M'NAGHTEN RULE V. IRRESISTIBLE IMPULSE TEST

By Charles L. Cetti*

INTRODUCTION

The proper test for legal insanity is a subject that has been in almost constant dispute since the celebrated M'Naghten case in 1843.1 This article will attempt to deal with the controversy between two of the various tests that have been proposed as a basis for determining legal insanity: the M'Naghten Rule and the irresistible impulse test.

In one of the most recent cases involving this dispute the defendant was tried for first degree murder and plead not guilty on grounds of insanity. Expert medical testimony indicated that although the defendant may have known the difference between right and wrong at the time of the murder, his power to control his conduct had been destroyed by mental disease. On appeal from a conviction of first degree murder, held, affirmed. If defendant knew the difference between right and wrong at the time of the criminal act, he was not legally insane.2

HISTORY OF TESTS FOR INSANITY*

The M'Naghten Rule, or so-called "right and wrong" test for legal insanity, provides a defense against prosecution for criminal conduct if

[a]t the time of the committing of the act, the party accused was labouring under such a defect of reason; from disease of the mind, as not to know the nature and quality of the act was doing; or, if he did know it, that he did not know he was doing what was wrong.3

This has become the accepted test of insanity in a majority of jurisdictions in the United States.4 Federally, the circuit courts of appeals are divided on the M'Naghten Rule as a proper test for legal insanity.5 The United States Supreme Court has not committed itself on the subject.6

*First year student at Walter F. George School of Law, Mercer University.
Sometimes used in conjunction with the M’Naghten Rule is the test frequently labeled the "irresistible impulse" test. It supplements the M’Naghten Rule in the states of Alabama, Arkansas, Colorado, Connecticut, Delaware, Indiana, Illinois, Kentucky, Massachusetts, Michigan, Utah, Vermont, Virginia, and Wyoming; and federally in the third, seventh, and eighth circuit courts of appeals.

Irresistible impulse is defined as follows:

Irresistible impulse as recognized by the courts is an impulse induced by, and growing out of, some mental disease affecting the volitive, as distinguished from the perceptive powers, so that the person afflicted, while able to understand the nature and consequences of the act charged against him and to perceive that it is wrong, is unable, because of such mental disease, to resist the impulse to do it. It is to be distinguished from mere passion or overwhelming emotion not growing out of, and connected with, a disease of the mind. Frenzy arising solely from the passion of anger and jealousy, regardless of how furious, is not insanity.

Recently, a modification of the irresistible impulse test has been adopted by the American Law Institute, but it has been accepted in only two states, Vermont and Illinois.

In addition to the above two tests, there exists a third test, referred

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8. Green v. State, 64 Ark. 523, 43 S.W. 973 (1898); Korsak v. State, 212 Ark. 921, 154 S.W.2d 348 (1941).
10. State v. Johnson, 40 Conn. 136 (1873).
16. People v. Finley, 38 Mich. 482 (1878). In People v. Durfee, 62 Mich. 487, 29 N.W. 109 (1886), the Supreme Court of Michigan approved a charge to the jury which included the irresistible impulse test.
to as the Durham Rule.\textsuperscript{25} It is used in New Hampshire,\textsuperscript{26} Washington, D. C.,\textsuperscript{27} and has been adopted by statute in Maine.\textsuperscript{28} However, it has been rejected in every other court in which it has been considered.\textsuperscript{29} As this article deals mainly with the controversy surrounding the irresistible impulse test, it will not include a discussion of the Durham Rule.

**Objections to the Irresistible Impulse Test**

There seem to be three primary objections to the inclusion of the irresistible impulse test into tests for legal insanity. The remainder of this article will attempt to deal with these objections.

**Irresistible Impulses Due to Mental Disease Do Not Exist**

Many courts rejecting the irresistible impulse test argue that such impulses do not exist. The logic seems to be that if a person knows the nature of his act, and that it is wrong, he cannot be acting on an irresistible impulse. An early statement of this position appears in an opinion written by Brannon, J.:

> For myself I cannot see how a person who rationally comprehends the nature and quality of an act, and knows that it is wrong and criminal, can act through irresistible innocent impulse.\textsuperscript{30}

There are two factors which these courts seem to ignore, however. First, there are serious questions concerning the qualifications of legal authorities to express opinions on a subject with which only the most highly-educated medical men are equipped to deal.\textsuperscript{31}

Second, the great weight of expert medical opinion not only fails to support this position, but directly contradicts it.

