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The Insanity Defense and Psychiatry: The Advantage of a Cognitive Approach

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THE INSANITY DEFENSE AND PSYCHIATRY: THE ADVANTAGE OF A COGNITIVE APPROACH

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Abstract: The insanity defense is an important part of criminal law because it allows individuals who suffer from severe mental disorders to face more lenient sentences for their crimes. In American courts, several different standards for this defense strategy are codified into state law. The main point of dispute between psychiatrists and legal scholars is whether insanity defense rules should focus on cognition or volition. This paper examines some psychological disorders commonly associated with criminal activity and how they interact with the various standards employed by different states. Ultimately, it argues that the insanity defense should be centered around a purely cognitive paradigm, as this creates a higher standard that more accurately implants the psychiatric conception of insanity into law. This debate is an important intersection between psychology and law and raises important questions about criminal culpability.

I. Introduction

Mental illness and the legal system have often crossed paths throughout human history, as some individuals plagued with delusions or those devoid of empathy find it difficult to conform their actions to societal norms and codified laws. In the United States, the insanity defense has often been used in high-profile cases such as the Hinckley trial, wherein John Hinckley was found not guilty of attempting to assassinate President Reagan by reason of insanity, to the outrage of many Americans. This case and others have brought the use of the insanity defense into the public eye; contrary to depictions in popular media, this type of defense strategy is extremely uncommon and rarely successful. Only about 1% of criminal cases involve an insanity plea, and

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of these, only 26% are accepted by the jury.² Nevertheless, this defense strategy represents a very important intersection between psychiatry and the legal system, raising pertinent questions about standards for culpability and the future of criminal justice in America.

II. History

In general, the insanity defense is a form of legal argument in which the defendant admits to the action in question but denies responsibility because of some sort of mental illness.³ This approach has been around for as long as sophisticated legal systems had existed, with one of the earliest cases being argued in Rome around 230 B.C.E. when a lawyer stated that “if a madman commit homicide he is not covered by the Cornelian law because he is excused by the misfortune of his fate.”⁴ Since then, this defense has appeared in criminal courts everywhere, with the standard for its application appearing in subtly different forms in various contexts. Some of these legal definitions are still codified in American laws today.

Iia. The M’Naghten Rule

The first appearance of the insanity defense that is relevant to contemporary American law was in 1843 in England. Daniel M’Naghten, a man troubled by paranoid thoughts, shot Edward Drummond, the private secretary to the Prime Minister at the time. He falsely believed that the Tories were attempting to persecute him and thought that his act would put an end to the political conspiracy that was being leveled against him. He was found not guilty by reason of insanity.⁵ This decision, given it absolved a man of the murder of a prominent public figure, was extremely controversial in England, so much so that the House of Lords requested a description of the criteria by which the judges arrived at such a conclusion. Thus, the M’Naghten Rule was

² Callahan, L A, H J Steadman, M A McGreevy, and P C Robbins. “The Volume and Characteristics of Insanity Defense Pleas: An Eight-State Study.” *The Bulletin of the American Academy of Psychiatry and the Law* 19 (1991): 331–38. <https://pubmed.ncbi.nlm.nih.gov/1786413/>.

³ “Insanity Defense.” Legal Information Institute, 2020. https://www.law.cornell.edu/wex/insanity_defense.

⁴ Walker, Nigel. “The Insanity Defense before 1800.” *The Annals of the American Academy of Political and Social Science* 477 (1985): 25–30. <http://www.jstor.org/stable/1045999>.

⁵ Kaplan, Robert. “Daniel M’Naghten: The Man Who Changed the Law on Insanity.” *Psychiatric Times* 40, no. 1 (January 23, 2023). <https://www.psychiatristimes.com/view/daniel-m-naghten-the-man-who-changed-the-law-on-insanity>.

born; this defense asserts that the defendant is afflicted with some sort of mental illness, to such a degree that they either did not know what they were doing when they committed the crime or did not know that what they were doing was wrong.⁶ If either of these conditions are met, the defendant can be declared not guilty by reason of insanity.

Iib. The Irresistible Impulse Test

The M'Naghten Rule was the primary standard for the insanity defense in the United States until the 1950s and remains the measure of criminal insanity in 25 states. However, even soon after its inception, criticisms were lodged from many sides. In 1887, the Alabama Supreme Court adopted another method of determining criminal culpability known as the Irresistible Impulse Test. This legal standard simply posits that the defendant, suffering from a mental illness, was unable to resist the urge to commit the crime.⁷ It was taken in many states as a corollary to the M'Naghten Rule: a separate set of circumstances to be considered in conjunction with the original standard. This is the status that it retains today in Texas, though all other states have abandoned it.

