

Introduction to Forensic psychiatry symposium

English law and the mentally abnormal offender

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These five papers were given at a conference held by the Forensic Division of the Royal College of Psychiatrists in Stratford-upon-Avon last year. They are concerned with the ways in which English law deals with the mentally abnormal offender, and they make recommendations for legal reform. The purpose of this introduction is to explain briefly how the present law operates.

English courts and the mentally abnormal offender

When a mentally abnormal offender is charged with a crime the first question to answer is whether he, or she, is 'fit to plead'. If he is not fit the Home Secretary must send him to a hospital – often a Special Hospital: if he is fit the trial can proceed.

For a defendant who is charged with any crime other than murder the defence which must be considered, relevant to his mental illness, is that of *insanity*. If successful, the defendant is found *not guilty by reason of insanity*. This verdict, although one of 'not guilty', does not, as we shall see, lead to the defendant's being set free.

The defence of insanity is rarely used if the defendant is charged with murder. This is because the less exacting defence is open to him of *diminished responsibility*. If the defence is successful then the verdict will be not guilty of murder, but guilty of manslaughter. This allows the judge great discretion in his sentencing, and he may choose a hospital order rather than prison.

Crime in English law

To be guilty of a crime it is not only necessary, in general, to have done the deed, but also to have had the relevant 'guilty mind'. This is embodied in the maxim: *actus non facit reum nisi mens sit rea* – (an act does not make a man criminal unless the mind be guilty) (1). A person, for example, who kills another by accident does not commit murder. However, if the unlawful

killing were intended then murder has been committed. It is the intention to kill that is, in this case, the 'guilty mind'. Although for many crimes the relevant 'guilty mind' is the intention to commit the crime, this is by no means always the case. A person might be guilty of murder if he killed, and intended only to inflict 'grievous bodily harm'. Nor need the 'guilty mind' be an intention at all: it may, for instance, be recklessness.

If a person who is mentally ill commits a crime then the question arises as to how, if at all, the mental illness affects the 'guilty mind'. The defences of insanity and diminished responsibility are the two most important ways in which English law answers this question.

The defence of insanity

Insanity can be a defence to any crime. If the defendant is found to be insane then the verdict is: *not guilty, by reason of insanity*. This is called the *Special Verdict*. At root, the reason why he is not guilty, is that because of his insanity he lacks the mental element necessary for the crime. The result of the Special Verdict is that the defendant must be admitted to a hospital specified by the Home Secretary. In the case of a person who is thought to be dangerous this will normally be one of the 'special hospitals' such as Broadmoor. The defendant who is found to be insane may spend more time in a special hospital than the murderer spends in prison.

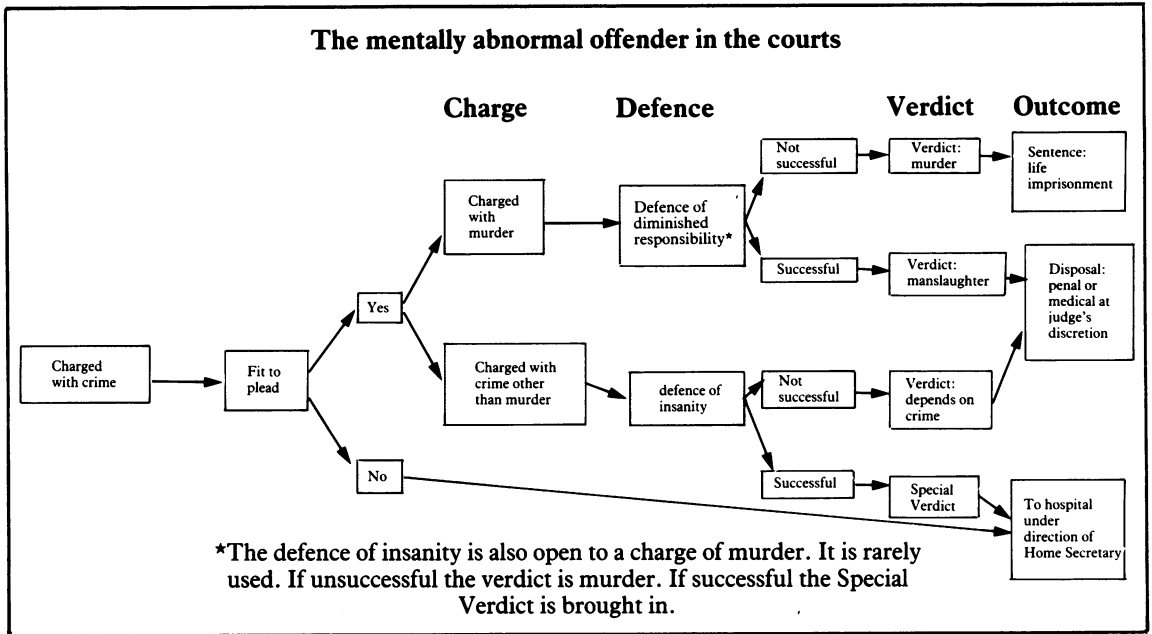
The criteria used by the jury to decide the issue of insanity are embodied in the *McNaughton Rules* (spelt variously M'Naughten and McNaughten). These are given below in the glossary. Essentially, the defendant is insane if he was suffering from a 'defect of reason, from a disease of the mind' and that because of this he either did not know what he was doing, or he did not know that what he was doing was wrong.

