Is the Insanity Defense Used as Commonly as You Think? An Insightful Analysis into its Formation

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Abstract

The aim of this dissertation is to explore if the standing defence for insanity is applicable in the face of law, through the uses of instances of the current world and historical precedent. As mental health has become a rising crucial factor in the lives of individuals, I intend to investigate the legitimacy of the insanity defence in criminal courts and the changes that have taken place to influence court decisions. The emergence of mental health defence has caused a structural change in judicial courts, where I aim to explore the extent to which the legal framework and standards have affected parties, including the psychological analysis of the "mental state". This dissertation will argue that the insanity defence should be scrapped as an argument due to its redundancy and other factors, while moral considerations regarding the mental state of an individual should be taken into account when giving a verdict.

1. Introduction

Over the years, the "insanity defense" has been the subject of a contentious, long-standing debate about procedural structuring in law courts since its debut in the British common law in the 19th century. (Melville & Naimark, 2002). Insanity has changed the rule of law; it has altered the way mental illnesses are perceived in the legal field and beyond. Law experts, such as judges, lawyers, and scholars have proposed numerous outlooks, while taking into consideration the moral and legal aspects. However, there has been yet no agreement not only on the interpretation of the insanity defense, but also on the characterisation of the meaning of "insanity" for the defense to be present in the case. (Hermann, 1997). Furthermore, it can go as far as coming to a fair conclusion, bringing in the concept of procedural or substantive fairness, although the two can be inextricably linked (Lisa Hsin, Corpus Christi, Oxford University, 2023). We define insanity as being of unsound mind or absence of recognition that averts an individual from having the mental ability required by law to participate in an interaction, which eliminates the individual of criminal culpability. In terms of jurisdictions, every country has its legislation regarding the "insanity" clause in relation to the case and/or being the cause of the crime. Hence, it would be unreliable to assume that a common meaning could be established when factors, such as culture and ideology, may play a role in setting a clear and common definition.

The principle of "actus non facit reum nisi mens sit rea" is a concept, which entrenched in criminal jurisprudence, states that there can be no crime but with a criminal intention. In criminal court, defendants bring a case against "mens rea", arguing that they are not of "sound and mind" (insanity defense), which if the judge considers legitimate, eliminates the criminal of any liability. However, the extent to which "mens rea" is applied can be limited in ways that it does not eliminate "full" criminal liability, but rather mitigates its scope, thus convicting the defendant of a crime either way but with a lesser sentence. Now, this is where the debate of insanity comes in: it is being questioned as a "solid" and "fair" set of rules, considering the rigorous nature of the M'Naughten rules that the UK legal system currently applies in such cases.

There is a common belief that the insanity defense might have resulted in more non-guilty verdicts than ever before and this includes high-profile cases, too. Although the public is savvy, they feel the insanity defense has become "the norm" to lower a sentence because of their mental state and

has been argued as being "overly used" by some (Borum & Fulero, 1999). Contrarily, only 1% of the cases use the insanity defence, and only 24% of those claim it successful, displaying that an absolute minority of cases are labelled by this defense. Hence, what I aim to cover further in my dissertation are the ways in which it has reached this outcome of low rate of insanity convictions and how do legal systems in advanced countries address the "insanity defense" through their intepretation.

2 Historical advancement of the insanity defense

In the ancient times, mental illness was denied as a justification for atrocities that would be committed, but it would be argued that the illness that they would experience would be torment/punishment per se. Defendants at the time would be obliged to display little to no cognitive functioning to be able to claim the defence. As the barriers for claiming the insanity defence became more rigid, the amount that would be successful would deteriorate. And so, this would be the start of common law approach that would be based on precedent. The main and presiding precedent for the insanity defence are the M'Naughten rules, established in 1843, which still stands as a solid defence in some countries for examining cognitive ability. It was a case of a man that was intending to assassinate the Prime Minister at the time, Robert Peel, and instead assassinated his secretary. There, he was declared as "not guilty" on the grounds of insanity, which caused a massive outburst within the British public, where an innocent citizen was murdered but the defendant would not be held liable. This led to the formation of the M'Naughten rules in the House of Lords(the judicial body at the time), which concentrates on the defendant's lack of awareness of the nature of the crime they were committing at the time, described specifically as "*under a defect of reason from a 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 that what he was doing was wrong.*" It also places emphasis on the moral aspect, where the defendant must be unaware of their wrongdoing to plead the insanity defence, as exemplified by the phrase "quality of the act". After having been criticised for its unrealistic guidelines and inapplicability in the modern world from legal and medical perspectives, with critics stating that although the defendant might have known that what they were doing was wrong (quality of the act) and accepted the nature of the crime, their mental disorder could still play a role in causing the defendant to act in an unlawful manner.