Iic. The Durham Rule

After this, a new formulation of the insanity defense was proposed with the appearance of a new case concerning mental illness in 1952. In this instance, Monte Durham was convicted of breaking into a house, but his lawyers argued that he was not culpable due to his mental illness. The judge overturned Durham's conviction after numerous testimonies stated that he was of unsound mind. The judge used his opinion to formally denounce the M'Naghten Rule, stating "by its misleading emphasis on the cognitive, the right-wrong test [the M'Naghten Rule] requires court and jury to rely upon what is, scientifically speaking, inadequate, and most often, invalid and irrelevant testimony in determining criminal responsibility."⁸ Later, the judge devised the Durham Rule, which states that "an accused is not criminally responsible if his unlawful act was

⁶ "The M'Naghten Rule." Legal Information Institute, 2020. https://www.law.cornell.edu/wex/m%27naghten_rule

⁷ "Irresistible Impulse Test," Legal Information Institute, 2023. https://www.law.cornell.edu/wex/irresistible_impulse_test

⁸ Durham v. United States, Justia (US Court of Appeals for the District of Columbia Circuit 1954).

the product of mental disease or mental defect.”⁹ Many scholars believed that this standard for criminal insanity moved in a more progressive and scientifically accurate direction. Despite these benefits, it is believed that the Durham Rule still has many shortcomings; it has been all but abandoned in the realm of criminal law, with only the state of New Hampshire still adhering to it.¹⁰

IId. The Model Penal Code

The final test for legal insanity was developed in 1972 after a team of legal scholars at the American Law Institute sought to create a model upon which states could update their own legal codes.¹¹ The project, titled the Model Penal Code, was incredibly broad in its efforts to reform the criminal justice system, touching on all pertinent topics, including the insanity defense. In Section 4.01, a new standard was formed, stating, “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 (wrongfulness) of his conduct or to conform his conduct to the requirements of law.”¹² This rule seeks to fuse together the disparate standards for legal insanity that have been present throughout the history of common law. The Model Penal Code rule, with some modifications, is the standard for criminal insanity in 23 states today.

Ile. Federal Rule

Each state has the ability to determine its own criteria for an insanity defense to be utilized in its own courts. On the federal level, the most recent formulation of an insanity defense is the Comprehensive Crime Control Act of 1984. U.S. Code §17 states that this defense can be applied if “the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts.”¹³ Given that this standard is

⁹ Durham v. US

¹⁰ “The Insanity Defense Among the States,” January 23, 2019.

<https://www.findlaw.com/criminal/criminal-procedure/the-insanity-defense-among-the-states.html>

¹¹ “Model Penal Code,” Legal Information Institute, 2021.

[https://www.law.cornell.edu/wex/model_penal_code_\(mpc\)](https://www.law.cornell.edu/wex/model_penal_code_(mpc))

¹² Model Penal Code § 4.01 http://individual.utoronto.ca/dubber/web/website/respons/Model_Penal_Code.htm

¹³ 18 US Code § 17 - Insanity Defense <https://www.law.cornell.edu/uscode/text/18/17>

nearly identical to that of the Model Penal Code, this paper will focus on the various rules used in states and exclude the federal rule from discussion.

III. Analysis

The contrasting qualities of each of these definitions are important to note with regard to criminal pathology. In psychology, cognition is all of the mental activities associated with understanding the world and performing actions. The M’Naghten Rule crucially focuses on cognition, specifically the defendant’s cognitive awareness of the existence or wrongfulness of their criminal act. The test is designed to determine if the subject is conscious of their actions with regard to the law. Thus, the M’Naghten Rule has been criticized for only taking cognition into account because some scholars believe the defendant’s ability to control their actions should be considered. Furthermore, the particular language used in the second condition of the M’Naghten Rule has often been the target of criticism, as the word “wrongfulness” is seen as not engaging with law but with morality. This perhaps places the M’Naghten Rule in an awkward position concerning determining a subject’s knowledge of the law itself.

