

and jury to rely upon what is, scientifically speaking, inadequate, and most often, invalid³¹ and irrelevant testimony in determining criminal responsibility.³²

The fundamental objection to the right-wrong test, however, is not that criminal irresponsibility is made to rest upon an inadequate, invalid or indeterminable symptom or manifestation, but that it is made to rest upon *any* particular symptom.³³ In attempting to define insanity in terms of a symptom, the courts have assumed an impossible role,³⁴ not merely one for which they have no special competence.³⁵ As the Royal Commission emphasizes, it is dan-

gerous "to abstract particular mental faculties, and to lay it down that unless these particular faculties are destroyed or gravely impaired, an accused person, whatever the nature of his mental disease, must be held to be criminally responsible * * *."³⁶ In this field of law as in others, the fact finder should be free to consider all information advanced by relevant scientific disciplines.³⁷

Despite demands in the name of scientific advances, this court refused to alter the right-wrong test at the turn of the century.³⁸ But in 1929, we reconsidered in response to "the cry of scientific experts" and added the irresistible impulse

31. See Guttmacher & Weihofen, *Psychiatry and the Law* 421, 422 (1952). The M'Naghten rules "constitute not only an arbitrary restriction on vital medical data, but also impose an improper onus of decision upon the expert witness. The Rules are unanswerable in that they have no consensus with established psychiatric criteria of symptomatic description save for the case of disturbed consciousness or of idiocy, * * *." From statement by Dr. Philip Q. Roche, quoted *id.* at 407. See also *United States ex rel. Smith v. Baldi*, 3 Cir., 1951, 192 F.2d 540, 567 (dissenting opinion).

32. In a very recent case, the Supreme Court of New Mexico recognized the inadequacy of the right-wrong test, and adopted what it called an "extension of the M'Naghten Rules." Under this extension, lack of knowledge of right and wrong is not essential for acquittal "if, by reason of disease of the mind, defendant has been deprived of or lost the power of his will * * *." *State v. White*, N.M., 270 P.2d 727, 730.

33. Deutsch, *The Mentally Ill in America* 400 (2d ed.1949); Keedy, *Irresistible Impulse as a Defense in Criminal Law*, 100 U. of Pa.L.Rev. 956, 992 (1952).

34. Professor John Whitehorn of the Johns Hopkins Medical School, who recently prepared an informal memorandum on this subject for a Commission on Legal Psychiatry appointed by the Governor of Maryland, has said: "Psychiatrists are challenged to set forth a crystal-clear statement of what constitutes insanity. It is impossible to express this adequately in words, alone, since such diagnostic judgments involve clinical skill and ex-

perience which cannot wholly be verbalized. * * * The medical profession would be baffled if asked to write into the legal code universally valid criteria for the diagnosis of the many types of psychotic illness which may seriously disturb a person's responsibility, and even if this were attempted, the diagnostic criteria would have to be rewritten from time to time, with the progress of psychiatric knowledge." Quoted in Guttmacher & Weihofen, *Psychiatry and the Law* 419-20 (1952).

35. " * * * the legal profession were invading the province of medicine, and attempting to install old exploded medical theories in the place of facts established in the progress of scientific knowledge." *State v. Pike*, 1870, 49 N.H. 399, 438.

36. Royal Commission Report 114. And see *State v. Jones*, 1871, 50 N.H. 369, 392-393.

37. Keedy, *Irresistible Impulse as a Defense in Criminal Law*, 100 U. of Pa.L. Rev. 956, 992-93 (1952).

38. See, e. g., *Taylor v. United States*, 1895, 7 App.D.C. 27, 41-44, where we rejected "emotional insanity" as a defense, citing with approval the following from the trial court's instruction to the jury: "Whatever may be the cry of scientific experts, the law does not recognize, but condemns the doctrine of emotional insanity—that a man may be sane up until a moment before he commits a crime, insane while he does it, and sane again soon afterwards. Such a doctrine would be dangerous in the extreme. The law does not recognize it; and a jury cannot without violating their oaths." This position was emphatically reaffirmed in *Snell v. United States*, 1900, 16 App.D.C. 501, 524.