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STUDENT NOTES

CRIMINAL LAW—"PARTIAL INSANITY" AS A MEANS OF REDUCING AN INTENTIONAL HOMICIDE TO VOLUNTARY MANSLAUGHTER

Voluntary manslaughter at common law is usually defined as the intentional killing of a human being without malice aforethought, but in a sudden heat of passion caused by sufficient provocation.¹ However, it is the contention of some legal writers that the provocation concept does not include all of the possible causes that will reduce an intentional homicide to voluntary manslaughter.

In line with this contention, it is the purpose of this note to consider partial insanity as a means of reducing an intentional homicide to voluntary manslaughter. It is well to point out that partial insanity as used herein refers to an abnormal mental condition but one not sufficient to constitute "legal insanity" in the particular jurisdiction.

To be relieved from criminal responsibility on the ground of insanity the accused must be declared to have been legally insane at the time of the killing. The test recognized both in the majority of American states and in England is the "right and wrong" test, expounded by the court in *M'Naghten's Case*² defining the degree of insanity which will entitle the accused to an acquittal.⁴ Although it is followed by a majority of the states, a minority recognize this test to be insufficient in many cases and they have supplemented it with the "irresistible impulse" test.⁵ Such courts take cognizance of the absence of sufficient will power in the accused to control his actions and prevent the homicide as a result of his mental condition.⁶ However, due to the impossibility of saying where mental soundness ends and mental abnormality begins, the courts are not consistent in applying these supposedly hard and fast legal tests of insanity.

The difficulty of finding a workable test of "legal insanity" and also, perhaps, an unwillingness in the courts to extend the defini-

¹ *Olds v State*, 44 Fla. 452, 33 So. 296 (1902) *Cottrell v. Commonwealth*, 271 Ky 52, 111 S.W. 2d 445 (1937) 2 BURDICK, LAW OF CRIME sec. 460 (1946)

² BURDICK, *op. cit. supra*, note 1, sec. 461, Note, 36 KY. L.J. 443 (1948)

³ 10 Cl. & Fin. 200, 8 Eng. Rep. 718 (1843)

⁴ *Guiteau's Case*, 10 Fed. 161 (1882) *Judd v State*, 41 Ariz. 176, 16 P. 2d 720 (1932), *Marceau v Travelers' Ins. Co. of Hartford*, 101 Cal. 338, 35 Pac. 856 (1894) *State v Knight*, 95 Me. 467, 50 Atl. 276 (1901).

⁵ *Parsons v. State*, 81 Ala. 577, 2 So. 854 (1887), *Ryan v People*, 60 Cal. 425, 153 Pac. 756 (1915).

⁶ See *State v Peel*, 23 Mont. 358, — 59 Pac. 169, 174 (1899).

⁷ GLUECK, MENTAL DISORDER AND THE CRIMINAL LAW 207 (1925).

tion of insanity beyond its present scope in particular jurisdictions, have caused the courts to make certain adjustments in substantive rules elsewhere in order to bring the law more into line with changing social concepts on the general subject of mental abnormality. One such adjustment occurs in the changed rule, now found in a few states and recognized by some writers, that one who is partially, though not legally, insane cannot be convicted of first degree murder.⁸ The courts in those states say that the defendant's mental disorder (partial insanity) should be considered by the jury to determine if the elements of premeditation and deliberation are present.⁹ Another method of handling the problem of partial insanity is to mitigate the *punishment* rather than the *grade of the offense*. This has been accomplished in some European countries by code provisions, whereby the defendant's mental disorder, although not of the degree to relieve him from criminal responsibility, may nevertheless be considered to reduce the punishment. Several writers have recognized and espoused the soundness of this method.¹⁰ Recognition is also given this idea in a Nebraska statute whereby punishment may be reduced by the Supreme Court in all criminal cases where a substantial miscarriage of justice has occurred.¹¹ Using this statute the Supreme Court has reduced the death sentence to life imprisonment in homicide cases where partial insanity was a controlling issue.¹² Although these modifications of the general rule of "legal insanity" have gained only minority recognition in this country it would seem that they do indicate evidence of the courts' dissatisfaction with the present-day law regarding cases that fall within that uncertain range between sanity and insanity

It seems that an increasing dissatisfaction with the rule of legal insanity is causing a noticeable change in the substantive law in another part of the law of homicide. This change is occurring in the law of voluntary manslaughter.

