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ABRAHAM'S DEIFIC DEFENSE: PROBLEMS WITH
INSANITY, FAITH, AND KNOWING RIGHT
FROM WRONG

*Andrew J. Demko**

INTRODUCTION

Moments after the angel steadies Abraham's hand,¹ a local sheriff arrests the father of faith. Months later, the trial begins and Abraham is charged with the attempted murder of his son Isaac. Abraham has a team of lawyers who are aware that he is being tried in a *M'Naghten*² jurisdiction where there is a possible insanity defense to the charge of attempted murder against Abraham. Courts, in these jurisdictions, hold that a person who is commanded by the voice of God is not only experiencing a delusion, but is also unable to know right from wrong and, in some cases, control his actions. These courts find that the victims of such a delusion may know what they are doing is against the law, but are unable to determine their actions are morally wrong. Furthermore, other courts have found a command from God to take away any meaningful choice to control one's actions. Abraham has a sound insanity defense.

Can we really imagine Abraham using this defense? Is faith a delusion? The problems with what is now called the deific decree doctrine stem from how to instruct the jury on the issue of what constitutes right and wrong. Beginning with then Judge Benjamin

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1 *Genesis* 22:11 ("And the angel of the Lord called unto him out of heaven, and said, Abraham, Abraham: and he said, Here am I.").

2 The *M'Naghten* rule is a test for insanity where a person is not criminally responsible for an act when, by reason of mental disorder or disease, the person either does not appreciate the nature and quality of the act or does not know whether the act was right or wrong. *M'Naghten's Case*, 8 Eng. Rep. 718 (H.L. 1843).

Cardozo, courts have blended a legal sense of right or wrong with a religious vision of right and wrong for defendants suffering such delusions.³

There are times when a delusion simply triggers a religious duty, which under current versions of the deific decree doctrine would not be legal insanity. If, however, that delusion came from the Christian God, there is a good chance a defendant would be legally insane. Recently, some courts have attempted to take away from the doctrine's usefulness to defendants, but these attempts still suffer from definitional problems of right and wrong.⁴ This Note will first detail the evolution of the deific decree doctrine, demonstrating the tendency for courts to distinguish cases of direct deific commands from religious duties triggered by delusions. Next, it will demonstrate that this difference is flawed when considering the defendant's cognitive ability to tell right from wrong in each situation. Finally, this Note will explain why the category of right and wrong in the *M'Naghten* test should be a universal sense of right and wrong, taking a fair look at all societal conceptions of religious duty, which will separate those who have a valid insanity defense from those who personally believe in breaking the law based on some higher *telos*.

I. EVOLUTION OF THE DEIFIC DECREE DOCTRINE

In the wake of American courts accepting the *M'Naghten* test for legal insanity, they have struggled to define what constitutes right and wrong. Starting with Judge Cardozo's opinion in *People v. Schmidt*,⁵ the doctrine has vacillated between a cognitive exception and a volitional exception to the *M'Naghten* test. Ultimately, however, the doctrine rested on a cognitive exception to the *M'Naghten* test.

Judge Cardozo heard a case in which the defendant, Hans Schmidt, lied by claiming insanity as a defense, asserting "he had heard the voice of God calling upon him to kill the woman as a sacrifice and atonement,"⁶ and Judge Cardozo used the case to create a cognitive exception to the *M'Naghten* test. On appeal, Schmidt admitted he feigned insanity to conceal an abortion resulting in the victim's

3 See *People v. Schmidt*, 110 N.E. 945 (N.Y. 1915); see also *State v. Cameron*, 674 P.2d 650 (Wash. 1983); *State v. Crenshaw*, 659 P.2d 488 (Wash. 1983).

4 See *People v. Serravo*, 823 P.2d 128, 137-38 (Colo. 1992) (determining that right and wrong means moral right and wrong determined by more objective societal standards than other cases); see also *State v. Boan*, 686 P.2d 160, 171 (Kan. 1984) (finding that right and wrong in these situations is a legal right and wrong and not "a moral judgment, a religious judgment, [or] a social judgment").

5 110 N.E. 945.

6 *Id.* at 945.

death.⁷ The defendant hoped his admission would constitute new evidence and lead to a new trial with a conviction for manslaughter at most. According to Judge Cardozo, however, the man's admission was not "newly discovered evidence."⁸

Even though the defendant admitted he had not heard the voice of God, he still questioned the trial court's definition of wrong as "contrary to the law of the state"⁹ in its insanity instruction. Judge Cardozo agreed that the definition of wrong should be moral wrong, finding that a much broader definition was appropriate in insanity cases. In so doing, Judge Cardozo delved into a careful analysis of the *M'Naghten* rule and the history of the insanity defense:

The [*M'Naghten*] judges expressly held that a defendant who knew nothing of the law would none the less be responsible if he knew that the act was wrong, by which, therefore, they must have meant, if he knew that it was morally wrong. Whether he would also be responsible if he knew that it was against the law, but did not know it to be morally wrong, is a question that was not considered. . . . But none the less it is the knowledge of wrong, conceived of as moral wrong, that seems to have been established by that decision as the controlling test.¹⁰

In illustrating his point, he used a hypothetical where a person could know the act was against the law, but still think she was justified morally:

A mother kills her infant child to whom she has been devotedly attached. 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. It seems a mockery to say that, within the meaning of the statute, she knows the act is wrong.¹¹

This hypothetical did not apply to the facts before him; yet, with this hypothetical, Judge Cardozo spawned the legal theory of the deific decree doctrine.

In 1961, the state of New Jersey acknowledged and adopted the deific decree doctrine in *State v. DiPaolo*.¹² The defendant murdered his girlfriend, drove to the state police barracks, and confessed to the

7 *Id.*

8 *Id.*

9 *Id.* at 946 (internal quotations omitted).

10 *Id.* at 947 (noting also that the predecessor for "right and wrong" was "good and evil").

11 *Id.* at 949.

12 168 A.2d 401 (N.J. 1961).

crime.¹³ According to the defendant, "God commanded his deed and . . . at the time of the homicide he heard a 'voice' which directed him to kill."¹⁴ Psychiatrists disagreed on the issue of insanity; yet, the court still pronounced that "none suggested that if defendant in fact suffered an insane delusion that God commanded the deed, he nonetheless was legally sane if he . . . appreciated that the deed was contrary to law."¹⁵ The deific decree doctrine started to become entrenched as a valid cognitive exception to the *M'Naghten* test.

