The Psychiatrist’s Guide to Right and Wrong: Judicial Standards of Wrongfulness since M’Naghten

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In insanity defense litigation, the precise legal definition of wrongfulness is often critically important. References in the M’Naghten Rules to the appropriate standard of wrongfulness were ambiguous, resulting in a divergence of judicial opinion as to whether wrongfulness means legal wrong, subjective moral wrong, or objective moral wrong. This article reviews and analyzes these three judicial standards of wrongfulness in the context of case law from jurisdictions that follow each of the respective standards. The evolution of knowledge of right and wrong tests of criminal responsibility is traced back to its philosophical roots. Most psychiatrists claim no expertise in matters of morality or law. The American Psychiatric Association would bar psychiatric expert testimony on the ultimate issue of insanity, on the grounds that there are “impermissible leaps in logic” when psychiatrists opine on the probable relationship between medical concepts and moral-legal constructs. Whether or not they testify on the ultimate issue, psychiatrists should ascertain the applicable standard of wrongfulness in order to properly relate their findings to the relevant legal criteria for insanity and thereby enhance the probative value of their testimony.

One of the classic debates in criminal law has centered on the meaning of the terms “wrong” and “wrongfulness,” as they are used in the various tests of criminal responsibility. (Both terms are synonymous and will be used interchangeably throughout this paper.) The precise meaning of wrong in this context can literally be a matter of life and death.

As Morris has noted:

If one charged with murder had a “disease of the mind” at the time of the killing and knew the “nature and quality of his act,” the question whether he “knew that what he was doing was wrong” becomes the phrase on which his life may hang: its meaning is not therefore of merely academic interest.

In the courtroom, a determination of insanity—whatever the standard—almost never bears on the first prong of the legal test, which deals with whether the defendant knew or appreciated the “nature and quality of his act” (a phrase that has been typically held to mean that the defendant must have understood the
The references in the M'Naghten Rules to the appropriate standard of wrongfulness were ambiguous, because the judges did not make it clear what construction they were giving to the word wrong. The controversy over this issue has continued to the present time, with all sides to the debate claiming to follow the authority of the M'Naghten Rules. (Some commentators have concluded that if the accused had knowledge of either legal or moral wrong, it is immaterial that he or she was ignorant of the other, and did not fall within the M'Naghten Rules.) At one point the M'Naghten judges said that a person is punishable if “he knew at the time of committing such crime that he was acting contrary to law; by which expression we . . . mean the law of the land.”

However, at another point they observed:

If the question were to be put as to the knowledge of the accused solely and exclusively with reference to the law of the land, it might tend to confound the jury by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction; whereas the law is administered on the principle that everyone must be taken conclusively to know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable [emphasis supplied].

The first passage quoted appears to support the position that wrong means legal wrong (the “illegality” standard), whereas the emphasized part of the second passage appears to support the view that it means moral wrong. (A further analysis of “moral wrong”, to be discussed in a later section of this paper, leads to a distinction between the accused’s subjective moral belief of what ought to be done and his cognition of an objective standard, i.e., other people’s moral belief of what ought to be done: the subjective moral standard vs. the objective moral standard.)

Adherents of the moral standard contend that the M'Naghten judges were merely attempting to state the law of England as it then existed, i.e., to express the existing law, and that in cases before M'Naghten the prevailing test (which the Rules had not been intended to change) was whether the accused had the capacity “to know the difference between good and evil” rather than the capacity to “know the law.” Morris supports this position when he states:

If it be accepted, as can hardly be denied, that the answers of the judges to the questions asked by the House of Lords in 1843 are to be read in the light of the then existing case-law and not as novel pronouncements of a legislative character, then . . . exhaustive examination of the extensive case-law concerning the defense of insanity prior to and at the time of the trial...
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of M'Naughten [sic] establishes convincingly that it was morality and not legality which lay as a concept behind the judges' use of "wrong" in the M'Naughten [sic] rules.7

Proponents of the "illegality" standard are no less adamant in their view. Confirming this interpretation, Lord Goddard asserted in Regina v. Windle, "In the opinion of the court there is no doubt that in the M'Naghten rules "wrong" means contrary to law and not "wrong" according to the opinion of one man or a number of people on the question of whether a particular act might or might not be justified."8

This ambiguity in the M'Naghten Rules has resulted in a divergence of judicial opinion as to the standard against which wrongfulness is to be judged. In this context the term wrong has three possible meanings:

1. Standard I: The illegality standard: The accused lack criminal responsibility if, as a result of a psychiatric disorder, they lacked the capacity to know or appreciate that their acts violated the law;

2. Standard II: the subjective moral standard: The accused lack criminal responsibility if, as a result of a psychiatric disorder, they believed they were morally justified in their behavior even though they may have known or appreciated that their acts were illegal and/or contrary to public standards of morality;

3. Standard III: the objective moral standard: The accused lack criminal responsibility if, as a result of a psychiatric disorder, they lacked the capacity to know or appreciate that society considers their acts to be wrong (i.e., to know or appreciate that their acts were contrary to public standards of morality).

