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KOOKY COLLECTS: HOW THE CONFLICT BETWEEN LAW AND PSYCHIATRY GRANTS INHERITANCE RIGHTS TO CALIFORNIA'S MENTALLY ILL SLAYERS

Laurel Sevier*

I. INTRODUCTION

If A, a legatee under B's will, murders B, A is barred from inheriting from B.[1] This is because California law requires that A forfeit his inheritance rights, not as punishment for his crime, but on the theory that B would want A disinherited because A killed her.[2] This scenario demonstrates the concept of the "slayer rule," the civil law consequence that a killer's wrongful act has on his inheritance rights.[3]

Slayer rules bar murderers who stand to inherit from their victim's estate from receiving economic benefits as a result of the death of their victims.[4] When the killer is insane, however, the rules change. This is because most slayer rules lack express provisions guiding courts toward the proper course of action.[5] For example, the California slayer statute does not expressly address the issue of insanity.[6] Thus, California is one of many jurisdictions where the judiciary must make a determination that the legislature

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1. Jeffrey G. Sherman, *Mercy Killing and the Right to Inherit*, 61 U. CIN. L. REV. 803, 861 (1993).

2. *Id.*

3. The slayer doctrine states that neither a person who kills another nor the killer's heirs can share in the decedent's estate. BLACK'S LAW DICTIONARY 1422 (8th ed. 2004).

4. *See* discussion *infra* Part II.A.

5. *See* discussion *infra* Part II.F.

6. *See* CAL. PROB. CODE § 250 (West 2006).

should have made.[7] When presented with a case involving an insane slayer, the majority of jurisdictions[8] do not deny succession rights.[9] Similarly, California courts have concluded that the mentally ill slayer presents a narrow exception to the slayer rules, and thus is not barred from receiving his inheritance.[10]

This comment examines how California's slayer statute applies to the insane slayer.[11] It will first outline the law in this area by discussing the development of inheritance laws and the slayer rule.[12] Next, it will explore the basic principles and policies underlying the rule.[13] This comment will then summarize the insanity defense, examine how this complex legal concept affects judicial treatment of a murdering heir, and analyze the complexities of the issue in California.[14] Finally, this comment proposes that the California Legislature resolve the ambiguous legal treatment of insane killers by adding an insanity element to its current slayer statutes.[15]

II. THE HISTORY OF RULES REGULATING THE DISTRIBUTION OF PROPERTY WHEN NORMAL TRANSFERS ARE INTERRUPTED BY MURDER

Passing property by a last will and testament is a

7. *See infra* Part II.E.2 (discussing judicial development of the insanity defense in California).

8. For example, though Alabama does not specifically address the issue of insanity in its inheritance laws, its Supreme Court stated: "We think that the principle of sound public policy which demands that a *sane*, felonious killer should not profit by his crime should be applied as often as and wherever any claim is made by such killer, whether under contract, will or statute." Weaver v. Hollis, 247 Ala. 57, 59, 22 So. 2d 525, 527 (1945) (quoting DeZotell v. Mutual Life Ins. Co., 60 S.D. 532, 245 N.W. 58, 65 (1932) (emphasis added). For more examples, see also Colorado, COLO. REV. STAT. § 15-11-803 (1987), Florida, FLA. STAT. ANN. § 732.802 (West Supp. 1991), Illinois, ILL. COMP. STAT. ANN. ch. 110-1/2, paras. 2-6 (Supp. 1991), Missouri, Eisenhardt v. Siegel, 119 S.W.2d 810 (1938), New Hampshire, Kelley v. State, 196 A.2d 68 (1963) (citing Anderson v. Grasberg, 78 N.W.2d 450 (1956)), New Jersey, N.J. STAT ANN. § 3B:7-1 (West 1983), and North Carolina, N.C. GEN. STAT. §§ 31A-3 to -10 (1984).

9. *See infra* Part II.F.

10. Estate of Ladd, 153 Cal. Rptr. 888, 893-94 (Ct. App. 1979).

11. *See* discussion *infra* Part IV.

12. *See* discussion *infra* Part II.A.

13. *See* discussion *infra* Part II.A.

14. *See* discussion *infra* Part II.B-C.

15. *See* discussion *infra* Part V.

principle dating back centuries in our legal history.[16] Included in this practice are the common law and statutory provisions called "slayer rules," which block killers from inheriting from their victims.[17]

A. The History of Inheritance

The history of wills and the right of testation in Anglo-American law date back to the eleventh century.[18] After the Norman Conquest, England instituted primogeniture.[19] This legal principle recognized the right of the eldest son to inherit the family estate, and excluded all female and junior male descendents with equal degrees of relationship from inheriting.[20] Eventually, with the decline of feudalism, this archaic system of inheritance ended.[21] By the thirteenth century, leaseholds, the common form of holding property, were passed by will.[22]

Two significant legal acts in English law led to the standardization of the legal written will as the primary postmortem method of distributing real and personal property.[23] The adoption of the Statute of Wills in 1540 enabled heirs to avoid primogeniture by passing land entirely

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16. Daniel C. Marson et al., *Testamentary Capacity and Undue Influence in the Elderly: A Jurisprudent Therapy Perspective*, 28 LAW & PSYCHOL. REV. 71, 73 (2004).

17. Sherman, *supra* note 1, at 805. The right of inheritance probably arose from a plain and simple principle where a man's children or nearest relations would surround him on his deathbed, and be the first witnesses of his death. JESSE DUKEMINIER & STANLEY M. JOHANSON, WILLS, TRUSTS, AND ESTATES 1-2 (6th ed., Aspen Law & Bus. 2000). They become, therefore, the next immediate occupants of his estate. *Id.* at 2. Eventually this occurred so frequently that it developed into general law. *Id.* While property ownership continued only for life, testaments were useless and unknown. *Id.* When the property became inheritable, the inheritance was indefeasible, and the children or heirs at law were incapable of exclusion by will. *Id.* Eventually, society realized that such a strict rule of inheritance made heirs disobedient, defrauded creditors of their just debts, and prevented many provident fathers from dividing or charging their estates as the needs of their families required. *Id.* The movement away from a rigid inheritance scheme introduced, generally, the right of disposing of one's property, or a part of it, by a last will and testament. *Id.*

18. Marson et al., *supra*, note 16, at 73.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

by will.[24] Subsequently, the Statute of Frauds, enacted in 1677, required "a writing to pass personalty at death."[25] In time, these social and legal developments made the will an established part of Anglo-American law.[26]

The system of inheritance rights for murdering heirs is a less developed aspect of the inheritance system simply because ancient laws barred them from inheriting. When an heir murdered a testator under ancient law, the property transfer system was not complicated;[27] the doctrines of attainder[28] and corruption of blood[29] immediately settled the disposition of property by preventing the murderer or his family from inheriting.[30] Perhaps reflecting a desire to leave behind a darker side of our colonial heritage,[31] the drafters of the United States Constitution prevented attainder from being incorporated into our legal system.[32]

Rules regulating slayers codify the common law maxim *ex turpis causa non actio*, that no one should profit from their own wrongful acts.[33] Under the common law, the killer was

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24. Marson et al., *supra*, note 16, at 73.

25. *Id.*

26. *Id.* at 74.

27. *See* John W. Wade, *Acquisition of Property by Willfully Killing Another—A Statutory Solution*, 49 HARV. L. REV. 715, 716 n.4 (1936) (citing Wall v. Pianschmidt, 245 N.W. 58, 59 (1932)) ("The problem did not arise under the common law until comparatively recent times, 'because of the ancient common law doctrine of attainder and corruption of blood'").

28. "Attainder," at common law, is the act of extinguishing a person's civil rights when that person is sentenced to death or declared an outlaw for committing a felony or treason. BLACK'S LAW DICTIONARY 137 (8th ed. 2004).

29. Corruption of blood was part of an ancient English penalty for treason. *See* BLACK'S LAW DICTIONARY 371 (8th ed. 2004) (quoting TERMES DE LA LEY 125 (1st Am. ed. 1812)). It was usually part of a Bill of Attainder, which normally sentenced the accused to death. *Id.* at 176. The corruption of blood forbade the accused's family from inheriting his property. *Id.* at 371. Such bills and punishments were often inflicted upon Tories by colonial governments during the American Revolution. United States v. Brown, 381 U.S. 437, 442 (1965).

30. Wade, *supra* note 27, at 716.

31. Michael G. Walsh, Annotation, *Homicide as Precluding Taking Under Will or by Intestacy*, 25 A.L.R. 4th 787, § 2(a) (2005).

32. "No Bill of Attainder or ex post facto Law shall be passed." U.S. CONST. art. I, § 9, cl. 3. The constitutions of each and every state also expressly forbid bills of attainder. *See, e.g.*, WIS. CONST. art. I, § 12 ("No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts, shall ever be passed, and no conviction shall work corruption of blood or forfeiture of estate.").

