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Psychotic Aspects of Premenstrual Tension

Naoma Lee Stewart*

What legal conclusions may be drawn from the newly developing medical understanding of premenstrual tension in women, insofar as mental competency and criminal law are concerned? That is the subject of this paper. The legal conclusions therefrom in the field of negligence (automobile accidents) were discussed by the writer in the January 1957 issue of this law review.

The Medical Background

Since ancient times the strange physical and emotional disturbances to which women are subject in connection with their menstrual cycle have been well known, but only partly understood. Almost startling in its modern sound is the prophet Jeremiah's analogy in his Lamentations between the desolate, chaotic melancholy of his era and the condition of a "menstruous woman." From the days of Hippocrates, the psychologic association of guilt and fear with the normal biologic occurrence of menstruation has been known to result in mental disturbances.

In 1931 Frank wrote a vivid description of premenstrual tension and ascribed its somatic and psychic symptoms to the heightened levels of estrogen. Since this report diverse conclu-

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The writer would like to thank Dr. James Gray, Division of Obstetrics and Gynecology, Lakewood Hospital and Fairview Park Hospital, for his advice and cooperation and for securing my admission to the medical libraries of these hospitals.

Acknowledgments also are due to Dr. William Grover, Superintendent of Cleveland State Hospital, Dr. Eduard Eichner, Division of Obstetrics and Gynecology, Mount Sinai Hospital, and Mrs. Marguerite Reilly, Superintendent of Ohio Reformatory for Women, for the suggestions and guidance given by them in discussions or correspondence with the writer. Editing and suggestions by members of this law review's Medical Advisory Editors also are gratefully acknowledged.

1 Oleck, H. L., The legal significance of premenstrual tension was first indicated by Howard L. Oleck in Legal Aspects of Premenstrual Tension, 166 Internat. Record Med. 475 (1953); and see, Oleck, Damages To Persons & Property, 252.2–252.5 (1957 revision).

2 Lam. (Jer.) 1:17.

3 Hippocrates: Oeuvres Completes, trans. into French by E. Littre, V. pp. 553, 702 and VII. pp. 275, 505.

sions as to its causation have been suggested, with explanations ranging from hormonal imbalance to purely psychosomatic factors. Morton has made the following comments concerning the psychosomatic aspects of the syndrome: 5 "Physicians and other observers had felt (and many still do) that this condition is essentially psychogenic. The recent popular acceptance of 'psychosomatic medicine' with its emphasis on the intimate interrelationship between the mind and the body has insinuated premenstrual tension as an instance of psychosomatic malfunction due to emotional factors."

"Unquestionably the emotional components do play a role in premenstrual tension. However, while emotional disturbances can and often do alter the functions of the endocrine glands, the converse also holds true. Endocrine dysfunctions can definitely influence the psychogenic factors and produce mental symptoms. It has been noted recently that the prolonged use of ACTH or cortisone has been found to produce psychotic manifestations in some instances. The need for a psychiatric approach to endocrine problems and an endocrine approach to psychiatric problems is thus becoming more and more manifest. Not infrequently one may ponder whether the primary disturbance is in the higher centers of the central nervous system with secondary manifestations in the endocrine system, or vice versa."

Premenstrual tension is a term applied to a symptom complex which begins about ten to fourteen days premenstrually, reaches its peak shortly before menstruation, and disappears dramatically following the onset of the menstrual flow. 6 It is manifested by a feeling of deep depression and/or anxiety, and is associated with such symptoms as intense irritability and nervousness, insomnia, fatigue, emotional instability, painful swelling of the breasts, abdominal bloating, headaches, and increased appetite and thirst.

The prevalence of premenstrual tension in the female population has been the subject of numerous surveys. 7, 8, 9, 10 The

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7 Israel, S. L., Premenstrual Tension, 110 J. A. M. A., 1721 (1938).
frequency of premenstrual tension in otherwise normal women in controlled series of tests ranges from 40% to 95%.

In June, 1957 Pennington made a survey among 1000 housewives, business women, and high school and college girls. This survey produced the following facts: 95 percent suffered from one or more symptoms of premenstrual tension. Eight per cent of the symptoms were of psychogenic origin only; 19 per cent were entirely somatic; 72 percent had components of both psychogenic and somatic origin. Eight per cent had dysmenorrhea alone and 92 per cent had other symptoms in addition to the dysmenorrhea. Pennington concluded that “because the prevalence of this syndrome produces social disharmony in the home and in business, and because of the economic loss caused by inefficiency, and even temporary disablement during the period, this syndrome is an important field for research.”

