

# The Psychiatrist's Guide to Right and Wrong: Part II: A Systematic Analysis of Exculpatory Delusions

Robert Lloyd Goldstein, MD, JD

Although delusions are *prima facie* evidence of psychosis, their mere presence is not a sufficient condition for exculpation on the grounds of insanity. In most cases, a determination of insanity will depend on the specific *content* of the delusions and whether, as a result of these delusions, the defendant was unable to know or appreciate the wrongfulness of his or her act. Delusions may be subdivided into four types, according to their content: 1) delusions of being controlled, 2) delusions of grandiosity, 3) delusions of persecution, and 4) delusions of jealousy. An analysis is undertaken of these delusional subtypes in terms of their exculpatory effect within the jurisdictions which follow each of the three respective standards of wrongfulness (i.e., the illegality standard, the subjective moral standard, and the objective moral standard). The criminal law does not recognize a transcendent constancy in the legal insanity status of psychotic individuals whose offense was the result of their delusional ideation. In most such cases, exculpation is based primarily on the specific content of their delusions and how it comports with the law of the jurisdiction in which the act was committed (the *lex loci delicti commissi*).

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*. A previous paper reviewed and analyzed these three judicial standards of wrongfulness in the context of case law from jurisdictions which follow

each of the respective standards.<sup>1</sup> These standards against which wrongfulness is to be judged are classified as follows:

1. **Standard I Jurisdictions (The Illegality Standard)** The accused lacks criminal responsibility if, as a result of a psychiatric disorder, he lacked the capacity to know or appreciate that his act violated the law.

2. **Standard II Jurisdictions (The Subjective Moral Standard)** The accused lacks criminal responsibility if, as a result of a psychiatric disorder, he believed he was morally justified in his behavior, even though he may have known or appreciated that his act was illegal and/or contrary to public standards of morality.

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Dr. Goldstein is the course director of the "legal and ethical issues in the practice of psychiatry" program and associate professor of clinical psychiatry, College of Physicians and Surgeons of Columbia University, New York, NY. Address reprint requests to Dr. Goldstein, 390 West End Ave., New York, NY 10024.

3. *Standard III Jurisdictions (The Objective Moral Standard)* The accused lacks criminal responsibility if, as a result of a psychiatric disorder, he lacked the capacity to know or appreciate that society considers his act to be wrong (i.e., to know or appreciate that it was contrary to public standards of morality).

In almost all litigated insanity cases, the principal issue in dispute is whether the defendant knew or appreciated the wrongfulness of his conduct.\* Far from being a pedantic exercise, the precise interpretation to be accorded to *wrongfulness* in a particular case may be dispositive in regard to the ultimate outcome. As Morris 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.<sup>2</sup>

The American Psychiatric Association's 1982 *Statement on the Insanity Defense* recommends that psychiatric disorders potentially leading to exculpation "should usually be of the severity (if not always of the quality) of conditions that psychiatrists diagnose as psychoses."<sup>3</sup> As defined in DSM-III-R, psychosis presupposes a "gross impairment in reality testing and the creation of a new reality."<sup>4</sup> The definition goes on to state: "Direct evidence of psychotic behavior is the presence of either delusions or hallucinations . . ."<sup>4</sup> Thus an individual who was clearly delusional would generally be classified as psychotic and

\* A determination of insanity 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").

meet the APA's threshold requirement for raising the insanity defense.<sup>†</sup> There is no perfect correlation between legal insanity standards and psychiatric or mental states that defendants exhibit. Thus for example, the mere presence of delusions would not by itself automatically lead to a determination of insanity. Such a determination would depend on the specific content of the delusions and whether, as a result of such delusions, the defendant was unable to know or appreciate the wrongfulness of his act. Because delusions are classified according to their content, they particularly suit our purposes by lending themselves to this type of analysis.<sup>‡</sup>

### A Classificatory Scheme for Delusions

Delusions are classified according to their content. Some of the more common types are classified as follows. (This scheme is not comprehensive, but is restricted to those types that are more likely to be relevant to the insanity defense.):

1. *Delusions of External Control* These delusions involve beliefs that one's thoughts, feelings and actions are operating under some external control. The individual's will, feelings, impulses, thoughts and actions are experienced as not being his own, but imposed by an outside force.