The defence of diminished responsibility

The insanity defence is appropriate when the nature and severity of the mental illness is such that no 'guilty mind' is possible, and that therefore no crime has been committed. The law recognises, too, the possibility that mental illness may be such as to affect the sentence that is appropriate, while not removing the guilty

Key words

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mind. In general this is dealt with by allowing the judge considerable discretion in sentencing. The mental illness does not affect the verdict given by the jury, but it can be taken into account in the sentence given by the judge. In the case of murder, however, the judge has no discretion: life sentence is mandatory.

The defence of *diminished responsibility* is available only to the charge of murder, and if successful the verdict is manslaughter. This has the practical effect of allowing the judge discretion in sentencing. The criteria for diminished responsibility are set out in statute in Section 2 of the Homicide Act 1957. These criteria are given below in the glossary.

The conference

Dr Higgins's paper describes how the concepts of insanity and diminished responsibility have developed in English law. He shows how our modern legal concept of insanity developed out of *the wild beast test* and *the right-wrong test*. It was following an assassination attempt on George III that Parliament determined that a person found not guilty by reason of insanity should not go free; and it was another assassination attempt, this time on the Prime Minister, that led to the formulation of the present criteria for insanity – the *McNaughton Rules*.

The concept of diminished responsibility was forged in Scottish law, and it took nearly a century for the English to convince themselves that this Scottish invention was safe to use South of the Border. **Professor Kenny** argues that it is not, and would like to see it abolished.

The use of diminished responsibility in English law is also criticised by **Professor Griew** and by **Dr Dell**.

Professor Griew finds the wording of Section 2 so compact as to be all but meaningless with the result that doctors, and especially psychiatrists are allowed too much power in the courts.

Dr Dell shows from her studies that the use made of the defence of diminished responsibility is inconsistent and arbitrary. The solution, she argues, is to abolish the mandatory life sentence for murder.

Dr Hamilton describes the case of Graham, a man with epilepsy, who was found insane by the courts using the *McNaughton Rules*, but who is not mentally disordered using the criteria of the *Mental Health Act*. This raises a procedural problem. The court decision sends the man to *Broadmoor*, but at the review six months later the *Mental Health Review Tribunal* may have to release him. It will be interesting to see what the tribunal decides.

Glossary

THE McNAUGHTON RULES (DEFINITION OF INSANITY)

'to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was *labouring under such a defect of reason, from disease of the mind, 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 what was wrong*'(2).

In general, a disease of the mind is taken to be a severe mental illness especially with delusions and hallucinations. A 'wrong' is generally taken to be a legal wrong.

DIMINISHED RESPONSIBILITY – SECTION 2 OF THE
HOMICIDE ACT 1957

‘Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing’(3).

References

- (1) Williams G. *Textbook of criminal law* (2nd ed). London: Stevens and son, 1983: 70.
- (2) See reference (1): 643.
- (3) See reference (1): 685.

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