II. DIRECT AND INDIRECT COMMANDS

The first twists on the deific decree doctrine occurred in Washington state during the mid-1980s. In 1983, the Washington Supreme Court decided two cases that defined the limits of the doctrine and provided the "foundation for the modern doctrine of deific decree."¹⁶ The two cases illustrate the difference between a religious duty triggered by a direct command and a personal belief in a religious duty stemming from an indirect command or duty triggered by a delusion. A command from God to the actor, usually in the form of a voice, is a "direct" command, while a command or duty passed down through religion is an "indirect" command.

A. Crenshaw

In *State v. Crenshaw*,¹⁷ the defendant had a delusion in which he sensed his wife cheated on him. According to his equally delusional version of Muscovite religion, he had a duty to kill his unfaithful wife. His defense to the murder charge was an insane delusion (his wife's unfaithfulness and his understanding of Muscovite religion) coupled with a religious duty to act on the delusion. Crenshaw argued these two factors made him unable to distinguish right from wrong.¹⁸ The court rejected his defense and explained the narrow exception to the legal/societal standard of wrong has been drawn in instances where "the act is ordained by God," not situations where one follows the "Muscovite Faith."¹⁹ The court looked for times during the incident where Crenshaw acted rationally:

13 *Id.* at 403.

14 *Id.* at 407.

15 *Id.* at 408 (finding a moral wrong more suitable than a legal wrong).

16 Christopher Hawthorne, Comment, "*Deific Decree*": *The Short, Happy Life of a Pseudo-Doctrine*, 33 *LOV. L.A. L. REV.* 1755, 1799 (2000).

17 659 P.2d 488 (Wash. 1983).

18 *Id.* at 491.

19 *Id.* at 494.

If, arguendo, Crenshaw was delusional, his delusion was only partial, for it related only to his perceptions of his wife's infidelity. His behavior towards others, i.e., the motel manager and the woman who loaned him the ax, at the time of the killing was normal. Crenshaw also "knew he was acting contrary to law," as evidenced by his sophisticated attempts to hide his crime and by the expert, psychiatric testimony. Furthermore, he acted with a view "of redressing or re-ven-ge-ning [the] supposed grievance" of his wife's infidelity.²⁰

The court used extraneous facts to distinguish this case because the command did not come from God. Exhibiting signs of normal rational function did not make Crenshaw able to understand what he was doing was wrong. Although they may be probative of a rational mind, in Crenshaw's mind, his action was rationale because he had a religious duty to act.

The court in this instance misunderstood and misapplied the reasoning in *Schmidt*. Recall that Judge Cardozo was arguing for a standard of moral wrong when he cited his hypothetical. He believed that a societal standard of moral wrong was sufficient to prove that the delusive mother could not distinguish right from wrong. Here, the court carved out an exception even if the defendant knew it to be wrong by societal standards to commit the act. Judge Cardozo would have argued that this person, even if ordained by God, made a choice to reject the laws of society much the same way a polygamist does when following her religious beliefs.²¹ Ultimately, the court affirmed the trial court's refusal to give the special instruction because the act was "clearly contrary to society's morals as well as the law,"²² and, under these facts, "'moral' wrong and 'legal' wrong are synonymous."²³

This type of case places the most strain on the deific decree doctrine because it blurs the line between cases of simple "moral obliquity" and cases that render a defendant incapable of distinguishing

20 *Id.* at 492 (citations omitted).

21 *See generally id.* at 494 (noting the difference between the devotee of the religious cult and the person acting under a deific command); *People v. Schmidt*, 110 N.E. 945, 949-50 (N.Y. 1915) (citing the differences between the polygamist and the devoted mother).

22 *Crenshaw*, 659 P.2d at 494. Societal standards are difficult to measure by a court and are often left to the determination of the jury. The "common conscience" is "so tenebrous and impalpable" that a court will have trouble defining it. *Schmidt v. United States*, 177 F.2d 450, 452 (2d Cir. 1949); *see also Crenshaw*, 659 P.2d at 492-94 (finding that the jury, functioning as the conscience of the community, is well suited to determine whether a defendant had the mental capacity to distinguish right from wrong).

23 *Crenshaw*, 659 P.2d at 491.

between right and wrong with respect to the act. Moral obliquity is the capacity to distinguish right from wrong while rejecting prevailing moral standards.²⁴ *Crenshaw* is somewhere in between.²⁵ Crenshaw was delusional and believed what he was doing was right, not against a societal standard, but against his delusional Muscovite belief. In essence, his insane delusions triggered a religious duty to act outside the ethical norm towards a higher *telos*, but this norm cannot be measured objectively against societal standards, because courts find, objectively, that his religion does not blur the line between right and wrong. Courts refuse to give his delusion any exception to the prevailing societal standards of right and wrong.

B. Cameron

In the other case it heard that term, *State v. Cameron*,²⁶ the court directly identified the difference between a direct command and an indirect belief. Cameron confessed to stabbing his stepmother over seventy times, defending his actions as being right "in the eye of God."²⁷ Specifically, he claimed his stepmother was "very symbolic with the 'Scarlet Whore Beast'" and like the "anti-God . . . [who] takes the God's truth and twists it into her sorcery."²⁸ Three psychiatrists agreed that Cameron believed he was an agent of God carrying out God's command.²⁹ The court found ample evidence that "it was impossible for him to understand that what he was doing was wrong" and his "free will had been subsumed by his belief in the deific decree."³⁰ By using this language, the court carved out both a cognitive exception and a volitional exception to the *M'Naghten* test and to the standard of moral wrong by societal standards. It went even further and suggested a possible presumption: "Consequently, as we held in *Crenshaw*, one who believes that he is acting under the *direct* command of God is no less insane because he nevertheless knows murder is prohib-

24 *People v. Serravo*, 823 P.2d 128, 137 (Colo. 1992).

25 Although the court characterized Crenshaw's delusional duty as a personal belief, the court failed to see the cognitive part of the test in these situations. It viewed Cardozo's hypothetical as a case of loss of free will or volition. See *Crenshaw*, 659 P.2d at 494 (finding that the mother's free will was "subsumed by her belief in the deific decree").

26 674 P.2d 650 (Wash. 1983).

27 *Id.* at 652.

28 *Id.* (internal quotations omitted).