Thus, in commenting on *Davis v. State*,¹³ a Tennessee case, Professor Weihofen states that the decision offers a theory of judging the

⁸ See discussion: WEIHOFFEN, *INSANITY AS A DEFENSE IN CRIMINAL LAW* 100 (1933) Keedy, *Insanity and Criminal Responsibility*, 30 HARV. L. REV. 535, 551 (1917) Weihofen, *Partial Insanity and Criminal Intent*, 24 ILL. L. REV. 505, 514 (1930)

⁹ "Feebleness of mind or will even though not so extreme as to justify a finding that the defendant is irresponsible, may properly be considered by the triers of the facts in determining whether a homicide has been committed with deliberate and premeditated design to kill, and may thus be effective to reduce the grade of the offense." *People v. Moran*, 249 N.Y. 179, 163 N.E. 553 (1928). See also *Jones v Commonwealth*, 75 Pa. 403, 410 (1874)

¹⁰ See discussion: WEIHOFFEN, *INSANITY AS A DEFENSE IN CRIMINAL LAW* 98 (1933)

¹¹ NEB. COMP. STAT. sec. 29-2308 (1929).

¹² *Muzik v. State*, 99 Neb. 496, 156 N.W. 1056 (1916), *Hamblin v State*, 81 Neb. 148, 115 N.W. 850 (1908)

¹³ 161 Tenn. 23, 28 S.W. 2d 993 (1930)

effect of provoking circumstances not only by an objective standard of reasonableness, but also by the subjective reaction of the individual to those circumstances so that the same circumstances not sufficient to provoke a reasonable man may be held sufficient in cases where partial insanity exists.¹⁴

The same idea seems even more evident in the language of the court in other cases. In *State v. Green*,¹⁵ the court held the accused entitled to an instruction on the law of voluntary manslaughter stating:

While the record before us fails to show facts that would be likely to cause a normal mind to be wrought up to a heat of passion, yet, there is some evidence in the record that the mind of the defendant was so wrought up, and such evidence, together with the evidence tending to show that the defendant was insane, was sufficient to entitle the defendant to have the jury instructed as to the law of voluntary manslaughter and have that question submitted to the jury¹⁶

In like manner, the court in *Fisher v. The People*¹⁷ reversed a murder conviction and held that the accused was entitled to an instruction on voluntary manslaughter. The requested instruction, which was allowed, provided that although the prisoner may not have been so insane as to excuse him entirely yet, the mental abnormality should be considered in requiring less provocation where extreme jealousy (partial insanity) existed than would have been required had the accused not been jealous.¹⁸

In *Maier v. People*,¹⁹ the charge was assault with intent to kill and murder. The accused attempted to prove the crime was simple assault and battery by reason of the fact that had the victim succumbed, he would be guilty of only voluntary manslaughter. Evidence offered by the accused in an attempt to prove sufficient cause for voluntary manslaughter was rejected. On appeal, the appellate court held that the question involved the same principles as where evidence is offered in a prosecution for murder and that the evidence should have been received. In further considering sufficiency

¹⁴ WEIHOFEN, *op. cit. supra*, note 10, at 103.

¹⁵ 78 Utah 58, 6 P 2d 177 (1931)

¹⁶ *Id.* at 67, 6 P 2d at 186 (1931)

¹⁷ 23 Ill. 218 (1859).

¹⁸ "Although the prisoner may not have been so insane as to excuse him entirely, yet, in determining whether at the time of the killing he acted without deliberation, and under the influence of such a sudden and irresistible passion as would reduce the grade of the offense from murder to manslaughter, it is proper for the jury, if they believe that the same provocation would arouse such a sudden and irresistible passion in his mind, if so affected by jealousy, when it would not have aroused it if he had not been jealous, to take into consideration the fact, if proven, that he was jealous, in determining the degree and extent of the passion which existed at the time of the killing." *Id.* at 220.

