Bridging the Gap Between Law and Psychology:
The Deific Decree

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I. INTRODUCTION

[1] The legal system and the field of psychology coincide when a defendant asserts the insanity defense. The two fields view the insanity defense from extremely different angels; the law concerned with establishing a framework that will correctly identify a defendant who warrants an insanity acquittal and the field of psychology concerned with identifying symptoms, formulating diagnoses, and implementing proper treatments. Since the two separate fields strive to achieve dramatically different results, psychology and the law collide, creating a gap that is most notably seen when a defendant asserts an insanity defense.

[2] This note will demonstrate that in order to bridge the gap between the two fields, courts have developed varying tests to evaluate a defendant's mental state. At the same time it will show how the field of psychology has come to the forefront in labeling mental diseases and developing treatments to help individuals who suffer from such defects. The legal system depends on the field of psychology to help the finders of fact understand mental diseases and defects. Yet, the courts must develop safeguards to assure that defendants, who should be punished under the law, do not avoid punishment because of the insanity defense. One of those safeguards created by the legal system is the deific decree.

II. HISTORY OF THE INSANITY DEFENSE

A. *M'Naghten*[1] Test for Legal Insanity

[3] The traditional test for legal insanity was developed in 1843 by the English judiciary, writing in response to certain questions under debate in the House of Lords.[2] The questions were

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[1] M'Naghten's Case, 8 Eng. Rep. 718 (1843).

[2] SANFORD H. KADISH & STEPHEN J. SCHULHOFER, CRIMINAL LAW AND ITS PROCESSES 933 (6th ed. 1995).

raised because of the *M'Naghten* verdict, which had alarmed the public and the then current Queen of England.[3] These fears were aroused because the press suggested that the insanity defense allowed madmen to roam free and kill with impunity.[4]

[4] M'Naghten was indicted for the murder of Edward Drummond, secretary to the Prime Minister, Sir Robert Peel.[5] M'Naghten mistook Drummond for Peel and shot him by mistake.[6] When he was arrested, M'Naghten told the police that he had come to London to kill the Prime Minister because he was being persecuted by the "Tories" that followed and wished to murder him.[7] The defense attorneys for M'Naghten introduced expert and lay testimony showing that M'Naghten had delusions and suffered from acute insanity.[8] Subsequently, the jury returned a verdict of "not guilty on the ground of insanity."[9]

[5] Because of the concerns and fears raised by this verdict, the famous *M'Naghten* rule was promulgated from the answers[10] submitted by the House of Lords. The rule states that, first,

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[3] *Id.* At the time of the *M'Naghten* verdict, Queen Victoria held the throne in England and was concerned with the results of the insanity defense because she had been the target of three assassination attempts. *Id.* One of her attackers was acquitted because of the availability of the insanity defense. *Id.*

[4] *Id.*

[5] *Id.* at 932.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.* at 933.

[10] *Id.* The questions that prompted the answers were: (1) "[w]hat are the proper questions to be submitted to the jury, where a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for example), and insanity is set up as a defense;" and (2) "[i]n what terms ought the question to be

jurors must be told in all cases that every man is presumed to be sane and to posses a sufficient degree of reason to be responsible for his crimes.[11] This presumption is true until the contrary is proved to the satisfaction of the jury.[12] Second, in order to establish a defense on the ground of insanity, it must be clearly proven that, at the time of the offense, the person "accused was laboring under such a defect of reason, from a disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong."[13] Generally, the latter part of the question asks whether the accused, at the time of the offense, knew the difference between right and wrong.[14]

[6] The *M'Naghten* rule became the accepted rule in both England and the Unites States.[15] Despite its general acceptance, the rule was subjected to vigorous criticism.[16] Generally, the insanity defense was criticized because an insane mind is often rational and wellbalanced.[17] Critics argued that a test for insanity should include an examination of the defendant's ability to control his or her acts.[18] More specifically, the rule was criticized because

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left to the jury as to the prisoner's state of mind at the time when the act was committed." *Id.* (citing M'Naghten's Case, 8 Eng. Rep. 718 (1843)).

[11] *Id.*; *see M'Naghten*, 8 Eng. Rep. 718.

[12] *M'Naghten*, 8 Eng. Rep. at 719.

[13] *Id.*

[14] *Id.*

[15] GARY B. MELTON ET AL., PSYCHOLOGICAL EVALUATIONS FOR THE COURTS 191 (2d ed. 1997).

[16] *Id.*

[17] *Id.*

[18] *Id.* Five years before the House of Lords' declaration in *M'Naghten*, Sir Isaac Ray, a noted American physician, advanced this argument. *Id.*

it was deemed too rigid; a literal interpretation of the *M'Naghten* test would seldom lead to exculpation.[19] Therefore, over time, a number of other tests were developed by the courts to determine legal insanity.

B. Irresistible Impulse Test for Legal Insanity

[7] The irresistible impulse test was developed in the United States.[20] It stated that a defendant is not legally responsible if, by reason of the duress of a mental disease, he lost the power to choose between right and wrong.[21] The test was justified on the grounds that defendants who could not control their behavior at the time of the offense were not deterrable, and therefore, there was no legitimate moral or policy purpose for convicting them.[22] Many people in the legal community criticized the irresistible impulse test because it was thought that a defendant could easily feign impulsivity, and this would lead to many invalid insanity acquittals.[23]

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[19] *Id.*; *see also* GREGORY ZILBOORG, MIND, MEDICINE & MAN 273 (1943) (psychiatrist's view that a literal interpretation of *M'Naghten* would excuse "only those totally deteriorated, drooling hopeless psychotics of long-standing, and congenital idiots").

[20] MELTON ET AL., *supra* note 15, at 191. The first court to adopt the rule was the Supreme Court of Alabama. Parsons v. State, 2 So. 854 (Ala. 1883).

[21] *Parsons*, 2 So. at 866.

[22] MELTON ET AL., *supra* note 15, at 191. Criminal law doctrine states that insane individuals are not punishable as criminals because there are no principal grounds for such punishment, such as retribution and deterrence. Society should not feel vengeful towards insane individuals. Rather, they should be treated with compassion and hospitalized. Because insane individuals are oblivious to the constraints of society, there is no hope in deterring them from committing crimes. *Id.* at 187.

[23] *Id.* at 191. Data on the insanity defense suggests that it usually fails. In New Jersey, in 1982, 30% of those who pled the insanity defense were successful. *Id.* at 188. New Jersey: Hearing Before the Subcomm. on Crim. Justice of House Comm. on the Judiciary, 97th Cong., 2d Sess.

C. Product Test for Legal Insanity

[8] Yet another test for insanity was developed in the District of Columbia known as the product test.[24] The product test, set forth by Judge Bazelon in *Durham v. Unites States*,[25] stated, "an accused is not criminally responsible if his unlawful act was the product of mental disease or defect."[26] Bazelon hoped that removing legal restraints on clinical testimony and allowing an explanation of all the aspects of a defendant's personality and functioning would encourage mental health professionals to help reform the criminal law on insanity and to humanize it.[27] Instead, the test was criticized for its lack of guidance and was overruled[28] in 1972.[29]

D. American Law Institute Test for Legal Insanity

[9] Upon rejecting the product test, the District of Columbia adopted a test for insanity drafted by the American Law Institute (ALI).[30] The language of the ALI test preserves the underlying notions of the *M'Naghten* test and the irresistible impulse test, yet makes it clear that

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(Sept. 9, 1982) (statement of Rodriguez); *see also* Joseph H. Rodriguez et al., *The Insanity Defense Under Siege: Legislative Assaults and Legal Rejoinders*, 14 RUTGERS L.J. 397 (1983).