\textsuperscript{25} "... an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect." Durham v. U.S., 214 F.2d 862, 874 (D.C. Cir. 1954).


\textsuperscript{27} Note 25, supra.

\textsuperscript{28} MAINE REV. STAT., ch. 49 §38-A (Supp. IV) (1961).

\textsuperscript{29} Blocker v. U.S., 288 F.2d 853, 866, n. 22 (D.C. Cir. 1961).


\textsuperscript{31} "When a judge states that a person who knows right from wrong can not be irresistibly impelled to do wrong, he is departing from his judicial function and is assuming the role of an expert medical witness, for which he is in no way qualified." Keedy, *Irresistible Impulse As A Defense in the Criminal Law*, 100 U. PA. L. REV. 956, 988 (1952).
Edwin R. Keedy, in an article entitled, *Irresistible Impulse As A Defense in the Criminal Law*, lists twenty-two works on the subject, supporting the view that irresistible impulses resulting from mental disease do exist.

Dr. Philip Q. Roche of Philadelphia, chairman of the Committee on Forensic Psychiatry of the Group for the Advancement of Psychiatry, recently put to the members of this group the following question: “Are there cases where a person, suffering from mental derangement, knows that it is wrong to inflict bodily harm (killing, maiming, ravishing) upon another person, but owing to the mental derangement is incapable of controlling (resisting) the impulse to commit such bodily harm?” One hundred and two answers were received, of which ninety-three were “yes” and nine were “no”.

In a recent article, John R. Cavanah, M.D. (Doctor of Medicine, Washington, D. C.), recognized the existence of irresistible impulses caused by mental disease and advocated the retention of the irresistible impulse test in determining legal insanity.

The findings of Hervey Cleckley, M.D., in his leading work on psychopathy, *The Mask of Insanity* (Mosby, 1941), have been summarized in Professor Robert W. White’s, *The Abnormal Personality*

34. Kirchoff, Handbook of Insanity 93 (1893); Cleveenger, Medical Jurisprudence of Insanity 172 (1898); Lewis, A Test-Book of Mental Disease 207 (1899); Mental Disease 120 (1900); Brower-Bannister, Practical Manual of Insanity 396 (1902); Defendorf, Clinical Psychiatry 389 (1902); Craig, Psychological Medicine 71 (2nd ed. 1912); Closson, Mental Diseases 338 (6th ed. 1904); Bruce, Studies in Clinical Psychiatry 27 (1906); Bianchi, Textbook of Psychiatry 633 (1906); Jacoby, The Unsound Mind and the Law 13 (1918); Goodwin, The Lunatic and the Law 225 (1924); Singer and Krohn, Insanity and Law 161, 212 (1924); Stoddart, Mind and Its Disorders 257 (5th ed. 1926); East, Forensic Psychiatry 358 (1927); Overholser, The Role of Psychiatry in the Administration of Criminal Justice, 93 J. AM. MED. ASS’N. 830 (1929); White, Outlines of Psychiatry 98 (12th ed. 1929); Sadler, Theory and Practice of Psychiatry 172 (1936); Tredgold, Mental Deficiency 346 (6th ed. 1937); Noves, Modern Clinical Psychiatry 88 (3rd ed. 1948). See, also, 3 Wittkau and Becker, Medical Jurisprudence 247 (2nd ed. 1909).  
(Ronald Press, 1958). They lend substantial support to the proposition that irresistible impulses do exist.\(^{37}\)

Finally, there is an abundance of cases in which psychiatrists and psychologists have testified in courts of law that such impulses exist, and in some of the cases that the defendant acted on such an impulse.\(^{38}\)

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**REFUSAL TO ALLOW THE DEFENSE OF IRRESISTIBLE IMPULSE PROVIDES A DETERRENT TO CRIME**

Courts frequently advance the proposition that by refusing to allow a defense for those acting through irresistible impulse the crime rate is kept lower than it would be if such a defense were allowed.\(^{39}\)

However, there are no statistics to prove that the ratio of crime in a state applying the irresistible impulse test is significantly greater than that of a comparable state not using such a test.\(^{40}\) The charge that the irresistible impulse test, "... constitutes a threat to the security of society does not stand up under the light of experience."\(^{41}\)

In fact, there is an abundance of evidence which indicates that there is no discernable causal relationship between the crime rate and the test used for insanity. For example, a comparison of the crime rates in selected irresistible impulse states with those of comparable states using only the M'Naghten Rule, during the years 1958-1961, revealed that the average crime rate during the period was lower in four of the states using the irresistible impulse test than it was in their sister states using the M'Naghten Rule alone, while the converse was true in one of the comparisons\(^{42}\):

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37. "It is clear that we are dealing with a fairly serious disorder. There are grave disturbances in the patient's affective life as well as in foresight and the control and organization of behavior." (emphasis supplied). White, The Abnormal Person 404 (Ronald Press, 1948).