<sup>†</sup> In cases of voluntary self induced intoxication, a defendant generally may not assert the insanity defense (although evidence of intoxication may be admissible to show that he lacked the specific intent required as an element of the crime.<sup>5</sup> However, when a defendant's condition rises beyond mere intoxication as in the case of a toxic psychosis (e.g., an Organic Delusional Syndrome), jurisdictions are divided as to whether he may raise an insanity defense premised on the unforeseeability of such an extreme psychopathological response to the intoxicant.<sup>6,7</sup>

<sup>‡</sup> This analysis will be limited to *cognitive* legal tests for insanity and will not deal with *volitional* ones.

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2. *Delusions of Grandiosity* These delusions involve an exaggerated sense of one's knowledge, power or importance. A religious theme may be present.

3. *Delusions of Persecution* These delusions involve a central theme that the individual is being persecuted, harassed, attacked, or conspired against by imaginary enemies.

4. *Delusions of Jealousy* These delusions involve themes of morbid jealousy and unfounded beliefs that one's sexual partner is unfaithful.<sup>4</sup>

Additional characteristics of delusions vary according to the nature of the underlying psychiatric disorder. For example, the delusions of paranoid schizophrenia are characteristically bizarre, fragmented, unfixed, and chaotic. In contrast, the delusions in classical paranoia (i.e., delusional (paranoid) disorder) are marked by an intricate, complex, elaborate delusional system which is compartmentalized, internally logical, fixed, and unassailable.<sup>8</sup> Outside of his encapsulated delusional system, the patient's logic and train of ideas are generally unimpaired. (For these reasons, the paranoiac is unfailingly portrayed in the psychiatric literature as a "Philosopher's Madman",<sup>9</sup> i.e., eminently rational.)

In the following sections, the four common types of delusions referred to above will be considered in terms of their exculpatory effect within the jurisdictions which follow each of the three respective standards of wrongfulness.

### Standard I Jurisdictions (The Illegality Standard)

In Standard I jurisdictions, M'Naghten is read as requiring that the accused knew or appreciated that the act was

legally wrong. In *Windle's Case*,<sup>10</sup> the leading English case in this type of jurisdiction,<sup>8</sup> the defendant acting under the influence of a delusional system he shared with his wife administered a fatal dose of aspirin to her. He informed the police that he had given his wife 100 aspirins and added: "I suppose they will hang me for this?" Such an admission by the defendant or attempts to avoid detection or apprehension may sometimes provide clear-cut incriminatory evidence demonstrating an awareness of criminal wrong. In ruling that there was no evidence of insanity in *Windle*, the appellate court concluded that "it could not be challenged that (he) knew that what he was doing was contrary to law, and that he realized what punishment the law provided for murder."<sup>10</sup> Such an inculpatory awareness may be present and coexist with any of the four types of delusions under consideration. In such cases, the fact finder may be persuaded by the weight of the evidence that the defendant knew or appreciated that he was breaking the law, his delusions notwithstanding.