[24] MELTON ET AL., *supra* note 15, at 191.

[25] 214 F.2d 862 (D.C. Cir. 1954).

[26] *Id.* at 874-75.

[27] MELTON ET AL., *supra* note 15, at 191.

[28] *Durham* was overruled by Unites States v. Brawner, 471 F.2d 969 (D.C. Cir. 1972).

[29] MELTON ET AL., *supra* note 15, at 191-92. Maine and New Hampshire were the only other states to adopt the *Durham* test. Both abandoned the rule as well. *Id.* at 192.

[30] *Id.*

a defendant's cognitive[31] or volitional[32] impairment at the time of the offense only has to be "substantial" rather than total, to warrant an insanity defense.[33] This test became popular with courts and was adopted by a majority of the country's jurisdictions.[34] However, it also became the subject of criticism because it gave the psychiatric profession too much control over the insanity finding.[35]

E. American Bar Association and the American Psychiatric Association Test for Legal Insanity

[10] Subsequently, a more popular trend in insanity jurisprudence arose.[36] It continues to be the most recent trend and it attacks the volitional prong of the defense.[37] This test, promulgated by the American Bar Association (ABA) and the American Psychiatric Association (APA), states that "a person is not responsible for criminal conduct if, at the time of such conduct, and as a result of mental disease or defect, that person was unable to appreciate the

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[31] Cognitive, under the insanity defense, refers to the mental process of comprehension, judgment, memory, and reasoning. *Id.* at 626.

[32] Volitional, under the insanity defense, "is a lack of capacity to conform one's conduct to the requirements of the law." United States v. Lyons, 731 F.2d 243 (5th Cir. 1984).

[33] MELTON ET AL., *supra* note 15, at 192.

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

wrongfulness of such conduct."[38] The ABA and the APA adopted this test because both reasoned that if a mistake were to occur in administering an insanity defense, it would most likely occur as a result of using the volitional test.[39] Both associations felt that clinicians could more precisely arrive at a reliable conclusion about a person's awareness, perceptions, and understandings of an event, and that the appreciation test was sufficient to include people who should be excused by a plea of insanity.[40]

[11] As a result of these arguments, Congress[41] and a number of states adopted an insanity test that tracked the ABA and APA tests.[42] Accordingly, as of 1995, the ALI test was being used in twenty states while some variation of the *M'Naghten* or cognitive-prong-only test influenced about half the states. Idaho, Montana and Utah abolished the defense, but allowed expert testimony on *mens rea*.[43]

F. Consequences of the Various Tests for Legal Insanity

[12] An important question, which has been the subject of extensive research, is whether or not the different tests for insanity produce a difference in the outcome of a trial. Current research has delivered vague and ambiguous results. One study found a small but significant

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[38] *Id.*; *see* AMERICAN PSYCHIATRIC ASSOCIATION, STATEMENT ON THE INSANITY DEFENSE 12 (1982).

[39] MELTON ET AL., *supra* note 15, at 193.

[40] *Id.* Richard Bonnie played an instrumental role in formulating the ABA and APA tests. *Id.*; *see* Richard Bonnie, *The Moral Basis of the Insanity Defense*, 69 A.B.A J. 194-97 (1983).

[41] 18 U.S.C. § 402 (1984).

[42] MELTON ET AL., *supra* note 15, at 193.

[43] *Id.*

difference in verdicts from juries given the *Durham* instruction and juries given the *M'Naghten* instruction.[44] The latter group found a fewer number of people insane.[45] Yet, a second study conducted through mock trials, found no significant difference between the five different versions of the insanity test.[46]

III. THE ESTABLISHMENT OF THE DEIFIC DECREE

[13] Despite this research, a dramatic difference in the outcome of trials can be seen between the existing formulations of the cognitive prong of the test for insanity.[47] Such obvious disparity arises with the "wrongness" issue rather than the knowledge or appreciation language.[48] It is most apparent and most dangerous when a defendant claims to have committed an illegal act because God ordered him or her to do so or because it is mandated by his or her religious beliefs.

[14] Under the *M'Naghten* rule, some courts have interpreted the word "wrong" restrictively, finding defendants to be legally sane if they knew their offenses were illegal.[49] Other courts interpret the word "wrong" as "morally wrong."[50] Under the latter approach, a man

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[44] *Id.*

[45] *Id.*; *see* RITA SIMON, THE JURY AND THE DEFENSE OF INSANITY 215 (1967).

[46] MELTON ET AL., *supra* note 15, at 193; *see* Norman Finkel et al., *Insanity Defenses: From the Juror's Perspective,* 9 L. & PSYCHOL. REV. 77, 83-84 (1985).

[47] MELTON ET AL., *supra* note 15, at 199. The *M'Naghten* test, the first prong of the ALI test and the ABA/APA test, allows a defense of insanity only if a mental disease or defect causes cognitive impairment. *Id.* at 198.

[48] *Id.* at 199.

[49] *Id.*

[50] *Id.*

who believes God ordered him to kill an individual, although he knew it was legally wrong to kill, would be considered legally insane.[51] A few states have adopted a modification of the *M'Naghten* rule that further narrows the scope of the "wrongness" approach.[52] Courts in those states hold that defendants with a mental illness, which made them believe their crime was morally permissible, are entitled to use the insanity defense if they would have been justified had their delusions been true.[53] These differences in interpretation are the root of the paradox in existing state law.

[15] To deal with the dangers of interpreting the word "wrong" as a "moral wrong," the Washington Supreme Court further limited this approach by holding that it only applies where a defendant feels his or her act is justified as a result of a belief in the deific decree.[54] Belief in the deific decree[55] refers to a belief that God ordered the crime committed.[56] The Washington Supreme Court adopted this approach, instead of the full *M'Naghten* rule, because it feared that criminal law would be seriously undermined if it allowed a defendant to be excused from

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[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] The state of mind behind the development of the deific decree has two possible religious and legal origins. First, it may have survived because of an eighteenth century belief in England (promulgated through its case law) that a person under the visitation of God could not distinguish between good and evil. Second, it may have survived because of a general sense of compassion for the religiously inspired insane individual. Christopher Hawthorne, *"Deific Decree": The Short, Happy Life of a Pseudo-Doctrine*, 33 LOY. L.A. L. REV. 1755, 1783 (2000) (internal quotations omitted) (discussing the origins of the creation of the doctrine of deific decree).