Causation and Psychosomatic Aspects

In some cases, premenstrual tension is due to a temporary tendency toward positive water balance. The symptoms of tension coincide with days of water retention, and relief is obtained by measures that impede or reverse the abnormal storage of water. There is little agreement even on the cause of premenstrual water detention. Some consider it to be the result of the elaboration of the antidiuretic hormone from the posterior pituitary. Others attribute causation of premenstrual tension generally to an estrogen-progesterone imbalance. Some research men have disagreed with this concept. Neither could they obtain any evidence of a psychogenic etiology of this condition. They observed a greater degree of tension in their

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11 Pennington, V. M., Meprobamate (Miltown) in Premenstrual Tension, 164 J. A. M. A. 638 (June 8, 1957).
15 Morton, J. H., supra, note 5.
18 Pennington, V. M., supra, note 11.
cases, as indicated by changes in the electroencephalogram. But this says nothing about causation.

Some have concluded that the somatic factors are primary, and that the psychic factors follow. Others have questioned this view. In truth the causation of premenstrual tension is simply not yet clear. Thus far, a neurologic origin seems to be most probable, according to some medical authorities.

Psychosomatic Symptoms

Regardless of the disagreement as to etiology and prevalence, the medical experts are in agreement as to the scientific existence of premenstrual tension as a medical entity. It also is obvious that a tremendous and unestimated toll is taken by this physical and mental disability.

Medical studies reveal that women suffering from the severest form of premenstrual tension have periodic and spectacular alterations of personality, with bizarre manifestations, including psychotic episodes. For example, one patient, 32 years old, had severe tension which rendered her almost psychotic for about ten days each month. In order to get relief, as well as to protect her family, she deliberately became pregnant five times in seven years in order to prevent the menstrual cycle. The same report illustrated cyclic marital discord with the case of a husband who frantically phoned for help because his wife was threatening him with a knife, stating that "she does this the same time every month."

Premenstrual tension occurs more frequently and with greater severity in emotionally unstable women. Their mental and nervous symptoms often become intense at the height of the syndrome. The clinical picture is a psychoneurosis or a functional nervous disorder. Increased anxiety and tension occur pre-

19a Dr. Carl B. Wasmuth, Cleveland Clinic Hospital, personal communication.
21 Kroger, W. S. and Freed, S. C., supra, note 17.
menstrually, and it is also observed that inmates of mental institutions are more difficult to manage during their premenstrual periods. The mental upheaval at this period can be so great that the patient is temporarily manic.

Criminologists recently have pointed out the serious sociologic implications of premenstrual tension as a causative factor in crimes of passion and violence. It is known that suicide and crimes are more common at this time. Cooke indicated that 84 per cent of all crimes of violence in Paris committed by women are perpetrated during the premenstrual and early menstrual cycle.

Prompted by these known anti-social attitudes and mental disturbances of women in the premenstrual phase, Morton and his associates conducted a controlled clinical study of inmates at the Westfield State Farm, a state prison and reformatory for women at Bedford Hills, New York.

The findings were as follows:

1. Review of the inmates' records indicated that 62 per cent of crimes of violence were committed in the premenstrual week and 17 per cent during menstruation.

2. Sugar tolerance tests showed a hypoglycemic type curve in the premenstrual phase, and premenstrual vaginal smears indicated hypoestrogenic stimulation.

3. Seventy-nine per cent of inmates reported improvement when given medication (as described in the report) plus supplementary high protein diet. Medication in this phase of the study is held to be effective on symptoms of premenstrual tension rather than the underlying estrogen-progesterone imbalance.

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Results showed increased work output, improvement in behavior and attitude, fewer requests for analgesic and sedative medication, less punishment for infraction of rules, and a marked increase in the general morale.

