The proposition that some criminal defendants should not be held responsible for their actions by reason of their mental state has been well established in Anglo-American law for centuries. As early as 1581, a legal treatise distinguished between those who understood the difference between good and evil and those who did not:

If a madman or a natural fool, or a lunatic in the time of his lunacy do [kill a man], this is no felonious act for they cannot be said to have any understanding will.

By the 18th century, the British courts had elaborated on this distinction and developed what became known as the "wild beast" test: If a defendant was so bereft of sanity that he understood the ramifications of his behavior "no more than in an infant, a brute, or a wild beast," he would not be held responsible for his crimes.

**THE "RIGHT/WRONG" M'NAUGHTEN TEST**

The guidelines for evaluating the criminal responsibility for defendants claiming to be insane were codified in the British courts in the case of Daniel M'Naughten in 1843. M'Naughten was a Scottish woodcutter who murdered the secretary to the prime minister, Sir Robert Peel, in a botched attempt to assassinate the prime minister himself. M'Naughten apparently believed that the prime minister was the architect of the myriad of personal and financial misfortunes that had befallen him. During his trial, nine witnesses testified to the fact that he was insane, and the jury acquitted him, finding him "not guilty by reason of insanity."

Queen Victoria was not at all pleased with this outcome, and requested that the House of Lords review the verdict with a panel of judges. The judges reversed the jury verdict, and the formulation that emerged from their review -- that a defendant should not be held responsible for his actions if he could not tell that his actions were wrong at the time he committed them -- became the basis of the law governing legal responsibility in cases of insanity in England. The M'Naughten rule was embraced with almost no modification by American courts and legislatures for more than 100 years, until the mid-20th century. In 1998, 25 states plus the District of Columbia still used versions of the M'Naughten rule to test for legal insanity.

**"IRRESISTIBLE IMPULSE"**

One of the major criticisms of the M'Naughten rule is that, in its focus on the cognitive ability to know right from wrong, it fails to take into consideration the issue of control. Psychiatrists agree that it is possible to understand that one's behavior is wrong, but still be unable to stop oneself. To address this, some states have modified the M'Naughten test with an "irresistible impulse" provision, which absolves a defendant who can distinguish right and wrong but is nonetheless unable to stop himself from committing an act he knows to be wrong. (This test is also known as the "policeman at the elbow" test: Would the defendant have committed the crime even if there were a policeman standing at his elbow?).

**THE RISE AND FALL OF THE DURHAM "MENTAL DEFECT" RULE**

The 1950s saw a growing dissatisfaction with the M'Naughten test. It was criticized in both legal and psychiatric circles as rigid and antiquated. As the profession of psychiatry grew in stature, critics began to call for the introduction of medical evidence of mental illness into the insanity defense equation. In 1954, an appellate court discarded the M'Naughten rule and the "irresistible impulse" test in favor of a broader, medically based determination: In Durham v. United States, the U.S. Court of Appeals for the District of Columbia ruled that a defendant could not be found criminally responsible "if his unlawful act was the product of mental disease or mental defect."

The decision was hailed as revolutionary because it marked the replacement of moral considerations with more neutral scientific determinations that were reflective of advances in psychiatric and psychological research. It was the first major break from the "right/wrong" M'Naughten rule in American jurisprudence.

The Durham rule proved vague and difficult to apply, however, and many were concerned that the broad definition would exonerate far more defendants than ever before. There was confusion over whether "mental disease or defect" should be interpreted to mean only psychosis, or any of the myriad of more minor disorders defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM). Critics worried that defendants would begin to use alcoholism or other disorders whose only symptoms were antisocial behavior as excuses for their crimes. It proved difficult to determine if the question of whether a defendant's actions were the "product" of his disease was a factual question for the jury, or for expert psychiatric witnesses. And the rule was criticized for inadvertently granting psychiatrists and psychologists too much influence in the courtroom.
Twenty-two states explicitly rejected the Durham test, and in 1972 a panel of federal judges overturned the ruling in favor of the Model Penal Code test of the American Law Institute.

**THE A.L.I. STANDARD**

In 1962, the American Law Institute (A.L.I.) set out a model insanity defense statute intended, like Durham, to soften the M’Naughten standard and allow for the introduction of medical and psychiatric evidence. The standard in effect consolidates the principles of the M’Naughten "right and wrong" rule and the "irresistible impulse" test. The A.L.I. formulation provides that a defendant will not be held criminally responsible if at the time of the behavior in question "as a result of a mental disease or defect, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law."

The A.L.I. was a significant softening of the M'Naughten standard. Instead of requiring a defendant to have no understanding whatsoever of the nature of his acts or the difference between right and wrong, the A.L.I. standard requires merely that he lack a "substantial capacity" to understand the right from wrong, and expands the M'Naughten rule to include an "irresistible impulse" component.

The A.L.I. standard excludes those defendants whose mental illness or defect only manifests itself in criminal or antisocial conduct, thus addressing the conundrum of the serial killer whose only symptom of mental illness is the killing of his victims.