39. "... when M'Naghten is used, all those who might possibly be deterred from the commission of criminal acts are included within the sanctions of the criminal law." State v. White, ___ Wash. ___, 374 P.2d 942, 966 (1962).


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<td>Wyoming</td>
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*Georgia supplements M'Naghten with the defense of delusional insanity.

Not only is the argument unsupported statistically, however; it seems to be logically unsound as well. If one acts on an impulse that is truly irresistible, no penalty, regardless of how severe, can influence him.\(^43\) To maintain otherwise is quite clearly a contradiction of terms.

Lastly, the argument seems to ignore completely one of the most important factors involved in any deterrent theory. It is elementary that in order for a person to be deterred from committing a crime he must be aware of that penalty which is supposed to deter him—a strict definition of insanity in this case. When courts advance the proposition that the M'Naghten Rule deters some criminals who would not otherwise be deterred under a more liberal test, they are necessarily assuming that the common criminal has knowledge of the differences in the tests for insanity. The assumption seems to be unwarranted and lack evidential support. It would not seem unreasonable to assume the contrary—that most criminals are not even aware of the different tests for insanity until after their crimes have been committed. If this is true, then how could differences in the tests for insanity have any deterrent effect whatever?

**THE IRRESISTIBLE IMPULSE TEST IS TOO HARD TO APPLY**

A third argument popularly advanced in support of the M'Naghten Rule is that the irresistible impulse test is harder to apply than the M'Naghten Rule:

The difficulty of distinguishing between uncontrolled impulse and the impulse that is not controlled would take too fertile a dilectorial field.\(^44\)

This argument, however, seems to assume that the M'Naghten Rule

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44. Henderson, Psychiatry and the Criminal Law, 4 Psychiatry Q. 105; Hamlen Smith, Psychology and the Criminal Law 179.
is easier to administer. How so? Why is it any easier to determine whether a man acted without knowing the difference between right and wrong, than it is to determine whether he acted on an irresistible impulse? It would seem that there is equal difficulty in the application of either rule. Both tests are equally definite in that they both give precise definitions of what constitutes legal insanity, and both are equally vague in that neither define what is meant by "mental disease" or "mental defect." The difficulties in applying either rule seem to be inherent within the subject of insanity itself rather than characteristic of the differences between the two tests:

The objection that irresistible impulse is difficult to prove is not an adequate reason for rejecting the defense. A similar objection may be made to other types of mental disease. This was clearly recognized by the Supreme Court of Utah in an opinion by Hansen, J., who states that "Insanity in all its forms is frequently difficult to determine with certainty, and yet courts all recognize that, if an accused does not know right from wrong, and does not know the nature and quality of the act charged he should not be punished."

Some physical diseases are difficult to prove,[45] yet it is not likely that a court would refuse to receive evidence, otherwise admissible, of the existence of any of these diseases merely because of the difficulty of proof.[46]

Somerville, J., speaking in Parsons v. State,[47] says:

It is no satisfactory objection to say that the rule above announced by us is of difficult application. The rule in McNaghten's Case is equally obnoxious to a like criticism. The difficulty does not lie in the rule, but is inherent in the subject of insanity itself.

Even conceding, however, that the irresistible impulse test is somewhat more difficult to apply than the M'Naghten Rule alone, does this justify refusing to administer it? In other areas of the law, such as tort actions for interference with peace of mind and invasions of right of privacy, it is generally held that administrative difficulties do not justify denying remedies to persons when justice dictates that those persons should have them.[48] There seems to be no reason why the same principal should not apply to the criminal law as well.