Legal Consequences

In terms of criminal law, a severe case of premenstrual tension, for criminal responsibility purposes, is analogous to the defense of temporary insanity or incompetency. Temporary incompetency or insanity is primarily a matter of subjective evidence, is very difficult to prove, and is easily subject to abuse as a rule of law. On the other hand premenstrual tension may well be a matter of objective evidence, not too difficult to prove in most cases. The existence of premenstrual tension can be verified by scientific tests on the basis of endometrial biopsies, vaginal smears, basal temperatures, and urinary hormone assays. These, of course, are much the same in all women. But the element of spontaneous hypoglycemia, the stress lymphocyte, or eosinopenia in severe cases suggest the possibility of proof after the event which caused the legal action as well as before. These latter scientific facts promise to help to remove premenstrual tension from the legal area of subjective and emotional argument, and into the area of provable fact, subject to searching tests according to the established rules of evidence. Further research along this line is much to be desired.

Since the defense of premenstrual tension is analogous in law to the defense of temporary incompetency or insanity, a discussion of the controversial rules of law pertaining to insanity should be attempted.

Insanity is a purely legal term for mental disorder. It connotes a mental disorder so severe that the individual is adjudged not responsible for his acts. Few principles of law have been subjected to more consistent criticism than the right-wrong test for insanity promulgated by the famous M'Naghten's Case. The trial of Daniel M'Naghten, a paranoid with insane delusions, resulted in acquittal on the ground of insanity. After the trial the pressure of public reaction warranted a request by the House of Lords that 15 judges give opinions upon the lasting laws governing insanity. The questions proposed to the judges were specifically limited to the case of a person afflicted with an insane

delusion as M'Naghten was. Fourteen of the judges agreed on two major rules necessary in order to establish a defense on the ground of insanity:

(1) "It must be clearly proved that, at the time of the committing of the act, the party accused was laboring 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

(2) if he did know it, that he did not know he was doing what was wrong." 29

Since then, the right-wrong test enunciated by that case, though condemned as being unscientific and based on fallacious principles by the overwhelming weight of medical authority, has nevertheless been tenaciously adhered to by a great many courts as the only safe standard under which there can be had a proper administration of justice. Some of the courts recognize the validity of the contentions of the medical authorities, but fear the practical consequences of enlarging the avenue of escape from criminal responsibility. 30

If the criticism which brands M'Naghten's Rule as medieval, formalistic, and wholly divorced from medical reality 31 is a sound criticism, an indictment of the American judiciary should follow, for the great majority of jurisdictions in this country have embraced M'Naghten's Rule both in name and in principle. 32

29 The Rule is most often quoted as follows: "to establish the defense of insanity, it must clearly be proved, that at the time of committing the act the accused was laboring under such a defect of reason from disease of 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." Daniel M'Naghten's Case, supra, note 28.

30 Anno., 70 A. L. R. 659.

31 Hall, Mental Disease and Criminal Responsibility, 45 Columbia L. R., 677 (1945).

32 The following jurisdictions follow the right-wrong test: Arizona, State v. Macias, 60 Ariz. 93, 131 P. 2d 810 (1943).
California, People v. Kimball, 5 Cal. 2d 608, 55 P. 2d 483 (1936).
Iowa, State v. Buck, 205 Iowa 1028, 219 N. W. 17 (1928).
Mississippi, Brummet v. State, 181 S. 323 (Miss., 1938).
Missouri, Eisenhardt v. Siegal, 343 Mo. 22, 119 S. W. 2d 810 (1939).

(Continued on next page)
The M'Naghten Rule reflected the psychological thinking and morality of its period. The test assumed that "there is a separate little man in the top of one's head called reason whose function it is to guide another unruly little man called instinct, emotion, or impulse in the way he should go."\(^{33}\)

The revolutionary psychological progress in the past one hundred years informs us that reason is not the only regulator of conduct. The Group for the Advancement of Psychiatry reflects modern medical thought on the ineptness of the M'Naghten Rule by saying:\(^{34}\)

"The Rule places a premium on intellectual capacity and presupposes behavior is actuated exclusively by reason and untrammeled choice. On the one hand, this overemphasizes the importance of the intellect, reason, and common sense; on the other hand, it under-emphasizes the emotional pressures that energize behavior. Actually, in the psychic effort to rationalize forbidden behavior with reality, reason and choice are more often observed in bolder relief after the act."