[56] MELTON ET AL., *supra* note 15, at 199.

responsibility solely because his or her own conscience reasoned that the act was not morally wrong.[57]

A. *People v. Schmidt*[58]

[16] The first case to recognize the deific decree notion of insanity was *People v. Schmidt*. When arrested for the murder of Anna Aumuller, Hans Schmidt confessed his guilt to the police.[59] He claimed that he heard the voice of God calling him to kill Anna as a sacrifice and in atonement for a life of excess and hideous crime.[60] At the time of the murder, Schmidt said he believed he was in the presence of God.[61] Two physicians expressed the opinion that Schmidt was insane and overpowered by his delusions, while other physicians opined that Schmidt was feigning his insanity.[62] Nevertheless, the jury condemned Schmidt to death.[63]

[17] Schmidt appealed his conviction, claiming error in the jury instruction.[64] At the trial, the judge instructed the jury that, for the second prong of the *M'Naghten* test,[65] the word

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[57] *Id.*

[58] 110 N.E. 945 (N.Y. 1915).

[59] *Id.* at 945.

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *Id.* at 946.

[65] New York had codified the *M'Naghten* rule, which served as the state's test for insanity. *Id.*; *see* N.Y. PENAL LAW § 1120 (1915).

"wrong" was defined as "contrary to the law of the state."[66] On appeal, Judge Cardozo, writing for the court, did not accept such a narrow definition.[67] Rather, the court held that under certain circumstances, the word "wrong" should not be limited to a "legal wrong."[68] The court further held that it could not be said that an offender knows an act is wrong if, in an insane delusion produced by a disease of the mind, God appeared to the offender and ordained the commission of a crime.[69] Hence, the deific decree made its first appearance in American common law.[70]

[18] Despite the holding in *Schmidt*, the court's opinion clearly distinguished these types of delusions from both (1) crimes committed by anarchists who reason that all government is wrong and (2) crimes committed by devotees of a religious cult that practice polygamy or human sacrifice.[71] Judge Cardozo noted that the holding in *Schmidt* does not relieve such individuals

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[66] People v. Schmidt, 110 N.E. 945, 946 (N.Y. 1915).

[67] *Id.*

[68] *Id.* at 949.

[69] *Id.* Judge Cardozo justified his reasoning in the case through the example of a mother who killed her beloved infant child.

> She knows the nature and quality of the act; she knows that the law condemns it; but she is inspired by an insane delusion that God has appeared to her and ordained the sacrifice . . . . If the definition propounded by the trial judge is right, it would be the duty of a jury to hold her responsible for the crime . . . . No jury would be likely to find a defendant responsible in such a case, whatever the judge might tell them.

Id.

[70] For an in-depth analysis of the mystery behind Anna Aumuller's death and Judge Cardozo's alternative motives for writing the *Schmidt* opinion see Hawthorne, *supra* note 55, at 1784-99. One alternative motive was Cardozo's fear that the New York legislature might abolish the insanity defense altogether if Schmidt was given another trial. *Id.* at 1792.

[71] *Schmidt*, 110 N.E. at 950.

from responsibility before the law.[72] He also noted that cases would arise in which defendants would feign a belief that God ordered the crime committed and attempt to shelter themselves behind such a belief or delusion.[73] Nevertheless, Judge Cardozo trusted the common sense of jurors to see through such deceptions.[74]

B. *Washington v. Crenshaw*[75]

[19] The most recent use and interpretation of the deific decree can be seen in the rulings of the Washington Supreme Court.[76] In 1983, the defendant in *Washington v. Crenshaw* entered a plea of not guilty by reason of insanity.[77] The jury rejected the insanity defense and found Crenshaw guilty of murder in the first degree.[78] On appeal, Crenshaw challenged the jury instructions, specifically the instruction which defined the terms "right and wrong."[79]

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[72] *Id.*

[73] *Id.*

[74] *Id.* Judge Cardozo may have expressed this belief because Schmidt conceded his sanity on appeal and admitted his defense had been a sham. *Id.* Apparently, the jury had seen through his lies when they sentenced him to death. His first ground for reversal on appeal was the discovery of new evidence, which Schmidt maintained justified a new trial. *Id.* at 945. The new evidence was: (1) Schmidt had fabricated his insanity and (2) he had not killed Anna. *Id.* Instead, he asserted that he had concealed the victim's body to cover up her failed abortion attempt. *Id.* Nevertheless, Schmidt was not granted a new trial on these grounds because he chose to withhold information, moreover, he would not be permitted to experiment with a new defense simple because the one he chose had failed. *Id.* at 946.

[75] 659 P.2d 488 (Wash. 1983).

[76] *See* State v. Rice, 757 P.2d 889 (Wash. 1988); State v. Cameron, 674 P.2d 650 (Wash. 1983); Washington v. Crenshaw, 659 P.2d 488 (Wash. 1983).

[77] *Crenshaw*, 659 P.2d at 491.

[78] *Id.*

[20] As Washington had codified the *M'Naghten* test for insanity,[80] the jury received a general *M'Naghten* instruction, which included the instruction that a defendant can be found not guilty by reason of insanity if the defendant was unable to tell right from wrong when he or she committed the acts charged before the jury.[81] The judge, however, added a sentence, not codified by the legislature, to the jury instruction in order to explain the meaning of "right from wrong."[82] The judge instructed the jury that "[w]hat is meant by the terms right and wrong refers to knowledge of a person at the time of committing an act that he was acting contrary to the law."[83] This is the instruction Crenshaw assigned error to on appeal.[84] He contended that the trial court erred in defining "right and wrong" as a "legal wrong" instead of a "moral wrong."[85]

[21] In *Crenshaw*, the absence of an instruction allowing the jury to find the defendant insane based on a "moral wrong" definition of "right and wrong" was significant because the jury could have found Crenshaw legally insane, resulting in an acquittal, if it had been given such an instruction. Nevertheless, the Washington Supreme Court found that the jury instruction was not reversible error and refused to overturn Crenshaw's conviction.[86]

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[79] *Id.*

[80] *Id.* The jury instruction in *Crenshaw* tracked the language of the insanity defense as codified by the Washington legislature. *Id.* The trial judge deviated from the codified language in the last sentence of the jury instruction. *Id.*

[81] *Id.*

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] *Id.*

[86] *Id.*

[22] At his trial, Crenshaw took the stand in his own defense.[87] He claimed that he "sensed" his wife had been unfaithful to him.[88] Crenshaw told the jury that he was an adherent of the Moscovite religious faith, and that it was improper for a Moscovite not to kill his adulterous wife.[89] Crenshaw appeared to claim that, in his mind, he had committed no "moral wrong" even though murder was a "legal wrong." Nonetheless, Crenshaw was convicted of the first-degree murder of his wife after the judge instructed the jury in accordance with a "legal wrong" definition.[90]

[23] The Washington Supreme Court held that the *M'Naghten* rule supported the correctness of the trial court's instruction to the jury in *Crenshaw*.[91] Although the court and the legislature had not previously adopted a definition of the word "wrong," the court found the definition contained in the jury instruction to be correct.[92] The court based its decision on the original *M'Naghten* case, quoting the House of Lords' response to the first question presented in

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[87] *Id.*

[88] *Id.* at 490.

[89] *Id.* at 491.

