rules, but since 1843 a very great deal has been learned in the fields of medical and psychiatric knowledge.

In the Durham case in the United States in 1954, an American court of appeals in Washington, D.C., substituted a new rule, which is the basis of the amendment I propose. The provision which that court adopted was that the accused is not criminally responsible if his act was the product of mental disease or mental defect.

Judge Bazelon, who wrote the judgment of the American court of appeals, has made the following statement:

> In this century the chorus of protest (against M'Naghten's rules) has become deafening. In a poll taken a few years ago 80 per cent of 300 American psychiatrists pronounced those rules unsatisfactory.

One of the greatest of American judges, Mr. Justice Cardozo stated flatly:

> Everyone concedes that the present definition of insanity has little relation to the truths of mental life.

Judge Bazelon tells us that the main criticisms of the right-wrong test are fourfold:

> First, it misses the point entirely because whatever "insanity" means, the term refers to abnormal conditions of mind that cannot all be gathered together under the rubrics, "know" and "wrong." Second, the test is based on an outmoded theory of faculty psychology derived from phrenology.

—a rather ancient science—

> —that dividend the topography of the mind into separate compartments. Modern psychology views a man as an integrated personality and reason is only one element of that personality, and not the sole determinant of conduct. Third, the test poses to the expert an ultimate question involving legal and moral, as well as medical issues. Fourth, the test has so strait-jacketed psychiatric testimony that insanity is defined exclusively in terms of extreme psychosis and patent organic deterioration.

From the judicial point of view, Judge Bazelon says:

> What all this controversy adds up to, practically, is whether we are to have more and freer psychiatric testimony. I myself have no hesitance in taking the position solidly in favour of freer and fuller expert testimony.

He goes on to state:

> This is exactly what we did in the District of Columbia five years ago when the United States court of appeals adopted the Durham rule. Under this new, more liberal rule—

—which description I hope will commend it to the hon. members opposite—

> —a modern and comprehensive body of law governing the administration of the insanity defence is being slowly built up on the basis of continuing experience. At the same time, the community's fears that great numbers of dangerous persons would be freed to attack again, are being put to rest. Nothing of this sort has happened. Defendants acquitted under the Durham rule have been sent to mental hospitals, many of them for longer periods than they would have served in prison, and they appear to get into less trouble after release, than prison convicts.

Therefore the fear that is sometimes expressed that if this rule is changed people will be let out and will more readily commit other crimes has no basis in fact.

In 1955 the American law institute, composed of a leading body of distinguished lawyers, judges and scholars, urged the liberalization of the M'Naghten rules. In a recent study sponsored by the American bar foundation in 1962 under the title "The Mentally Disabled and the Law", the following conclusions are reached:

> It is desirable to broaden the class of the mentally disabled who are held criminally irresponsible without removing the issue from the jury. The M'Naghten and irresistible impulse tests defined too narrowly the class of persons who should be hospitalized rather than imprisoned. These tests also prevent psychiatric witnesses from presenting an adequate word picture of the defendant's mental condition because they are phrased in terms having little relevance to current learning in the field of psychology. The product test remedies both of these defects.

I am aware, along with other hon. members who are familiar with this subject, that this matter was dealt with in 1957 when a royal commission presided over by Chief Justice McRuer made recommendations contrary to those of the bill I am now placing before the house. It so happens that Chief Justice McRuer was a former partner of mine and of the hon. member for High Park (Mr. Cameron). I worked closely with him as junior counsel and I have the greatest respect for Chief Justice McRuer, a respect which was deepened by my personal knowledge and experience. I know he is held in great respect by members of the legal profession. Nevertheless, I find the dissenting report of that commission, prepared by Her Honour Judge Kinnear and Dr. Jones, professor of psychiatry at Dalhousie University, far more persuasive and compelling. Indeed, with great respect, it seems to me that the chief justice in this report has erred by adopting a too legalistic approach to the problem. He rejected the proposal to amend the Criminal Code upon the basis of the contention that the word "appreciate" in the code substantially differentiates the Canadian law from M'Naghten's rules.

This is a refinement which, as the dissenting report indicates, not even judges and lawyers are able to appreciate.

The preferable view seems to me to be that adopted by the so-called Gowers commission in Britain, which quotes statements of doctors with experience in mental diseases appearing before it, as follows:

> The M'Naghten test is based on an entirely obsolete and misleading conception of insanity, since