29 *Id.*

30 *Id.* at 654 (internal quotations omitted); see also *Crenshaw*, 659 P.2d at 494 (finding that Crenshaw knew his act was wrong both legally and against "the people").

ited by the laws of man. Indeed, it may actually emphasize his insanity."³¹

The Washington Supreme Court next adopted almost completely a volitional exception to *M'Naghten*. In *State v. Rice*,³² where the defendant had only "urges" and thought he was in a battle with Satan, the court stated that *Cameron* and other cases in the state allow for insanity, in these instances, only if the defendant's free will has "been subsumed by his belief in deific decree."³³ Although this sounds as if Washington courts have adopted solely a volitional exception, the proposed instruction regarded "urges" the defendant was experiencing and not commands. The defendant argued that these urges were examples of deific commands.³⁴ The defendant never alleged that he was unable to determine right from wrong; in fact, he told his counselor that he could follow them or not follow them. That is why the court did not mention the question of moral wrong in the opinion.

The differences between *Crenshaw* and *Cameron* seem easy enough. Crenshaw's delusion was not that God told him to murder his wife, or even that God had informed him that she was unfaithful; rather, he delusively sensed that she had been with another man and followed a delusional tenet of the Muscovite religion, or what the court termed a personal belief. Cameron's delusion was that he was an agent of God, following God's command in killing the sorceress that was his stepmother.

The difference, however, is not simply a direct and indirect command/delusion from God. The defendant's free will being subsumed by the deific decree is important to the court. In certain situations, both actors above could be incapable of knowing moral right and wrong. For the Washington courts, even if Crenshaw could not subjectively know right from wrong, his will was not subsumed by a deific decree. Both defendants subjectively felt what they were doing was right, but Crenshaw did not fit under the court's "narrow" exception.³⁵ By forcing defendant to clear this second hurdle, that the free will be subsumed by the command, the court distinguished the case of a direct command (*Cameron*) from an indirect belief (*Crenshaw*).

31 *Cameron*, 674 P.2d at 654 (emphasis added).

32 757 P.2d 889 (Wash. 1988).

33 *Id.* at 904.

34 *Id.*

35 See generally *Cameron*, 674 P.2d at 654 ("A narrow exception to the societal standard of moral wrong has been drawn for instances wherein a party performs a criminal act, knowing it is morally and legally wrong, but believing, because of a mental defect, that the act is ordained by God." (quoting *Crenshaw*, 659 P.2d at 494)).

This is the same line that Judge Cardozo drew over a half century before.

III. A POSSIBLE SOLUTION? ANALYZING *SERRAVO*

Following these two cases, there have been several other cases trying to get a handle on the implications of the Washington court decisions. For instance, in *People v. Serravo*, the Colorado Supreme Court rejected the deific decree doctrine as an exception to the societal standard of moral wrong, calling it "an integral factor in assessing a person's cognitive ability to distinguish right from wrong with respect to the act charged as a crime."³⁶ Even so, the court went on to show the actual application of its standard may not be very different from the Washington courts:

We thus conclude that, although the court of appeals mischaracterized the deific-decree delusion as an exception to the right-wrong test for legal insanity, a defendant nonetheless may be judged legally insane where, as here, the defendant's cognitive ability to distinguish right from wrong with respect to the act has been destroyed as a result of a psychotic delusion that has decreed the act.³⁷

The most substantial addition to the deific decree doctrine by the *Serravo* court is the assertion that right and wrong must be judged objectively by societal standards and not subjective ones.³⁸ It is not clear, however, how a jury is to apply this standard. The court sees "[a] person's awareness of right and wrong" as deriving from a variety of experiences, including behavioral rules enforced by the social culture, ethical principles passed down through family, the formal educational process, and religious associations.³⁹ In the end, the court defines societal standards as "the total underlying conceptions of ethics shared by the community at large."⁴⁰

Will twelve people with similar backgrounds and education, living in the same enclave, and practicing different forms of the same religion, truly represent the total conception of ethics shared by the community at large? More likely, as shown below, a person must be under

³⁶ 823 P.2d 128, 139 (Colo. 1992). Contrastingly, in *State v. Worlock*, 569 A.2d 1314 (N.J. 1990), New Jersey followed the traditional understanding and allowed for an instruction that wrong encompasses both legal and moral wrong in the "exceptional case such as the deific exception." *Id.* at 1322.

³⁷ *Serravo*, 823 P.2d at 141.

³⁸ *Id.*

³⁹ *Id.* at 137-38.

⁴⁰ *Id.* at 138.

a mental disease that so impairs him that he is unable to distinguish between right and wrong defined by Christian ethical conceptions in society. If the person only fails to distinguish right from wrong in his own mind, under his own creed, or is morally obliquitous after his delusion, a court will hold him criminally liable.

For instance, the *Serravo* court tried to come up with a more objective standard, fearing that "an accused could be adjudicated insane even if he knew that the act in question was both forbidden by law and condemned by society, but nonetheless harbored a personal belief that the act was right."⁴¹ People whose insanity triggers duties in other faiths, or delusional versions of less mainstream faiths, will be judged to have both appreciated that their acts were contrary to the law *and* contrary to the shared conceptions of society as a whole, ultimately being judged criminally responsible for their acts. The *Serravo* court presumes that "a person is legally insane if that person's cognitive ability to distinguish right from wrong with respect to the act has been destroyed as a result of a psychotic delusion that God has commanded the act."⁴² It also seems clear that Colorado's definition of "objective" societal standard of moral wrong in practice is roughly equivalent with Christianity, leaving those delusional persons with less "societal" faiths out of luck even if they go through the same cognitive process, resulting in the same inability to judge right from wrong. If this is truly a cognitive exception, and if the two cognitive processes are essentially the same, courts should treat them equally.

In the end, *Serravo* suffers from the same direct/indirect problem seen in the Washington courts. Although not phrased in those terms, the essence of the reasoning is the same. Using an objective societal standard of morals, the court would protect a person who was under the direct command of God, while guarding against another delusion that triggers a religious duty, which they characterized as a personal belief.⁴³ Ultimately, this is the same distinction (direct/indirect) the Washington court observed in *Crenshaw* and *Cameron*, but simply phrased differently.

IV. SUBSEQUENT DECISIONS

More recently, however, Washington courts have scaled back their approach to deific decrees. In *State v. Potter*, the court dismissed the possibility of a volitional exception through deific decree. Namely, the court felt the interpretation of *Rice* which gave rise to the

41 *Id.*

42 *Id.* at 140.