The report of the Royal Commission on Capital Punishment contained the following criticism of the M'Naghten Rule: \(^{35}\)

"The M'Naghten test is based on entirely obsolete and misleading conception of the nature of insanity, since insanity does

(Continued from preceding page)


\textit{Texas}, Stout v. State, 142 Tex. Cr. R. 537, 155 S. W. 2d 374 (1941).


\(^{35}\) Report of the British Royal Commission on Capital Punishment, 1949-1953 (80 Sept., 1953): "It is well established that there are offenders who know what they are doing and know it is wrong (whether wrong is taken to mean legally or morally wrong) but are nevertheless so gravely affected by mental disease that they ought not be held responsible for their actions. It would be impossible to apply modern methods of care and treatment in mental hospitals and at the same time to maintain order and discipline, if the great majority of the patients, even among the grossly insane, did not know what is forbidden by the rules, and that if they break them, they are liable to forfeit some privilege."
not only, or primarily, affect the cognitive or intellectual facilities, but affects the whole personality of the patient, including both the will and the emotions. *An insane person may therefore often know the nature and quality of his act and that it is wrong and forbidden by law, but yet commits it as a result of the mental disease.*

The medical advances since the announcement of the M'Naghten test magnify the unrealistic nature of the formula, and have caused leaders in all the related fields to voice their disapproval of the continued usage of the rule. The criticism heaped upon this archaic rule comes from the country's foremost physicians, psychiatrists, jurists, and criminologists.

As a result of the endless war of criticism waged against the M'Naghten Rule, a minority of jurisdiction have supplemented the right-wrong test, which considers only the cognitive aspect of the intellect, by adopting the irresistible impulse doctrine. This doctrine takes into consideration the volitional elements of the personality. Despite the contentions and fears of their majority brethren, these minority jurisdictions have felt that the right-wrong test should be expanded to include the principle that, since criminal intent is a necessary element in most crimes, one who by the reason of a mental disease is driven to the commission of a criminal act, by an impulse which he is powerless to control, is not a voluntary agent and can have no criminal intent, and is therefore guilty of no crime where intent is a necessary element.

Irresistible impulse is defined in American Jurisprudence as an impulse induced by, and growing out of, some mental disease affecting the volitive, as distinguished from the perceptive powers, so that the person afflicted, while able to understand the nature and consequences of the act charged against him and to perceive that it is wrong, is unable, because of such mental disease, to resist the impulse to do it.

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37 Alvarez, W. C., Medical Roundup, Cleveland Plain Dealer, ... (1957): "Because of our stupid, outdated, futile and unworkable laws defining insanity, these people no matter how 'crazy' they may be in the eyes of their family, their acquaintances and their physicians, have to be adjudged sane."
39 In a statement prepared for the Royal Commission on Capital Punishment, Justice Frankfurter has declared: "If you find rules that are, broadly speaking, discounted by those who have to administer them . . . they are honored in the breach and not in the observance . . . I think the M'Naghten rules are in large measure shams."
40 Professor Glueck, one of the nation’s foremost criminologists, undermines the rule from a legal-expediency viewpoint as well as from a psychological standpoint. Psychiatry and the Criminal Law, 14 Va. L. R., 155, 161 (1928).
"It is to be distinguished from mere passion or overwhelming emotion not growing out of and connected with a disease of the mind. Frenzy arising solely from the passion of anger and jealousy, regardless of how furious is not insanity." 41

This doctrine, in recognizing that a person may be cognizant of the wrongfulness of his act, and yet be unable to resist the urge to execute the act, was a vital step towards bridging the gap between medical and legal thinking on mental illness. In 1886, 42 when the first state accepted the doctrine of irresistible impulse, hope ran high that other jurisdictions would recognize the soundness of the doctrine and adopt it as a highly necessary supplement to the M'Naghten Rule. In the seventy years that have since passed, only about fifteen states have adopted the doctrine. 43

The principal reasons for not recognizing this doctrine, even where the incompetency is the product of mental diseases have been said to be: (1) one who knows the difference between right and wrong cannot have an irresistible impulse; 44 (2) it is difficult to prove that there is an irresistible impulse. 45