33. See *Ford v. Ford*, 512 A.2d 389, 399-400 app. A (Md. 1986), for a list of Slayer's Statutes.

thus viewed as an "unworthy heir" and his dishonorable act extinguished his inheritance rights.[34]

The Supreme Court first addressed the problem of the murdering heir in 1886 with *New York Mutual Life Insurance Co. v. Armstrong*.[35] In *New York Mutual*, the assignee of a life insurance policy murdered the insured.[36] The Court held that "[i]t would be a reproach to the jurisprudence of the country, if one could recover insurance money payable on the death of a party whose life he had feloniously taken."[37] In following the Supreme Court's lead, state courts, beginning with *Riggs v. Palmer*[38] in New York in 1889, began adopting the following rule: "[N]o one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime."[39]

Despite state court decisions barring the inheritance of a murdering heir, some states function without express references to slayers in their statutes of wills or their statutes of descent and distribution.[40] The significant number of interfamily murders, however, demonstrates the need for such legislation. In 2002, one in five persons murdered were killed by a family member.[41] Every day, four women die as victims of domestic violence.[42] Fifty-seven percent of murders

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34. Kymberleigh N. Korpus, Note, *Extinguishing Inheritance Rights: California Breaks New Ground in the Fight Against Elder Abuse But Fails to Build an Effective Foundation*, 52 HASTINGS L.J. 537, 560 (2001).

35. New York Mut. Life Ins. Co. v. Armstrong, 117 U.S. 591 (1886); *see also* Korpus, *supra* note 34, at 560.

36. *New York Mut. Life*, 117 U.S. at 600.

37. *Id.*

38. Riggs v. Palmer, 22 N.E. 188 (N.Y. 1889). In this case, the testator's grandson murdered the testator in order to accelerate his inheritance and prevent the testator's planned revocation of the provision in his favor. *Id.*; *see also* Julie J. Olenn, Comment, *'Til Death Do Us Part: New York's Slayer Rule and* In Re Estates of Covert, 49 BUFF. L. REV. 1341, 1344 (2001).

39. Korpus, *supra* note 34, at 560-61.

40. Walsh, *supra* note 31, § 2(a).

41. *See generally* MATTHEW R. DUROSE ET AL., U.S. DEP'T OF JUSTICE, FAMILY VIOLENCE STATISTICS INCLUDING STATISTICS ON STRANGERS AND ACQUAINTANCES (2005), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/fvs.pdf. Family violence accounted for eleven percent of all reported and unreported violence between 1998 and 2002. *Id.* at 1. Of these offenses against family members, forty-nine percent were a crime against a spouse, eleven percent were a parent attacking a child, and forty-one percent were an offense against another family member. *Id.*

42. National Organization for Women, Violence Against Women in the

of children under the age of twelve are perpetrated by the victim's parent.[43] A growing number of jurisdictions have attempted to avoid the traditional approaches taken by the courts[44] in an attempt to establish uniformity.[45] These states enacted statutes that expressly preclude certain classes of slayers from taking under the wills of their victims or inheriting under the statutes of descent and distribution.[46] The majority of states follow a statutory scheme similar to the Uniform Probate Code's slayer rule, which states that "[a]n individual who feloniously and intentionally kills the decedent forfeits all benefits . . . with respect to the decedent's estate," and "[i]f the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed his [or her] intestate share."[47]

United States, http://www.now.org/issues/violence/stats.html (last visited February 21, 2007).

43. JOHN M. DAWSON & PATRICK A. LANGAN, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT: MURDER IN FAMILIES 1 (1994), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/mf.pdf.

44. Some courts have permitted the slayer to benefit from his crime on the theory that the courts are powerless to "amend" the legislature's intent by judicial enlargement. *See* Wade, *supra* note 27, at 717. Other courts bar the slayer by equitable principles under the maxim that no one should be permitted to profit from his own wrong. *Id.* Finally, a third group scorns the first two solutions. *Id.* Their solution permits the slayer to take initially under the will of the victim or pursuant to the statutes of descent and distribution, but prevents the slayer from using or enjoying the property so acquired. *Id.* A constructive trust results in favor of the victim's other lawful heirs, for whom the slayer holds the property as trustee. *Id.*

45. See Sherman, *supra* note 1, at 846 n.207, for a list of state slayer statutes.

46. Walsh, *supra* note 31, § 2(a); *see also* IDAHO CODE ANN. § 15-2-803 (2006); LA. CIV. CODE ANN. art. 966 (2006).

47. Kent S. Berk, Comment, *Mercy Killing and the Slayer Rule: Should the Legislatures Change Something?*, 67 TUL. L. REV. 485, 493 (1992); UNIF. PROBATE CODE § 2-803(b). *Compare* UNIF. PROBATE CODE § 2-803, *with* ALA. CODE § 43-8-253 (Lexis Nexis 1982), *and* ALASKA STAT. § 13.11.305 (1985 & Supp. 1991) (repealed 1996), *and* ARIZ. REV. STAT. ANN. § 14-2803 (1975 & Supp. 1991), *and* CAL. PROB. CODE § 250 (Deering 1991), *and* COLO. REV. STAT. § 15-11-803 (1987), *and* FLA. STAT. ANN. § 732.802 (West Supp. 1991), *and* GA. CODE ANN. § 53-4-6(a) (West 1982) (repealed 1998), *and* HAW. REV. STAT. § 560:2-803 (1985 & Supp. 1990), *and* IDAHO CODE ANN. § 15-2-803 (1979), *and* ILL. COMP. STAT. ANN. ch. 110-1/2, paras. 2-6 (Supp. 1991), *and* IOWA CODE ANN. § 633.535 (West Supp. 1991), *and* ME. REV. STAT. ANN. tit. 18, § 2-803 (1964), *and* MICH. COMP. LAWS ANN. § 27.5251 (West 1978) (repealed 1979), *and* MINN. STAT. ANN. § 524.2-803 (West Supp. 1992), *and* MONT. CODE ANN. § 72-2-104 (1991), *and* NEB. REV. STAT. § 30-2354 (1989), *and* N.J. STAT. ANN. § 3B:7-1 (West 1983), *and* N.M. STAT. ANN. § 45-2-803 (West 1989), *and* N.C. GEN. STAT. §§ 31A-3 to -10 (1984), *and* N.D. CENT. CODE § 30.1-10-03 (1976), *and* OR. REV.

While the slayer rules of different states find unity in their use of similar themes, such as principles of equity, morality, rational property transfer, and public policy considerations of deterrence, they vary significantly in other aspects.[48] The types of murderers that states regulate are not the same in every state. South Carolina, for example, allows unintentional killers to inherit, while Kansas has a provision for one who kills their spouse and then commits suicide.[49]

The transfer of property further illustrates how slayer rules differ among the states in other aspects. Slayer statutes resembling the Uniform Probate Code provide for the transfer of the murdered decedent's estate in one of three ways.[50] One way is to treat the portion of the estate originally left to the slayer as previously nullified by the decedent.[51] Another way is to create a fictitious transfer treating the benefiting slayer as if he died before the victim.[52] The final way is to address the transfer as though the murdering beneficiary forfeited his share.[53]

Regardless of how each state distributes the murderer's share, the slayer rule must account for all forms of inheritance.[54] Furthermore, regardless of whether the slayer would have inherited by will, intestacy, dower, survivorship, or life insurance, the underlying principle of the slayer rules, that no one shall profit from their wrongful acts, remains the same.[55] In order to uphold this principle in each type of property transfer, slayer statutes must be far-reaching in their breadth.[56] The application of the slayer statute cannot be limited to, or by, the particular kinds of testamentary

STAT. §§ 112.455 to .555 (1989), *and* R.I. GEN. LAWS §§ 33-1.1-1 to -11 (1984), *and* S.C. CODE ANN. § 62-2-803 (1987), *and* S.D. CODIFIED LAWS §§ 29-9-1 to -4 (1984) (repealed 2004), *and* WIS. STAT. ANN. § 852.01 (West 1991).

48. *See supra* note 47 (listing a number of relevant state statutes).

49. *See* S.C. CODE ANN. § 62-2-803 (1987); KAN. STAT. ANN. § 59-513 (2005).

50. Callie Kramer, Note, *Guilty by Association: Inadequacies in the Uniform Probate Code Slayer Statute*, 19 N.Y.L. SCH. J. HUM. RTS. 697, 704 (2003).

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. Kramer, *supra* note 50, at 704. For a discussion of the principle "that no man shall profit from his own wrong," see *Bradley v. Fox*, 129 N.E. 2d 699, 703 (Ill. 1955).

56. *See* Sherman, *supra* note 1, at 847.

transfers enumerated in it.[57]

B. Specific California Codes Addressing the Unworthy Heir

Currently, California Probate Code Section 250 reads that:

> A person who feloniously and intentionally kills the decedent is not entitled to . . . any property, interest, or benefit under a will of the decedent, or a trust created by or for the benefit of the decedent[,] . . . [a]ny property of the decedent by intestate succession . . . [or] [a]ny of the decedent's quasi-community property . . . .[58]

Originally, section 1409 of the Civil Code composed the California slayer statute.[59] The legislature enacted this section in response to public outrage over a single event—a California youth murdered his entire family so he could succeed to their property.[60] The public reacted strongly and harshly criticized "a system of law which would permit such injustice."[61] Section 1409 addressed this matter by providing that "[n]o person who has been convicted of the murder of the decedent shall be entitled to succeed to any portion of his estate. . . ."[62] As issues arose over the years, the code was amended to accommodate changing public needs.[63]

C. Principles and Policies Supporting the Unworthy Heir Rules

Principles of equity, morality, property law and deterrence support the slayer rule.[64] In equity, preventing a criminal from profiting from his crime serves a greater

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57. *Id.*

58. CAL. PROB. CODE § 250 (West 2006).

59. Estate of Ladd, 153 Cal. Rptr. 888, 892 (Ct. App. 1979).

60. *Id.*; *see also* People v. Weber, 86 P. 671 (1906). The devolution of the property was not contested, at least in the appellate courts, and the property was used to pay the attorneys who unsuccessfully defended the murderer in the criminal trial. *Estate of Ladd*, 153 Cal. Rptr. at 892.

