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Insanity as a Defense in Criminal Prosecution, I

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COMMENTS

INSANITY AS A DEFENSE IN CRIMINAL PROSECUTIONS — I.

This is the first in a series of two notes which will present (1) a brief survey and criticism of the decisions governing insanity as a defense in criminal prosecutions in this country and in England and (2) a suggestion of tests more in keeping with modern medical and psychological research than those presently used. Temporary insanity, caused by liquors or narcotics, has been omitted, because legal treatment of this type of insanity coincides with modern psychological thought.

The term "insanity" ordinarily connotes a more or less deranged condition of the mind. The mind controls our adaptation to environment. When derangement causes conduct which the community considers to be evidence of disease and as implying irresponsibility, the individual concerned is said to be insane and the law may step in to certify him as such. In a jural sense, insanity bears upon an individual's ability to meet the requirements of the society in which he lives. It is not a medical or physiological concept, but a purely social and legal one.[1] Since the legal concept concerns adjustment to environment, it is evidenced by failure to adhere to standards of conduct in a particular society. The word is but a label used to describe human reactions not tolerated by society. It may well be that an act classified as the product of insanity in one society might not be so labeled in another; it is a relative term.

To fully understand insanity as a defense to criminal prosecution, the types of insanity and how they are generally classified must be understood. Although no classification is entirely satisfactory, the following, taken in part from the *Encyclopedia Britannica*,[2] satisfies our purpose:

GROUP I

(1) Moronity (2) Imbecility (3) Idiocy	Characterized by *qualitive* defect of mental functions, generally accompanied by observable defect or changes in the brain

[1] Herzog, Medical Jurisprudence (1931) 459.
[2] 12 Encyclopaedia Britannica (14th ed. 1929) 385.

GROUP II

(1)	Manic-depressive insanity	Characterized by psychical symptoms. *No constant changes in brain* yet established
(2)	Dementia praecox (Schizophrenia)	
(3)	Paranoia group	
(4)	Neuroses and psycho-neuroses (neurasthenia, anxiety, compulsion neuroses and hysteria)	

GROUP III

(1)	Toxic insanity	Charecterized by *actual diseases* in which organic changes can be observed in the brain tissue
(2)	General paralysis of the insane	
(3)	Organic brain diseases	
(4)	Epileptic insanity	

This classification can be placed into two principal divisions, amentia and dementia. Group I is the type known as amentia, while Groups II and III are known as dementia.

Amentia refers to situations where the mental condition is due to some developmental defect, either before birth from structural malformation of the mother or some acute infection such as syphillis, or immediately after birth through injury or disease. In this group are the feebleminded, typed according to intelligence as morons, imbeciles, and idiots, who are insane from birth onward. The extent of their insanity is measured by intellectual ability, appreciation of environmental problems, and their adaptation to the social scheme.

The dement, on the other hand, is normal in all ways at birth but fails later in life to adjust himself to society. Why he fails is a difficult question to answer. Frustrations, environmental conditioning, and organic brain lesions are but a few of the possible reasons given by eminent psychiatrists.[3] However, difficult as the diagnosis may be, it is of paramount importance to the lawyer in determining whether his client may plead insanity as a defense. The client may be saved from death or imprisonment as a criminal by his lawyer's analysis of his case.

There are differences in the degree of dementia, generally referred to as psychoses and neuroses. The psychotic is the exaggerated condition and in most cases requires institutionalization. The neurotic or milder form usually confronts the attorney.

To appreciate the nature of insanity, one must realize that abnormal characteristics are nothing more than normal ones carried to an extreme. Normalcy itself defies definition.

[3] Shaffer, L. F., The Psychology of Adjustment (1936)

LEGAL CLASSIFICATION OF INSANITY

Insanity as a defense to criminal prosecution is the subject of considerable conflict of judicial authority. It is generally agreed that to negative criminal intent insanity must amount to a definite unsoundness rather than passion or mere eccentricity. Courts agree generally that mental weakness, or the group previously referred to as amentia, does not warrant exemption from responsibility for acts.[4] Mere ignorance or a low order of intelligence is not a defense, nor will a person with a lower form of intellect receive a lower degree of punishment. If found guilty, a person typed as amentia will generally suffer the same penalty as a person with normal mind.