43 *Id.* at 138.

volitional exception was against a long line of cases "rejecting the irresistible impulse defense."⁴⁴ Moreover, in a 2004 unpublished opinion, a Washington State court of appeals declared it was not error to give an instruction in a deific decree case where "wrong" was undefined.⁴⁵

Although there has been some wavering in the recent past, the deific decree doctrine is ingrained in most *M'Naghten* jurisdictions.⁴⁶ These recent variations point to an instruction that is flawed in two major ways. First, it fails to separate moral wrong's theistic and legal aspects. Some cases call the doctrine an exception to the societal standard of moral wrong,⁴⁷ and others feel moral wrong encompasses theistic as well as societal morals.⁴⁸ Secondly, the distinction between direct and indirect delusions holds no water in a truly cognitive exception when one closely examines the psychology of what happens in "Movements of Faith." These two aspects are more fully explored below, showing there are few differences between the situation in *Crenshaw* and that of the traditional deific decree, represented by Judge Cardozo's devoted mother.

In the end, however, the weight of authority makes appropriate the following instruction in cases of deific decree:

You can find the [defendant] not guilty by reason of insanity if you find that [defendant] 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 [as defined by moral conceptions of society] or prevented the defendant from perceiving the nature and quality of his act.⁴⁹

44 *State v. Potter*, 842 P.2d 481, 487 (Wash. Ct. App. 1992).

45 *See, e.g., State v. Turgeon*, No. 49535-6-I, 2004 WL 555278, at *2 (Wash. Ct. App. Mar. 22, 2004) (choosing not to define wrong as a legal wrong or a moral wrong but leaving it to the jury to decide).

46 *M'Naghten* jurisdictions include New York, New Jersey, Ohio, Colorado, California, Washington, and formerly Kansas, to name a few.

47 *See State v. Crenshaw*, 659 P.2d 488 (Wash. 1983).

48 For the traditional view, see *People v. Schmidt*, 110 N.E. 945 (N.Y. 1915).

49 *See Potter*, 842 P.2d at 486; *People v. Serravo*, 823 P.2d 128, 137-38 (Colo. 1992). Many other *M'Naghten* jurisdictions follow this holding. *See, e.g., People v. Coddington*, 2 P.3d 1081, 1180 (Cal. 2000).

Neither was it of consequence what Coddington's notion of morality might have been. Then and now, if a person believes that he is commanded by God to act as he does, whatever his views of morality might be, he is incapable of recognizing that his act is morally wrong. That is the square holding of *Skinner*, which dealt with a defendant who "held" a "belief . . . that the marriage vow 'till death do us part' bestows on a marital partner a God-given right to kill the other partner who has violated or was inclined to violate the marital vows."

Id. (quoting *People v. Skinner*, 704 P.2d 752, 755 (Cal. 1985)).

V. THE PROBLEM WITH A DIRECT/INDIRECT DISTINCTION

Judge Cardozo distinguished between a person who directly hears a deific decree and one who simply believes in the tenets of his faith, which gives the actor a duty to act contrary to the law.⁵⁰ Yet, as shown above, deific decree is, in most cases, a cognitive exception to the *M'Naghten* test. Namely, the person is unable to distinguish right from wrong because God directed her to act contrary to the law. In both cases, where one believes in the tenets of her faith and where she hears a deific command, at some point, prior to the act, the person chooses to have faith in God, triggering a religious duty. Otherwise, the voice of God would be meaningless, especially when telling a person to act contrary to the law as she knows it. As a cognitive exception to the test, therefore, it does not matter when one decides that God's law should reign over the law of men or what delusions triggered the duty.

The question is when God commands an illegal act, is a person able to distinguish right from wrong based objectively on society's moral concepts? In 1913, the laws of God and the laws of man represented the majority of society's moral code. The laws of man were not fundamental notions of what is right and wrong developed in a society; rather, they were laws codified in books and expressed in opinions derived from judges responding to the common law. The Bible heavily influenced society's moral code. This is why Judge Cardozo limited the choice of definitions to the laws of God and the laws of man.⁵¹ Since that time, especially in the United States, morality has become more than the laws of God and the laws of man. In a land known for its tolerance, society's moral standard could be starkly different especially when comparing smaller community beliefs to those of a more urban population.

Following this line of thinking, the Supreme Court, in *United States v. Ballard*, found that proof of a religious belief, including "mystic" experiences, could not be submitted to the jury to verify the truth of such a belief.⁵² The government accused the Ballards, who claimed to have communicated with Jesus and Saint Germaine, of using the

50 See *Schmidt*, 110 N.E. at 950 ("The devotee of a religious cult that enjoins polygamy or human sacrifice as a duty is not thereby relieved from responsibility before the law."); see also *Crenshaw*, 659 P.2d at 494 ("His personal belief that it was his duty to kill his wife for her alleged infidelity cannot serve to exculpate him from legal responsibility."); *State v. DiPaolo*, 168 A.2d 401, 408 (N.J. 1961) (citing *Schmidt's* proposition that the religious devotee is not relieved of responsibility before the law).

51 See *Schmidt*, 110 N.E. at 949.

52 322 U.S. 78 (1944).

mail to defraud members of their religious movement.⁵³ Although "[m]en may believe what they cannot prove," their religious beliefs and doctrines should not be put on trial.⁵⁴ This problem of proof has its limitations, however. For the Court, freedom of religion embraced two concepts: "freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be."⁵⁵

This case echoes the policy behind the deific decree doctrine. First, morally and probably legally, the actor would be justified if God actually commanded the act; however, as shown above, courts cannot let such an issue go to the jury. Instead, in cases of deific decree, they presume insanity, only forcing the defense to prove the defendant could not comprehend right from wrong. The law, in some way, gives the defendant the freedom to believe (not to be subject to proving that it was God speaking), but restrains the defendant's freedom to act. The law will not impede religious acts unless those acts interfere with the "laws of society, designed to secure its peace and prosperity, and the morals of the people."⁵⁶

The Supreme Court might as well have been echoing the views of *Schmidt*. Judge Cardozo based his opinion that all voices said to be of God must be a delusion on Kantian philosophy.⁵⁷ Namely, Kant believed reason was crippled when dealing with miracles and known law and that any voice that commands people to do something contrary to morality is an illusion.⁵⁸ Even if such miracles are possible, man cannot comprehend them and should "attend to the commands of reason."⁵⁹ Little doubt exists that the deific decree doctrine stemmed

53 *Id.* at 81-82.