61. *Id.*

62. *Id.*

63. The Legislature broadened the statute in 1955 to terminate the inheritance rights of claimants convicted of voluntary manslaughter. *Id.* In 1963, the Legislature made several more changes to the code. *Id.* The amendments were designed to accommodate murder-suicide cases, and to prevent litigation regarding issues previously decided in criminal proceedings in probate proceedings. *Id.*

64. Kramer, *supra* note 50, at 700.

societal interest than that which would be served by allowing the preservation of legal rights of ownership.[65] A colorful example of equity in action is *Garwols v. Bankers Trust Co.*[66] In this case, a stepson killed his stepmother so that he could inherit her wealth and use it to persuade a woman to marry him.[67] The court ruled that the stepson could not inherit because it would be contrary to public policy to allow him to benefit from his act of greed.[68]

When a killing is motivated by greed, morality clearly justifies denying the slayer the right to take from his or her victim's estate.[69] However, the moral principles remain applicable even when the killer was not motivated by economic gain.[70] For example, after drinking and arguing, a wife shot and killed her husband.[71] Despite the fact that alcohol and conflict motivated the killer, and not greed, the court could not justify allowing her to inherit.[72]

Additional principles support the slayer rule. Slayers interrupt the regular disposition of property[73] and interfere with the concept of "free and unencumbered transfer of one's property."[74] There is also a deterrence element. By denying a slayer the benefits flowing from his act, potential killers may be less inclined to act.[75]

D. *The Slayer Rules Applied*

States generally restrict the application of slayer rules to cases in which the killing is felonious and intentional.[76]

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65. *Id.*
66. Garwols v. Bankers Trust Co., 232 N.W. 239 (Mich. 1930).
67. Kramer, *supra* note 50, at 700.
68. *Id.*
69. *Id.* at 701.
70. *Id.*
71. Leavy v. Metro. Life Ins. Co., 581 P.2d 167, 170 (Wash. Ct. App. 1978).
72. *Id.* at 171.
73. The victim's death causes her to lose the enjoyment of her personal property, and in some cases, victims are denied an opportunity to revise their existing estate plans. Kramer, *supra* note 50, at 701-02. The order of death of the victims and slayers is interrupted, placing property transfers conditioned on survivorship in jeopardy of being controlled by surviving slayers. *Id.*
74. *Id.* at 702.
75. *Id.*
76. The Uniform Probate Code (UPC) describes the wrongful killing as felonious and intentional. *See* UNIF. PROBATE CODE § 2-803 (1982). Other statutes use similar language. *See, e.g.*, FLA. STAT. § 732.802 (2006) ("unlawful and intentional"); OR. REV. STAT. § 112.455 (2006) ("with felonious intent").

Courts require proof by a preponderance of the evidence[77] that the slayer feloniously killed the decedent.[78] Conversely, courts generally do not deny an individual the right to succeed to his victim's property where less heinous conduct is involved.[79] However, not all aspects of the slayer statutes are interpreted as uniformly as others.

Standards for "conviction" take on many forms and interpretations.[80] A significant minority of state slayer statutes bar a slayer from inheriting from the victim if the slayer is convicted of criminal homicide, regardless of how the term "conviction" is defined or restricted.[81] A final judgment of conviction is conclusive evidence of a felonious and intentional killing in California.[82] The California Court of Appeals, however, held that the absence of a conviction will not prevent the court from determining that a killing was felonious and intentional when determining succession rights.[83]

While the circumstances of a felonious and intentional killing vary, three categories of possible factual circumstances that surround the killings may be identified to find the moral and legal reasons for denying slayers the right to succeed to their victim's property: (1) a killing for greed; (2) a killing that is not economically motivated; and (3) a killing following a suicide that involves a slayer's distributes. Mary Louise Fellows, *The Slayer Rule: Not Solely a Matter of Equity*, 71 IOWA L. REV. 489, 491 (1986).

77. A lower, or civil, standard of evidence is used because probate law is concerned with preventing a killer from profiting from his wrong, whereas criminal law aims to protect the accused. DUKEMINIER & JOHANSON, *supra* note 17, at 146.

78. Sherman, *supra* note 1, at 853. Section 2-803(e) of the Uniform Probate Code adopts this standard, and it has been the model for a number of slayer statutes. *See, e.g.*, ALA. CODE § 43-8-253(e) (1982); MICH. COMP. LAWS ANN. § 700.251(5) (West 1979), (repealed 2002); MINN. STAT. § 524.2-803(f) (West 1984); UTAH CODE ANN. § 75-2-804(5) (1978); *see also* FLA. STAT. § 732.802 (1983) ("by the greater weight of the evidence").

79. Fellows, *supra* note 76, at 496-97; *see also In re* Wolf, 150 N.Y.S. 738, 742-43 (Sur. Ct. 1914) (husband who killed wife when attempting to kill her lover and was convicted of manslaughter could inherit because he did not intend to kill wife); *In re* Estate of Klein, 378 A.2d 1182, 1186 (Pa. 1977) (husband convicted of involuntary manslaughter for wife's death could take under wife's estate because slayer statute required "willful" as well as unlawful killing).

80. Sherman, *supra* note 1, at 853-56.

81. *E.g.*, D.C. CODE ANN. § 19-320 (LexisNexis 1989); KY. REV. STAT. ANN. § 381.280 (LexisNexis 1920); OKLA. STAT. ANN. tit. 84, § 231 (West 1990); *see also* Sherman, *supra* note 1, at 854.

82. Estate of Castiglioni, 47 Cal. Rptr. 2d 288, 293 (Ct. App. 1995) (construing CAL. PROB. CODE § 254(b) (West 2006)).

83. *Id.*

When faced with slayer statutes containing express conviction requirements, many courts choose to interpret the statutes as "supplementing rather than superseding" the common law slayer rule.[84] The result is that even those slayers who are not convicted are barred from inheriting.[85] Very few courts view the conviction element as a legislative demand, and therefore, most do not require a conviction as a prerequisite for operation of the statute.[86]

The slayer rules may prevent a killer who was never convicted from inheriting from his victims even in states that do not have an explicit conviction requirement.[87] For example, in some jurisdictions, slayer rules are invoked even if the slayer commits suicide before being criminally charged.[88] As a result, the victim's property will pass to the victim's heirs or alternate legatees instead of the heirs or legatees of the slayer.[89] However, if the slayer is acquitted in a criminal proceeding but found guilty in a civil trial, slayer rules may still bar his inheritance.[90]

Evidently, although a particular jurisdiction may have a slayer statute, that statute is not always conclusive of how courts will rule. Many intricate details factor into interpreting a slayer statute. When the slayer is insane, for example, the analysis becomes even more complex.

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84. Sherman, *supra* note 1, at 855; *see also* Smith v. Greenburg, 218 P.2d 514 (Colo. 1950); Nat'l City Bank v. Bledsoe, 144 N.E.2d 710, 715 (Ind. 1957), *overruling* Bruns v. Cope, 105 N.E. 471 (Ind. 1914); Jones v. All Am. Life Ins. Co., 325 S.E.2d 237, 244 (N.C. 1985); Parker v. Potter, 157 S.E. 68, 70-71 (N.C. 1931); Shrader v. Equitable Life Assurance Soc'y, 485 N.E.2d 1031, 1034 (Ohio 1985).

85. Sherman, *supra* note 1, at 855.

86. *Id.*; *see also, e.g.*, Peeples v. Corbett, 157 So. 510, 512 (Fla. 1934); *In re* Estate of Buehnemann, 324 N.E.2d 97, 98 (Ill. App. Ct. 1975); Hogg v. Whitham, 242 P. 1021, 1022 (Kan. 1926); Holliday v. McMullen, 756 P.2d 1179, 1180 (Nev. 1988).

87. Sherman, *supra* note 1, at 855.

88. *See Nat'l City Bank*, 144 N.E.2d at 715.

89. *See id.*

90. Sherman, *supra* note 1, at 854. This is a result of the different burdens of proof required by the criminal and civil proceedings (it may be possible to prove the slaying by a preponderance of the evidence but not beyond a reasonable doubt) as well as the principles of res judicata and due process. *Id.*

E. The Insanity Defense

1. History of the Insanity Defense

The maxim that "[o]ur collective conscience does not allow punishment where it cannot impose blame"[91] is deeply rooted in Anglo-Saxon law.[92] The earliest case in which a jury acquitted an alleged murderer on insanity grounds occurred in 1505, though it is unclear when this became a regular practice.[93]

The English law relating to the criminal responsibility of the insane did not change substantially until 1800, when it changed dramatically.[94] In that year, James Hadfield attempted to assassinate King George III.[95] Hadfield was deluded. He thought he was the savior of all humankind that and assassinating the King was the clearest path to martyrdom.[96] In defending against a high treason charge, Hadfield theorized that a man could know right from wrong, understand the nature of the act he was about to commit, and even reveal a clear design in planning and executing his act.[97] If his mental state was responsible for the act, however, then legally, he should not be held accountable.[98]

As a result of Hadfield's actions, the English Parliament quickly passed the Criminal Lunatics Act.[99] The act set forth a two-part procedure for proper treatment of an allegedly insane offender.[100] First, the verdict for one adjudged insane was the newly codified special verdict of "not guilty by reason of insanity."[101] Second, when this verdict was rendered, the act provided for the offender's automatic commitment.[102]

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91. Jonas Robitscher & Andrew Ky Haynes, *In Defense of the Insanity Defense*, 31 EMORY L.J. 9, 9 (1982) (citing Durham v. United States, 214 F.2d 862, 876 (D.C. Cir. 1954)).