41 14 Am. Jur., 793, Criminal Law (35).
42 Parsons v. State, 81 Ala., 577, 2 S. 854 (1886). The court, in repudiating the M'Naghten Rule, holds that where there is capacity to choose between right and wrong, nevertheless the accused is not legally responsible if by reason of the duress of mental disease "he has so far lost the power to choose between right and wrong, and at the same time, the alleged crime was so connected with such mental disease, in the relation of cause and effect, as to have been the product or offspring of it solely."
43 Jurisdictions following the doctrine of "irresistible impulse":
Arkansas, Green v. State, 64 Ark. 523, 43 S. W. 973 (1898).
Alabama, Parsons v. State, 81 Ala. 577, 2 S. 854 (1886).
Colorado, Ryan v. People, 60 Colo. 425, 153 P. 756 (1915).
Georgia, Rozier v. State, 185 Ga. 571, 185 S. E. 172 (1938).
Kentucky, Cline v. Commonwealth, 248 Ky. 609, 59 S. W. 2d 577 (1933).
Illinois, People v. Moor, 355 Ill. 393, 189 N. E. 318 (1934).
Indiana, Morgan v. State, 190 Ind. 411, 130 N. E. 528 (1921).
Louisiana, State v. Lyons, 113 La. 859, 37 S. 890 (1904).
Utah, State v. Green, 78 Utah 580, 6 P. 2d 177 (1951).
44 "The possibility of the existence of such a mental condition is too doubtful." Cunningham v. State, 269 (Miss., 1879).
45 Justice Summerville, in Parsons v. State, 81 Ala. 577, 2 S. 854 (1886), refutes this argument when he states: "It is no satisfactory objection that the rule (Irresistible Impulse Test) announced by us is difficult of applica-
Sheldon Glueck criticizes the Irresistible Impulse as well as the right-wrong tests. "Their employment as such neglects the fundamental notion of the unity of the mind and interrelationship of mental processes and the fact that a disturbance in the cognitive, volitional, or emotional sphere, as the cause may be, can hardly occur without its affecting the personality as a whole and the end conduct flowing from the personality." 46

During the years that have elapsed since the doctrine was first adopted, the medical profession, having delved deeper into the psychological and mental make-up of the individual, no longer considers the irresistible impulse test to be a satisfactory supplement to the M'Naghten Rule. Today the overwhelming majority of psychiatrists seek the abolition of the irresistible impulse doctrine as well as of the right-wrong test.

"Psychiatry today has advanced beyond the point where addition of the irresistible impulse test could be deemed adequate to remedy the deficiencies of the right-and-wrong test. Both tests fail to give due emphasis to the fundamental concept that the mental processes are interdependent and interrelated. . . ."

"Projective psychological tests have demonstrated how mental disorder affects every facet of the intelligence. Both of the established tests fail particularly to provide adequate bases for judging severe psychoneurotics and others whose criminal acts often seem to stem from unconscious motivations . . . ."

"All of us, the normal as well as those not so normal, are more influenced by our emotions than by reasoning. Although the actor may be conscious of only one motive, his mental attitude and his physical behavior in response to a given stimulus or situation is almost certainly the end product of a complex of psychological processes. The criminal, even more than the rest of us, may be largely unaware of the reasons for his behavior. Of this, the legal tests take no cognizance whatever." 47

The Royal Commission on Capital Punishment found the doctrine unsatisfactory because it: "carries an unfortunate and misleading implication that, where a crime is committed as a result of emotional disorder due to insanity, it must have been suddenly and impulsively committed after a sharp internal con-

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flict. In many cases, such as those of melancholia, this is not true at all. The sufferers from this disease experience a change of mood which alters the whole of his existence. It may be cool and carefully prepared: yet it is still the act of a madman.”

From this limited study of the two tests it can be concluded that the greatest objection to them is that they fail to take into consideration the total mental picture of the accused, and in so doing greatly limit the psychiatric expert in his testimony. However inadequate these rules have been for testing criminal responsibility, the courts have continued their use with all the stubborn tenacity that stare decisis can imply.