The Irresistible Impulse Test, on the other hand, draws upon the defendant’s volition rather than their cognition.¹⁴ It places the emphasis on whether the subject was able to willingly decide to commit the crime or not. Similarly, the Durham Rule, often dubbed “the product test,” deals with the defendant’s volitional capacity. Volition is one’s ability to voluntarily choose one’s actions. A sneeze, for example, is an act that is not done with volition, whereas throwing a baseball is. Thus, if one is afflicted with a mental disorder that involuntarily “produces” their crime like a sneeze, they are seen as having no free will in the matter and therefore are not responsible. Some scholars believe that this is a more accurate and lenient formulation of the insanity defense. In sum, the M’Naghten Rule and these two methods outline the main point of dispute in these cases: cognition versus volition.

According to some, the strength of the Model Penal Code’s conception of the insanity defense lies in its synthesis of these two terms, as well as its integration of both law and morality. It attempts to combine all of the disparate notions of criminal insanity into one rule: either the defendant is cognitively unaware of the nature of his crime, or he is unable to willfully act in

¹⁴ “Insanity Defense,” Legal Information Institute

accordance with the law. Additionally, the Model Penal Code deliberately uses both “criminality” and “wrongfulness” in this first provision concerning the cognitive aspect of insanity. In this way, the Model Penal Code seeks to combine each aspect of the various legal standards for criminal insanity.

IV. Application of Modern Psychiatry

Each of these definitions of insanity is the attempt of the legal system to integrate scientific knowledge into the consideration of crimes. Given the gap between these two separate institutions and the uncertain nature of psychiatry, any legal definition of insanity is destined to be at least somewhat vague and perhaps even inapplicable or incorrect in certain situations. However, the official clinical definitions of mental disorders can be helpful in elucidating what a proper standard looks like. The most recent diagnostic criteria can be found in the fifth edition of The Diagnostic and Statistical Manual of Mental Disorders (DSM-5), published by the American Psychiatric Association. Specific disorders most commonly associated with criminal acts can be input into each rule, and different determinations of sanity are arrived at by whether the emphasis is placed on cognition or volition.

IVa. Antisocial Personality Disorder

It is clear that certain disorders engage only with the volitional or product aspect of these legal definitions, and an issue raised by legal scholars and psychiatrists alike is that this allows an excuse for individuals who are otherwise clearly responsible for their acts. One such disorder is antisocial personality disorder, whose sufferers are known colloquially as “sociopaths.” The prevalence of this disorder could be as high as 3.6% of the population.¹⁵ It is defined as “a pervasive pattern of disregard for and violation of the rights of others.”¹⁶ Symptoms include lack of remorse, disregard for the safety of others, and repeated behaviors that violate social norms or laws. Consequently, this disorder is overwhelmingly associated with a high rate of incarceration:

¹⁵ “Antisocial Personality Disorder: Often Overlooked and Untreated.” American Psychiatric Association, December 29, 2022. <https://www.psychiatry.org/News-room/APA-Blogs/Antisocial-Personality-Disorder-Often-Overlooked>.

¹⁶ “Personality Disorders.” Diagnostic and Statistical Manual of Mental Disorders: DSM-5. Arlington, VA: American Psychiatric Association, 2017.

studies have found that at least 16% of the male prison population in the United States has antisocial personality disorder.¹⁷

However, despite the intense symptoms, people with this disorder are still cognitively healthy and experience no delusions, hallucinations, or paranoia. In fact, those with this disorder can actually become extremely successful when they stay out of prison; a study of high-level corporate professionals found that 21% meet the criteria for antisocial personality disorder. Evidently, this disorder does not cause its sufferers to be completely unable to function in society, and offenders with this disorder have full knowledge that their actions are wrong or illegal - they may even sadistically revel in this fact.¹⁸

Given this information, many critics worry that those with antisocial personality disorder may still be able to avoid penalties for their criminal actions under certain insanity defense rules, namely the Irresistible Impulse Test and the Durham Rule. Within both these paradigms, crimes committed by individuals with antisocial personality disorder could possibly be grounds for an insanity defense as they are unable to control their behavior given their pathology. It could potentially be argued that a crime committed by someone with antisocial personality disorder is involuntary. On the other hand, states with the M'Naghten Rule would not allow such an argument to be mounted because those with antisocial personality disorder clearly understand their actions and are aware of the law. Almost all psychiatrists agree that subjects with antisocial personality disorder should not avoid consequences for their crimes, and the leniency of volitional tests with regard to ASPD would, therefore, be a weakness. Tellingly, the creators of the Model Penal Code seemed to have recognized this oversight, as Section 4.01(2) specifically prohibits the use of the insanity defense for those with antisocial personality disorder.¹⁹ The Irresistible Impulse Test and Durham Rule contain no such provision.