92. *See id.*

93. *Id.* at 11. The earliest case resolved on the grounds of insanity can be found in the Yearbooks of Henry VIII, 21 Michaelmas Term, plea 16 (1505). *Id.* at 11 n.5.

94. *Id.* at 12 n.11 (citing J. BIGGS, THE GUILTY MIND 88 (1955)).

95. *Id.* (citing J. BIGGS, THE GUILTY MIND 89 (1955)).

96. *Id.*

97. Robitscher & Haynes, *supra* note 91, at 12 n.11.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* at 13.

102. *Id.* at 14.

Even before Hadfield's assassination attempt, the insanity defense had begun its slow evolution from "not guilty by reason of insanity" to "guilty but insane."[103] In the eighteenth century, the increase of recognized capital offenses had a profound effect on the evolution of the defense.[104] The defense was increasingly used and grew more formalized in England and the United States.[105] Acknowledging that it was beneficial to "alleviate the harshness of sentencing to death one who could not be said to possess the requisite criminal intent," courts expanded the idea of legal insanity.[106] The courts established procedures for the insane defendant[107] which afforded greater protection.[108]

Eventually, the verdict evolved into a judgment of "not guilty by reason of insanity."[109] American lawmakers disregarded the public's outcry for reform of the defense in the early 1900's, and refused to follow England in changing the defense to "guilty but insane."[110] However, in 1982, lawmakers finally changed the defense in response to the acquittal of John Hinckley Jr.[111] Hinckley attempted to assassinate President Ronald Reagan, but was acquitted by reason of insanity.[112] This event had a dramatic impact on insanity defense jurisprudence.[113] In response to public

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103. Robitscher & Haynes, *supra* note 91, at 14. Queen Victoria was unhappy that a defendant like Hadfield could be "not guilty by reason of insanity." *Id.* She considered Hadfield guilty of treason regardless of the language of the jury verdict. *Id.* Eventually, the Queen's concern for semantics prevailed, and Parliament passed the Trial of Lunatics Act of 1883, changing the permissible verdict from "not guilty by reason of insanity" to "guilty but insane." *Id.*

104. *Id.* at 12.

105. *Id.* at 12-13.

106. *Id.* at 13.

107. *See* JOSHUA DRESSLER, CASES AND MATERIALS ON CRIMINAL LAW 591 (2d Ed. 1999).

108. Robitscher & Haynes, *supra* note 91, at 13. Prior to this time, the insane were not punished for several reasons: the prosecution may have failed to prove its case, courts and juries were sympathetic to their plights, or they were subsequently pardoned by the King. *Id.*

109. *Id.* at 15.

110. *Id.* at 14-15.

111. Jessie Manchester, Comment, *Beyond Accommodation: Reconstructing the Insanity Defense to Provide an Adequate Remedy for Postpartum Psychotic Women*, 93 J. CRIM. L. & CRIMINOLOGY 713, 735-36 (2003).

112. *Id.* at 735.

113. *Id.*

outrage over the acquittal,[114] Congress enacted the 1984 Insanity Defense Reform Act, which weakened the test for insanity used at the time,[115] and aligned it more closely with England's M'Naghten rule.[116] To establish a defense on the ground of insanity, the M'Naghten rule requires that at the time the act was committed, the defendant was "labouring under such a defect of reason, from disease of the mind," such that he did not realize "the nature and quality" of his actions; if the defendant did realize "the nature and quality" of his actions, the rule requires that he did not know it was wrong.[117]

2. Development of the California Insanity Defense

California has, with slight variation, followed the M'Naghten test for legal insanity since the early nineteenth century.[118] At the turn of the century, the California Supreme Court rejected efforts to expand the rule to include "moral insanity"[119] or "irresistible impulse."[120] In 1927, however, the

114. A strong contingency in American politics is still pushing for reform; some even call for the complete abolition of the defense. GEORGE J. ALEXANDER & ALAN W. SCHEFLIN, LAW AND MENTAL DISORDER 752 (Carolina Academic Press 1998). The abolition of the insanity defense, however, might be unconstitutional. *Id.* at 754 (citing State v. Hoffman, 328 N.W.2d 709, 714-15 (Minn. 1982) (holding that a defendant has a due process constitutional right to assert an insanity defense)). While the United States Supreme Court has not directly addressed the issue, it has been adjudicated with differing results in state courts. *Id.*

115. Manchester, *supra* note 111, at 736. The test used in 1984 was the American Law Institute two-prong test. *Id.* See *infra* note 124 for a discussion of the American Law Institute test.

116. *Id.* In 1843, Daniel M'Naghten was indicted for shooting Edward Drummon, secretary to the Prime Minister of England. ALEXANDER & SCHEFLIN, *supra* note 114, at 744. The jury returned a not guilty by reason of insanity verdict which became the subject of popular alarm. *Id.* Queen Victoria was particularly concerned. *Id.* As a result, the House of Lords asked the judges to give an advisory opinion regarding the law governing such cases. *Id.* Their combined answers have come to be known as M'Naghten's Rules. *Id.*

117. ALEXANDER & SCHEFLIN, *supra* note 114, at 745.

118. Haaris Syed, *Developments in California Homicide Law*, 36 LOY. L.A. L. REV. 1371, 1374 (2003).

119. Moral insanity can best be defined as perversion of the moral senses. *See* People v. Kerrigan, 14 P. 849, 851 (Cal. 1887).

120. Walter L. Gordon, III, *Old Wine in Old Bottles: California Mental Defenses at the Dawn of the 21st Century*, 32 SW. U. L. REV. 75, 78 (2003); *see also* People v. Hubert, 51 P. 329, 331 (Cal. 1897) ("[C]onceding that the act was the offspring of irresistible impulse, and the impulse was irresistible because of mental disease, still the defendant must be held responsible if he at the time

Legislature made a major revision of the insanity defense by bifurcating the trials of insanity cases.[121] In this revision, the Legislature intended to remove all evidence of the defendant's mental state from the guilt phase of the trial.[122]

Although judicial interpretation refined the defense over the years, it did not significantly change until 1978.[123] In that year, the California Supreme Court adopted the American Law Institute test (ALI test)[124] for insanity.[125] In explaining its decision, the court stated that the "exclusive focus upon the cognitive capacity of the defendant [was] an outgrowth of the then current psychological theory under which the mind was divided into separate independent compartments, one of which could be diseased without affecting the others."[126] The court noted that although it had tried to modify M'Naghten by requiring that the defendant appreciate or understand the wrongfulness of his act, as well as by developing the defense of diminished capacity, these changes did not solve all the problems.[127] The primary failure with the modified version of M'Naghten was that it "still . . . [fell] short of acknowledging the teaching of psychiatry that mental aberration may not only impair knowledge of wrongfulness but may very well destroy an individual's capacity to control or to restrain

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had the requisite knowledge as to the nature and quality of the act, and of its wrongfulness.").

121. Gordon, *supra* note 120, at 79. The new law was the product of the California Commission for the Reform of Criminal Procedure (Commission), created by the Legislature in 1925 to provide the state with the most efficient system for swift justice. *Id.* at 80. The Commission was particularly concerned with abuse of the insanity defense in criminal trials. *Id.* The change created a new plea of "not guilty by reason of insanity," and provided that if both the plea of "not guilty," and "not guilty by reason of insanity" were entered, the plea of "not guilty" was tried first with a presumption that the defendant was sane. *Id.* If the person was convicted, then the same jury, or another, would try the issue of insanity. *Id.*

122. *Id.* However, neither the Commission nor the Legislature addressed the issue of whether mental state evidence was admissible on the issue of intent in crimes, like homicide, that required a specific mental state. *Id.* at 80-81.

123. *See id.* at 87.

124. The ALI test, or "substantial capacity test," states: "[A] person is not criminally responsible for an act if, as a result of mental disease or defect, the person lacks substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the law." BLACK'S LAW DICTIONARY 1469 (8th ed. 2004).

125. People v. Drew, 583 P.2d 1318, 1319 (Cal. 1978).

126. *Id.* at 1322.

127. *Id.* at 1323.

himself."[128]

In light of this judicial decision, the defense soon received attention from the California Legislature.[129] In 1981, following the slayings of two popular San Francisco politicians and the successful use of the diminished capacity defense by their murderer,[130] the California Legislature passed a bill that eliminated the diminished capacity defense and forbade expert testimony on whether the defendant had the requisite mental state for the crime.[131] In June of 1982, the defense changed again when voters passed Proposition 8.[132] Proposition 8 abolished the diminished capacity defense, and reinstated the M'Naghten test of insanity.[133] Currently, the Penal Code states that by law, the defendant is insane if he is "incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense."[134]

3. Theories of Insanity Defense Jurisprudence

The development of insanity defense jurisprudence is "the outcome of a fairly uneasy détente between law and psychiatry."[135] The insanity defense is one aspect of a series of tensions between the field of psychiatry and the legal system.[136] "It symbolizes the gap between the aspirations of a theoretically positivist and objective common law legal system . . . and the reality of an indeterminate, subjective, psychosocial universe (in which behavior is determined by a host of biological, psychological, physiological, environmental and sociological factors, and is frequently driven by unconscious forces)."[137]

The law is ambivalent about punishing the mentally

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128. *Id.*

129. Gordon, *supra* note 120, at 89.

130. People v. White, 172 Cal. Rptr. 612 (Ct. App. 1981).

131. S. 54, 1981 Leg., Reg. Sess. (Cal. 1981).

132. Proposition 8 enacted Article I, Section 28 of the California Constitution. CAL. CONST. art. I, § 28.

133. Gordon, *supra* note 120, at 90.

134. CAL. PENAL CODE § 25 (West 2006).

135. Michael L. Perlin, *Unpacking the Myths: The Symbolism Mythology of Insanity Defense Jurisprudence*, 40 CASE W. RES. L. REV. 599, 611 (1990).