[90] *Id.* Crenshaw and his wife Karen had been on their honeymoon in Canada when Crenshaw was deported because he was involved in a bar brawl. *Id.* at 490. When Karen joined Crenshaw at a hotel in Washington two days later, he "sensed" she had been unfaithful to him. *Id.* At the hotel, Crenshaw beat his wife until she was unconscious, stole a knife from a nearby store and stabbed her twenty four times. *Id.* Then he drove to a nearby farm, borrowed an ax and decapitated Karen with such force that it left cuts in the concrete floor under the hotel room carpet. *Id.* Thereafter, Crenshaw concealed the murder, placed Karen's body and severed head in the trunk, cleaned the hotel room of blood and fingerprints and had a beer with the manager before driving away with the body. *Id.* He then picked up two hitchhikers, told them what he had done and got them to help him dispose of the car in a river. *Id.* at 491. The hitchhikers called the police and Crenshaw was apprehended and voluntarily confessed to the crime. *Id.*

[91] *Id.* at 493.

[92] *Id.* at 492.

that case.[93] There, the House of Lords reasoned that, if an accused knew he was acting contrary to law, but acted under an insane delusion[94] that he was redressing or revenging some grievance, "he is nevertheless punishable . . . if he knew at the time of committing such crime that he was acting *contrary to law; . . . the law of the land.*"[95] Therefore, the court determined that the House of Lords approved of a legal standard of "wrong."[96]

[24] The *Crenshaw* court explained that the *M'Naghten* justices provided that, in certain cases, an additional instruction by a court would be acceptable.[97] Such an additional instruction is acceptable when there is no danger that a jury would be led to believe that actual knowledge of the law is essential in order to be convicted of the act charged.[98] Therefore, in cases, such as Crenshaw's, where actual knowledge[99] of the law is not an issue, a definition of "wrong" as a "legal wrong" is not improper.[100]

[25] Moreover, even if "wrong" is defined as a "moral wrong" it is society's morals, not the individual's, that are the standard for judging "moral wrong" under the *M'Naghten* test.[101]

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[93] *Id.* (citing M'Naghten's Case, 8 Eng. Rep. 718, 723 (1843)); *see supra* note 10 and accompanying text.

[94] Crenshaw also failed to prove that his alleged delusions stemmed from any mental defects. *Crenshaw*, 659 P.2d at 495.

[95] *Id.* at 492 (citing *M'Naghten*, 8 Eng. Rep. at 722).

[96] *Id.*

[97] *Id.* at 493 (citing *M'Naghten*, 8 Eng. Rep. at 723).

[98] *Id.*

[99] Ignorance of the law is a defense when the crime by its terms requires that a person know of the existence of the prohibition. MODEL PENAL CODE § 2.04 (1)(b) (1962).

[100] *Crenshaw*, 659 P.2d at 493.

To hold otherwise would allow a defendant to be exonerated because of his own personal beliefs and not society's determination of an individual defendant's ability to conform his conduct to that which the law of the land has determined to be appropriate.[102] Therefore, Crenshaw's belief that it was his duty to kill his wife could not serve to exculpate him from legal responsibility.[103]

[26] Thereafter, the court examined a narrow exception to the societal definition of a "moral wrong" that occurs when the defendant, because of a mental defect, believes the act to be ordained by God despite his or her knowledge that the act is both legally and morally wrong.[104] The court, adopting Justice Cardozo's opinion in *People v. Schmidt*,[105] likewise believed it would be unrealistic to hold such a person responsible for crimes he or she committed while acting under a deific command.[106] Hence, the *Crenshaw* court adopted the deific decree but held that it was not an available defense for Crenshaw because he had argued that he killed his wife in accordance with the tenets of his Moscovite faith, and not that he was ordained by God to commit the crime.[107]

[27] Crenshaw's attempt to justify his actions is analogous to that of a devotee of a religious cult that practices human sacrifice; neither the devotee nor Crenshaw are relieved from responsibility under the law simply because they claim to have acted as required by their

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[101] *Id.*

[102] *Id.*

[103] *Id.* at 494.

[104] *Id.*

[105] *See supra* note 69 and accompanying text.

[106] *Crenhaw*, 659 P.2d at 494 (citing People v. Schmidt, 110 N.E. 945 (N.Y. 1915)).

[107] *Id.*

religious beliefs.[108] Additionally, legal wrongs[109] and society's morals are interchangeable in *Crenshaw*; killing one's wife because of infidelity, regardless of whether it is true or not, is contrary to society's morals and against the law.[110] Therefore, Crenshaw would not have qualified for the insanity defense under either definition of "wrong."[111] Consequently, the court held that the jury instruction contained no error and the murder conviction was affirmed.[112] This holding set the stage for a subsequent case in Washington discussing the deific decree.

C. *State v. Cameron*[113]

[28] Around the time Gary Cameron was tried for the premeditated first-degree murder of his stepmother, the Washington Court of Appeals had just decided *Crenshaw*.[114] Upon appeal, the Washington Supreme Court, as previously explained, declined to assign error to the jury instruction at issue in *Crenshaw*.[115] An identical instruction to the one approved by the supreme court was challenged in *State v. Cameron*.[116] In spite of the court's earlier approval, ten months

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[108] *Id.*

[109] An attempt to hide evidence of a crime evinces awareness that the act is legally wrong. *Id.* at 497; *see also* State v. Skaggs, 586 P.2d 1279 (Ariz. 1978); State v. Law, 244 S.E 2d 302 (S.C. 1978); State v. McDonald, 571 P.2d 930 (Wash. 1977).

[110] *Crenshaw*, 659 P.2d at 494.

[111] *Id.*

[112] *Id.* at 497.

[113] 674 P.2d 650 (Wash. 1983).

[114] *Id.* at 653 (citing State v. Crenshaw, 617 P.2d 1041 (Wash. Ct. App. 1980)).

[115] *Id.* (citing *Crenshaw*, 659 P.2d 488 (Wash. 1983)).

[116] *Id.*

later, the Washington Supreme Court held that an identical jury instruction to the one used in *Crenshaw* was erroneously used in *Cameron*.[117] The court did not overrule *Crenshaw* or the court's adoption of the deific decree doctrine promulgated in *Schmidt*, but rather held that the defendant in *Cameron* was entitled to utilize the *Crenshaw* exception.[118]

[29] Cameron was found wandering along the shoulder of a highway, wearing only a pair of women's stretch pants and one shoe.[119] He was taken to a mental hospital, and the police subsequently discovered that he was wanted in Washington for the murder of Marie Cameron, his stepmother.[120] After police arrested Cameron and informed him of his Constitutional rights, Cameron confessed to having murdered Marie.[121] At his trial, four doctors testified about Cameron's mental condition and all four agreed that he suffered from paranoid schizophrenia.[122]

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[117] *Id.* at 654.

[118] *Id.*

[119] *Id.* at 651.

[120] *Id.*

[121] *Id.* Cameron stabbed the victim over 70 times, left the knife in her heart and her body in the bathtub with no attempt to conceal it. *Id.* He stated that Marie laughed, acted as if she enjoyed herself, and moved around throughout the ordeal. *Id.* at 652. He also claimed that Marie was involved in witchcraft and sorcery, was generally an evil person, and that she had initially attacked him with a knife but that he had taken it from her after twisting her wrist. *Id.* at 651-52.