Response to a century-long demand for a medically and psychologically accurate formula to determine criminal responsibility, came from the Court of Appeals for the District of Columbia in 1954 in the case of Durham v. United States. Monte Durham was convicted of housebreaking by the District Court sitting without a jury, after a waiver of his right to jury trial. The only defense asserted at the trial was that Durham was of unsound mind at the time of the offense. Durham had a long history of imprisonment and hospitalization which indicated a profound personality disorder. Durham's conviction followed the lower court's rejection of the defense of insanity because the defendant did not establish to the satisfaction of the court that at the time of the crime he was of unsound mind in the sense that he didn't know the difference between “right and wrong,” or that even if he did, he was not subject to an irresistible impulse" by reason of a derangement of mind. The lower court held that the usual presumption of sanity governs because: “there is no testimony concerning the mental state of the defendant as of the date the crime was committed, while if there was 'some testimony' as to his mental state as of that date to the effect that he

48 Supra, note 35.
50 The District of Columbia rule is that all defendants are presumed sane, but once the defense shows "some evidence" of insanity, then the burden shifts to the prosecution to prove sanity, like all other elements of crime, beyond a reasonable doubt. On the first ground for reversal, the court in the instant case found that the alienist's testimony that Durham was insane on the date of the offense, together with the testimony of Durham's mother as to his behavior at this time, was "some evidence" of insanity, hence rebutting the initial presumption of sanity and shifting the burden of proof back to the prosecution. There is a split of authority on the question of burden of proof. About half the states follow the rule of the present case. Most of the others, including Ohio, place the burden on the accused to establish his insanity by a preponderance of the evidence or some similar measure of persuasion. 9 Wigmore, Evidence, 359; Sec. 2501 (3rd Ed., 1940 and Supp. 1951, p. 107).
was competent on that date, the burden of proof would be on the government to overcome it."

The Court of Appeals reversed, holding that the lower court was in error in failing to find "some evidence." The Appeals Court was of the opinion that since the requirement of "some evidence" was satisfied, the presumption of sanity failed and the burden of proof then shifted to the prosecution to prove the defendant's sanity beyond a reasonable doubt.

In a well-reasoned opinion, Judge Bazelon traced the experience of courts in their search for a suitable test to determine the accountability of an insane defendant. The right-wrong and irresistible impulse tests were labeled inadequate, in the following language:

"We find that as an exclusive criterion the right-wrong test is inadequate in that (a) it does not take sufficient account of psychic realities and scientific knowledge and (b) it is based upon one symptom and so cannot validly be applied in all circumstances. We find that the 'irresistible impulse' test is also inadequate in that it gives no recognition to mental illness characterized by brooding and reflection and so relegates acts caused by such illness to the application of the right-wrong test. We conclude that a broader test should be adopted." 51

The court invoked its inherent power to adopt a new test, thus:

"The rule we now hold must be applied on the retrial of this case and in future cases is not unlike that followed by the New Hampshire Courts since 1870. 52 It is simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect." 53

Defect and disease are specifically defined as follows:

"We use 'disease' in the sense of a condition which is considered capable of either improving or deteriorating. We use 'defect' in the sense of a condition which is not considered capable of either improving or deteriorating, and which may be either congenital, or the result of injury, or the residual effect of a physical or mental disease." 54

The Durham test reflects modern theory by abandoning the terminology of earlier standards of insanity, and substituting

52 State v. Pike, 49 N. H. 399 (1870).
54 Id., at 875.
language consistent with modern psychiatric concepts and clinical experience. The Durham test seems preferable because it gives the jury greater freedom in determining the relative importance of each symptom or factor.

Although this new test permits the jury to consider every aspect of the defendant's mental condition, it does not furnish a standard for measuring how serious the "mental disease" must be in order to relieve the defendant of responsibility; but presumably the disease should have progressed to a reasonably serious state. Nor does the court explain what degree of actual connection between the defendant's mental abnormality and his act is necessary for acquittal, but presumably again this connection must be substantial. Indeed modern psychiatry recognizes that it is impossible to ascertain the exact amount of influence an abnormal condition of mind has on criminal behavior.55

Catholic University Law Review56 reported an interview with Dr. Winfred Overholser,57 one of the leading authorities in America on Forensic Psychiatry, who presented his views concerning the Durham decision, thus:

"At the outset, Dr. Overholser expressed his enthusiastic approval of the ruling of the Court of Appeals of the District of Columbia. 'Psychiatrists, in giving expert testimony as to the mental condition of the defendant at the time of the criminal act, need no longer play the role of a pseudo-doctor or pseudo-lawyer. Since he is no longer confined within the narrow limits of the antiquated tests, the psychiatrist is now free to present to the jury his complete analysis of the defendant's mental condition'."

