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Insanity Pleas: Mental Disorders and Legal Responsibility

Toward the close of *The Brothers Karamazov*, Ivan Karamazov, on the verge of an attack of brain fever, is visited by a genteel but shabby gentleman whom he understands to be the Devil. Ivan questions him about the tortures that the other world has in store, and he receives this reply:

What tortures? Ah, don't ask. In the old days we had all sorts, but now they are chiefly moral punishments — the "stings of conscience" and all that nonsense. We got that, too, from you, from the softening of your manners. And who's the better for it? Only those who have no conscience, for how can they be tortured by conscience when they have none? But decent people who have conscience and a sense of honor suffer. Reforms, when the ground has not been prepared for them, especially if they have been copied from abroad, cause nothing but trouble. The ancient fire was better.

This book is about the stings of conscience, rather than the ancient fire. It concerns issues of moral responsibility, not legal responsibility, and concepts such as blame, rather than punishment. That which accompanies judgments of moral responsibility cannot replace that which accompanies judgments of legal responsibility, as Dostoyevsky's old gentleman implies, but

neither should the two sorts of judgments be confused. Morality and the law have different agendas.

Nonetheless, when a mentally disordered person acts in a way that is morally or legally wrong, he is apt eventually to come into contact with the courts, and with a psychiatrist. It is unlikely that he will ever see a moral philosopher. The dispensation of mentally disordered criminal offenders is not merely a conceptual problem; it is a practical problem involving matters such as psychiatric treatment, punishment, and confinement. Because psychiatrists and attorneys are most intimately involved in these practical affairs — and because, unlike morality, the law can be changed with the stroke of a pen — it should not be surprising that, historically, much more attention has been given to the question of the legal responsibility of the mentally disordered than to the matter of their moral responsibility.

Their differences notwithstanding, judgments of moral and legal responsibility are closely tied, and the law's long and controversial history of dealing with mentally disordered offenders proves a fertile source of instruction for a moral analysis. Unlike morality, the law has been set the task of developing explicit rules of insanity, guidelines by which it is determined who is sane and therefore should be held accountable for his or her actions, and who is insane and therefore must be exonerated. This chapter traces some of the controversies that have emerged in the development of various insanity pleas, as well as some of the difficulties associated with their application and interpretation.

The M'Naghten Rules

By far the most influential, the most widely quoted, and the most roundly criticized tests of legal insanity are the M'Naghten Rules. In 1843, Daniel M'Naghten of Glasgow shot and killed Edward Drummond, the secretary to the prime minister, Robert Peel. M'Naghten shot Drummond in broad daylight, literally with a police officer at his elbow. Deluded that he was being persecuted by a number of people in England and Scotland, including the Tory government, M'Naghten had intended to kill Peel, and indeed, after the act thought he had done so. M'Naghten was tried and acquitted by reason of insanity.

The political climate at the time of M'Naghten was stormy, and the Queen had recently been the object of an assassination attempt for which the failed assassin was acquitted by reason of insanity. For this reason, the House of Lords asked the judges in M'Naghten's trial to explain the tests by which a person could be properly judged criminally insane. Out of these hearings emerged the M'Naghten Rules. In their essence the rules state:

The jurors ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defense on the grounds of insanity, it must be conclusively proved that, at the time of committing the act, the party accused was laboring under such a defect of reason, from the 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 what he was doing was wrong.¹

The shadow cast by M’Naghten has been long, not only in the United Kingdom but also in the United States, Canada, Australia, and New Zealand. With its influence, however, has come widespread criticism. In the voluminous literature on M’Naghten, the most common criticisms relevant to moral responsibility relate to its focus on deficits in reasoning ability and to the vagueness of the language it employs.

