CORRESPONDENCE

Insanity

As an author of medico-legal reports, I read with interest the article by Haque & Cumming (2003) on intoxication and legal defences. I would like to comment in particular on their section under the heading of Insanity on p. 148.

First, the infamous M'Naghten rules are stated to have had their inception in 1943. I suspect this is a typographical error. The judges at the House of Lords gave their opinion on what the wording of the insanity defence should be a century earlier, in 1843. This followed on from M'Naghten's case that same year.

Second, the interpretation of the 'knowledge' requirements of 'nature', 'quality' and 'wrong' are stated to be restricted to a lack of legal rather than moral knowledge. I submit that this is not quite right. *R v Windle* [1952] at the Court of Appeal did indeed hold that the word 'wrong' means legally wrong, not morally wrong. However, *R v Codere* (1916) also at the Court of Appeal determined that the 'nature' and 'quality' of the act means its physical nature and quality. So, for the one limb it is a lack of *legal* knowledge, but for the other limb it is a lack of *physical* knowledge. Thus, there is a distinction in the interpretation of the knowledge requirements of the two limbs.

Third, psychopathy is given as an example of a condition that is capable of forming the insanity defence in its own right. Is this correct? Are the authors saying that psychopaths are legally insane? Is there a mistake here, or have I misunderstood?

Haque, Q. & Cumming, I. (2003) Intoxication and legal defences. *Advances in Psychiatric Treatment*, **9**, 144–151.

M'Naghten's Case (1843) 10 Cl & F 200.
R v Codere (1916) 12 Cr App R 21.
R v Windle [1952] 2 QB 826.

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Author's response

Dr Memon rightly observes the typographical error in relation to the inception of the M'Naghten rules.

The M'Naghten rules are a unique source of English common law, the relevant section in this discussion being:

> 'it must be clearly proved that, at the time of committing the act, the party accused was labouring under such a defect of reason, from 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' (M'Naghten Case, 1843: 10 Cl & F 200, para. 210).

The courts have been consistent towards the two 'knowledge' requirements, namely 'nature and quality' and 'wrong'. Memon's criticism of Mackay's statement in our article seems to miss the point. Mackay (1995) stresses that the courts adopt an extremely narrow cognitive and legal approach to the interpretation of the M'Naghten rules. The principal impact of the judgment in *R v Cordere* (1916) is that the Court of Appeal refused to draw any distinction between 'nature' and 'quality', holding that the phrase referred to the physical character of the act and not its moral quality. Furthermore, in *R v Windle* [1952] the same court held that the meaning of the word 'wrong' was restricted to legal wrong rather than the broader concept of moral wrong. Mackay considers this narrow cognitive approach to signify an attempt by the courts to ensure that the rules are applied only in extreme cases of mental disturbance.

Of greater importance is how psychiatrists interpret the M'Naghten rules, and this is perhaps best exemplified by considering the 'wrongness' limb of the rules. Previous research of psychiatric reports indicates that psychiatrists interpret the wrongness issue in a liberal fashion by often considering elements of moral justification rather than applying the strict legal criteria mentioned above (Mackay & Kearns, 1999). This approach has not been entirely rejected by the courts and we should perhaps welcome psychiatry's common-sense approach to the M'Naghten rules.

Finally, we are unsure whether Memon requires us to classify mental disorders according to whether they fit the M'Naghten rules. This approach has limitations. First, it assumes that the legal concepts of 'disease of the mind' and 'defect of reason' are congruent with medical classification. They are clearly not. Two well-known House of Lords' decisions, both of which concern offenders with epilepsy (*Bratty v Attorney-General for Northern Ireland* [1963], *R v Sullivan* [1983]), make it clear that the concept of 'disease of the mind' is a broad one, capable of encompassing all forms of mental impairment that give rise to a defect of reason. Second, it risks a preconceived functionalist division of mental disorders into those that receive a status that deserves exculpation from criminal responsibility

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