooner members recognize that and remove this legislation the better off we will be.

An hon. Member: The President of the Treasury Board (Mr. Drury) is laughing.

Mr. Drury: He sure is.

Mr. MacDonald (Egmont): I am not so much worried about members being in their second childhood as I am that they have forgotten their first. In dealing with youngsters there must be a recognition, in respect of offences regarded as crimes by society, that there is a process of maturing or growing which is not absolute and which is not predictable. There is nothing absolute about one child at age 10, 11, 16 or 17 and his ability to recognize and make moral judgments in respect of the acts he performs. I have not heard, and I know I will not hear, from the minister any categorical statement concerning how anyone can define with precision the ability of a young person aged 13 or 15 to judge the worthiness or unworthiness of his acts. There is no real indication of a desire to recognize that in this bill.

I do not question the sincerity but, rather, the judgment of the people who drafted this legislation. We are not just dealing here with young people between the ages of 10 and 17 and their relationship with the law. Really, we are dealing with what could well be regarded as the foundation stone for the relationship between the mature adult, his society and the law. If our prisons and penitentiaries are repeatedly filled with what we often refer to as chronic offenders or high-rate recidivists, it is because