The M’Naghten Rules state explicitly that criminal insanity must depend on whether the party accused labors under a “defect of reason.” Critics of M’Naghten have argued that this emphasis on reason is based on the faulty assumption that cognition is the only or the most important mental capacity relevant to responsibility. This assumption, in turn, implies the further false assumption that the mind can be separated into compartments — for example, cognition, emotion, and volition — and that cognition is the most important determinant of behavior. The Butler Committee Report on Mentally Abnormal Offenders (1975) argued that:

The main defect of the M’Naghten test is that it was based on the now obsolete belief in the pre-eminent role of reason in controlling social behavior. It therefore requires evidence of the cognitive capacity, in particular the knowledge and understanding of the defendant at the time of the act or omission charged. Contemporary psychiatry and psychology emphasize that man’s social behavior is determined more by how he has learned to behave than by what he knows or understands.²

Even if it were possible to compartmentalize mental functions into various faculties, this criticism of the M’Naghten test emphasizes another important point: a person’s affect or mood is also relevant to responsibility, because a person’s mood may color how he perceives his actions, and thus what he believes about them. Critics also point out that a person may understand his actions but for some reason be unable to control them. M’Naghten ignores self-control, perhaps as a result of the tacit assumption that a person’s powers of self-control are strengthened by the knowledge that lapses will be punished.³

This perceived deficiency in M’Naghten was important in shaping a subsequent test of criminal insanity, the so-called irresistible impulse test.

The language of M’Naghten is also a target of frequent criticism. For example, it is unclear what qualifies as a “disease of the mind.” Must this be an organic disease? This would exclude most of the sorts of problem that psychiatrists and psychologists treat, the so-called functional disorders. If it includes functional disorders, must these be severe psychoses, or does the rubric also encompass disorders outside the bounds of psychosis — affective disorders, for example, such as depression? What about dementia and mental retardation?

Psychotic illness seems to be the paradigm for an insanity defense, but many other mental impairments appear to fall on M’Naghten’s borders. According to Goldstein and Marcus, actual judicial cases in the United States are silent as to what qualifies as mental illness. In general, nonpsychotic mental illness does not seem to qualify, but mental retardation qualifies if it deprives the defendant of the knowledge specified in M’Naghten.⁴ On the other hand, even though the law does not define “disease of the mind,” or mental illness, the insanity defense has been successfully invoked for a broad variety of cases, including fugue states, amnesia, post-traumatic stress disorder, somnambulism, and automatisms.⁵

Similar criticisms are directed at another ambiguity in M’Naghten, its stipulation that a person “not know the nature and quality of the act he was doing.” Some have taken issue with the verb “know,” arguing that it implies a rigid, shallow, intellectual understanding. A mentally ill person may possess this sort of understanding but lack the fuller, richer, more emotionally charged understanding that healthy persons have. This narrow definition of “know” restricts those eligible for an insanity defense, in Zilboorg’s graphic phrase, to the “totally deteriorated, drooling, hopeless psychotics of long-standing, and congenital idiots.”⁶

The “nature and quality of the act” is a phrase that has caused similar confusion. Some have taken it to mean merely the brute physical character of the act: a person must realize that it is a person he is shooting at and not a stump, that he has a gun in his hand and not a banana, and so on. Others argue that the knowledge of the nature and quality of some acts must include some idea of what it is like to be the victim of that act. That is, a person cannot be said to understand causing a person physical pain if he is incapable of empathy, of appreciating the position of the person who is experiencing the pain. Some have argued as well that the nature and quality of an act must also include an appreciation of the moral and legal significance of the act.

The final provision of the act, and potentially the most problematic, is that a person may be acquitted by reason of insanity if he did not know that his

act was wrong. First, it is debatable whether this provision belongs in an insanity defense. Some see it as a license to exonerate offenders who feel no guilt or remorse for their misdeeds. Second, if the provision is included, it is not clear whether the provision should mean legally wrong or morally wrong. If the latter, then the test is subject to a number of problems about what it might mean not to know that an action is morally wrong.

But holding “wrong” to mean “legally wrong” has its problems as well. One of these problems, as the Committee on Mentally Abnormal Offenders noted, is that ignorance of the criminal law is not a defense available to sane offenders.⁷ It might be argued that the knowledge of right and wrong to which M’Naghten refers is knowledge of the moral beliefs generally held by the members of a given society. But this sort of knowledge becomes problematic with actions that are legally prohibited, but are widely held to be morally acceptable, such as rational suicide or active euthanasia.⁸ It is also unclear how this sort of interpretation would apply to actions that a person believes to be morally acceptable but that she realizes that society regards as morally wrong.