Mental aberrations in law may be classified into four principal categories: intellectual, perceptional, volitional, and emotional.[5]

1. *Intellectual insanity.* This category includes cases in which the "wright and wrong" test of modern jurisprudence may be applied.[6] Mental depravity, naturally within this group, is not included since it is not recognized in the law as a valid defense.

2. *Perceptional insanity.* This category includes, "those subjects suffering from an illusion or hallucination. Courts recognizing such mental states relieve the subject from responsibility if the act would have been justified if the illusion or the hallucination had been real."[7]

3. *Volitional insanity.* A minority of the courts recognize this type of insanity as "irresistible impulse."[8] Usually the defense is not a complete one unless accompanied by a measure of intellectual insanity.

4. *Emotional insanity.* This category is recognized in but few jurisdictions. Judicial opinion concerning it has been expressed as follows:[9]

> Where the subject's intellectual and volitional powers are unimpaired, he should be able to keep his passions in check. Some courts, however, recognize the existence of a distinction between passion which merely overwhelms the barriers of reflections and restraint, and passion which for a space of time effects a complete derangement of the intellect. That passion which effects a total derangement of the intellect is legal in-

[4] 16 Corpus Juris (1918) 98; see also State v. Keerl, 29 Mont. 508, 75 Pac. 362, 101 Am. St. Rep. 579 (1904).
[5] Annotation: 10 L. R. A. (N. S.) 1032.
[6] 14 American Jurisprudence (1938), Criminal Law 789.
[7] *Ibid.*, at page 789.
[8] *Ibid.*, at page 789.
[9] Annotation: 10 L. R. A. (N.S.) 1034; see also Duthey v. State, 131 Wis. 178, 111 N. W. 222 (1907).

sanity while the partial inability to restrain from doing an act is not. The majority of the courts generally concede that if a subject has sufficient capacity to recognize that his act is wrong, mere passion or emotional insanity caused by anger or jealousy cannot be used as a defense to relieve the accused from criminal liability for his acts.

TESTS USED IN DETERMINING CRIMINAL RESPONSIBILITY

Although some courts are of the opinion there is no workable test for determination of insanity,[10] the majority opinion is that there are tests which can be applied to the facts of a particular case by a jury to determine whether or not a person was sane enough to be legally responsible for his act. Some of the tests the courts have used are described in the following paragraphs.

1. *Wild beast rule.* This rule was laid down in 1724.[11] The accused, in order to take advantage of it, had to exhibit traits of a wild beast. He was either a raving maniac or he was completely sane. The rule was promulgated before the advent of any psychiatric research and remained in existence for only a short period of time. It was never recognized by the courts of this country as a valid criterion because of its severity.

2. *Lord Hales rule.* The essence of this rule is that a man to be responsible for crime must have the capacity and understanding of a normal child of fourteen years.[12] There is only one reported case in this country where the rule was followed.[13] It has failed of recognition probably because the courts have never recognized mental depravity as a defense in criminal prosecutions.

3. *Right and wrong test.* This test is used in all the courts of this country, except in Rhode Island where the court has never passed upon the question of a legal test, and in New Hampshire.[14] In New Hampshire, "no legal test of irresponsibility by reason of insanity exists. Here it is a question of fact for the jury in each case whether defendant had a mental disease, and if so, whether it was of such character or degree as to take away the capacity to form or entertain a criminal intent."[15] The right and wrong test was first fully stated in *M'Naghten's Case*[16] where, in answer to questions propounded by the House of Lords to the judges as the effect of insanity upon responsibility for criminal acts, it was said