Under certain circumstances, delusions of external control might be exculpatory in Standard I jurisdictions. Such a deluded individual might believe he has not broken the law because his conduct was really involuntary or even against his will. [A voluntary act is an absolute requirement for criminal liability. For example, if D has an epileptic seizure during which she strikes X in the

<sup>8</sup> In accord with *Windle*, the following insanity defense cases in Standard I jurisdictions involved exculpatory delusions: *Schwartz v. the Queen*,<sup>11</sup> *Rex v. Rivett*,<sup>12</sup> and *State v. Andrews*.<sup>13</sup>

face, the striking of X was not a voluntary act and cannot give rise to criminal liability.<sup>14]</sup> Thus, a defendant believing he acted under the influence of a *psychotic influencing machine*<sup>15</sup> in committing a homicide might recognize the illegality of his conduct under ordinary circumstances; however, in his own peculiar circumstances he might simultaneously believe that he himself was not culpable in the eyes of the law because his free agency had been destroyed when he committed the act. [Overlap between the various standards may occur. For example, the same defendant who acted under the control of a *psychotic influencing machine* might also believe he was not morally (as distinguished from legally) culpable under such circumstances. Such an individual would qualify for exculpation in both Standard I and Standard III jurisdictions (see below).]

Likewise, one suffering from delusions of grandiosity might believe that he himself was God (or acting in response to a divine command), thereby superseding all human laws and the laws of nature. Such an individual might legitimately believe himself to be above the law.

Finally, one suffering from delusions of persecution might sincerely believe he was acting in justified self-defense to protect himself against enemies attempting to harm him. In such a case, one actually acting in self-defense would not generally be criminally liable.

Hence, such a deluded individual might be convinced that he was acting within the law. However, an individual

suffering from delusions of persecution who acted out of a motive of revenge would generally be held to understand that she acted unlawfully. Similarly, one who committed an offense in response to delusions of jealousy would generally understand that he had violated the law. (The criminal law generally does not recognize the existence of the so-called "unwritten law" as a form of justifiable homicide.)<sup>16</sup>

### 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 believe they are morally justified in their conduct (even though they may know or appreciate either that their act is criminal or that it is contrary to popular morality). It is important to emphasize that those who commit criminal acts under a false belief that such acts are morally justified are exculpated only if their false belief is the result of a psychiatric disorder. Those who commit criminal offenses believing they are above the law or believing as a matter of conscience that their acts are morally justified *without more*<sup>17</sup> (i.e., without a psychotic basis for the mistaken belief) do not legally lack substantial capacity

<sup>17</sup> "The anarchist is not at liberty to break the law because he reasons that all government is wrong. The devotee of a religious cult that enjoins polygamy or human sacrifice as a duty is not thereby relieved from responsibility before the law . . . In such cases the belief however false according to our own standards, is not the product of disease."<sup>17</sup>

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to know or appreciate the moral wrongfulness of their acts.<sup>18</sup>

In *United States v. Segna*,<sup>19</sup> the defendant, a non-Indian, shot and killed a 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 delusion that he was a persecuted Indian who was morally justified in taking revenge against an agent of the government. The record contained evidentiary support for the defendant's contention that, although he realized that his conduct was illegal and contrary to public standards of morality, because of his psychiatric disorder he maintained an irrational belief that the act was morally justified.

One can state a blanket rule applicable to most, if not all, Jurisdiction II cases: under the subjective moral standard, all four types of delusions in our classificatory scheme are exculpatory if they lead defendants subjectively to believe they are morally justified in their behavior.<sup>†</sup> Those suffering from delusions of control might maintain that they were morally justified in their behavior because they had no choice to act otherwise, i.e., their free agency had been destroyed. Likewise, those suffering from delusions of grandiosity, persecution, or jealousy would be exculpated so long as they believed thereby that they were morally justified to act as they did.

<sup>†</sup> In accord with *Segna*, the following insanity defense cases in Standard II jurisdictions involved exculpatory delusions: *Wade v. U.S.*,<sup>20</sup> *U.S. v. McGraw*,<sup>21</sup> *U.S. v. Sullivan*,<sup>22</sup> and *People v. Duckett*.<sup>23</sup>

## Standard III Jurisdictions (The Objective Moral Standard)

The leading case in Standard III Jurisdictions, *Schmidt*<sup>17</sup> and its progeny,<sup>‡</sup> stand for the proposition that moral wrong is not to be judged by the moral standards of the accused, but by their awareness that society regards the act as wrong (i.e., that it was contrary to public standards of morality). Defining knowledge of wrongfulness as knowledge that, according to the generally accepted standards of humankind, an act is to be condemned as an offense against good morals, Judge Cardozo in *Schmidt*<sup>17</sup> stated that a woman would not know that her act was wrong if she killed her infant child because of a delusion that God ordained the sacrifice.