Irresistible Impulse Test

Perhaps because of the failure of the M’Naghten Rules to include a provision in their definition of insanity for volitional control, later tests of insanity began to mention volition as a relevant factor in criminal responsibility. Commonly known as the “irresistible impulse” test, this standard allowed a defendant to be exonerated from legal responsibility if it could be shown that he was unable to control his actions. In his *History of the Criminal Law of England* (1883), Fitzjames Stephen wrote that an action should not be considered a crime if the agent was “prevented either by defective mental power or by any disease affecting his mind from controlling his own conduct, unless the absence of the power of control has been produced by his own fault.”⁹

Though it was much debated, the irresistible impulse test was never adopted in England. However, it was invoked in a number of cases in the United States. For example, *Parsons v. State* (1887) ruled that even if a person had knowledge of right and wrong, he might nevertheless be excused from legal responsibility if the following conditions applied:

1. If, by reason of the duress of such mental disease, he has so far lost the power to choose between the right and the wrong, and to avoid doing the act in question, as that his free agency was destroyed;

2. And if, at the same time, the alleged crime was so connected with such mental disease, in the relation of cause and effect, as to have been the product of it solely.¹⁰

Contrary to what its name suggests, the irresistible impulse test is not a test of impulsiveness. A desire may be irresistible, but not impulsive. The point of the test is to excuse a person from responsibility for his action if he could not prevent himself from acting — that is, if he could not control his behavior.

However, the primary problem with the irresistible impulse test should be obvious. That is, it is impossible to distinguish between behavior that the agent *did* not control and behavior that the agent *could* not control. Merely because a person has not prevented himself from acting does not mean that he was unable to prevent himself from acting. As the American Psychiatric Association's 1983 position paper on the insanity defense pointed out: "The line between an irresistible impulse and an impulse not resisted is probably no sharper than that between twilight and dusk."¹¹ To distinguish between the two can be difficult.

The Durham Rule

The Durham rule was established in the United States District of Columbia in 1954. In *Durham v. United States*, Judge David Bazelon ruled that "an accused is not criminally responsible if his unlawful act was the product of a mental disease or defect."¹² Bazelon instructed the jury:

If you the jury believe beyond a reasonable doubt that the accused was not suffering from a diseased or defective mental condition at the time he committed the criminal act charged, you may find him guilty. If you believe he was suffering from a diseased or defective mental condition when he committed the act, but believe beyond a reasonable doubt that the act was not the product of such mental abnormality, you may find him guilty. Unless you believe beyond a reasonable doubt either that he was not suffering from a diseased or defective mental condition, or that the act was not the product of such abnormality, you must find the accused not guilty by reason of insanity. Thus your task would not be completed upon finding, if you did, that the accused suffered from a mental disease or defect. He would still be responsible for his unlawful act if there was no causal connection between such abnormality and the act. These questions must be determined by you from the facts which you find to be fairly deducible from the testimony and the evidence in this case.¹³

The important differences between the Durham rule and the M’Naghten Rules were twofold. First, the Durham rule spoke of the defendant’s “mental disease or defect,” rather than the “defect of reason” of M’Naghten. Second, the Durham rule stipulated that for an insanity plea to be successful, the criminal act must have been the *product* of the accused’s mental abnormality. One purpose of the Durham rule was to shift from the narrow emphasis of M’Naghten on reason to a broader, more integrated model of human personality. It was thought that this change would allow psychiatrists to testify more freely about the broad range of factors relevant to the defendant’s mental condition.¹⁴ Psychiatry rarely concerns itself with questions about defects of reason, or knowing the difference between right and wrong. Durham allowed testimony from psychiatrists on much broader issues, with the hope that juries would thus be better informed to make judgments about the defendant’s mental life.¹⁵

Though the Durham rule was not established until 1954, the ideas that led to its adoption had been debated for some time. A law similar to Durham had been adopted in New Hampshire in 1869 as a result of the writings of the Maine physician Isaac Ray.¹⁶ In contrast to the narrow criteria of M’Naghten, Ray believed that a person should be exonerated by reason of insanity as long as his mental abnormality embraced the criminal act within its sphere of influence.¹⁷ These ideas found their way into law in *State v. Pike*, which stated that the defendant in a murder trial should be acquitted if “the killing was the offspring or product of mental disease.”¹⁸