[10] State v. Jones, 50 N. H. 369, 9 Am. Rep. 242 (1871).
[11] M'Naghten's Case, House of Lords, 10 Clark and Fin. 200 (1843).
[12] Hale, The History of Pleas of the Crown (1847) 29.
[13] State v. Richards, 39 Conn. 591 (1873).
[14] State v. Jones, 50 N. H. 369, 9 Am. Rep. 242 (1871).
[15] *Supra.* 9 Am. Rep. 242 at p. 258 (1871).
[16] *Supra,* note 11.

that jurors should be instructed that a man is presumed sane and possesses sufficient reasoning ability to be held responsible for a crime until the contrary is proved to their satisfaction, and to establish such defense it must be proved to their satisfaction that at the time of committing the act the party was laboring under such a defect of reason "as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing wrong."[17]

Chief Justice Shaw, widely quoted on this subject, presents the following view:[18]

> A man is not to be excused from responsibility if he has capacity and reason sufficient to enable him to distinguish between right and wrong as to the particular act he is then doing — a knowledge and consciousness that the act he is doing is wrong and criminal and will subject him to punishment. In order to be responsible, he must have sufficient power of memory to recollect the relation in which he stands to others, and in which others stand to him; that the act he is doing is contrary to the plain dictates of justice and right, injurious to others, and a violation of the dictates of duty.

There are some courts who construe this rule as referring to the ability to distinguish right and wrong conduct in general.[19] However, this is not the majority opinion.[20] The prevailing view is that the capacity of the acused to distinguish right from wrong must be in respect to the specific crime at the time of its commission, and does not mean his capacity to abstractly distinguish right and wrong.[21] Under this view, the accused may be considered sane on all subjects except the one concerned in his prosecution, and if he is unable to distinguish between right and wrong as to that one, his defense is complete. But, if he has knowledge and consciousness that the act he is doing is wrong and he will deserve punishment if apprehended, he is sane and guilty regardless of mental weakness.[22]

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[17] *Supra*, note 11, at p. 204.

[18] Comm. v. Rogers, 7 Met. (Mass.) 500 at p. 501 (1844).

[19] Stevens v. State, 31 Ind. 485, 99 Am. Dec. 634 (1869); Jolly v. Com. 110 Ky. 190, 61 S. W. 49, 96 Am. St. Rep. 429 (1901); Cunningham v. State, 56 Miss. 269, 31 Am. Rep. 360 (1879); Com. v. Wireback, 190 Penn. 138, 42 A. 542, 70 Am. St. Rep. 625 (1899); State v. Bundy, 24 S. C. 439, 58 Am. Rep. 262 (1885).

[20] 14 American Jurisprudence (1938), Criminal law 796.

[21] Boswell v. State, 63 Ala. 307, 35 Am. Rep. 20 (1879); Armstrong v. State, 30 Fla. 170, 11 So. 618, 17 L. R. A. 484 (1892); Hornish v. People, 142 Ill. 620, 32 N. E. 677, 18 L. R. A. 237 (1893); State v. Knight, 95 Me. 466, 50 A. 267 (1902); Hawe v. State, 11 Neb. 537, 10 N. W. 452, 38 Am. Rep. 375 (1881); State v. Roy, 40 N. M. 397, 60 Pac. (2nd) 646, 110 A. L. R. 1 (1936); Flannagan v. People, 52 N. Y. 467, 11 Am. Rep. 731 (1873); State v. Mewhinney, 43 Utah 135, 134 Pac. 632, L. R. A. 1916 D, 590 (1913); Duthey v. State, 131 Wis. 178, 111 N. W. 222 (1907), 10 L. R. A. (N. S.) 1032.

[22] *Supra*, note 20.

4. *Irresistible impulse.* An irresistible impulse as defined by the courts is an impulse "induced by, and growing out of, some mental disease affecting the volitive, as distinguished from the perceptive powers, so that the person afflicted while able to understand the nature and consequences of the act charged against him and to perceive that it is wrong, is unable, because of such mental disease, to resist the impulse to do it."[23] The classic example is kleptomania. Irresistible impulse is not to be confused with mere passion or an overwhelming emotion not connected with a diseased mind. "Heat of passion", used in manslaughter statutes of several states, therefore is not included within the doctrine of irresistible impulse. Irresistible impulse is sometimes confused with emotional or moral insanity, and also with the right and wrong test.