Dr. Overholser was pleased and proud over the fact that the District is the first jurisdiction to follow the New Hampshire Rule. Since the New Hampshire rule is broad enough to include the 'Knowledge and Impulse' test, he favors the continued use of these tests as additional aids to the broadened ruling. "We should be willing to consider anything which will help us to arrive at a proper diagnosis of the defendant's mental state."

In the new instructions of the Durham decision, Dr. Overholser does not think that the court's use of the terms "mental disease" and "mental defect" should present any problem to the

57 Dr. Winfred Overholser, Sup't. of St. Elizabeth's Hospital, Professor of Psychiatry at George Washington School of Medicine.
psychiatrist. He considers the court's definition of these terms to be psychiatrically accurate. Although the court's definition of "mental disease" offers no distinction between severe psychoses and mild neuroses, Dr. Overholser feels that the common sense of the average jury will prevent the acquittal of a defendant suffering only from a mild mental disorder. He considers the present theorizing that the new ruling will effectuate a succession of acquittals to be ill-founded. The effect of the test in this regard in all probability will be negligible. The new rule has not caused any epidemic of acquittals in New Hampshire.

Dr. Overholser agreed with the interviewers that there exists a conflict of rights: the right of the public to be protected on the one hand, and the right of the person legally irresponsible for crime to be relieved of punishment; and that the public's right to protection takes precedence until the hospitals are in a position to accept additional commitments.

The eminent psychiatrist offered the suggestion that the discretionary power of the judge concerning the commitment and examination of the acquitted-defendant should be replaced with a tightened mandate which requires the commitment to a mental hospital of all those acquitted by reason of insanity, there to be detained until they can be released without danger to the public. "The protection of society is the important thing, whether the detention be in a prison or in a hospital."

Dr. Overholser summed up his opinion of the new ruling by stating, in effect, that although long in arriving, it is a hopeful sign that the gap between psychiatry and the law is narrowing.

One can readily conclude from even this cursory discussion of the present legal rules governing insanity that medical progress in the field of mental abnormality has left the law far behind. Although the medical profession has reached no universal agreement on a substitute formula for a test of responsibility, there is a wide acceptance of the conclusion that where there is a medically recognized mental disorder resulting in a significant distortion of social judgment, the accused should not be held responsible. Fortunately, most modern legal realists understand that law is largely a somewhat tardy philosophic synthesis of rules based on general acceptance of scientific and social conclusions.\footnote{Friedman, W., Legal Theory, London, Stevens & Sons, Ltd., Chapter 17 (1949).} The significance of the Durham decision is clear. For the first time in almost seventy years (more than "somewhat
tardy\textsuperscript{59}, there has been an actual and vivid showing that a court will take notice of the law's shortcomings, and will create precedents more in accord with scientific reality.

The scientific reality displayed by the court in the Durham case is the type of realistic thinking that is necessary in order to effect the acceptance of premenstrual tension as a legal fact.

Although the medical profession unequivocally accepts the existence of premenstrual tension as a settled scientific fact, it is constantly working and encouraging research to determine the extent of the tremendous toll taken by this common syndrome. Eichner and Waltner\textsuperscript{59} say: "In all probability the greatest toll taken by premenstrual tension results from the nervous and mental symptoms, especially when these are severe. Obviously the woman with premenstrual migraine, irritability, insomnia, depression and other mental disturbances cannot be expected to function efficiently in her role as a member of the family, or in her relations with her associates in the social and business worlds. Disharmony at home, antagonism among friends, and inefficiency in industry inevitably result from such disturbances. In the milder cases the damage may not be disastrous. However, an increasing amount of evidence indicates that many domestic tragedies may be attributed in part to the effects of premenstrual tension. Many unpremeditated criminal acts performed by women occur during the premenstrual phase of their cycles . . . ."

Another comment was: "Too many physicians are inclined to dismiss their importance because the symptoms are seldom incapacitating, and thus deny the patient specific treatment. Undoubtedly such an attitude springs from the failure to evaluate properly the end results of uncontrolled premenstrual tension. Frequently sight is lost of the fact that the subject herself may be unaware of the extent of the impact of her disturbance on others. Far too often her difficulties are attributed to imaginary antagonism of her associates. To label these acts and complaints as neurotic or hypochondriacal is a serious error in judgment of the physician, and this may lead to disaster."\textsuperscript{60}

Present Conclusions

This writer is not so optimistic as to presume that immediate acceptance of this physical and mental disability as a legal fact

\textsuperscript{59} Eichner, E., and Waltner, C., Premenstrual Tension, Medical Times (1955).