IVb. Pedophilic Disorder

¹⁷ Kiehl, Kent, and Morris Hoffman. "The Criminal Psychopath: History, Neuroscience, Treatment, and Economics." *Jurimetrics* 51 (2011): 355–97. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4059069/>.

¹⁸ Holt, S E, J R Meloy, and S Strack. "Sadism and Psychopathy in Violent and Sexually Violent Offenders." *Journal of the American Academy of Psychiatry and the Law* 27 (1999): 23–32. <https://pubmed.ncbi.nlm.nih.gov/10212024/>.

¹⁹ Model Penal Code § 4.01(2) http://individual.utoronto.ca/dubber/web/website/respons/Model_Penal_Code.htm

Another disorder in the DSM-5 that affects the volitional capacity is pedophilic disorder, which involves intense sexual urges towards children.²⁰ Surveys have concluded that about 1% of the population may have this disorder.²¹ Pedophilic offenders could perhaps be allowed an insanity defense under the Irresistible Impulse Test and the Durham Rule if it is argued that they are unable to stop themselves from committing related crimes due to their diagnosed disorder. However, unlike antisocial personality disorder, there is no specific provision in the Model Penal Code that prevents the use of the insanity defense for pedophilic individuals. This opens the door for individuals diagnosed with this disorder to employ an insanity defense in states with this standard. Indeed, this exact scenario occurred in 1994 in Maryland, a state that adheres to the Model Penal Code rule. James Kowalski was accused of running a pedophile ring and thus charged with 84 counts of child abuse. His lawyer argued that pedophilia was a mental illness with powerful urges, the intensity of which left him unable to follow the law.²² Ultimately, the insanity plea was rejected, and the man was convicted of the crime, but the very fact that such a defense was possible concerned many legal scholars, who argue that pedophilic disorder is a potentially disastrous oversight of the Model Penal Code.²³ Any use of the insanity defense for pedophiles would be entirely impossible by the M'Naghten Rule, as these individuals are completely aware of the illicit nature of their acts.

Ivc. Schizophrenia

Contrary to psychopaths, sociopaths, and pedophiles, those with a psychotic disorder such as schizophrenia are more traditionally considered to be “insane.” Schizophrenia, according to the DSM-5, is characterized by delusions, hallucinations, and disordered thinking.²⁴ Sufferers are often plagued with paranoia as well. In general, schizophrenia causes the subject to be

²⁰“Paraphilic Disorders.” Diagnostic and Statistical Manual of Mental Disorders: DSM-5. Arlington, VA: American Psychiatric Association, 2017.

²¹ Tenbergen, Gilian, Matthias Wittforth, and Helge Frieing. “The Neurobiology and Psychology of Pedophilia.” *Frontiers in Human Neuroscience* 24 (2015). <https://pubmed.ncbi.nlm.nih.gov/26157372/>.

²² Jeter, Jon. “Pedophile Seeks Insanity Ruling.” *The Washington Post*, February 9, 1994. <https://www.washingtonpost.com/archive/local/1994/02/09/pedophile-seeks-insanity-ruling/3bf285ad-23e8-49e0-bc0e-1509331191b2/>.

²³ Jeter, Jon. “Kowalski Found Responsible in Molestation of Four Boys.” *The Washington Post*, June 7, 1994. <https://www.washingtonpost.com/archive/local/1994/07/07/kowalski-found-responsible-in-molestation-of-four-boys/6bd53cbe-5267-49c9-87d7-049f6b2ac8c0/>.

²⁴ “Paraphilic Disorders,” Diagnostic and Statistical Manual of Mental Disorders: DSM-5

radically out of touch with reality itself. These individuals are often severely incapacitated and unable to take care of themselves, with some even lapsing into catatonic states. Only about 0.32% of people will suffer from this disorder in their life.²⁵ However, numerous surveys have found that almost half of homeless people unfortunately suffer from one of the psychotic disorders, with 10% plagued specifically with schizophrenia.²⁶ This illustrates the severity of the functional impairment that it can cause, as those with the disorder are often incapable of taking care of themselves.