Devlin maintains that a public morality is essential to the existence of a society.<sup>24</sup> The right of a society to have a public morality and to use the law to enforce it derives from its right to preserve itself.<sup>24</sup> Admittedly, the public morality cannot always be ascertained with precision. Devlin refers us to a figure familiar to the law, *the reasonable man*, as a guide to such a determination: "What counts is the cross section of society represented by the twelve men in the jury box. The public morality is determined by the moral judgments of the right-minded man, and these judgments are conceded to be largely matters of feeling."<sup>25</sup>

<sup>‡</sup> In accord with *Schmidt*, the following insanity defense cases in Standard III jurisdictions involved exculpatory delusions: *People v. Wood*,<sup>26</sup> *People v. MacDowell*,<sup>27</sup> and *People v. Lytle*.<sup>28</sup>

While legal philosophers may tend to assume a greater convergence of moral opinion than probably exists, nonetheless it is likely that in Standard III jurisdictions something approaching a *consensus gentium* could be arrived at in a systematic consideration of our classificatory scheme for delusions.

Delusions of control might be regarded as exculpatory on the grounds that individuals who sincerely believe they were not acting voluntarily as free agents would thereby not expect others to regard them as criminally liable. Public morality would require an act to be undertaken voluntarily in order to impose culpability.

Likewise, under the objective standard, one who acted in response to a divine command (or believed, as a result of a grandiose delusion, that he himself was God) might not be held liable for his offense. Such an individual might not expect society to consider his act to be wrong because God's will is generally assumed to be the supreme moral authority which supersedes all human laws and the laws of nature. On the other hand, one who acted as his own personal judge of what was right and wrong and was guided by his own rules, operating under a standard of morality he had set up for himself, would know accordingly that he acted contrary to the public standard of morality.

Finally, one suffering from delusions of persecution, who believed she was acting in justified self-defense, would not expect to be held culpable according to the standard of public morality; however, the same individual acting out of vengeance, or one motivated by delu-

sions of jealousy, would expect to be condemned by society's moral judgment.

### A Philosophical Note

A number of legal philosophers have been troubled by the fact that culpability is based on the specific content\*\* of a psychotic individual's delusions.<sup>9,29,30</sup> Because the presence of *any* delusions signals a major disruption of reality testing and normal cognition, they have argued that the specific content of the delusions (expressing the moral views of the psychotic individual, whatever they happen to be) is somewhat beside the point. It is not the psychotic's moral views *per se* that identify insanity, but the defective reasoning process that gave rise to those moral views. As Bonnie noted, 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*.<sup>30</sup> [emphasis supplied]

Yet despite these troubling philosophical concerns, the law apparently does not recognize a transcendent constancy in the legal insanity status of psychotic

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\*\* Even if a defendant's delusion appears to satisfy the "content" requirement for exculpation in a given jurisdiction, the insanity defense might still fail based on other considerations. For example, a defendant's delusions of external control in a Standard I jurisdiction might be outweighed by his conduct in fleeing the scene and hiding from the police (which would demonstrate his awareness that he had broken the law and was subject to arrest). Similarly, based upon an approach that differs from *Schmidt*, in a Standard III jurisdiction, it might be said that one who acts upon what he believes to be a divine command still knows that his act is morally wrong if he knows that the general public would nonetheless view the act as wrong.<sup>14</sup>

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individuals whose offense was the result of their delusional ideation. In most such cases, exculpation will be determined primarily on the basis of the specific content of their delusions and how it comports with the law of the jurisdiction in which the offense occurred (the *lex loci delicti commissi*).<sup>††</sup>

<sup>††</sup> For example, consider the case of two individuals who are psychotic and grossly impaired in reality testing to an equivalent extent. Assume that this psychotic pair is travelling across country in an automobile, intent on committing a crime that is directly related to their delusions (which differ one from the other in terms of their specific content). The potential for exculpation on the basis of their psychotic disorders will not remain constant but will vary and shift as their automobile proceeds from place to place, crossing jurisdictional boundaries. Depending on where they ultimately stop to commit the offense, both, one, or neither may qualify for exculpation on the basis of insanity.

