Insanity As A Defense Essay, Research Paper

INSANITY AS A DEFENSE

The insanity defense is a defense that is used in the courts to say the defendant was not aware of what they were doing at the time of the crime. The terms of such a defense are to be found in the instructions presented by the trial judge to the jury at the close of a case. These instructions can be drawn from any of several rules used in the determination of mental illness. The final determination of mental illness rests solely on the jury who uses information drawn from the testimony of “expert” witnesses, usually professionals in the field of psychology. The net result of such a determination places an individual accordingly, be it placement in a mental facility, incarceration, or outright release. Because of these factors, there are several problems raised by the existence of the insanity defense. Problems such as the actual possibility of determining mental illness, justifiable placement of judged “mentally ill” offenders, and the overall usefulness of such a defense. In all, I believe that these problems, as well as others which will be mentioned later, lead us to the conclusion that the insanity defense is useless and should be abolished entirely. We have seen some cases in the past, such as Lorena Bobbett pleading insanity.

Insanity is a legal, not a medical definition. Therefore, mental illness and insanity are not synonymous: only some mental illness constitutes insanity. Insanity, however, includes not only mental illness but also mental deficiencies. Due to this, there are problems in exactly how to apply a medical theory to a legal matter (Gerber 8). The legal concepts of mental illness and insanity raise questions in a conflict between what are termed legalistic criminology and scientific criminology: mens rea, punishment v. treatment, responsibility, and prisons v. hospitals. This debate seesaws to and from amidst a gray area between law and science. The one problem with the theory of mental illness is that is all it is ?a theory.? Scientists live by theories but legal authorities do not trust them. By applying a loose theory such as mental illness to law we are in essence throwing the proverbial “monkey wrench” into the wheels of justice.

TESTING FOR INSANITY

At the center of the legal use of insanity lies the mens rea, the mental element of a crime or the intent to commit a criminal act.? (Senna G-10) Every crime involves a physical act, or actus reus, and a mental act, or mens rea, the non-physical cause of behavior. The difficulty here lies in analyzing the mens rea. In order to do this lawyers apply one of several rules used by psychologists. These rules range from the Irresistible Impulse Test to the M’Naghten Rule. Each of these rules approach mental illness capacity in a different way.

?The M’Naghten Rule, also known as the right-wrong test, arose in 1843 during the trial of Daniel M’Naghten who argued that he was not criminally responsible for his actions because he suffered from delusions at the time of the killing.? (Jeffery 60) The M’Naghten Rule says that, a defendant may be excused from criminal responsibility if at the time of the commission of the act the party accused was laboring under such a defect of reason, from a disease of the mind, as not to know the nature and the quality of the act he was doing, or if he did know it, that he did not know that he was doing what was wrong. So according to this rule, a person is basically insane if he or she is unable to distinguish between right and wrong as a result of some mental disability.

Criticisms of the M’Naghten Rule has come from both legal and medical professions. Many criticize that the test is unsound in its view of human psychology. ?Psychologists have said the theory of partial insanity or monomania, that is that a person could be sane in all other respects and yet have a cognitive delusion, has also been exploded by the more modern theory of the integrated psyche.? (Gerber 30). Additionally, the test is criticized for defining responsibility solely in terms of cognition. While cognitive symptoms may reveal disorder, they alone are not sufficient to give an adequate picture of such a disorder or determine responsibility. Also, it has been shown that individuals deemed insane by psychologists have possessed the ability to differentiate right from wrong.

The Irresistible Impulse Test (IIT) is a rule excludes from criminal responsibility a person whose mental disease makes it impossible to control personal conduct. Unlike the M’Naghten Rule, the criminal may be able to distinguish between right and wrong, but may be unable to exercise self-control because of a disabling mental condition. Normally this test is combined with the M’Naghten Rule. Many of the criticisms of the (IIT) center around the claim that the view of volition is so extremely narrow that it can be misleading. Just as the M’Naghten Rule focused on cognition rather than the function of the person in an integrated fashion, the (IIT) abstracts the element of volition in a way that fails to assess a person’s function in terms of an integrated personality. Additionally, it has been asserted that the concept at best has medical significance in only minor crimes resulting from obsession-compulsion, and that seldom, if ever, can it be shown that this disorder results in the commission of a major crime (Winslade 11). Such a claim is subject to the objection that it cannot be conclusively proven. Interestingly, it has been shown by many psychiatric authorities that no homicidal or suicidal crime ever results from obsession-compulsion neurosis.

Another criticism of this test is the difficulty of proving the irresistibility of the impulse, which the definition of the test requires. The jury has the final decision, and is faced with deciding when the impulse was irresistible and when it was merely not resisted, a task that psychiatrists suggest is impossible to perform. ?We are also able to argue that the test is one of volition. It is too narrow in that it fails to recognize mental illness characterized by broadening and reflection.? (Gerber 42). The test is misleading in its suggestion that where a crime is committed as a result of emotional disorder due to insanity, it must be sudden and impulsive.