Nearly every scholar agrees that people plagued with psychosis should have the insanity defense available to them. Indeed, psychotic individuals who commit a crime would be able to pursue an insanity plea under the Irresistible Impulse Test and the Durham Rule because they could have been unable to control their actions in the legal sense. Therefore, schizophrenia is covered under volitional approaches. In addition to this, the M'Naghten Rule covers psychotic disorders; psychotic people are often so out of touch with reality that they have no notion of the rules that govern them or what they are actually doing at the time. In fact, it is very likely that Daniel M'Naghten, the rule's namesake, was suffering from a psychotic disorder at the time of his crime. An insanity defense for schizophrenics could also be pursued under the Model Penal Code rule, theoretically in either of the two prongs, as it could qualify as a cognitive impairment or a volitional one. Thus, schizophrenia, arguably the most intense and debilitating psychiatric disorder, is incorporated into the insanity defense in all its iterations.

V. Advantages of a Cognitive Approach

Constructing an adequate standard for the insanity defense is extremely important because it will help those who have an incapacitating mental impairment and disallow others from taking advantage of the system to achieve more favorable rulings in court. Analysis of these three disorders and their relationship to the various versions of the insanity defense rule provides evidence for the superiority of a purely cognitive approach. The Irresistible Impulse Test,

²⁵“Schizophrenia.” World Health Organization, January 10, 2022.
<https://www.who.int/news-room/fact-sheets/detail/schizophrenia>.

²⁶Ayano, Getinet, Getachew Tesfaw, and Shegaye Shumet. “The Prevalence of Schizophrenia and Other Psychotic Disorders among Homeless People: A Systematic Review and Meta-Analysis.” *BMC Psychiatry* 19 (2019).
<https://bmcp psychiatry.biomedcentral.com/articles/10.1186/s12888-019-2361-7>.

Durham Rule, and Model Penal Code rule are poor formulations of the insanity plea because of the loophole they leave open through the volitional provisions. The M'Naghten Rule, though the oldest of them and therefore the most distant from modern psychiatry, is nonetheless more accurate in its staging of insanity because of its emphasis on the subject's ability to understand and navigate the world.

A lack of volition alone is not enough to disqualify an individual from criminal responsibility because it is too vague and difficult to recognize. Determining whether an act is the product of mental illness or if a subject is truly unable to resist their urges is not a clear-cut decision in the field of psychiatry. People with antisocial personality disorder or pedophilic disorder may be able to argue that their incredibly strong desires “force” them to commit crimes, but it is impossible to determine if this is actually true because the space between mental processes and behavior is murky. Many of these individuals are fully capable of existing in society, walking among us, working in our companies, and participating in our government, so it is clear that at least some of them do have the capacity to resist their urges and stay out of prison. Research has found that “criminal and non-criminal psychopaths share the same neuropsychological profile,” and whether a psychopath ends up committing a crime is more so determined by their background, specifically socioeconomic status and early parental supervision.²⁷ Similarly, some individuals diagnosed with pedophilic disorder do not offend at any point in their lives and instead develop numerous coping mechanisms.²⁸ Ascertaining the extent of a subject's volitional ability is nearly impossible in a psychiatric evaluation, while a lack of proper cognition is extremely obvious because it is constantly manifested in the sufferer's behavior. Psychopaths and pedophiles have the ability to blend in with normal, healthy individuals, but schizophrenics often do not. This variance in the ability of these disordered individuals to resist their urges places the volitional tests on very shaky ground; the psychological determinism that they advocate for is insufficiently backed up.

Even if it is somehow granted that some psychopaths or pedophiles have extremely strong desires that they are to curb, there is not sufficient cause to consider them in the company

²⁷Jarrett, Christian. “Not All Psychopaths Are Criminal.” British Psychological Society, June 26, 2008. <https://www.bps.org.uk/research-digest/not-all-psychopaths-are-criminal>.

