

Criminal Code

insanity does not only or primarily affect the cognitive or intellectual faculties, but affects the whole personality of the patient, including both the will and the emotions.

One or two misconceptions should be cleared up. This change in the law is not proposed because of any softness of outlook toward those who commit criminal offences. Indeed there are many cases in which persons who are mentally ill, but criminally responsible under the M'Naghten rule, receive sentences, serve their terms in jails or penitentiaries and are released while still suffering from mental illness. These people time and again commit further serious crimes.

The real question, after all the theoretical discussion, is whether the proper remedy is punishment or treatment. I know that many people, feeling indignant at the horrible anti-social acts which are sometimes committed, believe the answer is punishment. Unfortunately, punishment works no cure and indeed may intensify the criminal impulses of the person punished. An inmate of a mental hospital, however, should not be released from the hospital until it is certified that he is cured or at least not dangerous to himself or others. Psychiatrists can make mistakes but there is no reason why the law should not direct attention to the right question, which is: Has the person involved been cured of the mental defects which, if he is released, will make him a danger to society? The prison warden at the expiration of a criminal sentence has no right to ask such a question before he lets the prisoner out, possibly to endanger the public.

In the Durham case, the court said:

The legal and moral traditions of the western world require that those who of their own free will and with evil intent commit acts which violate the law, shall be criminally responsible for those acts. Our traditions also require that where such acts stem from and are the product of mental disease or defect, moral blame shall not attach and hence there will not be criminal responsibility.

In our society the essential aim of the criminal law should not be to induce mass fear of punishment but to reaffirm the value of each individual by due process in his conviction and purposeful treatment thereafter.

I know, Mr. Speaker, that this bill which I have introduced will probably suffer the fate of many other private members' bills. It is however my earnest hope that the government will give serious consideration to this matter which I have brought forward.

There are many other fields in which we reject the impact of modern thought and science, but is there any reason why we should insist in our criminal law in asking a question framed 120 years ago, when

psychiatric knowledge was in its infancy? Is there any reason why this parliament in 1964 should not gain a reputation throughout the civilized world for a modern and enlightened attitude to the question of criminal responsibility? I urge the government to give the most careful attention to the amendment of the criminal law in this respect.

I would like to conclude by quoting the words of Winston Churchill, who in the midst of the darkest days of the world war made the following statement:

The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country. A calm, dispassionate recognition of the rights of the accused, and even of the convicted criminal against the state... Those are the symbols which, in the treatment of crime and criminals, make and measure the stored-up strength of a nation and are sign and proof of the living virtue in it.

Mr. Speaker, the maintenance of an obsolete and antiquated law of criminal responsibility would show that we in this house in Canada were failing in this test. I suggest it is in this spirit that the members of this house should consider that the time has come to make sure that there are no more cases in Canada like the case of Ronald Markle, now being punished for a crime for which according to our modern knowledge and judgment he was not responsible mentally or morally. If we in this parliament do something about this type of problem we will be measuring up, in Mr. Churchill's words, to one of the "tests of civilization".

Mr. L. T. Pennell (Brant-Haldimand): I am sure the house is grateful to the honourable and learned member for Greenwood (Mr. Brewin) for bringing to our attention this most important aspect of the criminal law. I trust that if I indicate some difference of opinion between myself and the author of Bill C-14 he would not think I am treating his enlightened efforts in too summary a fashion.

It is true, as the hon. member stated, that we are still administering the law as it was laid down and applied in the trial of Daniel M'Naghten almost a century and a quarter ago. The main criticism of section 16 of our criminal law is, as I understand it, that the law has not kept pace with medical science and knowledge. It is contended that as medical science threw back the frontiers the law has not been modified. That, of course, is the object of the bill introduced by the hon. member for Greenwood.

I am sure the hon. member would agree that his proposition is not a novel one. I do not say that in any desire to detract from the worthiness of his efforts. My purpose and