\textsuperscript{60} Pollak, O., The Criminology of Women, Univ. Penna. Press (1950).

http://engagedscholarship.csuohio.edu/clevstlrev/vole/iss3/5
is likely. In view of the seventy year battle merely to secure a formula on insanity which was consistent with modern medical thinking, one cannot afford to be too optimistic. But the law can not forever be pure philosophy completely divorced from the scientific facts of life.

Some facts speak for themselves. In the years since the beginning of modern investigation of premenstrual tension as a scientific fact, estimates of women suffering from varying symptoms of this syndrome have tended to increase (from 40 to as much as 95 per cent). Sociologists are becoming increasingly aware of the important role premenstrual tension plays in many domestic tragedies. The actual degree to which the conduct of women is affected by this disability is as yet undetermined. The serious effects of premenstrual tension on the mental and physical reactions of the average female are probably grossly underestimated. Only time and further extensive research will conclusively prove the relation between this disability and illegal acts, of either a criminal or civil nature, committed by women.

Until legislation or cases build a structure of law dealing with the subject, every attorney should consider the possible acceptance of premenstrual tension as a legal fact. Perhaps soon objective evidence of the existence of disabling premenstrual tension will be able to be verified by scientific tests. Especially does spontaneous hypoglycemia suggest the possibility of use of modern charting methods for developing scientific proof of a physical condition after the event causing litigation as well as before. But even now the attorney should consider the possibilities of this common syndrome in connection with any legal problem affecting a female client.

Never have the medical and legal professions made a greater effort to reach accord over mutual problems than at this present time.61 But legal theorists who insist that the medical profession has adjusted to the majority rules on insanity are either indulging in wishful thinking or whistling in the dark. The medical profession has been forced into the ignominious position of adjusting to legal rules which are based upon assumptions absolutely contrary to the prevailing point of view of the medical profession.

Those entrusted with administering justice must be extremely prudent in accepting novel principles which the test of

61 Cleveland-Marshall Law Review's "Medical Advisory Editors" testify eloquently to such efforts.
time may prove to be incorrect. Conversely the law must also battle the danger of being overcautious and of impeding true progress. Conservatively speaking, a seventy year wait for the Durham Rule seems at least to border on the overcautious. It is to be hoped that this innate conservatism of the legal profession will not prevent lawyers from keeping open minds as to the acceptance of premenstrual tension as a legal fact. And this is said with full awareness of the fact that clear medical proof of its exact nature is yet to be established.

As time and further research will eventually reveal the extent of the relation between criminal acts of women and premenstrual tension, so will time and experience test the effectiveness of the Durham Rule. Time may prove that the great strength of the Durham Rule lies in its very presently-criticized vagueness. The rule is most often criticized because it does not pronounce as a matter of law what symptoms are sufficient for a finding of mental irresponsibility. Why should the rule restrict its application to the scientific facts of today? The facts as to mental illness are not all known. They may be endless in their variety. The same is true of facts concerning premenstrual tension. They too are scientific facts to be determined and interpreted by the expert witness, leaving to the jury the drawing of the conclusion of criminal responsibility.

Justice Somerville, in Parsons v. State, an outstanding example of legal reasoning, made some observations which apply so perfectly to the modern legal problems posed by the scientific existence of premenstrual tension, that I shall quote him verbatim and rest my case:

"It will not do for the courts to dogmatically deny the possible existence of such a disease, or its pathological and physical effects, because this is a matter of evidence, not of law, or judicial cognizance. Its existence and effect on the mind and conduct of the patient is a question of fact to be proved, just as much as the possible existence of cholera or yellow fever formerly was before these diseases became the subject of common knowledge. . . . The courts could with just as much propriety, years ago, have denied the existence of the Copernican system of the universe, or the efficacy of steam and electricity as a motive power. These are scientific facts, first discovered by experts before becoming matters of common knowledge. So, in like manner, must be every unknown scientific fact in whatever profession or department of knowledge."

62 Parsons v. State, 81 Ala. 577, 2 S. 854 (1886).