54 *Id.* at 86; *see also id.* at 93 (Jackson, J., dissenting) ("[I]t seems to me an impossible task for juries to separate fancied [mystic experiences] from real ones, dreams from happenings, and hallucinations from true clairvoyance.")

55 *Id.* at 86 (quoting *Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940)).

56 *Id.* at 87 (quoting *Davis v. Beason*, 133 U.S. 333, 342 (1890)).

57 *See* IMMANUEL KANT, *RELIGION WITHIN THE LIMITS OF REASON ALONE* (Theodore M. Greene & Hoyt H. Hudson trans., Harper 1960) (1793).

58 *Id.* at 81-82; *see* IMMANUEL KANT, *THE CONFLICT OF THE FACULTIES* 115 (Mary J. Gregor trans., Abaris Books 1979) (1798).

For if God should really speak to man, man could still never *know* that it was God speaking. . . . But in some cases man can be sure that the voice he hears is *not* God's; for if the voice commands him to do something contrary to the moral law, then no matter how majestic the apparition may be, and no matter how it may seem to surpass the whole of nature, he must consider it an illusion.

Id. Kant believes Abraham should have responded to God by saying he is certain he should not kill his good son and will never be certain that this voice is truly God's. *Id.*

59 KANT, *supra* note 57, at 83.

from this tradition. Presumptively, any voice coming from “God” is a delusion because humans are unable to comprehend the voice even if it were real. Therefore, when “God” speaks, courts presume it is a delusion and through society’s morality, often based on Christian concepts, a jury can find that the actor cannot distinguish between right and wrong.

To illustrate a facially ideal example of deific decree that becomes less ideal as more facts are uncovered, this Note borrows a story from an unreported case in California of a man who “sacrificed” his daughter.⁶⁰ The defendant, named Cristos Valenti by the author, seemed competent when questioned by a court-appointed psychologist:

- Psychologist: Why are laws necessary?
 Defendant: Laws are for everybody because there’s a lot of trouble out there.
 Psychologist: Thou shalt not kill, what about that law?
 Defendant: That’s God’s commandment.
 Psychologist: Did you break the law?
 Defendant: Yes and no. I did break it because the Bible says that, but I didn’t break it because God told me to.⁶¹

This is the quintessential example of the deific decree—one that Judge Cardozo would find a delusion. When examining this man’s life more closely, however, we learn of his deep Christian faith that ultimately led him to his decision to sacrifice his daughter. Valenti made this decision rationally by studying the tenets of his faith and choosing to reject society and follow his own personal belief.

There is little doubt that a voice alone compelling the defendant to commit an act contrary to morality would not prevent the defendant from distinguishing right from wrong.⁶² For instance, the defendant above was originally “confused by God’s request and went inside

60 This example is taken from CAROL DELANEY, *ABRAHAM ON TRIAL: THE SOCIAL LEGACY OF BIBLICAL MYTH* (1998). Delaney uses pseudonyms and relies on her first-hand account of what occurred as she attended this man’s trial. The judge instructed the jury that the defendant must have been able to distinguish between legal and moral right and wrong at the time of the act. *Id.* at 64 (following the holding in *People v. Skinner*, 704 P.2d 752 (Cal. 1985)); see *supra* note 49 and accompanying text.

61 DELANEY, *supra* note 60, at 58.

62 A voice even from the Devil would not make a person unable to distinguish right from wrong because the Devil is known to be evil:

There is something more sympathetic about a person who says it is God, not the devil, who is telling him what to do. It casts the perpetrator in a better light. . . . But it is a two-edged sword because if you do evil at the command of God, it almost seems hypocritical. It is easier to understand if evil things

to read the [B]ible about sacrifices.”⁶³ No doubt, the defendant turned to the Abraham story in Genesis and other biblical references to sacrifice and followed scripture in making his decision.⁶⁴ We learn, “[w]hen God came into his life . . . he followed God’s orders.”⁶⁵ According to the psychiatrists, witnesses, and police, the defendant functioned well—he was able to plan and execute everyday activities.⁶⁶ He was even able to distinguish between moral right and wrong in some sense. He told psychologists “you could look at it as wrong because it is against the commandment . . . I saw it as doing what God wanted me to do.”⁶⁷ In plain meaning, this is distinguishing between moral right and wrong; he just subjectively believed what he was doing was right.

This tells a story absent in most cases. Cases present the facts as they relate to the insanity plea; they rarely tell the story about what leads to a person’s decision to follow the voices commanding him to act contrary to the law and how the jury reacts to those decisions. Yet, it is precisely this cognitive aspect of each defendant’s decision/relation with religion/God that blurs the line between right and wrong. The defendant above would not have acted on the voice’s command if the Bible did not have the Abraham story and if he were not a man of faith.

This example illustrates a choice made by a man. At some point, the defendant read the Bible and made the choice to follow a higher law. The problem here is that, in essence, this is the same act of faith that Crenshaw made, yet he was unable to use the deific decree doctrine to get a proper definition of “distinguishing right from wrong” at trial so jurors could be more sympathetic as they were in Valenti’s case.

Valenti was acquitted by a jury of his peers based on an instruction stemming from a California court decision dealing with deific decree doctrine.⁶⁸ Society, in the form of the jury, related with Valenti’s obedience:

are done at the command of evil. Then there is no such contradiction, not such a paradox.

DELANEY, *supra* note 60, at 45 (quoting the trial judge in a personal interview).

63 *Id.* at 58 (quoting the defendant’s son).

64 *See Genesis 22; Judgments 11; Exodus 13:2; Exodus 22:29.* This is probably what the defendant above was reading. He missed, however, the change in Genesis from sacrifice to circumcision; both were to be done on the eighth day, with circumcision symbolically replacing all sacrifice. *See Genesis 17:12; Leviticus 12:3.*

65 DELANEY, *supra* note 60, at 58 (quoting the defendant’s son).

66 *Id.* at 63.

67 *Id.* at 64.

68 *See supra* note 49 and accompanying text. The judge’s actual jury instruction:

One woman [juror] said she had divorced the Catholic Church She had missed mass a couple of times and went to the priest to confess. But, instead of absolving her, he raged at her, "You don't deserve to be in Catholic school," and told her to get a transfer to a public school.⁶⁹

Six of the women jurors had been raised Catholic, only one male juror was raised without religion, and all but two knew the story of Abraham.⁷⁰ Valenti's religion, Christianity, is society's moral compass as shown by the jurors assigned to this case. Even though Valenti chose the laws of God over the laws of man, much in the same way Crenshaw did, Christianity is accepted by jurors, while a delusional Muscovite belief is simply not.