136. MICHAEL L. PERLIN, THE JURISPRUDENCE OF THE INSANITY DEFENSE 187 (1994).

137. Perlin, *supra* note 135, at 619-20.

disabled.[138] Society is apprehensive of being too exculpatory by allowing behavioral explanations for crimes, and is still trying to evolve from the medieval punitive spirit.[139] Still, the social order yearns for an assured method of identifying mentally disabled individuals so that their exculpation will not illustrate a weakness in the law.[140] The slayer statutes illustrate the mixed feelings society has in punishing the insane while maintaining social order.

F. Slayer Statutes and the Insanity Defense

Without explicit statutory rules as guidance, the majority of courts will not disinherit a slayer if he is insane.[141] The courts that have addressed the issue have held, for a variety of reasons and based upon various tests for criminal insanity, that a person who is not responsible for his criminal act at the time of its commission is not subject to the application of a slayer statute or rule.[142] Thus, the killer's criminal conduct does not preclude him from enrichment.[143]

Each jurisdiction's insanity test influences courts' determination of whether the insane should inherit.[144] For example, some courts, especially those that apply the M'Naghten definition of insanity, conclude that, under the test, a person found to be insane should be acquitted of the criminal charge.[145] Since he was not "guilty" of committing

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138. PERLIN, *supra* note 136 at 187.

139. *Id.*

140. *Id.*

141. Walsh, *supra* note 31, § 2(a).

142. *See* Ford v. Ford, 512 A.2d 389, 399 (Md. 1986).

143. *See id.*

144. *Id.*

145. *Id.* In *Eisenhardt v. Siegel*, the Supreme Court of Missouri addressed the issue of sanity in a title dispute. 119 S.W.2d 810 (1938). One brother, who was insane at the time of the homicide, shot and killed his brother. *See id.* at 811. This triggered a reversion of title in certain property. *Id.* The fact of the "murder" did not preclude the reversion for the reason that the slayer was insane. *See id.* at 812. The defense of insanity, per M'Naghten, eradicated the murder; in other words, since the slayer was insane, there was no murder. *Id.* ("Plaintiffs had no case, except on the issue of murder, and there was no murder if John was insane . . . .").
New Jersey applies the M'Naghten test in determining an accused's sanity. *See* N.J. STAT. ANN. § 2C:4-1 (1982). New York applies a somewhat modified version of M'Naghten. *See* N.Y. PENAL LAW § 40.15 (McKinney 2004). The Pennsylvania and Texas insanity statutes apply the M'Naghten test. *See* 18 PA. CONS. STAT. ANN. § 315(b) (West 2005); TEX. PENAL CODE ANN. § 8.01 (Vernon

the homicide, the slayer rule is not invoked.[146]

A number of other courts reason that an insane killer could not entertain the requisite intent to make his act criminal.[147] Therefore, the homicide could not have been intentional, unlawful, or felonious, thereby rendering the slayer statute inapplicable.[148] In some states, the slayer rule speaks in terms of a "conviction" and the insanity statute permits a verdict of guilty, but precludes the imposition of punishment.[149] Courts in these states have concluded that since no criminal sentence will be entered upon a guilty verdict, the killer does not stand convicted.[150] Finally, one Illinois appellate court[151] simply used the "humane rule that an insane killer is not a murderer" as prevailing over the tenet that we should not allow an offender to profit from an intentional wrong.[152]

In sum, the cases addressing this issue share the belief that permitting the insane killer to share in the distribution of the victim's assets is consistent with the common law principle of equity, the principle from which the slayer rule originates.[153] Courts feel that "the present enlighted definition of criminal insanity under which punishment for the commission of a crime is prohibited . . . make the maxims prompting the rule . . . inappropriate when a person is criminally insane."[154] This is consistent with Justice Cardozo's analysis of the *Riggs* opinion:[155] "[T]he logic of this [equitable] principle prevailed over the logic of others . . . . One path was followed, another closed, because of the

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2006).

146. *Ford,* 512 A.2d at 399.

147. *Id.*

148. *See id.*

149. *Id.* For example, in *Pouncey v. State*, the Maryland Court of Appeals said: "No criminal sentence may ever be entered on the guilty verdict in this case [where the second verdict was 'insane'] and the [slayer], therefore, does not stand 'convicted' of the murder offense in the traditional sense of the criminal law." 465 A.2d 475, 478 (Md. 1983).

150. *Ford,* 512 A.2d at 399.

151. *See* Blair v. Travelers Ins. Co., 174 N.E.2d 209, 211 (Ill. App. Ct. 1961).

152. *Ford,* 512 A.2d at 399.

153. *Id.*; *see also* Fellows, *supra* note 76 (arguing that a more preferable statutory rule is one that focuses on the preservation of the property transfer system in light of the killing, rather than on the specific types of property interests that ought to be denied the slayer as a matter of equity).

154. *Ford,* 512 A.2d at 398.

155. *See* Riggs v. Palmer, 22 N.E. 188 (N.Y. 1889).

conviction in the judicial mind that the one selected led to justice."[156]

The controlling California case in this area of law is *Estate of Ladd.*[157] This case demonstrates the proposition of a slayer adjudged insane and therefore never "convicted" of slaying, but still allowed to take under his victim's will.[158] In *Estate of Ladd*, the court considered whether a mother, Gloria Ladd, could succeed to the estates of her murdered teenage sons.[159] Her motivation for killing them was that she was considering committing suicide, and "didn't want them upset by being homeless orphans and other trauma that goes with suicide."[160]

The court held that an insane person is incapable of committing a crime, and therefore is not capable of acting unlawfully for purposes of California Probate Code section 258.[161] Ladd was found guilty of murdering her sons, but insane at the time of the murders.[162] The children's paternal uncle claimed that Ladd was disqualified from succeeding to the estates because she "unlawfully and intentionally" caused their deaths under the slayer statute.[163] Upon reviewing the history of the statute, however, the court ruled that Ladd could inherit from her sons because she was insane at the time of the murders.[164] This conclusion is virtually synonymous with other courts that have been asked to make a similar determination.[165]

Cases addressing this issue share unanimity in their results,[166] but virtually no uniformity in reaching them.[167]

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156. BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 40-41 (photo. reprint 1998) (1921).

157. Estate of Ladd, 153 Cal. Rptr. 888 (Ct. App. 1979).

158. *See* Walsh, *supra* note 31, § 7.

159. *Estate of Ladd,* 153 Cal. Rptr. at 891.

160. *Id.*

161. *Id.* at 893-94.

162. *Id.* at 895.

163. *Id.* at 891.

164. *Id.* at 894.

165. *See* Ford v. Ford, 512 A.2d, 389, 399 (Md. 1986).

166. *But see* Congleton v. Sansom, 664 So. 2d 276 (Fla. Dist. Ct. App. 1995), Goldsmith v. Pearce, 75 N.W.2d 810 (Mich. 1956); Garner v. Phillips, 47 S.E.2d 845 (N.C. 1948) (in each of these cases, a slayer who was not tried on, or was acquitted of, charges arising from the slaying on the ground that he was insane at the time he committed the crime, was nevertheless disqualified from inheriting from his victim's estate under applicable statutes of descent and distribution).

Several examples illustrate this point.[168] In Florida, a woman murdered her husband, but was allowed to take from his estate.[169] Because she was adjudged insane, she was not convicted as required by the state slayer statute.[170] Also, in South Dakota, the slayer rule requires that the killer be "sane" in order for it to apply.[171] The slayer rule had no application in Maryland when a woman who was the beneficiary under her mother's will killed her mother.[172] The woman was convicted of murdering her mother in the first degree, but adjudged not criminally responsible because she was also insane.[173] The varying rationalizations courts use to pardon the insane slayer demonstrate the complexities of this issue, as well as the interplay between morality and legal standards.

III. CALIFORNIA'S SLAYER STATUTE IS LEGALLY INSUFFICIENT BECAUSE IT DOES NOT ACCOUNT FOR THE MENTALLY ILL OFFENDER

The current California slayer rules are insufficient[174] because they do not provide for the occurrence of a mentally ill offender. Instead, they only address and account for broad issues regarding the differing types of murder.[175] It is disturbing to note that other states have equally deficient slayer statutes which force courts to use varying methods to determine how to adjudicate this issue.[176] The different methodologies courts have employed prove that reforms are needed in this area.[177]

The California slayer statute is especially in need of attention from the Legislature.[178] First, a provision for insanity is conspicuously absent from the California Probate

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167. *See Ford*, 512 A.2d at 399.
168. *See* Walsh, *supra* note 31, § 7.
169. Hill v. Morris, 85 So. 2d 847, 851 (Fla. 1956).
170. *Id.*
171. De Zotell v. Mutual Life Ins. Co., 245 N.W. 58, 65 (S.D. 1932).
172. *Ford*, 512 A.2d 389.
173. *Id.* at 399.
174. *See* discussion *infra* Part V.
175. *See* CAL. PROB. CODE § 250-59 (West 2006).
176. *See supra* Part II.F.
177. *See supra* Part II.F.
178. *See* discussion *infra* Part V.