Following that, the Irresistible Impulse Test (IIT) would emerge alongside the Durham test, bringing attention to the volitional insanity tests that would be based on the individual's will rather than cognitive factors. However, it has been blamed for focusing on very specific instances, mentioning "in an explosive fit…", thus ignoring the realistic aspect of criminality and applicability. Realistically, crimes tend to take place due to mental disorders that happen consistently rather than being a product of a specific incident. Furthermore, this test considers the fact that the defendant has the capacity to differentiate between right and wrong, however the defendant is not able to maintain themself from acting on the crime. In the case of *Parsons v State,* the defence presented their case, debating that "the duress of such mental disease he had … lost the power to choose between right and wrong"; "his free agency was at the time destroyed," hence, "the alleged crime was so connected with such mental disease, concerning cause and effect, having been the product of it solely." However, it has been criticised by scholars, such as Julie Grachek, for being a volitional test that requires complete impairment of the willing capacity, hence concluding that it can only be tested in a small pool of cases. This is supported by Mayer Law Office, which considers that the definition is vague and based on opinion, hence a vast number of criminals that use this defence may misuse it, which will lead to the disruption of the aims of the jurisdictions (preventing any future illicit activities). It is also argued to deter the scientific legitimacy of this defence, where criminals may overstate the scope of their illness and have them declared as "not guilty".

As legal systems were being altered due to the rise of liberalism in the US in 1960s, the IIT was becoming rejected more than ever due to the rise in scientific discoveries of that era. It was presented that experts in the medical field were not given the complete opportunity to demonstrate medical evidence/support required to the judge and the jury. This led to the formation of the Durham test, which does not consider the awareness factor of them knowing the wrongfulness of their act, compared to the McNaughten rules that clearly take a different route. This example would illustrate how over time, formations to the legislation would take place in consideration of mental illnesses, going from almost being inconsiderate and unaware of such illnesses to the insanity defence being overused to it maintaining a balance, but there is still a long way to go to ensure that parties are treated fairly. The Durham test was then condemned due to providing a broad and vague definition of insanity and some judges even stated that the Durham test distributed too much influence into experts' hands to decide criminal responsibility, hence there would be many more appeals and areas of uncertainty. One could even argue that power was distributed more to the expert than the judge, which would be paradoxical, considering that the judge should possess the ultimate power.

2.1 Modern advancements

Further into this investigation, the American Law Institute (ALI) generated a new insanity defence that had considerations of both the Durham test and the McNaughten rules, called the "Modal Penal Code test" or "Substantial Capacity Test". It was accepted in various states in the US as legitimate in 1980s. The infamous case of *United States v. Hinckley,* where John Hickley attempted to assassinate the American president Ronald Raegan in 1982- this Substantial Capacity test was used as a defence and was claimed successful, but not on the grounds of schizophrenia, which was initially his supposed mental illness, but acquitted on the basis of a narcissistic personality disorder, dysthymic disorder and schizoid personality disorder. This led to public outrage, making the legal system reconsider its foundation for the insanity defence, which led to the emergence of the Comprehensive Crime Control Act, which put the burden of proof on the defendant himself/herself. This not only caused some states to reconsider their legal insanity defence but rather to view it as a "mitigator" for a verdict, meaning that the insanity defence can only lead to a reduced sentence not a complete acquittal. For some states it meant the return of the McNaughten system. One could argue that the process reminded of a "hamster wheel", where the insanity defence came back to where it started from. However, the "new" insanity defence not only includes McNaughten's "mental defect" concept, but also considers the volitional and cognital factors, which in a way could be seen as a balance.

In comparison to the original McNaughton rules, it is able with more ease to establish insanity with the ALI test. For example, the ALI test is more pliable in terms of establishing the volitional and cognitive standards and this test is concerned more with the awareness of the defendant differentiating the right from the wrong. There is also a more standardised definition of "wrong" in ALI test, where it is defined as "criminality" that implies that rather than it being ethically unacceptable, it is more legally unacceptable.

Finally, another way they are differentiated is that the Model Penal Code test only requires the ability to follow the law to be "relative" rather than absolute, which makes the expectations more realistic for the judge and counsel. However, I believe that one of the flaws with this defence is that when "substantial capacity" is considered, it could be inferred that although the defendant possesses an illness that affects his/her thought processes, it does not mean that it can cause one to commit a crime. One might have a mental illness that would not deem them incredibly insane, and they might commit a crime not due to that specific mental illness, which could lead to the defendant getting away with their crime. Due to various possibilities and flaws that may emerge from this defence, states decided to either reserve to the McNaughten defence, but with some alterations, except a few states.

