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.[1]

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

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physical nature and consequences of the criminal act; e.g., a defendant must have known that holding a person's head under water would cause death). In almost all litigated insanity cases, it is the second prong of the legal test that is in dispute (i.e., whether the defendant knew or appreciated the *wrongfulness* of the criminal act). Far from being a pedantic exercise, the precise interpretation of wrongfulness in a particular case may be a matter of considerable import for the accused.

Appropriate Standard of Wrongfulness in *M'Naghten*

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.)[4,5] 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."[2]

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].*[3]

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."[6] 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

> 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 Canada[12] and some States in this country[13] 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,

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[20] 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

rated into a series of defenses in criminal law, i.e., "Excuses."[38] 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).[39] (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.*[40] 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.*)[41]

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."[42]

In other words it is not the mentally disordered individual's moral views per se that identify insanity, but the defect in thinking process that led to those moral views.[43] A review of the philosophical analyses of wrongfulness and proposed reforms of tests for criminal responsibility[43–45] are beyond the scope of this article and will be presented in a subsequent article.

In 1984 Congress amended Federal Rule of Evidence 704, prohibiting psychiatric expert testimony on the ultimate legal issue of whether a defendant is insane.[46] 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,[47] which asserts that there is a "logical leap" between scientific psychiatric inquiry and moral-legal conclusions:

> . . . 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.[48]

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."[49]

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.[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.)[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.

References

1. Morris N: "Wrong" in the M'Naughten rules. Modern Law Rev 16:435–40, 1953
2. M'Naghten's Case, 8 Eng. Rep. 718, 722 (1843)
3. *Ibid* at 723
4. Montrose JL: The M'Naghten rules. Modern Law Rev 17:383–6, 1954
5. Smith J, Hogan B: Criminal Law (ed 4). London, Butterworths, 1978, p 492
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)
9. Bonnie RJ: Ask the Experts Column. AAPL News 12:23–4, 1987
10. Lafave WR, Scott AW: Criminal Law. St. Paul, MN, West, 1972, p 278
11. Morris N: The defenses of insanity in Australia, in Essays in Criminal Science. Edited by Mueller G. New Jersey, Sweet & Maxwell, 1961
12. Schwartz v. the Queen, 1 R.C.S. 673 (Supreme Court of Canada, 1977)
13. State v. Andrews, 357 P.2d 739 (1961)
14. 2 Q.B. 826, 827
15. *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)
18. Model Penal Code §4.01 (Final Draft, 1962)
19. United States v. Segna, 555 F.2d 226 (9th Cir. 1977)
20. American Law Institute Proceeding, 38th Annual Meeting, 1961
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)
24. Quen JM: Ask the Experts Column. AAPL News 12:24, 1987
25. 216 N.Y. 324, 340
26. Quen JM: The case of Ann Aumuller and Father Hans Schmidt. AAPL News 12:26–7, 1987
27. 216 N.Y. 324, 332
28. *Ibid* at 334
29. *Ibid* at 336 (quoting *Comm. v. Rogers*, 7 Mete 500)
30. *Ibid* at 340
31. People v. Wood, 236 N.Y.S.2d 44 (1962)
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. Ibid
36. Platt A, Diamond BL: The origins of the "right and wrong" test of criminal responsibility and its subsequent development in the United States: an historical survey. Calif L

Rev 54:1227–60, 1966
37. Aristotle: Nichomachean ethics, in The Basic Works of Aristotle. Edited by McKeon R. New York, Random House, 1941
38. Hart HLA: Legal responsibility and excuse, in Punishment and Responsibility. Oxford, Oxford University Press, 1968
39. Radden J: Madness and Reason. London, George Allen & Unwin, 1985
40. Ibid
41. Colvin E: Ignorance of wrong in the insanity defense. U W Ontario L Rev 19:1–20, 1981
42. Bonnie, supra note 9 at 24
43. Fingarette H: The Meaning of Criminal Insanity. Berkeley, CA, University of California Press, 1972
44. Bonnie JR: A Model Statute on the Insanity Defense. Charlottesville, VA, University of Virginia, 1982
45. Moore MS: Law and Psychiatry: Rethinking the Relationship. New York, Cambridge University Press, 1984
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.
47. American Psychiatric Association Statement on the Insanity Defense. Am J Psychiatry 140:680–1, 1983
48. Ibid
49. Sobeloff S: Insanity and the criminal law: from McNaghten to Durham, and beyond. ABAJ 41:793–812, 1955
50. Ciccone JR, Clements C: The insanity defense: asking and answering the ultimate question. Bull Am Acad Psychiatry Law 15:329–38, 1987
51. Report of the Committee on the Judiciary, Senate, 98th Congress, 1st Session, No. 98–225, p 230