

Criminal Code

country which ought to be included in this bill are not included. I know of no excuse why they should be delayed. Furthermore, I suggest to the Minister of Justice and to the Prime Minister (Mr. Trudeau) that many of the proposed amendments in the bill ought to have been included in the Criminal Code of Canada long ago. They were recommended by committees and commissions ten years or more ago. Therefore, the minister must forgive me if I cannot be as lyrical about this piece of legislation as he is.

Mr. Turner (Ottawa-Carleton): We are not on the same side.

Mr. Lewis: I underline that those responsible for this bill cannot claim to be flaming revolutionaries or radical reformers.

Mr. Knowles (Winnipeg North Centre): Just "catcher uppers".

Mr. Lewis: They are just "catcher uppers", as the hon. member for Winnipeg North Centre (Mr. Knowles) says. With the indulgence of hon. members, Mr. Speaker, I want to express some general propositions that, in my view, ought to govern public and criminal law in a modern society. I emphasize that in our present society people generally, and young people in particular, are impatient with hypocrisy and cant which are so often expressed in our law and more often seen in the application of our law. They demand, and I welcome that demand, that we show consistency in our democratic pretensions and that parliament show consistency in the kinds of laws it passes.

In our criminal law we ought to amend everything that is a relic of the past and not consistent with modern morality. We ought to amend every provision that does not fit the technological age in which we live. That, it seems to me, ought to be the major guide to the way we revise our Criminal Code.

Also, our law ought to be alive and dynamic. It ought to be responsive to emerging situations in society. At present it is not. We do not amend our Criminal Code as soon as circumstances in our society require that to be done. It takes years of study and argument before we take a slight step in the direction of amending the law, such as is represented by many sections of the present bill.

As a member of the bar, and I say these words with respect to our judiciary, our law does not develop sufficiently through any actions of our courts. That is to say, in our system judges are bound by what lawyers

[Mr. Lewis.]

call by the frightful name of *stare decisis*. They are bound by precedent. That is, they are bound to apply the law as it was 40, 50 or 100 years ago. Every time I am in court and I hear counsel say, "I will now cite the law to Your Lordship and for the benefit of my learned friend,"—my learned friend being what lawyers call each other while hiding their daggers behind their backs—I can be sure that some dusty law will be referred to. When counsel says, "My Lord, may I recite a recent decision," you will find probably that the decision dates back to 1875, or 1850, or at the latest 1900. When a lawyer says in court, "I will now cite the leading case in this matter," it frequently happens that the leading case is 200 or 300 years old. Our habit of binding our courts by precedents of the past has made it difficult and almost impossible for our judges to interpret the law in a manner that will bring it to life and allow it to respond to the needs and developments in our society.

In trying to reform the criminal law we must remember that in 1969 we cannot define as a public crime certain actions which come within the ambit of personal conscience. We cannot define as criminal certain actions which, in another context, may be defined as sinful, or whatever other word one wishes to apply to them. When I studied the history of the law in my university days in England and here, I learned that much of our law developed during a period when society was governed by the church as well as the state. A good many of our laws can be traced to that historic fact. As society develops, and as the separation of church and state developed, the influence of the church in the formation of laws has become less and less. I urge that we do not term public crimes those actions which are matters for an individual's conscience. Behaviour which is governed in private by an individual's conscience ought not to be the subject of any provision in the criminal law.

Some hon. Members: Hear, hear.

Mr. Lewis: Confusion has arisen because of confusion in the use of words. At some point in his speech the hon. member for Calgary North said that a certain amendment—I forget which one—would legalize something. That was sheer semantic nonsense. The amendment to the section dealing with abortion does not legalize anything, the amendment to the section dealing with homosexuality does not legalize anything. Nothing is legalized. All these sections do is remove the