Moreover, it would not seem, judging from the available evidence,

45. For example, multiple sclerosis, chronic gastritis, coronary disease, and trachoma.
46. Keedy, Irresistible Impulse As A Defense in the Criminal Law, 100 U. Pa. L. Rev. 956, 990 (1952) ; State v. Green, 78 Utah 580, 600, 6 P.2d 177, 185 (1931).
47. 8 Ala. 557, 593 (1887).
that the increased difficulties encountered in administering the irresistible impulse test, if there are any increased difficulties, are such that make the test impossible or impractical to apply. An overwhelming number of foreign countries and an increasing number of jurisdictions within this country employ the irresistible impulse test in conjunction with the M'Naghten Rule. They have not found, evidently, that the test is so impractical to administer that it need be excluded from the tests for legal insanity. They include, in addition to the seventeen jurisdictions within the United States listed previously in this article,49 the foreign jurisdictions of Italy, Switzerland, Poland, Turkey, Soviet Republics, Hungary, Czechoslovakia, Bulgaria, Greece, Yugoslavia, Siam, Argentina, Brazil, Costa Rica, Dominican Republic, Ecuador, Haiti, Panama, Peru, Uruguay, Venezuela, Colombia, Honduras, Mexico, France, Denmark, Belgium, Germany, Luxembourg, Scotland, three of the six states of Australia and the Cape of Good Hope in South Africa.50

WHY SHOULD IRRESISTIBLE IMPULSES ARISING FROM MENTAL DISEASE OR DEFECT CONSTITUTE A DEFENSE?

In addition to the fact that the arguments against including the irresistible impulse test into tests for legal insanity seem to lack validity, there are two major affirmative reasons favoring its inclusion.

First, it has been observed that the M'Naghten Rule deals solely with the ability of the defendant to distinguish between right and wrong at the time of the crime. It takes no notice of the volitive element of the conduct.51 The irresistible impulse test does not ignore this volitive element, but provides exculpation in cases where the absence of volition,52 if caused by mental disease or defect, is sufficient to render the defendant incapable of controlling his conduct. The essential question, then, is whether the absence of volition should excuse criminal conduct.

It is a well-recognized principle of the criminal law that mere intent to commit a crime is not a crime.53 The intent must be supplemented either by an act,54 or by a criminal omission to act in a

49. See p. 419, supra.
52. "The 'act of willing' or the 'power of willing'." 2 Thorndike Barnhart Comprehensive Desk Dictionary 863 (1962).
54. "An act is the bodily movement which follows immediately upon a volition." Markly, Elements of Law §215 (4th ed. 1899); State v. Quick, note 53, supra.
prescribed manner, concurring in point of time with the intent to commit the crime. In both cases, volition is an essential element.

Since one engaging in conduct as a result of an irresistible impulse has, by definition, no volition, it is elementary that he cannot act or criminally omit to act. It follows, then, that applying the principle that an act or criminal omission to act is essential to crime, such a person cannot be guilty of a crime.

The result of the application of the M'Naghten Rule as the sole test of legal insanity, then, is a result totally inconsistent with the basic principles of criminal law, and as such, is an obvious injustice to the defendant.

A second reason for adopting the irresistible impulse test as a supplement to the M'Naghten Rule, is that contrary to the assertion that its adoption would increase crime, there is authority for the proposition that its adoption, if anything, would really decrease crime:

The mental competency of recidivists should be questioned by realistic means at the earliest possible stage. So long as the courts judge criminal responsibility by the test of knowledge of right and wrong, psychotics who have served prison terms or are granted probation are released to commit increasingly serious crime, repeating crime and incarceration and release until murder is committed. Instead of being treated as are ordinary criminals, they should be confined to institutions for the insane at the first offense and not be released until or unless cured.

SUMMARY AND CONCLUSION

This article has sought to examine realistically the controversy surrounding the irresistible impulse test as a defense for criminal conduct. It has endeavored to demonstrate first, that such impulses as a result of mental disease do indeed exist; second, that the arguments advanced by its opponents are not sufficient to justify its exclusion; and third, that there is a manifest necessity for its inclusion into tests for legal insanity.

Assuming the success of these endeavors, it is the conclusion of this writer that a defendant should not be held criminally responsible for his conduct if such conduct was caused by an irresistible impulse arising from a mental disease or mental defect.

57. In order to be liable criminally, "... the offender must have been 'able to help' his conduct." Clark, Elements of Criminal Liability 109 (1880). Accord, 4 Comm. 20 (1769); Holmes, The Common Law 54 (1881).
58. Note 59, supra.