?The Durham Rule, also known as the Products Test, is based on the contention that insanity represents many personality factors, all of which may not be present in every case.? (Jeffery 60) It was brought about by Judge David Bazelon in the case of Durham v. U.S. who rejected the M’Naghten Rule and stated that the accused is not criminally responsible if the unlawful act was the product of mental disease or defect. The primary problem with this rule of course lies in its meaning. Again it is impossible for us to define mental disease or defect, and product does not give the jury a reliable standard by which to base a decision.

Substantial Capacity Test which focuses on the reason and will of the accused. It states that at the time of the crime, as a result of some mental disease or defect, the accused lacked the substantial capacity to appreciate the wrongful of their conduct or conform their conduct to the requirements of the law. This test is disputable in the fact that it is not only impossible to prove capacity of reason or will, but to even test such abstracts seems absurd. Furthermore, the term “substantial capacity” lies question in that it is an abstract impossible to define.

INSANITY: HOW IT IS ESTABLISHED

The meaning of insanity is the legal definition as put forth in a rule such as the M’naghten Rule or whatever school of thought is in use on any given day. ?The legal test is applied in an adversary system which pitches lawyer against psychiatrist and psychiatrist against psychiatrist. Because of this, the psychiatrist is often perceived not as a scientist but a partisan for the side which is paying for his testimony? (Jeffery 56). The major problem in this case being that the use of a neutral expert is impossible to implement. In the end the determination of insanity is a layman’s decision since it is the jury which ultimately decides whether the defendant is sane or insane. This of course is ludicrous since professional scientists cannot agree on the meaning of mental illness. How can a layman make such a decision especially after listening to contradictory testimony which is manipulated by opposing lawyers. The psychiatrist finds himself in a double bind: he has no medical definition of mental illness and he must answer questions from lawyers concerning legal insanity, right and wrong, and irresistible impulses. As stated by Packer: “The insanity defense cannot tolerate psychiatric testimony since the ethical foundations of the criminal law are rooted in beliefs about human rationality, and free will. These are articles of moral faith rather than scientific fact.” (Jeffery 62)

MENTAL ILLNESS AND CRIMINAL BEHAVIOR

In the insanity defense we have no variable independent of the criminal behavior we are studying. Insanity refers to a class of behaviors known by observing the behavior of the patient and criminality is a class of behavior likewise known by observing the behavior of the defendant. We are involved in classification and labels. A person can be Catholic and commit a robbery without a casual relationship existing; likewise, a person can be schizophrenic and a robber without a casual relationship existing between the two classes of behavior. Coexistence does not show a casual relationship. What we must do, in order to prove a relationship between mental illness and criminal behavior is produce some independent link between the two classes of behavior on a biochemical level. We must have a definition of mental illness independent of the behavioral symptoms in order to establish a casual relationship between crime and mental illness. There is such a view and it is termed the Biological Psychiatric view. The view basically states that there is some effect or malfunction in the actual make-up of the brain of an individual which causes schizophrenia. This same defect then causes the criminal behavior such as robbery or murder. The problem here is that we have no actual way of mapping the brain and conclusively determining exactly what portion thereof is responsible for either type of behavior much less that one area is responsible for both. In essence even if true this theory is not provable.

There is also a statistical relationship between crime and mental illness. ?Guttmacker and Weihofen found 1.5 percent of the criminal population psychotic, 2.4 percent mentally defective, 6.9 percent neurotic, and 11.2 percent psychopathic.? (Jeffery 66). These figures are very unconvincing. Additionally they are based on old diagnostic categories and procedures which are most unreliable. Also, the meaning of neurotic or psychotic or psychopathic is uncertain within the context of these studies and they do not refer to modern biological categories of brain disease. Terms such as insanity, mental illness, and mens rea have no scientific meaning, therefore we must leave as unspecified and uncertain the relationships between insanity, mental illness and criminal law. We certainly cannot conclude that mental illness bears any relationship to diseases of the brain, nor can we conclude that mental illness or insanity causes criminal behavior.

USEFULNESS OF THE INSANITY DEFENSE

As we have already seen, there is much confusion dealing with the placement of insanity and mental illness, it’s definition, and even it’s very existence. We have likewise seen the use of several of the various testing techniques used to determine mental illness and their shortcomings. This information alone would lead us to believe that the insanity defense needs at least to be revised and improved in many areas. What we have looked at thus far is what precedes the actual judgment of sanity. What we have not looked at, however, is that implementation of the actual judgment of sanity. That is to say, the actual results of the defense when successful.

