

## Insanity

Viewed historically, the issue of criminal responsibility as affected by mental disorder has attracted lots of attention and possibly stimulated more controversy than any other question in the substantive criminal law.

Mental disorder creates many problems for the system of criminal justice other than that of determining who shall be relieved of criminal liability. There is for example the problem posed by the defendant who is mentally incompetent to stand trial or to plead to a criminal charge. Some procedures are rather inadequate to identify such persons with the result that in some instances, persons who are incompetent to stand trial are in fact tried and some times convicted and sentenced.

Even when insanity is noted prior to trial, problems may still arise, for the 'rights' not to be tried while incompetent conflicts with another basic interest; the right of speedy trial. A defendant who has been confined to a mental institution for months or even years prior to trial may be seriously handicapped in maintaining his defense once criminal proceedings have resumed.

Again, there are problems relating to the commitment of persons found not guilty because insane. Assuming that commitments to mental institutions are automatic in such cases, what criteria should govern the ultimate release of such persons? The number one problem in dealing with insane offenders is the formulation of a test of criminal responsibility, a matter which is dealt with differently in different codes.

**In the U.K.** There is a criterion of responsibility defined by the common law and set out in authoritative form in the McNaghten Rules formulated by the judges in 1843. Daniel McNaghten intending to kill Sir Robert Peel, killed the statesman's secretary by mistake. His acquittal of murder on the ground of insanity provoked controversy and was debated in the House of Lords which sought the advice of the judges and submitted to them a number of questions, the answers to which became the famous **McNaughten Rules**.

They may be summed up as follows:

## The McNaghten Rules

- (i) Every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crime until the contrary be proved to the satisfaction of the jury.
- (ii) To establish a defence on the ground of insanity it must be clearly shown that, at the time of committing the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality (Kenny here says that these 2 words are mere synonyms though medical witnesses have often treated these meanings as dissimilar. They refer to the physical nature of the act, as distinguished from the moral ex: the madman cuts a woman's throat under the idea that he is cutting a loaf of bread) of the act he was doing, or if he did know this, he did not know that what he was doing was wrong morally.
- (iii) As to the knowledge of the wrongfulness of the act the Judges said, "if the accused was conscious that the act was one which he ought not to do and if that act was at the same time contrary to the law of the land, he is punishable." The question then is not whether the accused is able to distinguish between right and wrong in general, but whether he was able to appreciate the wrongfulness of the particular act he was doing at that particular time.
- (iv) Where a criminal act is committed by a man under some insane delusion as to the surrounding facts, which conceal to him the true nature of the act he is doing, he will be under the same degree of responsibility as if the acts have been as he imagined them to be. He may, for instance, kill under the imagination either that he is the executioner lawfully carrying out a judicial sentence, or, on the other hand, merely that the person killed had once cheated him at cards.

In the UK, The person must be acquitted either because he did not know that nature and quality of his act because of a disease of the mind or if he did know the nature and quality of the act, he must be acquitted, because, due to a disease of the mind, he did not know it was wrong. The two limbs of the rule require separate consideration but the first question under each limb is whether the

defendant is suffering “from a defect of reason from disease of the mind.” However Sir James Stephen’s thought that insanity effects not only men’s beliefs, but also their emotions and their wills.

The need for broadening the legal definitions of insanity with reference to criminal responsibility as given in the McNaghten rules is, as Archbold says, felt in the United States and the British colonies where the tendency of judges and legislators is not to accept these definitions as adequate.

Therefore, there is an every growing tendency in modern countries to hold that disorders of the volitional powers, resulting in irresistible impulses to commit certain anti-social acts constitute a defense to a criminal charge in the same manner as disorders of the

intellectual powers resulting in the inability to understand the wrongfulness of such acts.

### **Criticism of McNaghten Rules**

The basic attack is that McNaghten applied literally and without distortion, fails to encompass all persons whom justice and good sense would dictate should be relieved of the criminal consequences of their acts.

- (a) Many have argued that the McNaghten rule incorporates an over-intellectualized concept of mental disorder.
- (b) The McNaghten rule is said to be defective in failing to give explicit recognition to volitional disorders, that is that deprive the person of control over his behavior.
- (c) It is recognised by psychiatrists that a man may know the nature and quality of an act, may even know that it is wrong and yet perform it under an irresistible or uncontrollable impulse emanating from volitional disorders.
- (d) McNaghten is said to be defective because it requires a total incapacity to evaluate the moral character of one’s behavior. There is persuasive evidence that such total and absolute incapacity rarely exists even in seriously disturbed persons, including those not fit subjects for the peno-correctional process.

## Insanity under Maltese Law

Under Maltese Law, insanity is dealt with under article 33 of the Criminal Code which merely states that:

*33. Every person is exempt from criminal responsibility if at the time of the act or omission complained of, such person -*

*(a) was in a state of insanity; or*

*(b) was constrained thereto by an external force which he could not resist.*

It will be observed at once that our law has not bound itself by any specific “a priori” test of responsibility in insanity. Unlike Anglo-Saxon law, the Maltese law has refrained from any attempt to define the conditions under which a man can plead mental unsoundness as a defence for wrongdoing, wisely leaving each case to be decided in the light of its particular circumstances, usually with the assistance of medical experts.

