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HOW WE CAN SAFEGUARD THE HOME

By EMILY F. MURPHY (Janey Canuck)

Police Magistrate of City of Edmonton and Judge of Juvenile Court

DESPITE the fact that we in Canada are heirs to the Statutory Laws of Great Britain, and have added to or amended these to suit both our general and particular requirements, there are still some laws which require alteration and others which should be called into existence. This is particularly true of the enactments which safeguard, or should safeguard, the home. While the majority of these are wise and well-considered, they still leave much to be desired. But, after all, in law as in life, the struggles are not so much between the good and the bad, as between the good and the better. While there is nothing new in life or in law, nevertheless, people change, conditions change, and civilizations change. The framing of a Children's Protection Act, a Liquor Law, or one governing assault, may affect or require other laws, so that the chain with all its links is endless.

It is not desirable that we in Canada should needlessly multiply laws, thus working out an injustice to some classes and burdening all. That country is best governed which is least governed. The environment of our people should be such that it is natural to do the right thing rather than the wrong. The recognition of this influence of environment upon conduct drew from Shakespeare the observation, "How oft the sight of means to do ill deeds make ill deeds done!" If we see to it that the law governing prohibition be observed, we prevent, to a very appreciable extent, the drugging of young girls, which is the chiefest weapons of that scoundrelly person of misshapen spirit known as the white-slaver. We also prevent the despoilation of intoxicated men, an evil art in which certain quick-fingered, low-moraled women do greatly excel, and of other offences it boots us not to mention.

Better Protection for Indian Women

A Canadian law which is in need of urgent consideration is that whereby it is a less offence to violate the sanctity of an Indian's home, tent, or wigwam, in which "an unenfranchised Indian woman" is an inmate, than it is to so violate the white man's home. In the case of the Indian, the fine may range anywhere from ten to one hundred dollars, or six months' imprisonment, whereas the keeper of a house in which white women are inmates may range from three months to one year and, on third and subsequent convictions, to two years.

This slack principled and highly discreditable clause relating to the Indian girl who has taken up the white woman's burden of "civilization," would seem to have been made for that class of pliant principled person commonly known as "gents." Every day it remains in our Code, it is a discredit to our sense of justice and to our morals. The Indian's wife and daughter require better treatment at our hands, especially in view of the fact that in all Canadian history, there is no reported case of an Indian having violated a white woman. This fact becomes the more astonishing when one considers that through all the ungentle conditions prevailing in the hinterlands of British North America, or in that part of it formerly known as Rupert's Land, the Indians have convoyed our women over innumerable leagues as their sole escorts, and have loyally and respectfully cared for them during the absence from home of their husbands and fathers.

Incidentally, this clause would seem to indicate that the Government places a higher rating on the morals of the enfranchised woman than on the unenfranchised, but the why and reason we cannot see. Indeed, the word "unenfranchised" in clause 220 of the Code becomes the jest or jolt of the whole compilation, when one remembers that the Federal Government has steadily refused to grant the Franchise to any race of women, whether they be white or red. It is obvious to the most ordinary capacity that the word was long ago inserted to insinuate that the Indian woman was made of inferior stuff—a kind of "human being of the second order"—and as a puny-hearted excuse for a glaring injustice. It should be necessary but to mention this open and notorious wrong to bring about its correction, and we are solidly persuaded this will be the way of it.

Protecting the Girl Who Works

A second enactment vitally necessary for the preservation of the home is one which will raise the age of consent from sixteen years to eighteen. This is an essential law because of the large number of girls under eighteen who are obliged to work in offices, stores, and factories, thus exposing them to the improper advances of certain reprobate persons possessed of fine manners and great cunning.

The girl may be flighty, or what we may describe as "a handful;" she may be no less reserved than she should; but, contrariwise, she is only a child with a girl-child's superb ignorance of deceitful and wicked ways. If these children could be protected until they have reached an age of responsibility, we should do more to prevent prostitution than we can do in any other way. There should always be present in our minds the fact that the vast majority of women who live by vice, or by what they define as "hustling," have been drawn or forced into the trade before the age of eighteen. Wisely has it been said that the age of consent in every nation marks the level of national morality.

Gathering in the Diseased

A third enactment required in Canada, and required immediately, is the establishment of a National Board of Health with authority to segregate all persons suffering from venereal diseases. No apology is needed for mentioning this subject, in that the life or death of the nation hangs on its acceptance or rejection. Our apathy and laxness in respect to this will be incomprehensible to our descendants. We need a new Moses and a new Pentateuch to inculcate into our Canadian people the principles of race conservation and race amendment.

