

most extraordinary life. Indeed, it is still the prevailing law in England and in most of the American states. Briefly, the opinion stated that in order to establish a defense on the ground of insanity, it must be proved that at the time of committing the act, the party accused was "laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong." The Judges emphasized that this knowledge of right and wrong referred to the very act charged rather than right and wrong in the abstract, and not only to legal but probably also moral right and wrong.

A few very serious objections to the M'Naghten Rule may be mentioned: It operates with relation to psychopathological notions which are wholly at variance with present-day psychiatric conceptions; the criterion is basically an ethical rather than a psychiatric one, right and wrong being ethical questions. Finally, it deals only with disorders of the intellectual aspect of the mind, making no allowance whatever for aberrations characterized by deficiency of volition or other emotional factors. The test was attacked almost immediately after it had been enunciated, and it has been frequently since criticized by legal writers and psychiatrists, yet it still persists. The basic objection by the psychiatrist is that he is not asked a psychiatric question at all, but rather a moralistic one, a question in a field in which he has no special competence whatever.

Another so-called "test," evolved in the United States even slightly earlier than the so-called M'Naghten Rule (1834) is known rather loosely as the "irresistible impulse" test. According to this doctrine, the power to choose or forbear to do the act was necessary in order to establish criminal irresponsibility, or as an Ohio court phrased it, "Was the accused a free agent in forming the purpose to kill?" [3]. Some of the earlier cases seem to have linked this type of defect to knowledge of right and wrong, combining the two as it were, but later decisions seem to have recognized the volitional aspect as distinguished from the cognitive as sufficient in itself if impaired to warrant a defense of lack of responsibility. It was an advance, of course, to recognize the emotional elements in crime as against the intellectual, but here again the test called for one symptom rather than a totality. From the psychiatric point of view it is almost as difficult to say that the defendant labored under an uncontrollable impulse as it is to say that he lacked capacity to recognize the difference between right and wrong. The "impulse" test is recognized in about twenty of the American states.

Both of these so-called "tests," until the establishment of the New Hampshire Rule in 1869 [4], and the Durham Rule in the District of Columbia in 1954 [5], drew a sharp line of dichotomy between "sane" and "insane," the latter term implying total loss of reason. The New Hampshire Rule, enunciated in 1869, stood alone until the Durham Rule was adopted in the District of Columbia in 1954. Judge *Doe* formulated the rule after prolonged study, concluding that the matter of the mental state of the offender is as much a matter of fact and not of law, as, for example, his presence at the scene of the crime. He held, too, that the law should not attempt to define disease, saying that a "diseased condition of the mind should be settled by science and not by law. Disease is wholly within the realm of natural law or the law of nature." Both the New Hampshire and the District of Columbia rules, then, inquire whether or not the act of the accused was the product of mental disease or defect. If there is any question on which the psychiatrist should be competent to speak, it is the relationship between the behaviour of the defendant and any mental deviation from which he may be suffering. In other words, the psychiatrist under the Durham or the New Hampshire rule speaks as a *psychiatrist*. He has full opportunity and should use it to outline the history, the development of the subject's conduct and the relationship of his mental disorder, if any, to the act with which he is charged. The problem of causation of conduct is within the psychiatrist's province, whereas the M'Naghten Rule and the frame of reference in which the questions under that rule are asked pose a moral query which is not within his competence and under the "irresistible impulse" test ask a question which is extremely difficult, if not impossible, of answer from the evidential point of view.

The Durham Rule has not been adopted as yet, by any other jurisdiction, although a number of judges have gone out of their way to explain why they were not adopting it. Their principal objection seems to be that the Durham Rule is vague, whereas, say the judges, the M'Naghten Rule is definite. This definiteness is quite illusory, as well as wholly lacking in psychiatric reality. For example, there has been dispute on the meaning of so simple sounding a phrase as "nature and quality." As one of the eminent jurists, Chief Judge