[122] *Id.* at 653. Paranoid-type schizophrenic persons show a history of increasing suspiciousness and severe difficulties in interpersonal relationships. JAMES C. COLEMAN ET AL., ABNORMAL PSYCHOLOGY AND MODERN LIFE 474 (Rebecca Pascal ed., 11th ed. 2000). The clinical picture of a paranoid schizophrenic is a person

> dominated by absurd, illogical, and often changing delusions. Persecutory delusions are the most frequent and may involve a wide range of bizarre ideas and plots. An individual may become highly suspicious of relatives or associates and may complain of being watched, followed, poisoned, talked about, or influenced by various tormenting devices rigged up by enemies.

The doctors also agreed that Cameron knew, mechanically, that he was killing his stepmother and that murder was prohibited by law, but that he was fixated with delusional beliefs.[123] He believed his stepmother was an agent of Satan who, along with others such as Yasser Arafat and the Ayatollah Khomeini, was persecuting him.[124] Cameron also believed that God had directed him to kill Marie, Satan's angel, and that "by doing so, [he] was obeying God's higher directive or law."[125] Cameron compared himself to Jesus Christ, and believed he was a messiah "directed by God to send Marie from this life to another."[126]

[30] The doctors contended that although Cameron technically understood that the stabbing would kill Marie, he did not have the capacity to discern between right and wrong with reference to the act itself.[127] The doctors also concluded that Cameron was unable to "appreciate the nature and quality of his acts."[128] No doctor insisted otherwise.[129]

[31] Cameron entered a plea of not guilty and a plea of insanity existing at the time of the act charged.[130] Over his objection, the trial court instructed the jury with the same definition of

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Id. at 474.

[123] *Cameron*, 674 P.2d at 653.

[124] *Id.*

[125] *Id.*

[126] *Id.*

[127] *Id.*

[128] *Id.*

[129] *Id.* at 652. In Cameron's written confession, he stated, "I wanted to kill the spirit that seemed to be attacking my spirit." *Id.* Cameron had confessed to the murder twice, once during a tape-recorded oral confession and again in a signed written confession. *Id.*

[130] *Id.* at 653.

"wrong" that had been utilized in *Crenshaw*.[131] The jury returned a guilty verdict, which was subsequently affirmed by the Washington Court of Appeals.[132] On appeal, the Washington Supreme Court applied the deific decree doctrine and reversed the holding of the trial court and the court of appeals.[133]

[32] In applying the deific decree doctrine, the Washington Supreme Court held that Cameron fit the exception to the "moral wrong" definition of "wrong."[134] The court reasoned that the trial court's use of a "legal wrong" definition of "wrong" had precluded the jury from considering the essential relevant facts that formed Cameron's theory of the case.[135] Therefore, the trial court erred by adding the definition of "wrong" to the jury instructions.[136] Because of the considerable evidence presented in the case, the supreme court found that the jury could have concluded that Cameron suffered from a mental disease and believed God directed him to kill his stepmother, and it could have found his mental disease prevented him from understanding the difference between right and wrong.[137] While the court held that the deific decree exception

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[131] *Id.*

[132] *Id.* at 651.

[133] *Id.*

[134] *Id.* at 654. The Washington Supreme Court compared Cameron to the mother who kills her child because she was directed by God to do so, *id.*, which is the original example Cardozo used in *People v. Schmidt*, 110 N.E. 945 (N.Y. 1915). *See supra* note 69 and accompanying text.

[135] *Cameron*, 674 P.2d at 654.

[136] *Id.* The instruction that was read to the jury stated, "[w]hat is meant by the terms right and wrong refers to knowledge of a person at the time of committing an act that he was acting contrary to the law." *Id.* at 653.

[137] *Id* at 654.

applied in this case, it stressed that the scope of the exception must be determined on a case-by-case basis.[138]

IV. THE DEIFIC DECREE AND THE *M'NAGHTEN* TEST FOR LEGAL INSANITY

[33] *Crenshaw* and *Cameron* seem to outline how the deific decree works in a jurisdiction that adopts the *M'Naghten* test for insanity. The two cases also purport to solve the question of how to define the word "wrong" under the infamous *M'Naghten* rule. However, the cases do not set forth a rule that would enable a trial court judge to decide those defendants who should be afforded a jury instruction for "legal wrong" versus those who are not entitled to any definition of "wrong." Apparently, Crenshaw was allowed to use the deific decree simply because, in hindsight, the Washington Supreme Court thought he was an appropriate candidate. Due to the ambiguity created by precedent in Washington, however, cases that question the use of definitions for "wrong" in jury instructions still reach the Washington Court of Appeals.

[34] As the following cases demonstrate, the answer to questions regarding appropriate jury instructions for an insanity defense is still elusive and under constant attack. Moreover, the insanity defense is generally attacked by society as a whole because, although unfounded, society fears that dangerous and guilty murderers may roam free because of the availability of the insanity defense in the American court system.[139]

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[138] *Id.*

[139] Three notorious murderers in the United States attempted to use the not guilty be reason of insanity (NGRI) plea in *M'Naghten* jurisdictions. COLEMAN ET AL., *supra* note 122, at 703. Jeffrey Dahmer unsuccessfully asserted the defense while on trial for the murder, dismemberment, and cannibalization of fifteen men in Milwaukee. *Id.* Likewise, David Berkowitz, also known as the "Son of Sam," who terrorized the New York City community for thirteen months, killing six people and wounding seven, was unsuccessful when he asserted a NGRI plea. *Id.* Unlike Dahmer and Berkowitz, however, John Hinckley, who was tried for the

State v. Potter[140]

[35] Dennis Potter confessed to murdering his wife, Norma, and was convicted of murder in the second-degree.[141] Before his confession, law enforcement officials believed, based on the coroner's report and statements of officers who were at the accident scene, that Norma had died in a car accident.[142] Thus the state declined to prosecute Potter for Norma's murder until he walked into the police department and confessed.[143]

[36] Potter confessed that he first broke his wife's jaw and then strangled her to death.[144] Thereafter, he put her body in his car and drove the car off the road in an attempt to commit suicide.[145] The officer at the scene of the accident found no evidence to indicate that Norma had died from anything other than the injuries she received in the car accident.[146] Consequently, the

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attempted assassination of former President Ronald Reagan, asserted a NGRI defense and was acquitted on those grounds. *Id.* The Hinckley verdict unleashed a storm of public protest and widespread attempts to reform the NGRI defense laws. *Id.* (Hinckley is still committed to the care of a federal high security mental hospital, and it is doubtful that he will ever be declared well enough to justify his release from confinement. *Id.*) In reality, the insanity defense is unsuccessful in most cases, as it was for Dahmer and Berkowitz. *Id.*

[140] 842 P.2d 481 (Wash. Ct. App. 1992).

[141] *Id.* at 482.

[142] *Id.* at 482-83.

[143] *Id.* at 483-84. Potter was charged with his wife's murder more than twelve years after her death. *Id.* at 483. He argued that his due process rights were violated by the delay in time between the crime and the filing of charges. *Id.* The appellate court, however, found that Potter had failed to satisfy the first prong of the due process analysis because he could not demonstrate actual prejudice. *Id.* at 484.