Code.[179] Second, the seminal appellate case interpreting this issue is grounded in an outdated insanity defense.[180] Third, the California Penal and Probate Codes have been revised since this decision.[181] Furthermore, as a reflection of society's constant evolution, developments in mental health laws support the necessity of change.[182] With changes in all other aspects of the law surrounding this issue, one can only conclude that formal change is needed here as well.

Without legislative guidance, California courts are free to reach their own interpretation of the state's slayer rules.[183] This is a clear violation of the law of inheritance, which should receive guidance and control from the legislature.[184] Furthermore, the mentally ill represent a significant part of society, and the Probate Code's lack of acknowledgement of their place in society needs to be addressed and provided for by the California Legislature.[185]

IV. ANALYSIS

Although the question of an individual heir's "worthiness" is typically irrelevant for inheritance purposes, the slayer rules provide one exception to this general corollary.[186] Under these rules, American jurisdictions recognize the relevance of a murdering heir, and disqualify that individual from inheriting.[187] In application, there is an exception to this exception when the slayer is insane.[188] Generally, court decisions allow a slayer who has been found insane to inherit,[189] but recent decisions by several state legislatures[190] indicate that change is imminent.[191]

179. *See* discussion *infra* Part IV.B.
180. *See* discussion *infra* Part IV.B.
181. *See* discussion *infra* Part IV.B.
182. *See generally* Gordon, *supra* note 120.
183. *See* discussion *infra* Part IV.A.
184. *See* Maxwell v. Bugbee, 250 U.S. 525, 536-37 (1919); Estate of Gurnsey, 170 P. 402 (Cal. 1918); Estate of Wilmerding, 49 P. 181 (Cal. 1897); Estate of Scott, 202 P.2d 357 (Cal. Ct. App. 1949).
185. *See generally* Robitscher & Haynes, *supra* note 91 (discussing the law and the mentally ill).
186. Richard Lewis Brown, *Undeserving Heirs?—The Case of the "Terminated" Parent*, 40 U. RICH. L. REV. 547, 558 (2006).
187. *See id.*
188. *See generally* Walsh, *supra* note 31, § 7.
189. *See supra* note 141-43 and accompanying text.
190. The legislatures of Indiana and Ohio have amended their statutes to

Relieving the insane slayer of responsibility is consistent with the principles of equity that form the basis of the slayer rules.[192] Because the killer did not have the requisite intent to kill, which is the very essence of the bar of equity, equity should not bar the slayer from succession under the statute of distributions.[193]

California allows the insane slayer exception despite a lack of guidance from the Legislature on the issue.[194] This is problematic because the exception is outdated.[195] To begin with, the decision of whether the slayer statutes should apply to the insane is a statutory decision, and should be made by the state legislature.[196] Even without guidance from the legislature, the current judicial interpretation of the statute is based on an outdated appellate court decision, *Estate of Ladd*.[197] Relying on the *Estate of Ladd* decision is wrong for two reasons—first, the decision interpreted California's slayer statute in light of an outdated version of the Penal Code, and second, California has made several changes to its insanity defense since the decision.[198] Finally, absent an explicit provision for the mentally ill, the statutory language does not provide the legal system adequate guidelines in deciding how to properly treat the mentally ill.[199]

A. The Decision of Whether Probate Code Section 250 Applies to Insane Slayers Should Be Made by the Legislature

The rules of probate are regulated by the Legislature.[200] "The laws of inheritance and testamentary disposition are wholly statutory and subject to legislative control, and do not depend on the ideas of the courts as to justice and natural

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include the insane slayer as falling within the purview of the slayer statutes. *See* OHIO REV. CODE ANN. § 2105.19 (LexisNexis 1985); IND. CODE ANN. § 29-1-2-12.1 (LexisNexis 1986).

191. *See* discussion *infra* Part V.

192. Kramer, *supra* note 50, at 713.

193. *Id.*

194. *See* discussion *infra* Part IV.A.

195. *See* discussion *infra* Part IV.B.

196. *See* Estate of Kramme, 573 P.2d 1369, 1372 (Cal. 1978); Estate of Kirby, 121 P. 370, 371 (Cal. 1912).

197. *See* discussion *infra* Part IV.B.

198. *See* CAL. PROB. CODE § 250 notes (West 2006).

199. *See* discussion *infra* Part IV.C.

200. Estate of Ladd, 153 Cal. Rptr. 888, 892 (Ct. App. 1979); *see also Estate of Kramme*, 573 P.2d at 1372,-73; *Estate of Kirby*, 121 P. at 371.

rights."[201] However, absent an express provision providing for the appropriate outcome of an issue, courts are forced to determine and rule on their approximation of the legislature's intent.[202]

In determining how to apply the insanity defense to the slayer statute, California courts must construe the Probate Code to comply with their desired outcome.[203] For example, the court in *Estate of Ladd* concluded that, despite the fact that the trial court found Gloria Ladd guilty, there was no "conviction" for the purposes of the slayer statute.[204] If there had been a "conviction" under the slayer statute, it would have been conclusive proof of "unlawfulness."[205] For purposes of the slayer statute, the court was certain that the Legislature intended this to be construed as an "acquittal."[206] However, section 254 of the California Probate Code offers a different conclusion.[207] Under this section, a conviction is conclusive of a "felonious and intentional" killing.[208] When no determination of a criminal conviction is made, the probate court makes its own determination of whether the killing was felonious and intentional.[209] Although seemingly a mere matter of semantics, the effect of not having a "conviction" should be made by the Legislature. The contradiction between the *Estate of Ladd* holding and what the Probate Code suggests regarding a "conviction" demonstrates the need for an unambiguous express provision regarding slayers.

B. Estate of Ladd *is Socially Outdated and Inconsistent with the Current Slayer Statute*

Changes and attitudes about California's insanity defense, as well as amended language of the slayer statute, render *Estate of Ladd* outdated.[210] In examining the fact

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201. *Estate of Ladd*, 153 Cal. Rptr. at 892.

202. This has led to varied reasonings and applications of the slayer statute. *See* discussion *supra* Part II.D.

203. *Estate of Ladd*, 153 Cal. Rptr. at 892.

204. *Id.* at 893. Because the trial court deemed Ladd insane at the time of the killings, she was not "convicted." *Id.*

205. Ford v. Ford, 512 A.2d 389, 401 (Md. 1986).

206. *Estate of Ladd*, 153 Cal. Rptr. at 893.

207. *See* CAL. PROB. CODE § 254 (West 2006).

208. *Id.*

209. *Id.* § 254(b).

210. *See infra* Parts IV.B.1-2.

pattern in *Estate of Ladd* in light of these changes, it is apparent that the result may have been different if the case were decided today.[211]

1. *The "Feloniously and Intentionally" Requirement*

When *Estate of Ladd* was decided, section 258 of the Probate Code held that in order to be disqualified from inheritance, a slayer must have acted "unlawfully and intentionally."[212] The *Estate of Ladd* court easily dismissed the intent requirement by applying section 21 of the California Penal Code, which stated that insane persons are not of sound mind and are therefore incapable of acting intentionally for the purposes of section 258.[213] Thus, even if the slayer acted unlawfully, without satisfaction of the requirement that the act be intentional, the slayer would still inherit. Presently, the California Penal Code does not contain such explicit language.[214] Section 21 of the Penal Code now states that "intention is manifested by the circumstances connected with the offense."[215] When the *Estate of Ladd* court interpreted the "unlawfully" standard under the former section 21, it reasoned that insane persons are incapable of acting "unlawfully," since they are incapable of being found guilty of committing crimes.[216] Given the changes to section 21, a court would likely reach a very different result than did the *Estate of Ladd* court.

After *Estate of Ladd*, the California Legislature amended the slayer statute to read "feloniously and intentionally," instead of "unlawfully and intentionally."[217] The term "felonious" is subject to several interpretations.[218] A narrow construction of "feloniously" provides that only an act constituting a felony, as defined by the state criminal statutes, is felonious.[219] Thus, under such an interpretation,

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211. See Estate of Ladd, 153 Cal. Rptr. 888 (Ct. App. 1979), for a discussion of the facts in that case. *See also supra* notes 157-64.

212. *Estate of Ladd*, 153 Cal. Rptr. at 893.

213. *Id.* at 894.

214. *See* CAL. PENAL CODE § 21 (West 2006).

215. *Id.* However, the notes of decision indicate that this change does not render a difference when applying "intent" to an insanity defense. *Id.*

216. *Estate of Ladd*, 153 Cal. Rptr. at 893-94.

217. CAL. PROB. CODE § 250 (West 2006).

218. *See* Fellows, *supra* note 76, at 555 n.26.

