

September 2016

## Mental Disease and Criminal Responsibility

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### Recommended Citation

Joseph T. Tinnelly, C.M. (1958) "Mental Disease and Criminal Responsibility," *The Catholic Lawyer*. Vol. 4 : No. 4 , Article 2.

Available at: <https://scholarship.law.stjohns.edu/tcl/vol4/iss4/2>

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# Mental Disease and Criminal Responsibility

Psychiatry, its practice, and its application in the law were subjects of deep interest to the late Supreme Pontiff, Pius XII. He enthusiastically supported modern research and experimentation in these areas. Yet he was gravely concerned lest the false philosophical assumptions which are basic to some current theories of psychotherapy should be accepted by the unphilosophical practitioner or his patients or the persons who send him patients or the general public, as scientific conclusions, and thus disguised, should create moral dangers. Mainly, he feared the impact upon morals of the assumption that man, in his psychic life, is a mere aggregate of instinctive dynamisms or "drives." He insisted strongly that the true philosophical orientation of any study of man in relation to the forces and drives with which he is endowed must take as its centerpost the spiritual soul which, through its faculties of intellect and will, is normally capable of governing and integrating the other energies of the ego.

In his address to the delegates to the fifth International Congress on Psychotherapy and Clinical Psychology in Rome, April 13, 1953, he said, in part,

We intend to outline the fundamental attitude which is imposed upon the Christian psychologist and psychotherapist.

This fundamental attitude can be summed up in the following formula: Psychotherapy and clinical psychology must always consider man (1) as a psychic unit and totality, (2) as a structured unit in itself, (3) as a social unit, and (4) as a transcendent unit, that is to say, in man's tending toward God.<sup>1</sup>

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<sup>1</sup> 45 ACTA APOSTOLICAE SEDIS 278-79 (1953), Catholic Action, June 1953, p. 17.

Today in the criminal law interest in psychiatry has reached a high point. The traditional *M'Naghten* rule which has been utilized by the courts for over a century as an aid in established insanity as a defense in criminal prosecutions is under attack.

Responsible groups have advocated a broadening of the traditional test which takes cognizance of only such defect of reason as caused the defendant: "(1) not to know the nature and quality of the act he was doing; or (2) not to know that the act was wrong." The American Law Institute and the New York State Governor's Conference on the Defense of Insanity would relieve a person from responsibility for criminal conduct if at the time of such conduct, as a result of mental disease or its effect, he lacks substantial capacity (1) to know the wrongfulness of his conduct, (2) to appreciate the wrongfulness of his conduct, or (3) to conform his conduct to the requirements of law.

In 1954, in the case of *Durham v. United States*,<sup>2</sup> the *M'Naghten* rule was rejected in the District of Columbia. In place of the "right-or-wrong" test the so-called "product" test was substituted.<sup>3</sup> Those who advocate this new test claim that it expresses best the modern advances which have taken place in the field of psychiatry. Critics, however, fear that it will convert the criminal court into a mere forum for psychiatric debate.

Many Catholic lawyers realize reform or rejection of the *M'Naghten* rule involves problems which have psychological and moral implications, but they are unable to represent clearly, even in their own minds, what these implications are. They know that the present debate on the rule somehow touches the doctrine of free will, but they do not perceive precisely when and how and to what extent the various existing and proposed insanity rules postulate, or deny, or ignore, the doctrine's various elements.

In view of this general uncertainty, the Editors of THE CATHOLIC LAWYER have undertaken the present symposium on mental diseases and criminal responsibility. It is planned that the symposium be published in two parts. Part I, which appears in the present issue, contains a survey article prepared by the St. Thomas More Institute, which sets forth the present and proposed Rules on insanity as a defense in criminal law. The article by Judge Peter Farrell, entitled "A Judge Views the *M'Naghten* Rule," is in effect a defense of the present rule, with the suggestion that perhaps it may be aided by slight modification in the procedural area. The article by Dr. Cavanagh, President of the Guild of Catholic Psychiatrists, presents further arguments in favor of the basic soundness of the *M'Naghten* rule from the point of view of scholastic philosophy, yet suggests even broader modifications in light of modern advances which have been established in the field of psychotherapy.

Part II of the symposium, which will be published in the next or Winter issue, will contain articles by Oliver Gasch, United States Attorney for the District of Columbia,

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<sup>2</sup> 214 F.2d 862 (D. C. Cir. 1954).

<sup>3</sup> The court said that the rule which "must be applied on the retrial of this case and in future cases . . . is simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect." 214 F.2d at 874.

and Hugh McGee, prominent Washington attorney who specializes in criminal law. These two articles will outline the problems that face the prosecuting attorney and the defense attorney who operate under the "product" rule which prevails in the District of Columbia. The concluding article will be a summary of the basic points established in the symposium plus basic recommendations. It will be written by Father S. Oley Cutler, S.J., who is a member of the commission appointed by Governor Harriman to report to the New York State Legislature on the defense of insanity in criminal law.

Of uppermost importance in this whole subject is the necessity to appreciate that the use of reason, which is required for every human act, regards both conceptual cognition and evaluative cognition, and demands a capacity of a man to dispose of himself and of his action according to this twofold cognition of the object. Dr. Cavanagh's article is particularly valuable in that it clearly establishes this cognitive function in the achievement of judgment. A basic understanding of the principles of cognition is necessary before any final determination can be made concerning the retention, modification or rejection of the *M'Naghten* rule.

It is hoped, therefore, that this symposium will serve a dual purpose — (1) to provide an explanation of these basic principles, and (2) to demonstrate the need that any legal test of criminal responsibility must postulate these principles, while at the same time reflect the progress which has been made in psychiatric science.

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EDITOR