> Emotional insanity is the state of mind of one who, while in possession of his ordinary faculties, and unaffected by any mental disease, gives way to his passions to such an extent that he becomes a temporary maniac. Strictly speaking, this is not insanity at all, from the legal standpoint, which requires the existence of some mental disease.[24]

Confusion also arises from statements of the right and wrong and irresistible impulse tests conjunctively. Doubt is created as to whether the court will give the accused a choice of tests in building his defense, or will require that the mental condition of the accused satisfy both tests at once.[25]

Some states rule out the doctrine of irresistible impulse by statute;[26] some authorities are not agreed as to whether to recognize it or not;[27] and others, notably Wisconsin,[28] reject it by court decision. Those repudiating it state it is harmful because it gives too great immunity to the accused.

Mental Depravity

The great majority of the courts agree that an adult charged with commission of a crime is not to be judged by a comparison of his mental ability with that of a twelve-year-old infant, or by similar comparisons. In *Patterson v. People*[29] it was held that if a

[23] Annotation: 27 L. R. A. (N. S.) 461 at p. 466; see also L. R. A., 1918 D, 794.
[24] State v. Knight, 95 Me. 467, 50 A. 276, 55 L. R. A. 373 at p. 377 (1902).
[25] Annotation: 70 A. L. R. 680.
[26] New York Penal Law, Sec. 34; see, People v. Silverman, 181 N. Y. 235, 73 N. E. 980 (1905).
[27] Annotations: 18 L. R. A. 224; 27 L. R. A. (N. S.) 461; L. R. A. 1918 D 794.
[28] State v. Wilner, 40 Wis. 304 (1876); Bennett v. State, 57 Wis. 69, 14 N. W. 912 (1883); Butler v. State, 102 Wis. 364, 78 N. W. 590 (1899); Eckert v. State, 114 Wis. 160, 89 N. W. 826 (1902); Lowe v. State, 118 Wis. 641, 96 N. W. 417 (1903); Schissler v. State, 122 Wis. 365, 99 N. W. 593 (1904); Oborn v. State, 143 Wis. 249, 126 N. W. 737 (1910); Simecek v. State, 243 Wis. 439, 10 N. W. (2nd) 161 (1943).
[29] Patterson v. People, 46 Barb. (N. Y.) 625 (1886).

low order of intellect or education is to excuse homicide, a rule results which gives it far greater immunity than is now afforded. Again in *People v. Farmer*[30] it was conceded that the defendant had an inferior and untrained intellect, and her moral perceptions were of a low order. The jury, however, "were not required to pass upon the quality and strength of her intellect, or upon her moral perceptions, except as such questions affect the general question of the defendant's knowledge, at the time of the homicide, or the nature and quality of the act she was doing. A weak or even a disordered mind is not excused from the consequencies of crime."[31] In *State v. Johnson*[32] the court in its instruction to the jury stated:

> It does not follow, however, that one of less mental caliber than another but still knowing the nature of his act and whether it is right or wrong is to be excused from responsibility therefor. In order that the plea of feeblemindedness shall prevail the evidence must be sufficient to justify you in finding that at the time he first fired the fatal shot which resulted in the death of the deceased that he did not have sufficient mental capacity to know the difference between right and wrong or the nature of the act which he was doing.

Cases to the same effect can be found in other states throughout the country.[33]

Conclusion

Although an accused no longer must exhibit beast-like characteristics in order to be excused from criminal responsibility, courts still are very reluctant to entertain any rule which extends increased immunity to the accused. This attitude, sometimes puzzling to the psychiatrist, is deeply rooted in the jury system, where sympathy may bubble through the smallest legal loophole, and where local conditions and tendencies play a large role. The judicial attitude is revealed in the leading Wisconsin case of *Oborn v. State*[34] in which Justice Marshall writes:

> The term "insanity", as used in the special plea in a criminal case, means such abnormal mental condition, from any cause, as to render the accused at the time of committing the alleged criminal act, incapable of distinguishing between right and wrong and so *unconscious* at the time of the nature of the act which he is committing, and that commision of it will subject him to punishment.

