

rule and related opinions is still too limited to permit definitive conclusions.

It is unnecessary to belabor the difficulties of effecting a change once a statutory test is enacted. In New York, where the "right and wrong" test is prescribed by statute, there has been agitation for reform, promoted by such leading figures as Judge Benjamin Cardozo, for more than thirty years, and no change has yet been achieved. (See Interim Report of Subcommittee of The Governor's Conference on Insanity, New York, May 29, 1958.)

Apart from this basic consideration, we believe a number of problems are raised by the majority's proposed test which reads as follows:

"[T]he defendant is not mentally [sic criminally?] responsible if at the time of the alleged offense, the defendant, because of an impaired or defective mental condition, was substantially lacking either in his capacity to appreciate that his conduct was wrong or in violation of law, or in his capacity to conform his conduct to the right or to the requirements of law."

(i) The terms "right" and "wrong" embodied in the proposal do not appear in the A.L.I. test which is the model for the majority.¹⁷ These terms, a relic of M'Naghten, are far more ambiguous and subjective in content than the terms "disease or defect" to which the majority takes exception. The terms "impaired or defective mental condition" in the proposed test are perhaps apt synonyms for mental defects (e.g., idiocy), but these terms do not, in our view, meaningfully describe most of the psychoses, such as schizophrenia or manic-depressive psychosis.

(ii) The majority deplores uncertainty under the *Durham* rule. But the same degree of uncertainty would exist with respect to the majority's proposal. Psychiatrists would differ as to whether "because of an impaired or defective mental condition" an individual "was substantially lacking either in his

¹⁷ The proposed A.L.I. test reads as follows: "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law."