### References

1. Goldstein RL, Rotter M: The psychiatrist's guide to right and wrong: judicial standards of wrongfulness since *M'Naghten*. *Bull Am Acad Psychiatry Law* 16:359-67, 1988
2. Morris N: "Wrong" in the M'Naghten rules. *Mod L Rev* 16:435-40, 1953
3. American Psychiatric Association Statement on the Insanity Defense. *Am J Psychiatry* 140:681-8, 1983
4. Diagnostic and Statistical Manual of Mental Disorders, 3 ed.-Revised. Washington, DC, American Psychiatric Association, 1987
5. Mandiberg SF: Protecting society and defendants too: the constitutional dilemma of mental abnormality and intoxication defenses. *Fordham L Rev* 53:221-77, 1984
6. *People v. Griggs*, 17 Cal. 2d 621 (1941)
7. *State v. Cooper*, 529 P.2d 231 (Ariz. Sup. Ct. 1974)
8. Swanson DW, Bohnert PJ, Smith JA: The Paranoid. Boston. Little, Brown and Company, 1970
9. Radden J: *Madness and Reason*. London. George Allen & Unwin, 1985
10. *Regina v. Windle*, 2 Q.B. 826. (Court of Criminal Appeals 1952)
11. *Schwartz v. the Queen*, 1 S.C.R. 673 (Supreme Court of Canada 1977)
12. *Rex v. Rivett*, 34 Cr. App. R. 87 (1950)
13. *State v. Andrews*, 357 P.2d 739 (Kansas Sup. Ct. 1961)
14. Lafave WR, Scott AW: *Criminal Law*. St. Paul, MN, West Publishing Company, 1972
15. Tausk V: On the origin of the "influencing machine" in schizophrenia. *Psychoanal Q* 2:519-44, 1933
16. *Roberts R*: The unwritten law. *Ky L J* 10:45-92, 1922
17. *People v. Schmidt*, 216 N.Y. 324, 340 (Court of Appeals 1915)
18. *United States v. Sullivan*, 544 F.2d 1052 (9th Cir. 1976)
19. *United States v. Segna*, 555 F.2d 226 (9th Cir. 1977)
20. *Wade v. United States*, 426 F.2d 64 (9th Cir. 1970) (en banc)
21. *United States v. McGraw*, 515 F.2d 758 (9th Cir. 1975)
22. *United States v. Sullivan*, 544 F.2d 1052 (9th Cir. 1976)
23. *People v. Duckett*, 162 Cal. App. 3d 1115 (1984) 207 Cal. Rptr 491 (Cal. App. 1 Dist. 1984)
24. Devlin P: *The Enforcement of Morals*. London, Oxford University Press, 1965
25. Golding MP: *Philosophy of Law*. Englewood Cliffs, NJ, Prentice-Hall, Inc., 1975
26. *People v. Wood*, 236 N.Y.S.2d 44 (Court of Appeals 1962)
27. *People v. MacDowell*, 508 N.Y.S.2d 870 (Supreme Court 1986)
28. *People v. Lyttle*, 408 N.Y.S.2d 578 (App. Div. 1976)
29. Fingarette H: *The Meaning of Criminal Insanity*. Berkeley, CA. University of California Press, 1972
30. *Bonnie JR*: Ask the experts column. *AAPL Newsletter*, 12:23-24, 1987