

The Supreme Court, in the 1988 Morgentaler case, speaking of federal abortion legislation, acknowledged that:

The primary objective... is the protection of the foetus... a perfectly valid legislative objective.

This statement was made by Madam Justice Wilson. It spoke of the state's interest in the life of the preborn child as "pressing and substantial in a free and democratic society." This was emphasized in the judgments rendered by Justices Beetz and Estey.

The Supreme Court did impugn the administrative procedural design of the 1969 law. It left Parliament to legislate in this field. The court merely required a closer attention to avoiding unwieldiness in the escape clause or exculpatory provision of the law. Most major criminal offences require an escape clause for the absence of *mens rea* or ill will on the part of a defendant. While the escape clause of Bill C-43 is convoluted as part of the offence itself and may be far too destructive of the principle, it remains possible to amend it. At least such amendments are debatable.

The *Daigle* case of 1989 spoke positively of this important need in legislation on abortion. Speaking of policy, which in Morgentaler it was also careful not to adjudicate, that court said:

"Decisions based on broad social, political, moral and economic choices are more appropriately left to the legislature."

Here is our opportunity. As in Morgentaler, the court did not state that the parlance "everyone" in section 7 of the Charter should not include the preborn child, but rather called the settlement of that question of "normative task." A normative task, honourable senators, is a definitive task, belonging exclusively to legislature in clarifying its own legislative will.

Help in this direction is available in the findings of the learned Quebec Judges Nichols and Bernier. Judge Nichols found that, regardless of their accorded legal status, narrowly understood, the interests of the preborn "have been recognized by custom and implicitly consecrated in our laws." That, I believe, is a beautiful touchstone of French civil code as compared with other common law. Judge Bernier argued that the child "en ventre de sa mère" is entitled to be carried to term. The child, he said, "cannot be deprived of his natural right to life without cause which is just, sufficient, and acceptable in a free and democratic society."

Genuine legislative work on Bill C-43 is possible, given that the committee treating it pursues analysis and substantial amendment, helped by the best of jurisprudential advice and fundamental principles of justice. The power of Parliament to legislate is plenary, and its sensitivity to society should consider in depth the submissions of genuine experts yet to be called.

I believe, therefore, that the Legal and Constitutional Affairs committee stands in need of an instruction to pursue the failures of Bill C-43 at substantial and penetrating depth, as is proper to a committee looking into a bill of such first-class constitutional importance as Bill C-43.

*Beauchesne* tells us that an instruction may be required to direct a committee to do something which it might otherwise not do. At the present time, the Legal and Constitutional Affairs committee perhaps does not believe that it is within its understood scope to consider amendments which extend the objects of the bill so as to render Bill C-43 more generally acceptable. It is appropriate, therefore, for this house to issue a mandatory instruction to broaden the objects in keeping with the constitutionally-valid intent of a law on abortion to the full extent that the house as a whole or a committee of the whole would entertain. It is suitable to instruct the committee to hear from experts and pro-life groups who have positive suggestions for rendering Bill C-43 a valid criminal law, rather than to hear from a disproportionate number of witnesses who desire to negate the whole principle of Bill C-43. The debate about acceptability, for social policy, of various valid amendments, could then informatively be taken up at the report stage and at third reading.

● (1430)

The abortion of some 1.5 million of Canada's progeny in one generation, added to the fact that many of the killed preborn would now have reached child-bearing age themselves, is immoral. It is national genocide. It is a travesty of the fundamental principle of respect for life from its very beginning. The abortion rate, less measurable since 1988, may have saturated itself at the 70,000 plus per year level reached since the *Morgentaler* decision.

Canada could not sustain the loss of 20,000 soldiers per year in the First World War, the war to end all wars, which we dare to remember at this time of year. Let us also remember for whom those men died and women suffered: for the future of Canada, their children and their children's children. In the face of a full-tilt annihilation rate of 70,000 a year, a bill regarding abortion certainly does have prime constitutional importance, and not only.

If there existed no committee competent to deal with the various profound ramifications of such a bill as C-43, we would most certainly have resolved ourselves into a Committee of the Whole to deal with it, following British practice since the Second World War. Otherwise, we would have assembled a special committee. As it is, we do have a committee which can at least address the most salient constitutional ramifications of Bill C-43, since justice and rights extend to every sphere of human life. The Standing Senate Committee on Legal and Constitutional Affairs is competent to deal with the ethical, sociological and scientific ramifications of Bill C-43 in addition to the manifestly legal and constitutional ones which some members of that committee want to emphasize.

I move, therefore, that an obligatory instruction be given by this house to the Standing Senate Committee on Legal and Constitutional Affairs to give particular study to the individual flaws of Bill C-43 as identified, for instance, in my speech on June 26, and that the committee give full study and call expert witnesses to address all issues that are cognate to the bill, including its legal, constitutional, ethical, sociological and