[144] *Id.* at 483.

[145] *Id.*

[146] *Id.* at 482.

coroner did not perform an autopsy and instead relied on the accident report to determine a cause of death.[147]

[37] Following Potter's confession, an autopsy was finally performed on Norma's body.[148] The autopsy revealed that strangulation, and not injuries sustained by Norma in the car accident, was the cause of death.[149] At his trial, Potter entered a plea of not guilty and a plea of insanity existing at the time of the act charged.[150] He claimed that God had told him to kill his wife and that he had acted in accordance with God's command, which in his mind was not morally wrong.[151] The jury rejected the insanity defense and found Potter guilty of second-degree murder.[152]

[38] At trial, Potter had proposed a jury instruction that differed from Washington's jury instruction for the deific decree exception.[153] The trial court rejected Potter's instruction and read a different instruction to the jury.[154] On appeal, Potter argued that his proposed instruction, which was a variation of Washington's general rule, should have been given to the jury.[155] The

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[147] *Id.*

[148] *Id.* at 483.

[149] *Id.*

[150] *Id.*

[151] *Id.* at 489.

[152] *Id.* at 483.

[153] *Id.* at 486.

[154] *Id.* at 483.

[155] *Id.* at 486.

Washington Court of Appeals found that the trial court did not err in rejecting Potter's jury instruction and affirmed his conviction.[156]

[39] Potter's proposed instruction would have established a special rule for people "who possess the cognitive ability to know the nature and quality of their acts and can tell the difference from right and wrong, but nonetheless lack volitional control of their behavior because they are unable to overcome a 'deific command.'"[157] Instead, the court instructed the jury that it could find Potter insane at the time of the act if he believed "he was acting under a direct command of God and that belief prevented him from comprehending the act with which he is charged was morally wrong or prevented the defendant from perceiving the nature and quality of his act."[158]

[40] Potter derived his jury instruction from two aforementioned Washington Supreme Court decisions; *Crenshaw* and *Cameron*.[159] While the court of appeals acknowledged that these cases might offer support for Potter's position, the court refused to overturn his conviction based on the rejected jury instruction because *Crenshaw* and *Cameron* were deemed to be case specific reformulations of the traditional insanity test.[160] Hence, the court held that Potter's instruction was an incorrect statement of the law.[161]

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[156] *Id.* at 489.

[157] *Id.* at 486.

[158] *Id.*

[159] *Id.* at 487.

[160] *Id.* at 486.

[161] *Id.* at 489.

[41] Potter's proposed jury instruction would have allowed a defendant to be found not guilty by reason of insanity if he or she had the cognitive ability to know the act was "wrong" but lacked volitional control.[162] This was an incorrect statement of the law because the deific decree exception only allows the jury to find the defendant not guilty by reason of insanity if the deific command overcomes the defendant's cognitive ability to know that his act was "wrong."[163] The deific decree exception relates only to a defendant's cognitive ability to tell right from wrong, not the volitional ability to control behavior.[164]

V. THE DEIFIC DECREE AND THE IRRESISTIBLE IMPULSE TEST FOR LEGAL INSANITY

[42] In *Potter*, the deific decree exception was not extended to the volition prong of the *M'Naghten* test for insanity despite the Washington Supreme Court's earlier holding in *State v. Rice*.[165] The *Rice* holding suggests that cognitive ability is irrelevant in determining if the deific command overcame a defendant's free will, thus a jury could find that the defendant knew right from wrong but was unable to control the urge to commit the crime.[166] Nonetheless, in *Potter,* the Washington Court of Appeals interpreted *Rice* as inconsistent with well-settled state law.[167]

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[162] *Id.*

[163] *Id.*

[164] *Id.* at 488.

[165] 757 P.2d 889 (Wash. 1988).

[166] *Id.* at 904.

[167] *Potter*, 842 P.2d at 487.

A. *State v. Rice*

[43] David Rice was found guilty of four counts of aggravated first-degree murder and sentenced to death.[168] On Christmas Eve 1985, Rice killed Charles and Annie Goldmark and their two sons with a fillet knife and a steam iron.[169] He claimed he murdered the family because he faced "terminal unemployment" and intended to rob them.[170] Furthermore, Rice believed that Charles Goldmark was a member of the local Communist Party and sought information about other members of the group.[171]

[44] At his trial, Rice wanted the jury to receive an instruction on the deific command exception.[172] The trial court rejected his proposed instruction and instead read the standard Washington instruction on insanity.[173] On appeal, the Washington Supreme Court found that the trial court properly rejected the defendant's proposed instruction because Rice would have been entitled to an instruction of his choice only if the theory of his case was supported by substantial evidence in the record, which was not the case.[174]

[45] While Rice had mentioned in a letter he wrote that he was in a battle with Satan and referred to himself as an emissary of God during a video interview,[175] he also had explained that

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[168] *Rice*, 757 P.2d at 891.

[169] *Id.* at 895.

[170] *Id.* at 893.

[171] *Id.* at 894.

[172] *Id.* at 904.

[173] *Id.*

[174] *Id.*, *see also* State v. Quinn, 719 P.2d 936 (Wash. 1986); Cooper's Mobile Homes, Inc. v. Simmons, 617 P.2d 415 (Wash. 1980).

his acts on Christmas Eve were motivated by his political beliefs and financial situation.[176] Yet, Rice also contended that he communicated with extraterrestrials that urged him to act.[177] Defense counsel suggested that these "urges" were deific commands.[178] Doctors who testified at his trial, however, stated that Rice was not compelled to follow these urges.[179] Instead, Rice had told the doctors that he could chose to either follow or not follow these urges, but that bad things tended to happen if he did not follow them and good things happened if he did follow them.[180]

[46] Relying on its decision in *Cameron*, the court made it clear that a defendant following deific commands qualifies as insane only if his free will has been subsumed by a belief in the deific decree.[181] Rice, despite the evidence aforementioned, did not make such a showing.[182] Consequently, he was not entitled to an instruction on the deific decree exception.[183]

[47] Since the *Rice* court did not dismiss the defense counsel's contention that "urges" may give rise to a deific decree instruction, the defense counsel in *Potter* tried once again to expand the deific decree defense. Nevertheless, it is hard to reconcile the definition of deific

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[175] *Rice*, 757 P.2d at 904.

[176] *Id.* at 894.

[177] *Id.* at 904.

[178] *Id.*

[179] *Id.*

[180] *Id.*

[181] *Id.*

[182] *Id.*

[183] *Id.*

decree as a "command of God"[184] with communication through extraterrestrials. Moreover, the following "urges" theory resembled the "irresistible impulse" insanity defense. Consequently, this gray area had to be resolved by the Washington courts.