Some jurisdictions resolve the ambiguity from the onset where the statute uses the term "criminality" instead of wrongfulness. In jurisdictions with statutes based on the Model Penal Code, the use of the term wrongfulness should be understood not to mean criminality, because the Code offers these terms as mutually exclusive alternatives.9 In the following sections we will discuss jurisdictions that follow each of the three standards of wrongfulness and present illustrative case law from each.

Standard I Jurisdictions: The Illegality Standard

In England M'Naghten is now read as requiring that the accused knew that his or her act was legally wrong.10 (The present English authorities,11 at odds with many earlier cases, hold the view that wrong means contrary to law.) The Supreme Court of Canada12 and some States in this country13 have also approved the proposition that wrong means legally wrong.

In the Windle case the accused was charged with poisoning his wife with an overdose of aspirin. The accused

... was a man, 40 years of age, of little resolution and weak character, and was married to a woman 18 years his senior. His married life was very unhappy; his wife was always speaking of committing suicide and the doctors who gave evidence at the trial were of opinion, from the history of the case, that she was certifiably insane. Eventually ... the appellant gave his wife 100 [aspirin] tablets. He sent for a doctor and told him that he had given his wife so many aspirins. She was taken to hospital, where she died. The appellant informed the police that he had given his wife 100 aspirins,
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and added: "I suppose they will hang me for this?" 14

A psychiatrist called by the defendant testified that he was suffering from a form of "communicated insanity" known as folie à deux. All of the psychiatric experts testified that in their opinion the accused, when administering the fatal dose of aspirin to his wife, knew that he was doing an act that the law forbade. The trial judge, having heard all of the evidence, ruled that there was no evidence of insanity and withdrew the issue from the jury. The Court of Criminal Appeals concluded:

In the present case, it could not be challenged that the appellant knew that what he was doing was contrary to law, and that he realized what punishment the law provided for murder . . . . In these circumstances, what evidence was there to leave to the jury which could suggest that the appellant was entitled to a verdict of guilty but insane . . . ? If there was no such evidence, the judge was entitled to withdraw the case from the jury and was, I think, right in doing so. 15

This case clearly demonstrates that, in general, it is easier to rebut a claim of insanity in which the only issue is held to be knowledge of legal wrong. Admissions by the accused (as in Windle) or attempts to avoid discovery or apprehension may provide irrefutable evidence sufficient to prove the requisite knowledge of legal wrong.

Standard II Jurisdictions: The Subjective Moral Standard

Under the subjective approach, the accused are not criminally responsible for their acts if, as a result of a psychiatric disorder, they believed they were morally justified in their behavior even though they may have known or appreciated that their acts were illegal and/or contrary to public standards of morality (i.e., that they would be condemned in the eyes of their "right-thinking fellow men"). 16

The United States Court of Appeals for the Ninth Circuit, in adopting this standard in Wade, 17 chose the alternative term wrongfulness (rather than criminality) in the American Law Institute's test of legal insanity (i.e., the Model Penal Code). 18 The Wade court, however, did not clarify whether the moral standard it had adopted was to be subjective or objective. This ambiguity was resolved in a later case, United States v. Segna. 19 Segna, a non-Indian, shot and killed an Indian policeman on the Navajo Indian Reservation in Arizona. Psychiatric evidence was adduced to the effect that Segna was suffering from a fixed delusional system, the central feature of which was his conviction that he was a persecuted Indian who was morally justified in exacting revenge against an agent of "the white man's" oppressive government. The record contained evidentiary support for the defendant's theory that, although he realized that the offending act was illegal and contrary to public standards of morality, because of his psychiatric disorder he possessed an irrational belief that the act was morally justified. The court stated:

It is clear from the ALI debates leading to the inclusion of the word wrongfulness in the ALI test that the drafters intended that word to mean more than contrary to law. It is less clear, however, whether the drafters intended this expanded term to be measured objectively
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rated into a series of defenses in criminal law, i.e., "Excuses." The two fundamental types of insanity defenses are predicated on these excuses: those based on the mentally disordered individual's ignorance about the nature and quality of the criminal act or its legal or moral status; and those based on a compulsion to commit the act (as a result of volitional impairment). An excellent exposition of the philosophical and ethical issues underlying the concepts of moral responsibility and insanity, as reflected in tests for criminal responsibility, is set forth in Radden's book Madness and Reason. Colvin presents an equally excellent analysis of the subject in terms of legal theory and modern jurisprudence in his law review article Ignorance of Wrong in the Insanity Defense.