²⁸Stevens, Eleanor, and Jane Wood. “‘I Despise Myself for Thinking about Them.’ A Thematic Analysis of the Mental Health Implications and Employed Coping Mechanisms of Self-Reported Non-Offending Minor Attracted Persons.” *Journal of Child Sexual Abuse* 28, no. 8 (2019): 968–89. <https://pubmed.ncbi.nlm.nih.gov/31509097/>

of those who genuinely cannot tell real from imaginary. The fact of the matter is that they still know that what they are doing is wrong. They suffer from no delusion or mental distortion that renders them unable to be completely aware of the law in its intricacies or even common moral norms at large. Fully lucid in themselves yet plagued by uncomfortable and distressing impulses, these individuals should prevent their urges by seeking psychiatric treatment and alleviating their symptoms; many already do. On account of this, psychopaths and pedophiles should not be allowed to take an insanity plea to escape consequences for their actions, which they were wholly aware of at the time. Someone who is perhaps unable to control themselves can still have full, perhaps even intimate and professional, knowledge of the law and a competent ability to escape the criminal fate that their disorder has ostensibly condemned them to. Unfortunately, the volitional rules of certain insanity defenses leave the option open for these characters to exploit the system.

In addition to this, a purely cognitive approach like that of the M'Naghten Rule already contains elements of volition it, only with a higher standard for determining insanity. Nearly everyone would agree that schizophrenics should be allowed the insanity plea. Indeed, they are afforded it by all of the various rules that exist in the United States, including those like the Durham Rule that only concern the subject's ability to control their actions. Schizophrenia often causes auditory and visual hallucinations, rendering the sufferer unable to determine what is real from what is a figment of their imagination. Thus, it follows that untreated schizophrenics cannot control what they do because they are not even in touch with reality itself; they cannot resist their delusions, and if they commit some horrific act because a voice in their head tells them to do so, the crime is a product of their illness. We see here that the cognitive defect present is actually the cause of the volitional deficit. Someone who is unaware of the true nature of their actions is necessarily unable to properly control themselves. Therefore, a volitional aspect of insanity is already contained within the cognitive aspect of it, only with a higher threshold for consideration. This means that anyone who meets either of the requirements of the M'Naghten Rule would also already be considered insane by the Irresistible Impulse Test, Durham Rule, or Model Penal Code rule standards; cognition alone is a higher bar.

Solely volitional tests are too broad, while the M'Naghten Rule is more specific and sets a higher standard for what is considered insanity. It makes sense that an extremely strict and

limiting standard should be set for insanity because of the minuscule number of cases that actually concern it. Furthermore, stricter evaluations of criminal insanity are important because they disallow malicious actors from taking advantage of a rule designed for those who are genuinely disabled by their disorder. To eliminate the volitional provisions in the insanity defense is to prevent certain individuals from taking advantage of the system to earn themselves more lenient sentences. The flaw of the volitional perspectives of criminal insanity is a completely unnecessary ambiguity in this corner of the law, and it can be avoided through an entirely cognitive approach. The M'Naghten Rule provides this wholly cognitive standard which more appropriately situates criminal insanity in whether an individual is able to understand the world around them, the inability to do which is far more easily diagnosed than whether one can control their actions.

Ultimately, it is up to a jury to decide whether a defendant successfully employs the insanity plea. As mentioned before, pedophiles who have used the defense have been unsuccessful because of this fact. Furthermore, a legal scholar, when writing on New Hampshire, the only Durham Rule state, argued that “whether a jury would regard a psychopath as criminally insane is doubtful.”²⁹ It has been shown that juries rarely, if ever, allow psychopaths and pedophiles insanity defenses under the volitional rules. Despite this, all it takes is one strangely inclined jury, and a pedophile may be able to avoid prison through an insanity defense; even if it is largely unsuccessful, the loophole still exists and must be amended.

The M'Naghten Rule is simply a more refined and focused version of the volitional rules. It allows an insanity defense to those who are out of touch with reality while stopping those who are not from utilizing one. This is the most accurate codification of common sentiment into law. Half of the states recognize the superiority of the M'Naghten Rule; most others use the Model Penal Code rule, which, in its second provision, allows the possibility for paraphilic disorders to count as insanity. Even with the supposed steadfastness of juries with regard to certain disorders, this still creates an uneasy and perilous situation going forward. Psychiatry must work in tandem with the law to furnish fair and accurate standards that protect the rights of the accused while also maintaining a certain precision that prevents the abuse of such rules. A cognitive approach

²⁹Reid, John P. “The Working of the New Hampshire Doctrine of Criminal Insanity .” *University of Miami Law Review* 15 (1960): 14–57. <https://repository.law.miami.edu/cgi/viewcontent.cgi?article=3414&context=umlr>

to criminal insanity meets both of these criteria and places the insanity defense in a strict and clear-cut position, one void of any ambiguity or cracks to slip through.