

*Criminal Code*

forth intoxicated and wander about in a public place without drawing opprobrium or some penal sanction upon himself. He is not free to go forth stealing, even if stealing may be a matter of life or death to him and he takes something literally to preserve life. He is not free to handle any potentially dangerous thing. Any hot-rodder can skip along, with youth on his side and the ability of young people to react more quickly to dangerous situations than older drivers do, but he is not free to drive as he likes down the centre of any main street in Canada. The law imposes sanctions against that sort of behaviour. In short, what I am saying is that personal norms are not our guidelines in drafting the criminal law, and the criminal law deals with a multiplicity of human behaviour.

The dilemma in which I find myself is that I do not like the existing law in this field. We were all shocked by a recent case in which a person who had practised homosexuality was kept in prison for an indefinite period under another section in the code which was upheld by the Supreme Court of Canada. I do not think that the facts in that case justified that sort of reprisal against an individual of aberrant habits, otherwise, God knows who really should be in an institution for the rest of their lives.

I reject the present law in this field, but I think that the minister, in taking the course he has followed, is shrugging off the whole problem rather than attempting to cope with it in some manner. I have to agree that remedies are not particularly rampant in this field, but we do have the Kinsey studies and, particularly in the last 15 years, there has been a growth in the science of ethology. Studies in this field have so far been confined to aberrant behaviour in wild geese and animals, but they are nonetheless an indication of how human behaviour might develop under certain environmental conditions. Within a few years these studies will probably give us a much better understanding of how we can cope with sexual perversions and other aberrant behaviour of human beings.

Admittedly my remedy comes late in the day because we have to vote on a particular measure and not discuss a course of action that otherwise could be followed, but I suggest that we have dealt with this subject in a purely legal manner. It has been studied well in the committee—it was a very fine committee—but it was studied as a legal rather than a health problem. Perhaps it would have been better to take up the subject in the health

[Mr. McCleave.]

committee where ethologists and other people could have come forward and made suggestions.

May I say as my final point that I have tried to argue as best I could that we cannot allow morality to become the prerogative of every individual. It is not individual morality that we are dealing with but group morality. I have here an article which appeared in the *Western Catholic Reporter* of February 9, 1969. This is not a periodical to which I, as a Presbyterian, subscribe but this copy was given to me by my friend, the hon. member for Calgary North (Mr. Woolliams). It contains one sentence which makes the argument as well as I could in 15 or 20 minutes. It reads as follows:

—the government has an obligation to promote the acknowledged norms of decency.

Unfortunately this is not what is happening in regard to the particular section of the code with which we are dealing.

I do not believe that problems of homosexuality and other aberrant sexual behaviour should be dealt with entirely as a penal matter; I think other courses will be open to be followed as our society becomes more knowledgeable on this subject. However, I would not like to see the field thrown wide open so that any person may think he has a right to do his thing. I do not think, for example, that we help society by making certain sexual aberrations permissible under the code. This might allow any pervert who molests children to think that if his neighbour down the street can be a homosexual and mingle with his kind he himself has the right to follow his own inclination to savage young children. Yet I think that unless we are very careful with what we do with the Criminal Code people will shrug—this seems to be the society of the shrug—at any suggestion that there is good law in the nation.

This is what bothers me most of all. People have to have a sense of what is right and proper in society and they must feel that there is an expression of this in the law. In the normal course of things, if someone goes astray society steps in and says that person is to be punished for going beyond what is regarded as good and proper behaviour. I believe that the intention behind the proposed amendments is good and I do not quarrel with it. But if we pass these amendments we will make our criminal law meaningless to a large segment of the country because people will automatically cast their minds back to the days of decadence of