

*Criminal Code*

my justification are simple. It is my submission that the M'Naghten rules have stood the test of time. While it is true that on one hand the M'Naghten rules have their strong critics, on the other hand there may be found their strong supporters.

I propose, with deliberate economy of language, to outline the historical background of the M'Naghten rules and their progress. Forty years ago—in 1924, to be precise—Lord Justice Atkin headed a 27-man committee, a committee of eminent and outstanding men both in the law and in medicine, who were reinforced by an opinion from the British medical association. They brought forth a recommendation that the M'Naghten rules should be modified. That recommendation died on second reading in the British parliament. In 1953 a royal commission was again established in Great Britain and the question was given searching and careful inquiry. Once more the British medical association came forward, and the committee, armed with their report, went a step further than the Atkin committee and recommended to parliament that the M'Naghten rules be abrogated. Once more that recommendation died in the British House of Commons.

The hon. and learned member for Greenwood (Mr. Brewin) has stated that in 1957 Chief Justice McRuer headed a commission to examine the same question. I share the hon. member's respect for the chief justice of Ontario and I should like to put on the record the conclusions of the majority report, which may be found at page 46 of the report and which reads in part as follows:

There should be no change in subsection 1, 2 and 4 of section 16 of the Criminal Code.

Then the majority report goes on to deal with the law suggested by the hon. member for Greenwood, sometimes known as the laws of the state of New Hampshire. This is what the report said:

The repeal of section 16 and the substitution of the laws of the state of New Hampshire or those of the district of Columbia would not make for a better administration of justice in Canada.

How is it that the M'Naghten rules, subjected to the severest criticism, have withstood the onslaughts of medical associations, of legal committees and royal commissions? An appropriate consideration in answering that question, I suggest, is to determine the purpose for which the M'Naghten rules were formulated. The object of the criminal law, as I understand it, is to protect society, and while there should be other considerations than deterrence, nonetheless the prime purpose of the law is to protect society from the depredations of dangerous and vicious people.

[Mr. Pennell.]

It should be borne in mind that the M'Naghten rules are not set forth as an all-embracing definition of insanity. Perhaps it is more accurate to say that they do not define insanity at all. They set forth a standard of criminal responsibility.

In that regard I wish to point out—and I cannot emphasize this too strongly—that even in 1843 when the judges brought forth the M'Naghten rules, they were aware of the fact that the medical association had a much broader view as to the definition of insanity. But the judges who brought forth the M'Naghten rules started from the fundamental proposition that every person is presumed to be sane and responsible in law for his acts. Then they went a step further and said that if the person desired to escape criminal responsibility it must be proved that either he did not know the nature and quality of his act, or if he did know it, he did not know that it was wrong. The hon. and learned member for Greenwood pointed out in his lucid statement that this is putting the question in the strait-jacket of the right or wrong test. He calls to our attention that modern medical science shows that you cannot, in determining insanity, put the human mind into separate compartments and determine this question solely on the principles of reason, and it must be determined by looking at the whole human function. I concede that, judged solely by medical standards, it is difficult to defend the M'Naghten rules, but I respectfully suggest that in practice they have worked and I am not aware of any substantial miscarriage of justice because they have been maintained in the Criminal Code.

I would, in this great conflict between the M'Naghten rules and the medical association, borrow the words of Mr. John Robinette, the treasurer of the Law Society of Upper Canada and one of the leaders of the bar in this country. This is what he said in giving his opinion before the royal commission:

It seems to me that it might be worthy of consideration to exclude from the code entirely the word insanity, and what is now section 16 should merely provide that under certain circumstances a person shall not be criminally responsible for his acts or omissions, leaving out any reference to insanity because I think that is probably what causes some of the controversy between the medical profession and the legal profession.

There is a general maxim that if the law satisfies the public conscience, then it is doing its duty. It is my humble and respectful submission that over the years the M'Naghten rules have satisfied the conscience of the majority of the people in this country and no one can place his finger on any substantial miscarriage of justice because the rules are still in the Criminal Code. I do not, Mr.