

Criminal Code

taint of crime to certain actions which are merely personal matters to the persons concerned, actions which do not impinge on the public good or the rights of others because of the provisions in the law. These amendments do not legalize one thing. As I have said, they merely remove the taint of crime from certain behaviour, therefore making it permissible for people whose conscience permits them to behave that way, a way which was formerly prohibited. And it permits those whose conscience does not allow them to behave in this way to follow their conscience. This is all the law does.

• (9:20 p.m.)

Another principle, Mr. Speaker, which I think is relevant in 1969 and on which the bill is inadequate is that every psychological and psychiatric study has shown that penal institutions ought to be concerned with rehabilitation rather than punishment. The idea of punishment, vindictiveness and harshness toward human beings who have committed an offence against society is an old fashioned idea.

I submit to all my colleagues in this house and to all fellow citizens who are moved by deep religious feelings, that the ethics of all religions and all denominations the world over pleaded that we treat those who have fallen by the wayside humanely and compassionately and not with vindictiveness. Our criminal law ought to reflect this. This is the basic concept of Christian and Judaic and all other religions the world over. I always find it difficult to understand people who are sincere in their religion, but are not prepared to approach the public law in this way.

With your permission, Mr. Speaker, another principle I would like to mention is that there are very few absolutes in human behaviour. There are some moral absolutes, but very few. I can think of nothing that should more properly fall into the category of the absolute than the duty of the state to protect and preserve human life. I agree this is one of the most important and most pressing duties of the collectivity, but even that, Mr. Speaker, is not absolute.

There is no one in this house, regardless of his feelings toward abortion, birth control or anything else, who would deny a policeman the right to kill a criminal who threatens his life, or to make that a crime. No one wants to remove self-defence in the proper circumstances as a defence against a criminal charge. But more important still, even though the duty

of the state is to protect and preserve human life, in certain circumstances we support war and send our young men to kill and be killed, not always even to defend our lives but to defend what may be basically less than our lives, although just as important. We send them to defend those values which we believe deserve defending with our lives. Thus, even the duty of the state to protect and preserve human life is not absolute. The state knowingly and deliberately sends people to kill and be killed for the preservation of those values which collectively the people of a region, country and the world are not prepared to sacrifice.

Another elementary principle we ought to bear in mind, and it is relevant to some of the amendments which have caused a great deal of discussion, is that no law is a good law if in fact it is unenforceable or if when enforceable, it is discriminatory.

The laws regarding abortion, homosexuality and many other offences under the present Criminal Code are in certain respects unenforceable. When they are enforced it is against those who cannot afford the best legal assistance.

The Minister of Justice referred to the fact that he and his advisers have been unable to locate Canadian jurisprudence dealing with abortion covered by the old law in which the medical question had been a factor. The reason is obvious, Mr. Speaker.

Mr. Turner (Ottawa-Carleton): The prosecution was not taken.

Mr. Lewis: The reason prosecution was not taken is that when a medical decision is made, usually it is in relation to people who can afford the funds to acquire the necessary medical assistance and legal advice when it is needed. Only those people are prosecuted who do not have the funds and find it necessary to resort to unethical medical practitioners or to quacks. It is only in those situations where you have prosecution and that is why the other situation could not be found. Therefore, any amendment which makes the law more enforceable and more equitable is an improvement in our law and should be welcomed by everyone.

Finally, there is one more principle I would like to mention. There is an educative value to the law. People think of the law as concerned only with coercion, with enforcement. However, the law also has an educational value. A good law which is in tune with the modern age, reflects modern developments,