219. *Id.* Thus, for example, a killing by a juvenile could not be felonious, and

the issue would be whether an insane person can commit a felony.[220] Some courts, as in *Estate of Ladd*, found that a killing by a person deemed insane cannot be felonious, and therefore, the killer would not be precluded from inheriting.[221] In effect, this construction of "felonious" operates as a greater protection for the insane than the former interpretation of "unlawful."[222]

Other courts have broadly construed "felonious" to mean "without legal excuse or justification."[223] This interpretation offers a way for the mentally ill to evade the application of the slayer statute since the very existence of the insanity defense demonstrates that this condition is, in fact, a "legal excuse" or "justification" for a criminal act.[224] If a court found a person to be insane using this construction of "felonious," a mentally ill person would not be precluded from inheriting by the slayer statute.[225]

The Florida Supreme Court[226] attempted to clarify the meaning behind the description "felonious killer[s]."[227] The court stated that an acquittal by reason of insanity conclusively established that the slayer was not guilty of the charged offense because, "*as a matter of criminal law* [h]e lacked the capacity to commit the crime."[228] The justices concluded that this construction is properly applied only in the context of criminal law and that the record should be cleared of any confusion caused by "such epithets."[229] Unfortunately, this interpretation provides little in the way of precedent for California courts to follow.

The varying interpretations of the word "feloniously" demonstrate that while its usage might not preclude the insane from inheriting, a conclusive interpretation is better left to the California Legislature. A definitive rule from the

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a juvenile killer could not be precluded from inheriting. *Id.*

220. *See id.*

221. *Estate of Ladd*, 153 Cal. Rptr. at 893-94.

222. *See* Fellows, *supra* note 76, at 555 n.26.

223. *Id.*

224. See *supra* Part II.E for the history of the insanity defense.

225. The slayer would receive his inheritance and be excused from his wrongful action on account of his insanity. *Id.*

226. Hill v. Morris, 85 So. 2d 847 (Fla. 1956).

227. Ford v. Ford, 512 A.2d 389, 402 (Md. 1986).

228. *Id.* at 401 (citing *Hill*, 85 So. 2d at 851).

229. *Ford*, 512 A.2d at 401-02.

Legislature is especially necessary in light of societal changes and the growing trend of lawmakers declining to provide legal protection for the mentally ill.[230]

The comments to California's amended Probate Code explain that "feloniously" was substituted for "unlawfully" in Probate Code section 258 because of the felony murder rule.[231] In effect, the earlier language disqualified a person from inheriting if the killing was deemed accidental but within the scope of the felony murder rule.[232] The new language was intended to eliminate this disqualification.[233] The amended statute did not address the issue of the insane slayer.[234] In fact, the California slayer statute has never contained an express accommodation for the mentally ill.[235] Consequently, the interpretation of this wording has always been left to the courts.[236]

2. Amendments to the California Insanity Defense

The amendments to California's insanity defense in 1982 are a single reflection of society's constantly shifting perspective on the criminal culpability of the mentally ill. The *Estate of Ladd* decision of 1979 is an anomaly, dangling between the 1978 change to the loose ALI test, and the quick return in 1982 to the stricter M'Naghten rule.[237]

The M'Naghten rule and the ALI test are considerably different.[238] Whereas the ALI test contains both cognitive and volitional components, M'Naghten is narrow and conservative, and excuses only a cognitive component.[239] The

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230. *See* discussion *infra* Part IV.B.2.

231. CAL. PROB. CODE § 250 (West 2006). The felony murder rule holds that death resulting from the commission or attempted commission of a felony is murder. Most states restrict this rule to inherently dangerous felonies. BLACK'S LAW DICTIONARY 651 (8th ed. 2004).

232. *See* CAL. PROB. CODE § 250 (West 2006).

233. *Id.*

234. *Id.*

235. *See* Estate of Ladd, 153 Cal. Rptr. 888, 892 (Ct. App. 1979).

236. *Id.*

237. When California switched from M'Naghten to the ALI test, there were 187 not guilty by reason of insanity acquittals in the year preceding the change, and 270 in the year following. Randy Borum & Solomon M. Fulero, *Empirical Research on the Insanity Defense and Attempted Reforms: Evidence Toward Informed Policy*, 23 LAW & HUM. BEHAV. 375, 380 n.9 (1999).

238. Deborah W. Denno, *Who is Andrea Yates? A Short Story About Insanity*, 10 DUKE J. GENDER L. & POL'Y 1, 12 (2003).

239. Borum & Fulero, *supra* note 237, at 377.

ALI test excuses a person from criminal liability if the person could not "appreciate" the criminality of his or her conduct,[240] rather than if he or she did not "know" it was wrong."[241] Thus, under the ALI test, the defendant's lack of emotional understanding can be incorporated into his or her defense.[242] Additionally, the ALI test requires only that defendants "lack substantial capacity," as opposed to total capacity, to appreciate the criminality of their conduct.[243] The ALI test also allows consideration of "wrongfulness" rather than "criminality."[244] This word choice enables courts to find the accused insane if she does not know the act was illegal, or if she believes the act was "morally justified" according to community standards.[245]

This delicate treatment of the criminal liability of the mentally ill is reflected in the *Estate of Ladd* court's decision to allow Gloria Ladd to inherit from her two sons. Without an express statutory provision for the insane slayer, California law relies on this decision, a case determined during ALI test's four-year stint as the standard for insanity. Ladd's words indicate that, while she may have known that what she was doing was wrong, she did not realize that her actions were criminal.[246] Hence, she passed the ALI test. The court's statutory analysis concluded that determinations made under the slayer statute should turn on the mental state or culpability of the slayer, or the punitive value of the statute.[247] Thus, Ladd was not held accountable for her actions. In effect, the court deemed Ladd blameless, while also allowing her to keep her inheritance rights.[248]

While it is uncertain whether the result in *Estate of Ladd* would change under the current rules, the analysis would surely be different. Courts today address mentally ill offenders under the framework of M'Naghten as opposed to the ALI test, which was in place at the time *Estate of Ladd* was decided. *Estate of Ladd* accurately reflects its place in

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240. *See* BLACK'S LAW DICTIONARY 1469 (8th ed. 2004).
241. Denno, *supra* note 238, at 13.
242. *Id.*
243. *Id.* at 12-13.
244. *Id.* at 13.
245. *Id.*
246. *See* Estate of Ladd, 153 Cal. Rptr. 888, 891 (Ct. App. 1979).
247. *Id.* at 894.
248. *See id.*

time; a timepiece case that represents the clash between law and psychiatry. As a guide for statutory analysis, however, the decision falls short.

In switching the California insanity test to M'Naghten, the California Legislature attempted to calm public outcry and fetter out defendants' unwarranted, yet successful, employment of the defense.[249] The M'Naghten rule is an important principle of law. Accordingly, the California Legislature should provide for insanity in the slayer statute within the Probate Code, and employ this standard in another, more recent and reflective, appellate review.[250] To do otherwise would lead to an inequitable result under a principle founded in equity.

C. The California Legal System Has Inadequate Guidelines to Determine How to Distribute Property to Mentally Ill Slayers

Law and psychiatry are inherently conflicted.[251] When law demands the use of psychiatry, there is friction; thus, when the law can function without psychiatry, it will.[252] This phenomenon is evident in the California slayer statute.[253] Curiously, it would seem necessary to include a provision for the mentally ill within the slayer statute. While there certainly are some greedy heirs who are only mentally unhealthy in that they cannot wait for their birthrights, there are also those who kill because they must, commanded by a force beyond their control.

1. The Conflict Between Law and Psychiatry

Court decisions regarding the culpability of a mentally ill defendant suggest the social conflicts that dominate insanity defense jurisprudence.[254] *Estate of Ladd* narrowly construes California's statute to include only a select group of killers, leaving the insane as a class beyond the confines of the statute.[255] While this result is subject to scrutiny, it reflects

249. Gordon, *supra* note 120, at 89-90.
250. *See* discussion *infra* Part V.
251. *See generally* PERLIN, *supra* note 136.
252. *Id.* at 195.
253. *See supra* Part III.
254. *See* PERLIN, *supra* note 136, at 227.
255. *See* Estate of Ladd, 153 Cal. Rptr. 888, 893-94 (Ct. App. 1979).

the hesitation the law has in punishing mentally ill defendants.[256]

The conflict between law and psychiatry is rooted in the assumptions of each field.[257] The law assumes the existence of a reasonable man; this reasonable man is the standard the law uses to judge human behavior.[258] Psychiatry, on the other hand, deals with the unreasonable man.[259] In insanity defense jurisprudence, "the two professions become uniquely intermingled."[260] Therefore, the law must decide how to treat the "unreasonable" man.[261]

The legal system's ambivalence toward psychiatry has spawned a series of tensions that only serve to further our doctrinal incoherence.[262] While there may be an inherent conflict between these two fields, psychiatry serves an important role within the judicial process.[263] The law uses psychiatry "to explain 'inexplicable' deviant behavior and to 'take the weight' in decisions about an individual defendant's responsibility, competency, or dangerousness."[264]

Legal action regarding the punishment of mentally ill individuals charged with crimes has always reflected a special ambivalence.[265] The writings of physicians, lawyers, judges, and others faced with this issue contain a remarkable amount of circular reasoning.[266] This uncertainty about how much we should rely on psychiatry, for what purposes, and with what legal consequences leads to both "pretextual and teleological decision making."[267] Where psychiatry supports