There are many problems with this conception. Members of a minority faith or moral code who are entirely protected by the Free Exercise Clause, who then receive a delusion from their God or even some other delusion that triggers a religious duty, will probably not be acquitted because objectively they knew it was against the laws of society and a juror applying that standard will have difficulty relating. As shown below, Valenti's Movement of Faith or "trial" is in no way different from Crenshaw's, except that society views Christianity as the basis of its morals. Both have similar cognitive movements. They both suffered a delusion that triggered a religious duty to act. Society related to Valenti in a way it did not get the chance to with Crenshaw.

VI. MOVEMENTS OF FAITH

Perhaps the most widely recognized meditation on the psychology of faith comes from Søren Kierkegaard.⁷¹ Kierkegaard wrote in the literary guise of Johannes de Silentio, a man dealing with the paradox of faith. He uses the story of Abraham to illustrate the mechanics of faith. For Abraham, loving his son more than himself was the highest moral expression.⁷² Yet Abraham, by his actions, acted immorally

In order to find the defendant sane, you must find that at the time of the commission of the crime he was capable of distinguishing between legal right and wrong with respect to the act and you must find that he was capable of distinguishing between moral right and wrong with respect to the act.

DELANEY, *supra* note 60, at 64.

69 DELANEY, *supra* note 60, at 47.

70 *Id.* at 47, 50.

71 This Note will draw heavily from SØREN KIERKEGAARD, *FEAR AND TREMBLING* (Howard V. Hong & Edna H. Hong eds. & trans., Princeton Univ. Press 1983) (1846), for its descriptions of the mechanics of faith.

72 *Id.* at 57-59 (noting that the "noble" thing for Abraham to do, as tragic hero, would have been to sacrifice himself in place of his son).

by sacrificing Isaac, ultimately acting on a higher *telos* which is somewhere above and outside the normal legal *telos* commanded by law.⁷³ In fact, knowing that the action lies outside the ethical/universal, knowing that he will be hated, is what makes the Movement of Faith such a paradox. It is completely outside ethical comprehension and expression.⁷⁴ If faith is taken away, "all that remains is the brutal fact that Abraham meant to murder Isaac."⁷⁵ According to Kierkegaard, the individual must resign the ethical/universal world, rise above it, leaping into the absurd so that by sacrificing her, "I will get her—that is, by virtue of the absurd, in virtue of the fact that for God all things are possible."⁷⁶

Importantly, some commentators have stressed the relationship between God and Abraham as a precursor to Abraham's decision regarding Isaac.⁷⁷ Namely, the narrative of Genesis presents a relationship of trust between Abraham and God that makes Abraham's decision to sacrifice Isaac appear more rational and less paradoxical than when looking at the trial itself:

In examining the relationship between Abraham and God in the Abrahamic narrative . . . certain salient features of the relationship emerge . . . [T]he relationship possesses the character of responsiveness, both in the way that communication proceeds via dialogue and the manner in which it is guided by concern . . . More than unconscious reaction to external stimuli, *response* represents a self-conscious process of interpretation and engagement where one interprets not only the present set of actions which immediately affect the agent but the entire pattern of past actions and possible future actions.⁷⁸

The significance of this idea comes from the mechanics of the decisionmaking process. God's voice alone, absent the historical relationship depicted in the Genesis narrative, would not have moved Abraham to sacrifice Isaac, and Abraham's decision would *not* have been as rational a decision. The key conceptual issue is that somewhere in each individual's relationship with/to God they begin to believe in Him. In essence, they make a choice between the "law of God

73 *Id.* at 76.

74 *Id.* at 120.

75 *Id.* at 30.

76 *Id.* at 46.

77 Jung H. Lee, *Abraham in a Different Voice: Rereading Fear and Trembling with Care*, 36 RELIGIOUS STUD. 377 (2000) (arguing that Abraham's Movement of Faith can be read as an ethical response within the grammar of care where Abraham's trial is a response to the historical relationship between him and God).

78 Lee, *supra* note 77, at 389–90.

and man.”⁷⁹ When they make this decision, striving toward a “higher” *telos*, they have made a Movement of Faith. Important in this movement is the historical relationship between the person and God.

The process of faith depends on a relationship with God over the course of a lifetime. This decision is made either before the defendant hears the voice of God or after a historical relationship between the defendant and God, and this decision will direct how the defendant responds. In this sense, it does not seem different from the person who believes in the voice of a priest or preacher who is a vehicle for God and then wrongly commits an act because of a delusion.⁸⁰

VII. CRENSHAW, VALENTI, AND DEIFIC DECREE

An instance where a defendant’s delusion lacked a direct command from God occurred in *Crenshaw*. The defendant followed his own delusive Muscovite belief, not the tenets of that religion.⁸¹ Clearly, the defendant believed his act was ordained by his faith and, therefore, morally acceptable. That said, however, he was not allowed the instruction for distinguishing between a moral and legal wrong. The court concluded: “Petitioner’s crime, killing his wife by stabbing her twenty-four times then hacking off her head, is clearly contrary to society’s morals as well as the law. Therefore by defining wrong in

79 *People v. Schmidt*, 110 N.E. 945, 949 (N.Y. 1915).

80 Of course, the Catholic tradition has a completely different take on this. Faith and reason work together to produce an objective body of knowledge put forth through the Pope as arbiter. In that sense, the Catholic tradition wants to remedy the “tendency to grant the individual conscience the prerogative of independently determining the criteria of good and evil and acting accordingly . . . wherein each individual is faced with his own truth different from the truth of others.” POPE JOHN PAUL II, *FIDES ET RATIO* ch. VII, ¶ 98 (1998). In the instance of deific decree, the Catholic Church would teach the defendant to consult the Church and not individually evaluate the command. In contrast, Kierkegaard would find the Catholic Church as “not qualitatively different from . . . the state.” A person who is sponsored by the Church comes to his decision by a “simple meditation,” and will be understood by all in the Church—this is no longer a temptation and no longer a trial because the Church grounds the act in the universal/ethical. Such a person is incapable of being a true Knight of Faith. The Knight of Faith goes against society by rejecting its norms as Abraham did, sacrificing his son even though society will hate him for it. See KIERKEGAARD, *supra* note 71, at 74.