The English text writer Kenny divides insane persons into 2 categories:

1. There are those whom the threats and prohibitions of criminal law would exercise no control and on whom therefore it would be gracious cruelty to inflict its punishment. – Lack in their capability to understand.
2. Those whose form of insanity is only such that they would not have yielded to their own sanity if a policeman were at their elbow. – Lack in their volitional capability to will.

Maltese law also takes volitional disorders into account. There must be 2 constituent elements of legal responsibility in the commission of every crime:

(i) capacity of intellectual discrimination

(ii) Freedom of will

It has been suggested however that article 34 dealing with intoxication throws considerable light on the matter, referring as it does to the capacity of understanding and volition as an imperative to constitute responsibility and this tallies with the Italian doctrine to which we refer in the absence

of an express test of responsibility. In Italy the necessary presupposition of responsibility is imputability which consists in the persons “capacita` di intendere e volere” at the time of the commission of the act. In the absence of “capacita di intendere e di volere” there can be no criminal responsibility consequently the person is not punishable.

“Non e` punibile colui che nel momento in cui ha commesso il fatto era in tale stato di infermita` di mente da togliergli la coscienza e la liberta` dei propri atti.”

Manzini in his succinct clarity elucidates us further on the meaning of the 2 basic ingredients “coscienza e liberta`”. The faculty of mere “coscienza” does not suffice. The mere fact that a man knows the nature of his deed does not suffice to constitute responsibility. The element of capability of intellectual discrimination must be accompanied by freedom of will, for a man to be responsible for his deed and thus imputable before the law.

If it is true that mental disease can so affect the mind as to subvert the freedom of the will, and thereby destroy the power of the victim to choose between the right and the wrong, although he perceives it, a person so affected is not responsible criminally for an act done under the influence of such controlling disease.

Our law, therefore, recognises insanity as an exemption from criminal responsibility not only when it deprives the victim of his power of distinguishing the physical and moral nature and quality of the act charged as an offence but also when it deprives him of his faculty of choice so as to exclude a free determination of his will in relation to that act. Insanity thus embraces all forms of disease of the mind, the word mind being used as a general name for the combined operations of intellect and volition.

Just as under Anglo Saxon law, the lack of ability to distinguish between right and wrong must emanate from a “disease of the mind”, so also under Maltese law, there must be a nexus of causality between the insane state of mind of the lack of a “capacita di conoscere o di volere”

A person who is otherwise sane will not be excused from a crime because he has temporarily lost his reason not because of a disease of his mind but because of anger or jealousy Emotional impulses resulting from violent passion do not in themselves afford any defense.

Again, a man is not excused come so morally depraved that his conscience no longer controls or influences his actions. Thus “moral insanity” or moral depravity which does not result from a disease of the mind does not exempt from criminal liability.

For there to be criminal responsibility the time when insanity must exist is also important. The person must be insane at the time of commission or omission of the act. Thus, in the case of ‘lucid intervals’ if the accused committed a crime whilst lucid he is liable for what he did.

### **Superiority of Maltese Law over U.K. Law**

The superiority of Maltese law over English law on the point of freedom of will is obvious. In England knowledge constitutes the test of legal responsibility, this now leaves out of account the factors of emotion and control which come within the purview of our concept of “liberta’ di volere”.

In England owing to the existence of a legal test of insanity which ignores the veffective and volitional aspect an insane person may well be found equally responsible for his acts when morally no psychiatric would judge him so. Such a situation arose to mention but one instance during the trial of Neville Heath (1946). Neville Heath was declared by the psychiatrist, brought as a witness to be suffering from a psychopathic state in which owing to a diseased condition of the mind, he was incapable of controlling his actions, yet he was quite aware of the nature of his actions and because of the awareness of his plea of nonresponsibility on the grounds of insanity was rejected. Neville Heath was found guilty of murder and executed.

### **Semi-Responsability**

It is known that there is no clear-cut line between sane and insane. Maltese Law does not include semi responsibility as it does not cater for partial insanity. Partial insanity is a mental impairment which is not so complete as to render its victim wholly irresponsible for his criminal acts. Punishment is not exempted but mitigated. This rule has not been accepted in our law, notwithstanding that a proposal for the introduction in our code of this doctrine of limited

responsibility was twice made in the council of government, first by Sir Adrian Dingli in 1850 and later by Sir Arturo Mercieca in 1909.

When the issue of insanity is decided in the affirmative, the accused is exempted from criminal liability, but nevertheless the defendant is not 'discharged'. To set him free might constitute danger to himself and to others. So, in all cases he is ordered to be detained in strict custody in the Hospital for Mental Diseases.