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256. *See supra* Part II.E.1.
257. *See* Robitscher & Haynes, *supra* note 91, at 59.
258. *Id.*
259. *Id.*
260. *Id.*
261. *Id.*
262. PERLIN, *supra* note 136, at 227.
263. *See id.* at 194.
264. *Id.* at 194-95.
265. *Id.* at 188.
266. JUSTINE WISE POLIER, THE RULE OF LAW AND THE ROLE OF PSYCHIATRY 13 (1968).
267. PERLIN, *supra* note 136, at 195. Psychiatric expertise is valued when it serves a social control function of the law (such as in testifying in involuntary civil commitment proceedings in support of commitment applications), but it is devalued when it appears to subvert that purpose (for example, as in testimony in insanity defense cases supporting a defendant's non-responsibility claim). J. LA FOND & M. DURHAM, BACK TO THE ASYLUM: THE FUTURE OF MENTAL HEALTH LAW AND POLICY 156 (1992).

other instrumental social goals, it receives great credence.[268] Yet where it is contrary to such goals, we suppress it.[269] This hesitation deserves greater attention, especially in previously overlooked areas of law such as rules pertaining to slayers.[270]

2. *The Lack of an Express Accommodation in California's Slayer Statutes for the Mentally Ill*

Through California's slayer statutes, the California Legislature expressed a sweeping policy against allowing a felonious and intentional killer to receive any form of benefit from his killing.[271] It is not obvious, however, how these statutes should be applied to the mentally ill.[272] Absent an explicit indication from the Legislature stating otherwise, little supports the assumption that insane slayers should inherit.[273]

The lack of a provision for mentally ill offenders in the California slayer statute proves that, for once, the state is behind the times.[274] California, "a bellwether state in terms of cultural, political, and social trends," has taken steps that demonstrate a regression to nineteenth century standards towards treating the mentally ill.[275] California has demonstrated an effort to severely restrict mental defenses.[276] As the insanity defense slowly regresses, the stricter legal standards make it even clearer that when an individual meets the insanity criterion, the state should provide for his behavior by statute.[277] Society cannot resort to the circular and ambivalent reasoning of the judicial system to decide this

268. PERLIN, *supra* note 136, at 195.

269. *Id.* Justice Thomas's opinion in *Foucha v. Louisiana*, in which he dissents from an opinion declaring unconstitutional a state law allowing the continued commitment of "not guilty by reason of insanity" acquittees who are no longer mentally ill, is a textbook example of this sort of judicial behavior. 504 U.S. 71 (1992) (Thomas, J., dissenting). Justice Thomas based much of his conclusion that such retention is constitutionally permissible on a variety of sources, including the 1962 commentary to the Model Penal Code, a 1933 text by Henry Weihofen, and a 1956 Supreme Court opinion that stressed psychiatry's uncertainty of diagnosis. *Id.*

270. *See* discussion *infra* Part V.

271. CAL. PROB. CODE § 254 (West 2006).

272. *See supra* Part II.F.

273. *See* discussion *supra* Part IV.A.

274. See discussion *infra* Part V for a solution to this problem.

275. Gordon, *supra* note 120, at 75.

276. *Id.*

277. *See* discussion *infra* Part V.

issue.[278]

Indiana and Ohio provide for the insane slayer in their respective laws, and are therefore ahead of California in this regard. In response to their indignation over the outcome of a 1983 slayer case,[279] the Indiana Legislature enacted a statute declaring a person found guilty but mentally ill to be a constructive trustee of any property that he acquired from the victim.[280] As constructive trustee, the slayer holds the property for the people who would have been entitled to the property as if the slayer had died immediately before the victim.[281]

The Ohio Legislature amended the Ohio slayer statute so that a slayer found not guilty by reason of insanity suffers the immediate loss of benefits from the victim's estate.[282] The slayer may file a complaint to have his or her right to inherit restored, but this will not be granted if the civil court determines that, if sane, the slayer would have been convicted in a criminal trial.[283] The civil court has the power to determine whether the insanity judgment in the criminal trial will be dispositive of a restoration of the right to inherit.[284]

Indiana and Ohio amended their slayer statutes to include the following in their definition of slayer—a person who was insane at the time of the killing or incompetent to stand trial.[285] These changes demonstrate that the ambiguity between law and psychiatry might finally find resolution in the area of inheritance and testamentary disposition.[286] Indiana and Ohio have set an example that other states, such as California, should note. The inadequacies of the California rule do not have to persist; by following Ohio and Indiana's lead, California can resolve its flawed and incomplete rule.

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278. *See* discussion *supra* Part IV.A.

279. *See* Turner v. Estate of Turner, 454 N.E.2d 1247 (Ind. Ct. App. 1983) (where a son who killed both of his parents, but was found innocent by reason of insanity, was entitled to his intestate share of his parents' estates and his share of the insurance proceeds).

280. IND. CODE ANN. § 29-1-2-12.1 (LexisNexis 1986).

281. *Id.*

282. OHIO REV. CODE ANN. § 2105.19 (LexisNexis 1985).

283. *Id.*

284. *Id.*

285. Fellows, *supra* note 76, at 555 n.26.

286. *See generally* PERLIN, *supra* note 136.

V. SECTION 250 OF THE CALIFORNIA PROBATE CODE MUST BE AMENDED TO EXPLICITLY PROVIDE FOR INSANE SLAYERS

The conclusion under *Estate of Ladd* renders the insane slayer criminally blameless and strangely compensated for his or her misdeed. While California usually leads the way in innovative social legislation, other jurisdictions have taken the lead in this area of law by producing new, unambiguous rules for insane slayers.[287] California should follow the initiative shown by the Indiana and Ohio Legislatures and expressly address the predicament posed by the "insane slayer" by amending the Probate Code.

The California Legislature must amend section 250 of the Probate Code to include a provision that explicitly alleviates any ambiguity regarding the proper treatment of the mentally ill slayer. "The clearer and more definitive our distribution-codified law is, the more effectively we will be able to protect [the non-slayer's] rights to inherit what is rightfully theirs to take."[288]

Specifically, the mentally ill should be included within the classification of people that cannot take under the victim's estate. A killer who has been adjudicated incompetent to stand trial, or found not guilty by reason of insanity, should be declared a constructive trustee of their victim's property.[289] Turning the slayer into the constructive trustee,[290] instead of the property holder, is proper. The slayer acquired the property in circumstances such that he cannot retain the beneficial interest in good conscience; equity should therefore convert him into a trustee.[291]

The use of a constructive trust is ideal because it preserves the principles of equity that underlie the slayer rules, while also ensuring against unjust enrichment. It is appropriate to release slayers from criminal culpability on account of their mental state, but they should not be allowed to benefit from their actions in the civil courts.

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287. *See* Fellows, *supra* note 76, at 555 n.26; Gordon, *supra* note 120, at 75.

288. Kramer, *supra* note 50, at 721.

289. *See* IND. CODE ANN. § 29-1-2-12.1 (LexisNexis 1986).

290. BLACK'S LAW DICTIONARY 1547 (8th ed. 2004) (citing Beatty v. Guggenheim Exploration Co., 122 N.E. 378, 380 (N.Y. 1919)). "A constructive trust is the formula through which the conscience of equity finds expression." *Id.*

291. *Id.*

While the statute proposed for California by this comment would draw guidance from the statutes of Indiana and Ohio, it would nonetheless be different. Ohio allows the insane slayer to file a complaint to declare his right to benefit from the death in the probate court.[292] California should not adopt this provision. The slayer killed the decedent, and should not be allowed to benefit as a result. "It is repugnant to decency to say that an insane murderer can finance her rehabilitation with new found wealth from her victim's estate."[293] Consequently, this provision is unnecessary and would be a waste of judicial resources.

Indiana requires a civil action to be filed declaring the insane slayer a constructive trustee.[294] In California, once the slayer has been adjudged insane, he should automatically become the constructive trustee of the property. To require otherwise is, again, unnecessary. The proposed addition would alleviate judicial uncertainty regarding the rights of the insane, and provide a clear rule for courts to follow.[295]

If *Estate of Ladd* had been decided under the proposed statutory guidelines, the result would have been quite different. The court would not have allowed Gloria Ladd to inherit. Instead, based upon the court finding her insane, she would have been named a constructive trustee.

VI. CONCLUSION

The ambivalent feelings that dominate insanity defense jurisprudence have spawned a series of tensions that contributed substantially to our doctrinal incoherence. The legislative debate following the Hinckley acquittal reflected the way these tensions animated legislative change, change that returned the insanity standard to its restrictive version. The impact of the doctrinal incoherence persists in California's slayer statute. Without legislative intervention to resolve the ambiguity, the issue of whether an "insane slayer" should inherit from his victim's estate is unlikely to disappear.[296] The proposed statutory solution set forth above

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292. OHIO REV. CODE ANN. § 2105.19 (LexisNexis 1985).
293. Ford v. Ford, 512 A.2d 389, 407 (Cole, J., dissenting).
294. IND. CODE ANN. § 29-1-2-12.1 (LexisNexis 1986).
295. *See* discussion *supra* Part IV.C.
296. *See* discussion *supra* Part V.

amends the inadequacies of the current statute, while providing for the principles and policies of the original rule.[297] In the absence of a definitive codified rule, California courts will continue to struggle with the issue.[298] They will base their findings on outdated precedent, decide against what is perhaps the true desire of the Legislature, and violate the principles and policies underlying the slayer rule.[299]

297. *See* discussion *supra* Part V.
298. *See supra* Part III.
299. *See* discussion *supra* Part IV.