

choses due to disease of the brain."⁴³

wrong test. We conclude that a broader test should be adopted.⁴⁴

[6] We find that as an exclusive criterion the right-wrong test is inadequate in that (a) it does not take sufficient account of psychic realities and scientific knowledge, and (b) it is based upon one symptom and so cannot validly be applied in all circumstances. We find that the "irresistible impulse" test is also inadequate in that it gives no recognition to mental illness characterized by brooding and reflection and so relates acts caused by such illness to the application of the inadequate right-

[7,8] B. In the District of Columbia, the formulation of tests of criminal responsibility is entrusted to the courts⁴⁵ and, in adopting a new test, we invoke our inherent power to make the change prospectively.⁴⁶

[9] The rule we now hold must be applied on the retrial of this case and in future cases is not unlike that followed by the New Hampshire court since 1870.⁴⁷ It is simply that an accused is not criminally responsible if

43. Royal Commission Report 110; for additional comment on the irresistible impulse test, see Glueck, *Crime and Justice* 101-03 (1936); Guttmacher & Weithofen, *Psychiatry and the Law* 410-12 (1952); Hall, *General Principles of Criminal Law* 505-26 (1947); Keedy, *Irresistible Impulse as a Defense in Criminal Law*, 100 U. of Pa.L.Rev. 956 (1952); Wertham, *The Show of Violence* 14 (1949).

The New Mexico Supreme Court in recently adopting a broader criminal insanity rule, note 32, *supra*, observed: " * * * insanity takes the form of the personality of the individual and, if his tendency is toward depression, his wrongful act may come at the conclusion of a period of complete lethargy, thoroughly devoid of excitement."

44. As we recently said, " * * * former common law should not be followed where changes in conditions have made it obsolete. We have never hesitated to exercise the usual judicial function of revising and enlarging the common law." *Linkins v. Protestant Episcopal Cathedral Foundation*, 1950, 87 U.S.App.D.C. 351, 355, 187 F.2d 357, 361, 28 A.L.R.2d 521. Cf. *Funk v. United States*, 1933, 290 U.S. 371, 381-382, 54 S.Ct. 212, 78 L.Ed. 369.

45. Congress, like most State legislatures, has never undertaken to define insanity in this connection, although it recognizes the fact that an accused may be acquitted by reason of insanity. See D.C.Code § 24-301 (1951). And as this court made clear in *Hill v. United States*, Congress has left no doubt that "common-law procedure, in all matters relating to crime * * * still continues in force here in all cases except where special provision is made by statute to the exclusion of

the common-law procedure." 22 App. D.C. 395, 401 (1903), and statutes cited therein; *Linkins v. Protestant Episcopal Cathedral Foundation*, 87 U.S.App.D.C. at pages 354-55, 187 F.2d at pages 360-361; and see *Fisher v. United States*, 1946, 328 U.S. 463, 66 S.Ct. 1318, 90 L. Ed. 1382.

46. See *Great Northern R. v. Sunburst Oil & Refining Co.*, 1932, 287 U.S. 358, 53 S. Ct. 145, 77 L.Ed. 360; *National Labor Relations Board v. Guy F. Atkinson Co.*, 9 Cir., 1952, 195 F.2d 141, 148; Concurring opinion of Judge Frank in *Aero Spark Plug Co. v. B. G. Corporation*, 2 Cir., 1942, 130 F.2d 290, 298, and note 24; *Warring v. Colpoys*, 1941, 74 App.D.C. 303, 122 F.2d 642, 645, 136 A.L.R. 1025; Moore & Oglebay, *The Supreme Court, Stare Decisis and Law of the Case*, 21 Texas L.Rev. 514, 535 (1943); Carpenter, *Court Decisions and the Common Law*, 17 Col.L.Rev. 593, 606-07 (1917). But see von Moschzisker, *Stare Decisis in Courts of Last Resort*, 37 Harv.L.Rev. 409, 426 (1924). Our approach is similar to that of the Supreme Court of California in *People v. Maugh's*, 1906, 149 Cal. 253, 86 P. 187, 191, where the court prospectively invalidated a previously accepted instruction, saying:

" * * * we think the time has come to say that in all future cases which shall arise, and where, after this warning, this instruction shall be given, this court will hold the giving of it to be so prejudicial to the rights of a defendant, secured to him by our Constitution and laws, as to call for the reversal of any judgment which may be rendered against him."

47. *State v. Pike*, 1870, 49 N.H. 399.