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[30] People v. Farmer, 194 N. Y. 251, 87 N. E. 457 (1909).
[31] *Supra*, at page 265.
[32] State v. Johnson, 233 Wis. 668 at 670, 290 N. W. 159 (1940).
[33] Parsons v. State, 81 Ala. 577, 2 S. 854 (1887); People v. Spencer, 264 Ill. 124, 106 N. E. 219 (1914); Sharp v. State, 161 Ind. 288, 68 N. E. 286 (1903); Com. v. Rogers, 7 Met. 500, 41 Am. D. 458 (1844); Flanagan v. People, 52 N. Y. 467, 11 Am. R. 731 (1873); Leache v. State, 22 Tex. A. 279, 3 S. W. 539 (1886).
[34] Oborn v. State, 143 Wis. 249 at 268, 126 N. W. 161 (1910).

The right and wrong test is universally accepted,[35] and is the only test used in twenty-nine of the American states, including Wisconsin, and in England. The more liberal test, that of irresistible impulse, is applied in seventeen states and the District of Columbia. This test is summarized and its future applicability discussed in the principal case of *Parsons v. People*,[36] where the court states:

> If, therefore, it be true, as a matter of fact, that the disease of insanity can, in its action on the human brain through a shattered nervous organization, or in any other mode, so affect the mind as to subvert the freedom of the will, and thereby destroy the power of the victim to choose between right and wrong, although he perceives it — by which we mean the power of volition to adhere in action to the right and abstain from the wrong — is such a one criminally responsible for an act done under the influence of such controlling disease? We clearly think not, and such, we believe to be the just, reasonable, and humane rule, towards which all the modern authorities in this country, legislation in England, and the laws of other civilized countries of the world, are gradually, but surely tending*** to show.

Such optimism is not shared by courts not adhering to the doctrine, for in *Cunningham v. State*,[37] the court states:

> It (irresistible impulse) may serve as a metaphysical or psychological problem, to interest and amuse the speculative philosopher, but it must be discarded by the jurist and the law-giver in the practical affairs of life.

Since the majority of courts adhere to the right and wrong test, they continue to disregard all criteria of mental depravity. Undoubtedly the inadequate standard applied by Sir Matthew Hale,[38] known as Lord Hales rule, did much to discourage acceptance of any test which uses mental age as a standard for responsibility. In recent years careful and serious research has been carried on in this field by such notable psychologists as Binet,[39] Terman,[40] Thorndike,[41] and others,[42] and certainly the results of this research can be of help to the judge in pondering the age-old question of instructions to a jury in a criminal case where mental abnormality is alleged.

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[35] Weihofen, Insanity as a Defense in Criminal Law (1933) 15.
[36] Parsons v. People, 81 Ala. 577 at 586, 2 S. 854, 60 Am. Rep. 193 (1887).
[37] Cunningham v. State, 56 Miss. 269 at 279, 31 Am. Rep. 360 (1879).
[38] Hale, The History of the Pleas of the Crown (1847) 29.
[39] Binet, Etude Experimental de I'ntelligence (1905-08); see also, Woodworth, Psychology (1929) 27.
[40] Terman and Merrill, Measuring Intelligence (1937).
[41] Thorndike, E. L. et al, The Measurement of Intelligence (1927).
[42] Freeman, Mental Tests, Their History, Principles and Applications (1926); Kuhlman, A Handbook of Mental Tests (1922); Rorschach, Psychodiagnostik. Methodik und Ergebnisse eines wahrehmungs—diagnostischen Experiments (2nd 1932); Wechsler, The Measurement of Adult Intelligence (1939).