There are several decisions which can be reached when insanity is at last proven. These judgments include not guilty by reason of insanity (NGI), and guilty but mentally ill (GMI), with the later verdict not being implemented until the early eighties in an attempt to reform the insanity defense and decrease the amount of NGI verdicts. The NGI verdict is the more dangerous verdict. and the one which I believe has the strongest argument against the insanity defense. The objection here is that it allows dangerous men to return to the streets where they commit heinous crimes. ?Of the 300 persons committed on NGI verdicts 80 percent were released from mental hospitals by psychiatrists, and in several instances these mental patients went on to kill again.? (Jeffery 73) I feel that mental hospitals do not help nor do they cure defendants with insanity. This is the reality of the insanity defense which I find irrefutable; in many cases criminals are released due to loopholes such as the insanity defense to simply commit the same crime again. Even is these cases make up 10 out of 100,000, there now exist 10 crimes that need not have happened. The guilty but mentally ill approach has three serious flaws. First it attacks indirectly at the mens rea requirement, introducing the slippery notion that the accused had partial, but not complete, criminal intent. Second, it creates a lesser and included offense that judges and juries may choose as simply a compromise verdict. They believe the accused probably did something wrong and deserves some punishment, but they are unwilling to bring in a verdict of guilty on the top charge. The GMI verdict would allow them to split the difference. Finally the GMI verdict is fraudulent on the issue of treatment. As proposed, it makes no provision for treatment of the person who has been declared mentally ill. The GBI option has already proved to be a bogus reform. A 1981 Illinois law added the GMI as an additional verdict, retaining the traditional insanity defense. In Cook County, verdicts of not guilty by reason of insanity actually increased from 34 to 103 between 1981 and 1984. At the same time GMI went from 16 in 1982, the first year the option was available, to 87 in 1984. There has been much evidence of a “hydraulic” effect that was contrary to the law’s intent. ?Offenders so adjudicated are in effect, found guilty of the criminal offense with which they are charged, but because of their prevailing mental condition are generally sent to psychiatric hospitals instead of prisons.? (Schmalleger 218)

ABOLISH THE INSANITY DEFENSE

Abolishing the insanity defense is easier said than done for the simple reason that the mens rea requirement remains a fundamental legal principle. The proposal that “mental condition shall not be a defense to any charge of criminal conduct” could be interpreted in one of two ways. The broader interpretation would mean that absolutely no aspect of mental condition could be taken into account. In effect, this interpretation would abolish the mens rea requirement altogether. The prosecution would not have to prove anything about the accused mental state. This is unnecessary. For one thing, it would wipe out the intentions that separate first-degree murder, second-degree murder, and manslaughter. It is doubtful that anyone against the insanity defense would choose to take this approach. So sweeping, in fact, would be it’s effect, that it would probably be declared unconstitutional. A more limited reading of the wording “mental condition shall not be a defense to any charge of criminal conduct” would mean that an affirmative plea of “not guilty by reason of insanity” could not be raised. The crucial distinction here is drawn between affirmative and ordinary defenses. An ordinary defense is simply an attempt to shown that the prosecution has failed to connect the accused with the crime, a defense used in everyday law. An affirmative defense is raised when the prosecution has connected the accused with the crime, as in an example of self-defense. The defense argues that, yes, the accused did shoot and kill the person and did so intentionally, but because the act was committed in self-defense the accused does not bear criminal responsibility for it. The same is true in the case of a criminal act committed under duress. The insanity defense, in this respect, is an affirmative defense. It is this usage that needs to be abolished. In cases such as self defense it may be an adequate and totally acceptable defense, for in how many cases do you hear of a man being acquitted due to a self-defense plea returning to the streets in order to kill again? To draw a comparison between the two and argue that both defenses are necessary to the total order is naive and unfounded.

IN CONCLUSION

The law of insanity involves the concepts of mens rea and punishments, as does the criminal law in general. Insanity is a legal concept, not a medical concept, and insanity is defined within the context of an adversary system wherein psychiatrists and lawyers battle one another over the meaning of terms such as “right and wrong” and “ability to control one’s behavior.”

Mental illness and mental disease are psychoanalytic concepts, not scientific concepts. Mental illness is defined by talking to people or by giving them written tests, and there is no agreement among psychiatrists as to the meaning of this illness or whether or not it really exists. Some psychiatrists call mental illness a myth. The psychoanalyst has not been successful in treating or predicting mental illness. The psychoanalyst has never established a casual relationship between mental illness and criminal behavior. The insanity defense would require both a mental illness and a relationship between the illness and the criminal behavior, neither of which could be scientifically established. Of the criminals both acquitted and convicted using the insanity defense, a good number have shown conclusive evidence of recidivism. Many dangerous persons are allowed to return to the streets and many non-dangerous persons are forced into facilities due to an insanity plea adding further confusion and injustice within both the legal and medical systems.

I feel that the insanity defense is difficult to maintain with respect to the M?Naugten rule and the relationship between the medical and legal must be reestablished on a more scientific level. The insanity defense is unrealistic in its current practice and therefore should be done away with. The only benefit of Insanity as a defense is to the criminal whom wants to avoid prison.

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