B. Resolving *Crenshaw*, *Cameron* and *Rice* with *Potter*

[48] Potter's proposed jury instruction was deemed an incorrect statement of law because Washington rejects the "irresistible impulse" insanity defense.[185] Since *Crenshaw*, *Cameron* and *Rice* did not mention the irresistible impulse defense, the silence indicated that the Washington Supreme Court did not intend to overrule its long line of case law[186] rejecting the defense.[187] Nor did the court seek to create a new judicial exception to the insanity defense.[188] The court reasoned that the *Crenshaw*, *Cameron* and *Rice* decisions did not relate to the volitional ability to control behavior, but instead referred to the cognitive ability to tell right from wrong.[189]

[49] In Washington, the irresistible impulse defense requires that a person be

> one induced by a mental disease affecting the volitive powers so that the person afflicted is unable to resist the impulse to commit the act charged against him. He cannot control his own behavior even though his perceptive powers are unaffected and he understand the nature and consequences of the act charged and perceives that it is wrong.[190]

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[184] Definition of the deific decree exception in *Cameron*, 674 P.2d at 650.

[185] State v. Potter, 842 P.2d 481, 488 (Wash. Ct. App. 1992).

[186] *See*, *e.g.,* State v. Edmon, 621 P.2d 1310 (Wash. Ct. App. 1981); State v. Niblack, 443 P.2d 809 (Wash. 1968); State v. White, 374 P.2d 942 (Wash. 1962).

[187] *Potter*, 842 P.2d at 488.

[188] *Id.*

[189] *Id.*

[50] Since Potter's proposed definition, while not using the words "irresistible impulse," clearly resembled Washington's definition of an irresistible impulse, the court could not adopt his proposed instruction without overruling its previous decision to reject the irresistible impulse insanity defense. Consequently, while a belief in the deific command may render an individual unable to resist the impulse to commit a crime, a defendant will be found sane so long as he or she can tell right from wrong. This view reflects Washington's desire to further limit the availability of the insanity defense, especially when defense counsel is seeking to expand the deific decree exception.

[51] Limiting the availability of the insanity defense, specifically by limiting the definition of "moral wrong," reflects the Washington court's fear that terrorists and routinely antisocial[191] individuals will take advantage of the defense.[192] Likewise, courts in other jurisdictions have limited the defense in the same fashion.[193]

VI. THE DEIFIC DECREE IN COLORADO

A. *State v. Serravo*[194]

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[190] *Edmon*, 621 P.2d at 1310.

[191] Antisocial individuals are commonly described as superficial, lacking empathy or remorse, with callous unconcern for the feelings of others. MELTON ET AL., *supra* note 15, at 635. Most importantly, they disregard social norms and have poor behavioral controls. *Id.* Common characteristics include the inability to sustain consistent work behavior, conflicts with the law, and repeated failures to meet financial obligations. *Id.*

[192] *Id.* at 200.

[193] *Id.*

[194] 797 P.2d 782 (Colo. Ct. App. 1990).

[52] The Colorado Court of Appeals adopted Washington's version of the deific decree exception. In *State v. Serravo*, Robert Pasqual Serravo was tried for attempted first-degree murder and found not guilty by reason of insanity.[195] The state, on appeal, challenged the jury instruction because it embodied the deific decree exception.[196] The court concluded, however, that the trial court did not err in giving such an instruction.[197]

[53] Serravo was obsessed with delusions that "he was on a mission from God to establish a community for evangelizing his religious ideals."[198] He felt his wife was not supportive of his ideals and therefore, it was God's will that he kill her so she would not be an obstacle to his mission.[199] Serravo stabbed his wife in the back while she was sleeping, but his wife survived the attack; her survival proved to Serravo, who called the police, that she had passed a divine test and would no longer be an obstacle.[200]

[54] At trial, it was undisputed that Serravo was mentally ill but the prosecution objected to the inclusion of a jury instruction which provided that "the phrase incapable of distinguishing right from wrong includes within its meaning the case where a person appreciates that his conduct is criminal, but, because of a mental disease or defect, believes it to be morally right."[202] The prosecution contended that the instruction was incorrect because "it applie[d] a subjective

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[195] *Id.* at 782.

[196] *Id.*

[197] *Id.* at 783.

[198] *Id.* at 782.

[199] *Id.*

[200] *Id.*

[202] *Id.*

moral standard to the determination of whether the defendant understood right from wrong."[203] The Colorado Court of Appeals disagreed.[204]

[55] In *Serravo*, the court noted that *M'Naghten* did not define "wrong" as either a moral or "legal wrong" and that the jurisdictions are split on the issue.[205] Nevertheless, the court found that the General Assembly in Colorado, as reflected by its codification of *M'Naghten*,[206] intended to define "wrong" as the societal standard of "moral wrong."[207] The court reasoned that society's standard of "moral wrong" is usually identical to the legal standard of "wrong" and therefore, the test would not be broadened if "wrong" was defined by society's moral standard.[208] Consequently, the deific decree exception was recognized in Colorado and the jury instruction was upheld.[209]

[56] The Colorado Court of Appeals adopted the deific decree exception for situations where a person commits a crime, knowing it is illegal and morally wrong according to society's

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[203] *Id.*

[204] *Id.*

[205] *Id.* at 783.

[206] Section 16-8-101, C.R.S. (1986 Repl. Vol. 8A) and People v. Low, 732 P.2d 622 (Colo. 1987). The Colorado statute states, possibly in conflict with the deific decree, that mental disease or defect should not be confused with "moral obliquity, mental depravity, or passion growing out of anger, revenge, hatred, or other motives, and kindred evil conditions, for when the act is induced by any of these causes the person is accountable to the law." Serravo, 797 P.2d at 783.

[207] *Serravo*, 797 P.2d at 783.

[208] *Id.*

[209] *Id.*

standards, yet, because of a mental defect, believes that God ordered the act.[210] The court was also careful to point out that the deific decree exception would not apply to a person who commits a crime in accordance with a duty imposed by a particular faith.[211]

[57] Serravo's statement to the police, that an intruder stabbed his wife, demonstrated that he knew trying to kill his wife was against the laws of society.[212] This evidence, in turn, supported a finding that Serravo also knew society considered the murder morally wrong.[213] Yet, the evidence also indicated that, due to a mental disease or defect, Serravo believed that God had ordered the act.[214] Therefore, in *Serravo*, the deific decree exception was an appropriate instruction for the jury.[215]

B. *People v. Galimanis*[216]

[58] In a subsequent case, the Colorado Court of Appeals affirmed but further narrowed the deific decree exception. In *People v. Galimanis*, the defendant beat, stabbed, and decapitated

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[210] *Id.* (citing Washington v. Crenshaw, 659 P.2d 488 (Wash. 1983); People v. Schmidt, 110 N.E. 945 (N.Y. 1915)). The Colorado Court of Appeals quoted Justice Cardozo's infamous example of the mother who kills her infant child believing that God decreed the act. *Id.*; *see supra* note 69 and accompanying text.

[211] *Serravo*, 797 P.2d at 783.