Bonnie and others have argued that the focus on the kind of wrong (legal or moral) "actually deflects attention from the critical and more subtle inquiry that should be undertaken—an inquiry that has more to do with the processes of mental and emotional dysfunction rather than its content." It is clear that psychiatrists are experts in medicine, not the law. When, however, 'ultimate issue' questions are formulated by the law and put to the expert witness [he] is required to make a leap in logic. He no longer addresses himself to medical concepts but instead must infer or intuit what is in fact unspeakable, namely, the probable relationship between medical concepts and legal or moral constructs such as free will. These impermissible leaps in logic made by expert witnesses confuse the jury.

Psychiatrists are, however, permitted to testify as to the defendant's diagnosis, mental state and motivation at the time of the alleged offense, so as to assist the fact-finder to reach the ultimate conclusion on the issue of insanity. Most psychiatrists would agree that determining whether a defendant is legally insane is indeed a matter for fact-finders and not for experts. They would agree that when the psychiatrist "is forced to adopt the vocabulary of morality and ethics, he is speaking in what to him is a foreign language and in an area in which he claims no expertness."

In 1984 Congress amended Federal Rule of Evidence 704, prohibiting psychiatric expert testimony on the ultimate legal issue of whether a defendant is insane. The purpose of this amendment was to eliminate the confusing spectacle of competing psychiatric expert witnesses testifying to contradictory conclusions as to the ultimate legal issue of insanity.

The rationale for this limitation on psychiatric testimony in insanity cases is set forth in the American Psychiatric Association's Statement on the Insanity Defense, which asserts that there is a "logical leap" between scientific psychiatric inquiry and moral-legal conclusions:

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However, it cannot be said that this position is unanimous. Ciccone and Clements have argued, on clinical and philosophical grounds, that psychiatrists may answer the ultimate legal question in insanity cases without making an impermissible logical leap.\textsuperscript{50} A number of jurisdictions (including New York) in fact do permit psychiatric expert testimony to embrace the ultimate legal issue on insanity. (Moreover, even when precluded from ultimate issue psychiatric testimony, the expert is still permitted to present opinions concerning the defendant's diagnosis, mental state and motivation at the time of the act. Thus the limitation on expert testimony in insanity cases may only result in experts resorting to a variety of indirect means in order to bring the accused's sanity (or insanity) to the fact-finder's attention.)\textsuperscript{51}

As a threshold issue, psychiatrists should ascertain the appropriate legal standard of wrongfulness within the jurisdiction in question. Whether or not they are permitted to testify as to the ultimate question of the defendant's insanity, by properly relating their clinical psychiatric findings to the relevant legal criteria for criminal responsibility that apply, psychiatrists are better prepared to provide data and inferences to the factfinder that are needed to achieve the law's purpose. We have delineated and reviewed the three judicial standards of wrongfulness in order to assist the psychiatrist to conceptualize these distinctions and to enhance the probative value of psychiatric testimony.

\textbf{References}
3. \textit{Ibid} at 723
6. Stapleton v. the Queen, 86 C.L.R. 358, 368 (High Court of Australia, 1952)
7. Morris, supra note 1 at 436
8. Regina v. Windle, 2 Q.B. 826, 834 (Court of Criminal Appeals, 1952)
12. Schwartz v. the Queen, 1 R.C.S. 673 (Supreme Court of Canada, 1977)
14. 2 Q.B. 826, 827
15. \textit{Ibid} at 834
16. Regina v. O., 3 Crim. L.Q. 151, 153 (1959)
17. Wade v. United States, 426 F.2d 64 (9th Cir. 1970) (en banc)
19. United States v. Segna, 555 F.2d 226 (9th Cir. 1977)
21. 555 F.2d 226, 232
22. United States v. Sullivan, 544 F.2d 1052 (9th Cir. 1976)
23. People v. Schmidt, 216 N.Y. 324 (1915)
25. 216 N.Y. 324, 340
27. 216 N.Y. 324, 332
28. \textit{Ibid} at 334
29. \textit{Ibid} at 336 (quoting Comm. v. Rogers, 7 Mete 500)
30. \textit{Ibid} at 340
32. People v. Lyttle, 408 N.Y.S.2d 578 (1976)
33. People v. Irwin, 4 N.Y.S.2d 548 (1983)
34. People v. MacDowell, 508 N.Y.S.2d 870 (1986)
35. \textit{Ibid}
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Rev 54:1227-60, 1966
40. Ibid
42. Bonnie, supra note 9 at 24
46. Fed. R. Evid. 704: Rule 704 subparagraph (b) as amended reads as follows: No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.
48. Ibid
49. Sobeloff S: Insanity and the criminal law: from McNaughten to Durham, and beyond. ABAJ 41:793-812, 1955