Ray’s ideas were debated extensively in England, but were never adopted. In 1923, the Medico-Psychological Association proposed to the Atkin Committee on Insanity and Crime that the M’Naghten Rules be replaced by a formulation similar to that which Ray advocated. The Atkin Committee eventually recommended a more conservative position advocated by the British Medical Association, which proposed that the irresistible impulse test be added to the M’Naghten Rules, but the government favored neither proposal and did not make any changes to the existing law.¹⁹

In the United States, the Durham rule proved to be unsuccessful for several reasons. First, because it widened the range of relevant mental abnormalities without offering any definition of what constituted “mental disease or defect,” it opened the door for debates between psychiatrists about the definition of mental disease, and the pertinence of conditions such as psychopathy and narcotics addiction.²⁰

Second, because of its stipulation that the accused’s action be the product of mental disease or defect, Durham gave rise to irresolvable disputes over mental causation. According to Durham, the presence of mental illness was not an excuse in itself; it excused only if it in some way caused the defendant’s action. However, this distinction is in practice of little value, because

it is extremely difficult to argue that the actions of a mentally ill person are in no way caused by his mental illness.²¹

The courts initially invited testimony from psychiatrists and psychologists about the relationship between the defendant's mental condition and his offense. However, it gradually became clear that this was in fact an invitation for experts to expound on their opinions of the defendant's moral culpability. By 1967, the courts had directly prohibited any psychiatric testimony about whether the defendant's action was the product of his disease.²²

Moore argues persuasively that this failure was to be expected, given the clash between the deterministic assumptions of psychiatry and the law's assumptions of free will. While the law must assume that a person acts freely unless it is shown otherwise, psychiatry diagnoses and treats mental illness by assuming that there is a cause of the mentally ill person's thoughts and behavior. Moore notes, "If mentally ill persons are excused because of their lack of 'free will' (in a contra-causal sense), then psychiatry could be of no help, for its theoretical commitment is that none of us enjoys the freedom the mentally ill are supposed to lack."²³

The American Law Institute Model Penal Code

In 1962, the American Law Institute proposed its Model Penal Code, whose section on the insanity defense read:

1. A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks the substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of law;
2. As used in this article, the terms "mental disease" or "defect" do not include an abnormality manifested only by repeated criminal or anti-social conduct.²⁴

The A.L.I. test was an attempt to remedy many of the difficulties of earlier formulations of the insanity defense. By saying that to be held responsible an agent must have the capacity "to conform his conduct" to the law, the A.L.I. test covered some of the difficulties in volitional control which the irresistible impulse test was designed to handle. By substituting "appreciate" for M'Naghten's "know," the A.L.I. test was intended to convey a deeper and less narrowly intellectual sense of understanding. In a fashion similar to M'Naghten, the A.L.I. test focused on the defendant's ability to appreciate wrongfulness, and it also included a clause clearly intended to exclude the diagnosis of psychopathic or

sociopathic personality from the definition of mental disease. And like Durham, by including the stipulation that the act be “the result of” mental disease or defect, the A.L.I. test retained the need for a causal connection between the mental abnormality and the crime.²⁵

However, the A.L.I. test also retains some of the problems of its predecessors: what is meant by mental disease; how to tell whether a person is truly incapable of conforming his conduct to the law or whether he merely did not conform it; what is meant by “criminality” or “wrongfulness”; and what it means to “appreciate” criminality or wrongfulness. Moreover, like Durham, it has the problematic requirement that an action be caused by mental disease.