¹⁹ 10 Mich. 212, 81 Am. Dec. 781 (1862).

of the provocation, the court used the objective standard of a reasonable man but modified it in the following manner: " unless, indeed, the person whose guilt is in question be shown to have some peculiar weakness of mind or infirmity of temper, not arising from wickedness of heart or cruelty of disposition."²⁰

These cases are all decisions involving voluntary manslaughter and all contain the factor of provocation as an agent for reducing the homicide from murder to manslaughter. It is also true that they contain the factor of partial insanity as a possible agent for such reduction. The question therefore arises as to what is the proper classification of these cases. Should the *provocation* be considered as the basis for reducing—or should the *partial insanity* be considered as the basis for such reducing? In order to reduce an intentional killing to voluntary manslaughter it is evident that not only must there be provocation but it must be *sufficient legal provocation*.²¹ The very fact of itself that a man is provoked is not sufficient to relieve him from criminal responsibility but it must be that kind of provocation which the law recognizes as reasonable and adequate.²² In these cases under consideration, the courts point out that there is not sufficient legal provocation to reduce. However, they do say that the provocation which is present, coupled with the partial insanity may be sufficient. Taking this into consideration, is it not reasonable to conclude, where *legal* provocation is not present, that it is the defendant's abnormal mental condition which forms the real basis for reducing an intentional killing to voluntary manslaughter? As a matter of fact, *State v. Green*²³ states that "When insanity is made an issue in the case of homicide, such insanity may have the effect of reducing the homicide to voluntary manslaughter."²⁴ In like manner, in *Fisher v. The People*,²⁵ "Though such a state of mind would not excuse the homicide, it should reduce it to manslaughter for deliberation would be absent, and that is essential to constitute murder."²⁶

Further evidence that partial insanity may reduce murder to voluntary manslaughter appears in *Mangrun v. Commonwealth*²⁷ where the court affirmed a manslaughter conviction in a case of intentional homicide. The court approved the instruction of the lower court which charged that the defendant should be acquitted if he was so insane as not to know right from wrong or " if they believe from the evidence that he was weak or feeble-minded, they

²⁰ *Id.* at 221, 81 Am. Dec. at 786.

²¹ Perkins, *The Law of Homicide*, 36 J. CRIM. L. & CRIMINOLOGY 412 (1946)

²² *Miller v Commonwealth*, 163 Ky. 246, 173 S.W. 761 (1915)
Ryan v. State, 115 Wis. 488, 92 N.W. 271 (1902)

²³ 78 Utah 58, 6 P. 2d 177 (1931)

²⁴ *Id.* at — 6 P. 2d at 186.

²⁵ 23 Ill. 218 (1859).

²⁶ *Id.* at 232.

²⁷ 19 Ky. L. Rep. 94, 39 S.W. 703 (1897)

should consider that fact in determining the degree of his guilt and the measurement of his punishment."²⁸ Again, in *Rogers v. Commonwealth*,²⁹ the court, in holding that the accused was entitled to an instruction on voluntary manslaughter, seemed to be of the opinion that the mental condition (feeble-mindedness) of the accused was a matter "legally put in proof for the consideration of the jury, for the purpose of guiding them to a correct conclusion on the degree of the appellant's guilt."³⁰ The word "degree" is evidently used here as referring to the degree of felonious homicide rather than in an attempt to distinguish first from second degree murder.³¹

In summarizing the above discussion, it may be concluded that partial insanity has been used by a number of courts in reducing an intentional killing to voluntary manslaughter. These cases point out a tendency on the part of the courts to take into consideration, in order that justice may be done and society protected, those unfortunate individuals whose abnormal conditions have not otherwise been fully considered or accounted for in the law. As to what is considered as partial insanity the cases above have included insane delusion, extreme jealousy weak or feeble-mindedness, peculiar weakness of mind and degree of insanity. Whether wise or unwise, legal writers in advocating changes and developments in the law have suggested that by considering partial insanity, a result is reached that harmonizes with sound principle and is consistent with the public idea of justice.³²

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²⁸ *Id.* at 95, 39 S.W. at 704.

²⁹ 96 Ky. 24, 27 S.W. 813 (1894)

³⁰ *Id.* at 28, 27 S.W. at 814.

³¹ Perkins, *supra* note 21, at 443.

³² WHARTON, CRIMINAL LAW sec. 64 (12th ed. 1932).