As of 1998, the states were roughly split between the two standards: 22 states used some form of the A.L.I. rule, while 26 used a version of M'Naughten, with or without an irresistible impulse component.

In addition to the popularity of the more expansive test for legal insanity among state legislatures, many state courts during the '60s and '70s issued rulings demonstrating a growing concern with protecting the civil rights of the mentally ill. Many courts struck down laws providing for the automatic and indefinite confinement of defendants who had been acquitted by reason of insanity. The courts said that due process and equal-protection concerns required that those found not guilty but confined due to mental illness had the right to periodic reassessment of their mental health status and dangerousness. If the evaluations did not find justification for continued confinement, the defendants would be released. By the early 1980s, all but 10 state legislatures had responded to these decisions and reformed their laws to provide for such review procedures.

**AFTER HINCKLEY**

In 1981, John Hinckley Jr. shot then-U.S. President Ronald Reagan, a secret service agent, a Washington police officer, and Reagan's press secretary James Brady. Hinckley claimed that he was trying to impress the actress Jodie Foster, with whom he was infatuated. He later described the incident in a letter to The New York Times as "the greatest love offering in the history of the world. ... At one time Miss Foster was a star and I was the insignificant fan. Now everything is changed. I am Napoleon and she is Josephine. I am Romeo and she is Juliet."

A jury acquitted Hinckley of 13 assault, murder, and weapons counts, finding him not guilty by reason of insanity. There was an immediate public outcry against what many perceived to be a loophole in the justice system that allowed an obviously guilty man to escape punishment. There were widespread calls for the abolition, or at least the substantial revision, of the insanity-plea laws.

**THE INSANITY DEFENSE REFORM ACT OF 1984**

After the Hinckley acquittal, members of Congress responded to the public outrage by introducing 26 separate pieces of legislation designed to abolish or modify the insanity defense. At the time of Hinckley's trial, all but one federal circuit had adopted the A.L.I. "substantial capacity" test, and all the new proposals were aimed at creating a stricter federal standard that would avoid acquittals like Hinckley's in the future.

The debates on this legislation reflected the public's indignation over the Hinckley decision. Sen. Strom Thurmond criticized the insanity defense for "exonerat[ing] a defendant who obviously planned and knew exactly what he was doing." Sen. Dan Quayle claimed that the insanity defense "pampered criminals," allowing them to kill "with impunity."

This hyperbolic testimony was countered by psychiatric and legal professionals who called for the modification, rather than the total abolition, of the insanity defense, and ultimately the resulting legislation -- the Insanity Defense Reform Act of 1984 -- was somewhat of a compromise. The insanity defense was not abolished, but the A.L.I. test was discarded in favor of a stricter version which more closely resembled M'Naughten. In order to qualify, an insanity defendant must show that his mental disease or defect is "severe." The "volitional" prong of the test, which excused a defendant who lacked the capacity to control his behavior, was eliminated. In effect, Congress returned to the 19th century "right/wrong" standard, echoing Queen Victoria's response to the M'Naughten acquittal.
Congress also adopted a number of provisions that toughened procedural barriers to a successful insanity defense. Before Hinckley, the burden of proof in federal cases was on the prosecution to prove beyond a reasonable doubt that a defendant was sane. The post-Hinckley reform legislation shifted the burden to the defendant to prove with clear and convincing evidence that he was legally insane at the time of the crime. The scope of expert psychiatric testimony was severely limited, and stricter procedures governing the hospitalization and release of insanity acquittees were adopted.

STATE RESPONSES TO HINCKLEY

Following Congress' lead, more than 30 states made changes to their insanity-defense statutes in the wake of the Hinckley verdict. Over the 1980s and 1990s, many shifted the burden and standard of proof in ways to make it more difficult to sustain an insanity plea, moving away from the A.L.I. standard back towards the more restrictive M'Naughten test. In addition to raising more procedural hurdles for a successful insanity defense, many states enacted laws providing for more restrictive confinement options for those acquitted by reason of insanity. Three states -- Utah, Montana, and Idaho -- abolished the defense altogether.

GUILTY BUT MENTALLY ILL

The introduction of the "guilty but mentally ill" (GBMI) verdict in many states is the biggest development in insanity defense law since the post-Hinckley reforms. A sort of hybrid alternative to an acquittal by reason of insanity, a defendant who receives a GBMI verdict is still considered legally guilty of the crime in question, but since he is mentally ill, he is entitled to receive mental health treatment while institutionalized. If his symptoms remit, however, he is required to serve out the remainder of his sentence in a regular correctional facility, unlike a defendant who was acquitted by reason of insanity, who must be released if it is determined he is no longer dangerous to himself or others. In 2000, at least 20 states had instituted GBMI provisions.

Questions

1. How are the terms “psychological disorder” and “insanity” related?

2. How are they different?

3. Based on what you know/think right now, at what point do you think “insanity” should be used at a defense? Do any states have it correct now? (see attached chart) Why or why not?