81 *State v. Crenshaw*, 659 P.2d 488, 494 (Wash. 1983); see also Hawthorne, *supra* note 16, at 1801–02 (commenting on Crenshaw’s disordered mind when he believed he was following his faith and noting the defendant satisfied one of the elements of Cardozo’s deific decree: “a moral choice within the parameters of a mental disorder”).

terms of legal wrong, the trial court did not alter the meaning of the *M'Naghten* test."⁸²

The court's response to such a defense was that the person "knew that the act was morally and legally wrong but he *personally* believed the act right."⁸³ Somehow, for the *Crenshaw* court, the direct command of God makes the act morally ambiguous when the actor is under the direct delusion, whereas the actor clearly knows the act is morally wrong when under the indirect command of God. This is clearly inconsistent.

People acting under indirect commands from God go through the same mental processes as those under direct commands from God. The reasoning for only recognizing direct commands as overcoming the defendant's cognitive ability to know right from wrong is that people who follow religious tenets that produce duties contrary to the law have made a premeditated choice.⁸⁴ As shown above, however, even Abraham made a premeditated choice to follow God's commands through a historical relationship. Valenti also made a premeditated choice; he even researched sacrifices in the Bible and contemplated his past relationship with God before committing the act.⁸⁵ Recall that this doctrine is a cognitive exception to the *M'Naghten* test. There is no requirement that the person instantly follow God's command. Valenti deliberately and methodically searched the Bible for answers and he personally came to one answer—that God commanded him to sacrifice his daughter.⁸⁶

Valenti and *Crenshaw* have much in common. Both actors went through the same mental steps in committing their acts. First, both were hit with delusional external stimuli. Valenti heard the voice of God while *Crenshaw* delusively believed his wife cheated on him. Next, they both checked their "moral" authorities to determine how to act, and each triggered a religious duty. In the above example, Valenti read the Bible, learned of the duty to have faith in God and followed His orders, even if He ordained sacrifice. He followed the Abraham story to the letter, only this time there was no Angel to keep his hand from using the knife. *Crenshaw* studied his faith and delusively believed he had a religious duty to kill his "unfaithful" wife. They both committed the act and followed a duty.

82 *Crenshaw*, 659 P.2d at 494.

83 *Id.* at 493-94 (quoting *State v. Corley*, 495 P.2d 470, 473 (Ariz. 1972)).

84 *See Crenshaw*, 659 P.2d 488; *People v. Schmidt*, 110 N.E. 945 (N.Y. 1915).

85 DELANEY, *supra* note 60, at 58.

86 *Id.*

Crenshaw was guilty because if everything were "true" (there were no delusions) he would not be "justified" morally by our Christian standards, i.e., he truly would be able to tell right from wrong because he knows society and the law forbid his act. Moreover, the judge would not give the jury the opportunity to empathize with a man confused over what he perceived to be reality, and what his equally delusional faith told him was right. One can also surmise that Crenshaw loved his new wife and deliberated over killing her.⁸⁷ Unlike his monstrous portrayal in the case, Crenshaw may have been like the devoted mother, struggling to answer God's command.

On the other hand, jurors related to Valenti. The mostly Christian jurors recalled the story of Abraham, they recalled the Catholic Church teaching them obedience, and they believed he truly could not tell right from wrong based on their perceptions. He deliberated over killing his daughter. These two men went through a similar mental process; yet, because one is Christian and the other is a believer in a delusional version of the Muscovite religion, they are afforded different opportunities.

It is the law's job, not that of the Bible, to control people's actions in society. The Christian is not justified spiritually by the law but by God alone.⁸⁸ In that sense, either both of these examples should be examples of the same acts of insanity, or the law should not recognize either.

VIII. THE ANSWER TO THE INCONSISTENCY: A NEW CATEGORY OF WRONG

The problem directly relates to the definition of wrong used in instances only when there is a direct command from God. The courts use both a legal and societal wrong when instructing the jury with respect to the *M'Naghten* test. A better test would be to separate the religious connotations contained in "moral wrong" and replace it with a category of universal wrong based on shared conceptions of what an *entire* society believes to be ethical or unethical. Juries would need to recognize alternative forms of beliefs that produce religious duties. Basically, there needs to be a definition of right and wrong that en-

⁸⁷ Crenshaw's story was left out of the opinion for the most part. The judge painted the opinion for the conclusion he wanted to reach. Therefore, Crenshaw looks more like a monster than a person undergoing a trial. See *Crenshaw*, 659 P.2d 488.

⁸⁸ See generally KIERKEGAARD, *supra* note 71, at 83–120 (noting in Problema III Abraham's inability to express his act ethically because the ethical (saving Isaac or sacrificing himself in Isaac's place) was his temptation—instead he stood in absolute relation to the Absolute which has no ethical/moral expression).

compasses various sets of beliefs or one that just concerns itself with a legal right and wrong. Otherwise, people who truly cannot tell what is right or wrong based on some delusional religious duty (Crenshaw) or some other moral compass will be caught admitting that they knew the act was legally wrong and wrong based on society's conception, and, therefore, held to be sane.

This category works for two reasons. First, the person who makes a choice to believe in God, or a Movement of Faith, regardless of that faith, will be as protected as the Christian who hears God's command. Second, this category is better than the alternative of legal right and wrong. These people are insane when they believe in a higher *telos* which tells them to do something inconsistent with the laws of our society. They are truly unable to tell right from wrong, and broadening the societal standard will include those caught in a similar situation. Yet, this category may still exclude Judge Cardozo's polygamist who holds a subjective belief that the law of God is above the law of man, absent some delusion that blurs the line of right from wrong. Polygamy is a bad example because it traces its route to a delusion. Somewhere in the chain of their religion someone had what a court would call a delusion. In addition, if God called each polygamist to practice polygamy, there can be an argument for deific decree. A better example is the anarchist who, because he believes government is inherently bad, acts on the belief out of moral obliquity. A standard of wrong that encompasses differing faiths would not see this person as having a duty to act, but rather a choice. Basically, the court should recognize that universal wrong includes a situation where everyone's God or belief system trumps the law of man when triggered through a delusional episode, while mere belief systems that do not trigger the same absolute duty will be left without the defense.