Another potential difficulty is created by the A.L.I. test’s stipulation that the criteria should not apply to abnormalities manifested only by repeated criminal or antisocial conduct. This stipulation was presumably meant to exclude the so-called “psychopath,” or “sociopath,” or “antisocial personality,” whose condition has often been included in psychiatric diagnostic schemes but who many people also feel should be held accountable for his actions. However, the A.L.I.’s stipulation might well also exclude some other offenders from the insanity defense whom many people would regard as properly falling within its scope. For example, a person with an organic frontal lobe lesion might exhibit only disinhibited behavior; such a person would be suffering from an illness for which she bears no responsibility, but which is manifested only in antisocial behavior. Many people would regard such a person as not responsible for her actions, but, at least on its surface, the A.L.I. code would seem to exclude her from using the insanity defense.²⁶

Diminished Responsibility

Because of its historical reliance on the defense of “diminished capacity,” Scotland escaped many of the snares and pitfalls that persistently reappeared in English and American jurisprudence. This defense allowed for a middle road between the verdict of sane and guilty on the one hand, and that of insane and excusable on the other. If her mental faculties were partially impaired, a person’s criminal responsibility could be mitigated. The originator of the diminished capacity defense, Sir George Mackenzie of Rosenhaugh (1636–69), wrote:

It might be argued that since the law grants a total impunity to such as are absolutely furious therefore should by the rule of proportions lessen and moderate the punishments of such, as though they are not absolutely mad yet are Hypochondrick and Melancholy to such a degree, that it clouds their reason.²⁷

Scotland's "diminished responsibility" defense eventually made its way into English law, when a version of it was included in the Homicide Act 1957. This law stated:

Where a person kills, or is 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 party to the killing.²⁸

The Homicide Act 1957 had obvious deficiencies in its confusing language, with terms such as "mental responsibility" and "abnormality of mind." Nonetheless, from a moral standpoint, the "diminished responsibility" standard is a sensible one. First, it conforms with our common sense notions of causation; there are often many causes to an event, of which the agent's action is only one. Thus, from this graded concept of causal responsibility seems to follow a graded concept of moral responsibility. Second, the borderline between mentally ill and mentally healthy is not always bright. A defense of diminished responsibility aligns more truly with a picture of mental capacity painted in shades of gray, rather than black and white. The Royal Commission on Capital Punishment 1949–53 made this observation:

It must be accepted that there is no dividing line between sanity and insanity, but that the two extremes of "sanity" and "insanity" shade into one another by imperceptible gradations. The degree of individual responsibility varies equally widely; no clear boundary can be drawn between responsibility and irresponsibility. . . . The acceptance of the doctrine of diminished responsibility would undoubtedly bring the law into closer harmony with the facts and would enable the courts to avoid passing sentence of death in numerous cases in which it will not be carried out.²⁹

Conclusion

From a moral perspective, two broad points about the various formulations of the insanity defense are worth considering. The first point concerns the disputes over the definition of mental illness and its causal relationship to the defendant's action. In previous years, much of the debate over the various formulations of the insanity defense centered around the question of how mental aberrations and deficiencies were related to a person's actions. Certain sorts of

mental problems seemed clearly unrelated, yet others were obviously highly relevant; the point at issue was to try to establish some sort of definition that included the relevant problems and excluded the others. Thus came endless debate over the terms “mental disease,” “mental defect,” “mental abnormality,” “defect of reason,” and so on.

The debate over causation arose for similar reasons. One did not want mental illness to be an excuse in itself; this would mean that even mental illnesses with no bearing at all on a person’s actions would excuse him from responsibility. The solution to this was to require some sort of causal relationship between the mental illness and the action, to require that the action be the “product” or the “result” of the mental illness. But this engendered futile arguments about causal relationships between mental illness and action (arguments that were, and are, thought to be empirical, but that are in fact philosophical).

Both of these debates arise from a faulty theoretical model of the mind and how it relates to responsibility. This model supposes that responsibility is absent if an identifiable physical cause of the agent’s actions can be found. Much of the search for an acceptable definition of the sorts of mental illness which abrogate responsibility is an effort to include organic mental disorders and those for which an organic or physical cause is suspected — those disorders that might be more properly regarded as neurological, rather than psychiatric — and to exclude the less physically explainable functional disorders. The assumption is that if the action has a physical cause, then responsibility is negated, because the agent did not “will” or “intend” the action. We are responsible only for those actions that are caused by our willing them, and if it can be shown that they are in fact caused by a physical brain abnormality, then the agent can no longer be held responsible for the action.