[212] *Id.*

[213] *Id.*

[214] *Id.*

[215] *Id.*

[216] 944 P.2d 626 (Colo. Ct. App. 1997).

a woman.[217] The jury had convicted Galimanis of first-degree murder, but he argued on appeal that the jury should have been given the deific decree instruction because he felt "God-like" at times and referred to himself as the devil.[218] Nonetheless, the court of appeals affirmed his conviction, because, while Galimanis admitted that he felt "God-like" at times, there was no evidence introduced at trial to show that God compelled him to kill his victim.[219]

VII. PSYCHOLOGY'S VIEW OF THE DEIFIC DECREE

A. Psychological Diagnoses Compared to Legal Tests for Insanity

[59] As a legal matter, psychological diagnoses rarely support an insanity defense.[220] In some jurisdictions, specific psychological diagnoses are limited and cannot be used as mental state defenses.[221] For example, the Model Penal Code excludes the psychopathic personality from its definition of mental disease under the insanity defense even though many mental health professionals regard the disorder as a mental disease.[222]

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[217] *Id.* at 628.

[218] *Id.*

[219] *Id.* at 632. California also recognizes the deific decree exception. *See, e.g.*, People v. Skinner, 704 P.2d 752 (Cal. 1985). In *Skinner*, the defendant believed that his marriage vows reflected the direct wishes of God. *Id.* at 755. Therefore, when he strangled his wife, he believed the act was sanctified by God and was not morally wrong. *Id.* Consequently, the California Supreme Court determined, on appeal, that Skinner was insane because he could not distinguish right from wrong at the time of the offense. *Id.* at 764.

[220] MELTON ET AL., *supra* note 15, at 242.

[221] *Id.* Drug or alcohol abuse may be excluded as a basis for legal insanity. *Id.*

[222] KADISH, *supra* note 2, at 980.

[60] The Model Penal Code[223] describes a psychopath as an offender with a long history of antisocial[224] conduct.[225] Such an offender "knows" that his or her actions are illegal but has little or no empathy and no capacity to understand the rights of others.[226] Hence, the Code states that the psychopathic personality is excluded from the concept of mental disease or defect, despite the fact that it is recognized as a mental disease in the field of psychology.[227]

[61] The field of psychology has tried to bridge the gap between the differences in legal insanity and mental disease diagnoses. When evaluating a defendant for competency, clinicians determine diagnoses to help forensic examiners calibrate their sight and keep speculative tendencies about mental illnesses in check.[228] Moreover, a clinician's diagnosis may provide a lawyer with a device for assessing the probable legal relevance of finding a mental disease.[229] Furthermore, a clinician's diagnosis can help the jury, as fact finders, identify the presence of a legally sufficient mental disease or defect.[230] A clinician's diagnosis can also help the fact finder determine the severity of a disorder, the type of impairment it causes, and the defendant's credibility when he or she suffers from such impairment.[231] Yet, it is important to reiterate that a

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[223] § 4.01(2) (1962).

[224] *See supra* note 191 and accompanying text.

[225] KADISH, *supra* note 2, at 980.

[226] *Id.*

[227] Tent. Draft No. 4, 1955, at 160.

[228] MELTON ET AL., *supra* note 15, at 242.

[229] *Id.*

[230] *Id.*

[231] *Id.*

diagnosis, in and of itself, is useless to the legal system.[232] The symptoms that speak to offenders' characteristic, thoughts, feelings, and beliefs are more important to the resolution of legal issues than diagnoses.[233]

B. How Psychologists Adapt to the Legal System

[62] When clinicians wish to determine a defendant's mental state at the time of the offense, whether it is under the *M'Naghten* test or the irresistible impulse test, they concentrate on determining whether the accused suffers from a mental disease or defect.[234] Specifically, when a clinician is called to testify in a case where the jury will receive a deific decree instruction, the clinician will continue to concentrate on the characteristics of the mental disorder.[235] Therefore, for the psychologist, the focus is the same whether the court is looking at the defendant's degree of cognitive or volitional impairment.[236] This clearly explains why the Washington and Colorado courts and the Model Penal Code seek to limit the types of mental diseases or defects available under the various tests for insanity.

[63] Clinicians' leave the theory of the case to the lawyers.[237] They avoid being dragged into semantic battles over the language of a legal test or about the legal definition of mental

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[232] *Id.*

[233] *Id.*

[234] *Id.* at 199.

[235] *Id.*

[236] *Id.* at 200.

[237] *Id.* at 243.

states.[238] Instead, clinicians are instructed to explain the different ways that clinical symptoms impair a defendants' ability to act in the legally prescribed manner.[239] The framework of the test for insanity is left to the courts. Thus, courts are free to develop legal doctrines, such as the deific decree exception, and to instruct a jury on a doctrine's relevance to a particular accused.

C. Diagnosing the Deific Decree

[64] The deific decree is sometimes described, not as a religious belief, but rather, as a delusion that qualifies as legal insanity, exculpating the defendant from criminal responsibility.[240] This position is inaccurate because the analysis leaves out the fact that defendants who enter a plea of not guilty by reason of insanity must also show, in addition to a belief in the deific decree, that they suffer from a mental disease or defect.[241] Therefore, not every individual who feels his or her act is justified will be exculpated under the law.[242]

[65] Moreover, legal definitions of mental diseases or defects, if they exist at all, are vague and vary from jurisdiction to jurisdiction.[243] Therefore, it is incorrect to assume that a

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[238] *Id.*

[239] *Id.* Clinicians, as experts, provide descriptive accounts and logical links between symptoms or diagnoses and alleged criminal behavior. *Id.* at 245. Clinicians may cautiously elaborate on behaviors often associated with the diagnosis. *Id.* at 242.

[240] Grant H. Morris & Ansar Haroun, *"God Told Me to Kill": Religion or Delusion?*, 38 SAN DIEGO L. REV. 973, 1004 (2001) (discussing the deific decree exception and the American Psychiatric Association's decision declining to declare any religious belief as a false belief).

[241] MELTON ET AL., *supra* note 15, at 199.

[242] *Id.*

[243] *Id.* at 196.

particular diagnosis can be equated with insanity or its threshold under the law.[244] Even the drafters of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders ("DSM") have recognized the imperfect fit between questions of concern to the law and information contained in a clinical diagnosis.[245] Therefore, once again, it is important for a clinician in preparing to testify that he or she focus on describing symptoms instead of labeling diseases.[246]

[66] It is troubling and inaccurate to describe the deific decree as a delusion that qualifies as legal insanity. A delusion is generally described as a false belief based on an incorrect inference about external reality and firmly sustained despite clear and convincing evidence to the contrary.[247] While this definition seems to describe people who believe God commanded them to kill, it does not accurately answer the question of insanity under the law. It does not help the jury determine whether a defendant knew the difference between right and wrong, under any definition of the word "wrong." Therefore, courts are left to determine the legal standard of insanity and clinicians are relied upon to describe symptoms of diseases. Furthermore, psychologists do not determine if a defendant was subsumed by a belief in a deific decree; this decision is left for the jury. If the facts fit the legal test for insanity, it is the jury that ultimately determines whether a defendant is not guilty by reason of insanity and a verdict is handed down accordingly.

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[244] *Id.*

[245] *Id.*

[246] *Id.*

[247] *Id.* at 627.

VIII. CONCLUSION

[67] Since the legal system and the field of psychology are separate and distinct entities, approaching the issue of insanity from two different perspectives, it is necessary for courts to develop doctrines that safeguard society's system of justice. The deific decree is an example of such a safeguard, and although it is not widely used, its success in bridging the gap between the law and psychology may cause it to be refined and utilized in the near future.