

Criminal Code

act he will be certifiable and he will never come up for trial. The real question is whether or not he also knows the act was wrong. Lord Devlin poses the rather important question of why we should seek to have one standard for a person of normal mind and another standard with respect to morality for a person who has something less than a normal mind. I quite appreciate the liberal sentiments and the humanitarianism of my hon. friend—

Mr. Brewin: It is just common sense.

Mr. Matheson: —in presenting this bill to the house, but why should a man of a somewhat diseased mind be free to do what he knows is wrong any more than any other person? If we are prepared to effect reform by way of penalty, if we are able in a particular case to allow psychiatric evidence and advice to come into the picture, whether it is a matter involving sexual assault or murder or other crimes that may be attributable in some way to mental abnormality, if we are able to consider these factors, in what way is the convicted person hurt?

Lord Devlin has indicated to us this proposition, that one of the important things from the standpoint of treatment is that the person who has control over the individual with the diseased mind will have some kind of certainty with respect to controlling treatment. I am sure there is not a member in the house interested in penology who is satisfied that we are doing what we should in our penitentiaries or jails with respect to psychiatric care. Quite frankly, we do not have enough people to do this important work.

Mr. Fisher: Why do you not spend a lot more money on it?

Mr. Matheson: I think we should. I hold the view that such treatment is of critical importance. At this time we are rapidly moving toward a figure of 10,000 people in our federal penitentiaries. It is obvious we are not providing nearly enough treatment services. I am addressing myself however to the argument placed before us by Lord Devlin with regard to a person who is convicted, for instance, of the crime of arson as suggested by the distinguished proponent of the bill, namely that if the individual is confined for a certain length of time it is possible for the psychiatrist to work with him and if the man makes notable progress the psychiatrist will be the first to make a recommendation through the proper channels that the man be allowed out on parole or ticket of leave or something of that kind which, while allowing the man his liberty, will at the same time ensure the continued treatment that is so necessary in this type of case.

Does it help simply to throw out this proven test, which is ultimately the old test of *mens rea*? When we boil down the rule in M'Naghten's case what we really find is that only a man who in fact knows that what he is doing is wrong shall be convicted, whether he be sane or insane. If the Criminal Code were to be changed in the manner suggested in the bill we could have a situation where a guilty minded person could walk out of a court room free. It is true there are other provisions now under the Criminal Code whereby the court could actually order that a man be placed under mental observation. I think this is the kind of thing we may be compelled to do in a good many cases where there is not actually a conviction but where a person comes clearly within the terms defined in Bill C-14.

What harm is there if such a person is actually convicted of the criminal offence charged when he comes before an intelligent court that is prepared to listen to psychiatric evidence and to be guided by it on the question of whether or not the man should go to a penitentiary or to jail or to a hospital, or should even be kept under psychiatric observation in his own home for some time? I am sure that the contribution made by the hon. member in bringing this bill to the attention of the house is worth while. I do not think it is fair to overemphasize the fact that there was a minority report by the royal commission. Chief Justice McRuer has a high reputation, as the hon. member himself said, among those who are interested in criminal jurisprudence.

Mr. Brewin: The minority report makes very good sense, if you read it.

Mr. Matheson: I have read the minority report and I have very high respect for Her Honour, Judge Kinnear. However, I would point out that the chief justice of the high court of Ontario, who has conducted many capital cases and has had a long and wide training in criminal law, obviously has benefited from much broader experience, much closer, I submit, to the experience of Lord Devlin, than can possibly have been had by such a distinguished and scholarly person as Her Honour Judge Helen Kinnear.

Mr. G. W. Baldwin (Peace River): Mr. Speaker, I want to make some very brief observations. I agree with what the hon. member who proposed the bill has said. His argument was reasoned, eloquent and very intelligent and I accept it in its entirety. I do want to point out to the house that I understand that last year a committee on criminal law reform was established in the United Kingdom and in its third or fourth report it dealt with this