In writing on this subject, the late Mr. Arnold White has said, "If the ancient Greek, modern Hebrew, and Japanese ideal of parental responsibility for the health of the offspring is desirable, it follows logically that no man should be invested with the right to profit by the degeneration or death of women and children."

It is argued by legislators in defence of their inaction that the men of our country will not tolerate registration of this infection. From this it would appear that their attitude is similar to that of Naaman, the Syrian, Commander-in-Chief of the Syrian Army and Prime Minister of State, who suffered from two diseases—pride and leprosy—and who wanted to be dealt with as a great warrior, and not as a leper.

It must also be remembered that, while the disease has heretofore carried a moral stigma, this stigma should no longer exist, since innumerable innocent persons of both sexes and of all ages have become sufferers. We need to reform our opinions as well as our laws in this respect, and in protecting our homes from this virus, there is no occasion for anything approaching publicity or placards. We should do things differently in Canada.

Punishment for the Unfaithful

It is chiefly to prevent the rapidly increasing murders arising out of unfaithfulness to the Marriage Contract, or arising out of jealousy, that we require in this Dominion a fourth enactment whereby the commission of adultery may become an offence under the Criminal Code.

The Marriage Contract has the distinction of being the only contract the incidents of which are fixed by law, and yet, incomprehensible though it be, the only one breach of which carries with it no penalty other than the possibility of an action for divorce. As this action must be taken in the Senate of Canada in five out of our nine provinces, its attendant costs make it prohibitive except to the wealthy in these five provinces.

This is all the more remarkable when one considers that marriage, as a contract, takes precedent over all other contracts, even to the extent of changing the status of the parties agreeing thereto, and this being so, its breach should be attended by fitting punishments. This was the rule, until comparatively recent times, through all ages and in all countries. This most notable omission from our Criminal Code is probably due to the severity of the penalties which formerly attended a breach of the Marriage Contract. In the mitigating of these punitive clauses, we have swung to the opposite extreme by abolishing all enactments except that nebulous ordinance known as "the unwritten law"—*the law whereby society recognizes the right of a dishonoured and despoiled man to create and operate a law for the protection of his family*—or, in a word, to license himself as his own prosecutor, judge, jury, and executioner. Just why this law should remain unwritten is a mystery.

It is true that this unwritten law is not formally recognized, and is usually presented to the jury by the counsel for the accused as "self-defence," or in some other pleasing guise which serves the purpose equally well. Unfortunately, too, in redressing his wrongs, the dishonoured man has recourse to no other weapons than the pistol and the pickaxe. If he kills with anything less drastic, society will not tolerate it. The more refined and equally certain method of poison has been entirely ruled out of court.

It is to prevent the commission of these crimes of the pistol and pickaxe that we require the enactment of a law under which action may be taken against the guilty parties and by which the safety and continuance of the home may be ensured. In the Province of Alberta, despite its sparse population, thirteen murders, or attempted murders, have occurred since January, 1914, by reason of unfaithfulness and jealousy.

The State Protects Itself

In the older Provinces of Canada, when a man brings a mistress into the home with his wife, the wife may secure some measure of redress under the law governing trespass, because of her dower in the home, but in the newer and western provinces, no such procedure is available.

This offence was considered so serious under the Justinian Code, that it was the only one for which a wife could obtain a divorce. It is plain that this provision was "man-made," divorce being exactly what the husband wanted under the circumstances.

It may be urged that the bringing of a mistress into the home is not a very general offence, but, for that matter, the same argument applies to vitriol throwing, sacrilege, or incitement to mutiny. It is, however, more general than is popularly supposed. All of us know cases. In one instance which occurred recently in Alberta, the wife shot the intruder, for which offence she was condemned to be hanged. In another, the wife lost her reason and was committed to the Provincial Asylum, while the intruder settled down comfortably in her place; indeed this highly unvirtuous husband so far forgot the existence of his wife as to take an oath that the intruder was his wife and, as such, entitled to half of his military pay and all of his patriotic allowance. It may interest the curiously inclined to know that, while the penalty meted out to him by the law was an adequate one, it was administered under a clause governing perjury and not one governing adultery, for, while a man may cruelly wrong his wife and his home without any fear of punishment, the State steps in where its own rights are assailed.

While the Criminal Code cannot reasonably be expected to make geographical distinction in dispensing the punishment of murder which has arisen out of unfaithfulness, yet the fact that no legal procedure was available for relief should in some way be taken into consideration. If, however, the Federal Government were to strike at the root of the matter by making adultery a criminal offence in all the Provinces of Canada, this provision would indubitably prove a safety valve, or temporary breakwater, for the passions of aggrieved or jealousy-jarred persons.