Although "[m]ost cases involving the insanity defense involve serious crimes for which society's moral judgment is identical with the legal standard,"⁸⁹ there are certainly instances where that line is blurred by delusions. For instance, in *Cameron*, the defendant suffered from a delusion not only that God commanded him to kill his stepmother, but also that his stepmother was a demon and "became very violent with me, with a knife in her hand."⁹⁰ Even if the defendant knew it was legally wrong to kill his stepmother, a jury could come to the conclusion that, universally, he could not distinguish that it was wrong to do so. Many societies have this basic notion of good and evil, possession, and the duties triggered by such events. On the

89 *Crenshaw*, 659 P.2d at 494.

90 *State v. Cameron*, 674 P.2d 650, 651 (Wash. 1983).

other hand, the polygamist or an anarchist, who believes the laws are wrong, will not be allowed an instruction in this new category. They are not under a delusion.

The countervailing argument is that legal right and wrong should be the only standard. True "Knights of Faith" resigned the earthly world to let go of the earthly love they carry for their fathers, mothers, wife, children, and brothers and sisters.⁹¹ Movements of Faith are coupled with Movements of Resignation, where the mover waives any claim to the earthly, which is grounded in society and consensus, to express it spiritually.⁹² This is what enables Abraham to go through with the sacrifice. If he is tied to the earthly, he makes the decision to become the tragic hero, but the real Knight of Faith is not a hero. A tragic hero "needs and demands tears" so his task is grounded in universal acceptance and admiration.⁹³ The Knight of Faith, on the other hand, resigns the universal and dares you "not to weep for me, but weep for yourself."⁹⁴ Similarly, he has neither need nor desire to escape earthly punishment for his deed. The true believer will accept his fate as ordained by God.

This course of action seems to indicate that those acting on a true delusion and who are possibly insane will still be punished and publicly put to death. The policy behind the insanity defense stems from not wanting to execute someone who is mentally incapacitated.⁹⁵ These people would be unfairly punished by our legal system if we did not recognize an exception to the normal definition of right and wrong in this instance.

Overall, this is not a perfect answer, and no perfect answer exists. This suggestion keeps the law consistent. In the end, society has laws to protect innocent people. This suggestion keeps innocent people from being hurt by forcing those who made a choice to follow faith and violate the law to be accountable when they knew what they were doing violated the law and a wide array of established public norms. Those who are truly insane should be able to pass the standard if they

91 *Matthew* 10:37; *Luke* 14:26 ("If any man come to me, and hate not his father, and mother, and wife, and children, and brethren, and sisters, yea, and his own life also, he cannot be my disciple."). Kierkegaard sees this verse as a way to determine if a person can become a Knight of Faith. The absolute duty/love one owes to God can lead one, as in the case of Abraham, to do what ethics forbids. This verse only means *something* if the disciple loves his relatives with all his soul, otherwise he could not *sacrifice* them. See KIERKEGAARD, *supra* note 71, at 72-74.

92 KIERKEGAARD, *supra* note 71, at 46.

93 *Id.* at 60-61.

94 *Id.* at 66.

95 *People v. Schmidt*, 110 N.E. 945 (N.Y. 1915).

are so deluded as to not be able to distinguish between right and wrong when committing the act. Those who made lucid decisions, based on teachings and experiences absent a delusional episode, will not be spared by this doctrine. Moral obliquity will be punished, while two Movements of Faith, regardless of their origin, will be treated the same.

In almost all cases, faith is not a defense to criminal acts, and faith, alone, should not be a defense in these situations. Under a cognitive exception, however, the cognitive movements are exactly the same for Crenshaw as they are for Valenti and the devoted mother, and they should all be treated equally under the law.

CONCLUSION

Early in 2004, in New Hampshire, a mother told police she wanted to kill her kids on the altar of a Roman Catholic Church.⁹⁶ Police recalled her saying “Jesus sacrificed himself for her, so she was going to sacrifice her sons to free her soul.”⁹⁷ She believed that her little son had the Devil in him because he was autistic. Police suspected he would be the one she sacrificed. This woman did not hear the word of God; thus, her defense will be more difficult.

In Texas, a woman was acquitted of murdering two of her sons (one survived the attack) because “[she] believed God had told her the world was going to end and ‘she had to get her house in order,’ which included killing her children.”⁹⁸ She smashed the head of her infant son with a rock and then calmly walked inside to do the same to her two older boys.⁹⁹ The public defender followed the Abraham story perfectly, saying “he would present witnesses who would corroborate Laney’s love of her children as well as her belief ‘that the word of God was infallible.’”¹⁰⁰ The public defender displayed the paradox that has been equated with faith and insanity:

Defense attorneys argued that insanity was the only reason why a deeply religious mother who homeschooled her children would kill two of them and maim another without so much as a tear. . . . Psychiatrists testified that Laney believed she was divinely chosen by

96 Brian Dekoning, *Woman Who Allegedly Threatened to Kill Sons Arraigned*, MANCHESTER UNION LEADER (Nov. 14, 2004).

97 *Id.*

98 Cable News Network LP, *Mom Who Said She Killed on God’s Orders Acquitted*, at <http://www.cnn.com/2004/LAW/04/03/children.slain> (April 3, 2005).

99 Cable News Network LP, *Attorney: Woman Thought God Told Her to Kill Sons*, at <http://www.cnn.com/2004/LAW/03/29/children.slain> (March 29, 2005).

100 *Id.*

God—just as Mary was chosen to bear Christ—to kill her children as a test of faith and then serve as a witness after the world ended.¹⁰¹

The differences between these two examples illustrate the problem with the deific decree doctrine. In the first, the special instruction is not applicable because the mother's action was triggered by a religious belief, not a direct command from God. In the second, because God told the mother to act, she would receive a special instruction explaining that because she knew the act was against the law, but thought it was morally right, she could not distinguish between right and wrong. Two mothers equally love their children, are equally delusive, and equally believe what they are doing is morally right, yet they are treated differently under the current law. This Note is just one attempt to remedy this problem.

101 *Texas Woman Who Killed Kids Acquitted*, USA TODAY, Apr. 3, 2004, available at http://www.usatoday.com/news/nation/2004-04-03-texas-woman-acquitted_x.htm?po=newisva. Interestingly, in this example, the mother did not kill the third infant son. She said she could not do anymore and asked the Lord to finish for her. *Id.* The prosecution took this as her knowing right from wrong—but ultimately she was acquitted.