This model ignores the fact that we have (at least) two different languages in which to speak about mental events, and that speaking in one language does not exclude the possibility of speaking in the other. On the one hand, we speak of the brain, its anatomy and its physiology, of tumors causing personality changes and neurotransmitter deficiencies causing hallucinations. On the other hand, we speak of the will and intentions, of having reasons for actions, of actions resulting from beliefs and desires. However, identifying a mental illness in physical language and pointing to it as the “cause” of an action does not mean that this other language of will and intention no longer applies. Identifying the cause of a person’s action in physical terms does not mean that the agent did not “will” that action. A person who acts violently as a result of a tumor may have willed his violent action just as much as a person with a healthy, normal brain. This is not to say, of course, that we do not have good reason to exonerate mentally ill offenders for their actions, especially the violent person with

a brain tumor. It is only to say that the reason for exonerating them is not that we have identified a "cause" for the action which negates intention or will.³⁰

Clarifying this confusion eliminates the problems of determining what qualifies as a mental illness, and whether mental illness has caused the agent's actions. It quickly becomes clear that these are not the relevant questions. What we actually want to know, and what these questions are in fact pointing to, are whether the mental disorder is to a significant degree *relevant* to the agent's action, and whether the agent is *responsible* for this disorder. The causation clauses in the insanity defenses are attempts to cover the first of these; we do not want to allow mental disorders that clearly have no bearing on a person's action to negate her responsibility for that action. The definitions of mental illness were attempts to deal with the second of these; we do not want to excuse a person from responsibility if her mental illness was something for which she was to some degree responsible, such as a flawed character.

The second point concerns an area of confusion in these formulations of the insanity defense about the *reason* why insanity might excuse a person from responsibility for his actions. Throughout these formulations, a tension exists between two approaches. On the one hand, the formulations sometimes seem to assume that insanity excuses in the way that ignorance or compulsion excuse. That is, if insanity in some way negates or alters the agent's intention, then he is excused from responsibility. In this view, insanity might cause a person to be ignorant in some way about what he is doing, or it might compel him in some way to act, and its influence in either of these cases might negate the agent's intentions and hence his responsibility. Thus arose the ideas that an agent might be excused if he did not appreciate the wrongfulness of his action, if he could not conform his conduct to the law, and so on.

On the other hand, at other times the formulations seem to be operating under the assumption that insanity creates a special *class of beings*, the members of which cannot be regarded as morally responsible for their actions. In the same way that, for example, infants and animals cannot be regarded as morally responsible for their actions, neither can the insane, and the task of an insanity defense is to determine which persons belong in this class of the insane. This assumption seems to underlie M'Naghten's emphasis on a defect of reason as the distinguishing characteristic of insanity. It is not that a defect of reason negates intention; it is that a defect of reason marks out a person as belonging to the class of beings who cannot be regarded as responsible for their actions.

There is merit in each of these views of the insanity defense. In some cases, we are inclined to say that the reason for excusing a person from responsibility is that his mental illness negates his intentions, as when a delusion causes a person to believe that he is doing something other than what he is ac-

tually doing (say, shooting at a body-snatcher rather than at his nephew).³¹ In other cases, we are inclined to say that a person should be exonerated because he is not sufficiently like other human beings for us to regard him as such for the purposes of assessing responsibility. A severe psychotic or a patient with Alzheimer's disease might fall into this class of beings.³² Though I will argue later that we must incorporate both of these two conceptions into our ideas of how mental illness negates moral responsibility, for the moment it is sufficient to note that the tension between these two conceptions of how insanity excuses lies at the root of many of the problems with previous formulations of the insanity defense.

In this chapter, I have tried to give a brief overview of the issues involved in the insanity defense, especially those issues related to moral responsibility. By this point it should be clear that a major problem for the insanity defense is the fact that different types of mental disorder can affect a person's moral and legal responsibility for his actions in very different ways. The difficulty is that of encompassing the common elements of a wide variety of disorders within a few understandable formulations. This is also a difficulty for the questions of moral responsibility, and not just for those people who are mentally disordered. One of the aims of the next chapter, which draws on Aristotle, will be to sort out in a broader fashion the various ways in which a person might be excused from responsibility for his actions.