What this historical background provides are two conclusions. First, the insanity defence would form at a historical period, to which there would be no other alternatives to the insanity defence in terms of punishment mitigation for a purposeful crime. There would be no concepts of provocation, appropriate justification of an individual and mens rea.

3 Theories that surround the contemporary insanity defence

As George Fletcher argues that when we decide whether an individual is liable for their conduct, there is a sort of burden placed upon us to decide ultimately whether anyone is liable for their criminal actions. Christopher Slobogin extends this theory by applying it to the insanity defence by stating that this defence does not accommodate a fixed task, thus it should cease to exist as a defence and consider the "mental illness" when making a verdict. This way, defendants are provided with a sentence and are not able to escape their punishment as easily as it would be with the ALI test, which I will give reasons for throughout my discussion.

The impact of public opinion has now shifted in terms of legal considerations. If we look back at the case of *United States v Hickley,* following the verdict was public discontent, which led to the revision of insanity tests and terms of acquittal, especially considering this trial took place in the Neo-Conservative era of history. However, as there are more opinions and more access to global networks, for trials, such as *Depp v Heard*, opinions come from all over the world, from social media to word-of-mouth. Hence, the insanity defence as a theory is rejected by public. Most of the information the public get is extracted from media, with mostly include high profile cases. This could lead to inaccurate portrayal, leading to the public making uninformed judgements about the whole of legal system based on a specific trial. There is a common misconception that exists in society, where people think that if the defendant utilizes the insanity defence, they are not punished by the law.

Additionally, the public also has concerns regarding the availability of the insanity defence, meaning that some defendant would go as far as pretending to have a mental weakness to achieve their desired aim. These concerns although taken into consideration, are looked through by experts and possess better knowledge on the subject, so these claims do not a have a legalistic element to them. Historically, it can be derived that the insanity defence was the only legitimate defence that could be used in courts of law to reduce punishment for unjustified reasons. Hence, as the criminal law has developed ever since the first insanity

defence, it appears to have lost its primary cause. This goes as far as saying that the insanity defence should be scrapped from criminal law. Although experts' opinions are considered as evidentiary support and precedents are applied, it is debatable whether these precedents can be used in the current legal system and whether the opinions of experts are reliable and not impacted by the unconscious bias everyone possesses.

Despite the persistence of public misconceptions regarding the frequency and success of insanity pleas, some justified concerns exist. These concerns, coupled with the fact that mentally ill offenders comprise a significant portion of the criminal justice system, 89 warrant a renewed examination of the insanity defence. The most significant concerns involve the anti-therapeutic nature of the criminal justice system's treatment of the mentally ill, which hinders the achievement of the policy goals of the insanity defence. escribed as "anti-therapeutic." This assessment is reinforced by the President's New Freedom Commission on Mental Health's 2003 Final Report, which indicates that "[m]any people with serious mental illnesses... remain... housed in institutions, jails, or juvenile detention centres. These people are unable to participate in their own communities." The insanity defence is not founded on the problem of blameworthiness, but rather on the question of when the mentally ill are allowed back into society. Many individuals doubt if "treatment for dangerous mental illness is effective" or whether "dangerous mentally ill people can get better." The mentally sick, a population for which we cannot guarantee that the purposes of punishment are met, are being punished ineffectively because they are not receiving potentially useful mental health therapy. While being punished, adequate placement of offenders who pose a threat to society in a psychiatric treatment facility is not always assured.

One of the key policy rationales for the insanity defence (and the criminal justice system in general) is some psychiatrists recognise the severely punitive nature of the treatment being received, referring to the commitment of offenders as "America's newest form of slavery."' Many judges subsequently perpetuate these ideas by basing their judgements on stereotypical views that the mentally ill are incompetent and lack self-control," so perpetuating the inadequacies in the insanity defence system. Some psychiatrists recognise the severely punitive nature of the treatment being received, referring to the commitment of offenders as "America's newest form of slavery."' However, in the scope of the 13% rise of mental illnesses in the past years, the legislation will also have to delve into the complexities of mental illnesses that qualify defendants to plea the insanity defence. Additionally, it will have to ensure that criminals do not acquire the insanity defence with ease, but also maintaining that the standards for the insanity defence are not overly rigid.

As a result of these complications, scarpping the insanity defense overall would seem the most appropriate course of action. Rather than complicating and changing the systemic approach on a regular basis, taking the mental illness aspect in consideration when deciding on the verdict of the defendant appears to be the most fair approach. This prevents defendants from avoiding prison time and/or getting away without conviction, hence this ensures that every defendant bears responsibility, especially considering those who do plead the insanity defense.

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