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Not Guilty by Reason of Insanity?

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Writing in *USA Today*, Professor Jonathan Turley of George Washington University argues that a society which fails to "recognize the difference between a premeditated and delusional act," is immoral. Turley points to four states, Idaho, Kansas, Montana, and Utah, that have eliminated the insanity defense altogether. Other states have moved to curtail the insanity defense in significant ways.

In recent years, there has been no shortage of notorious defendants claiming an insanity defense. Currently, Lashaun Harris is on trial in San Francisco for the murder of her three children, whom she is charged with throwing into San Francisco Bay last October. According to press reports, Harris told authorities that God wanted her children as a sacrifice.

The nation's conscience was seared by the news that Andrea Yates, a housewife in Houston, had drowned her five children. With regard to all these cases, the public at large is generally ready to concede that those who committed these acts might be mentally impaired or ill, but most Americans believe that mental illness does not eliminate the moral burden of a criminal act.

The idea of the insanity defense has roots that go all the way back to ancient Greece and Rome. Nevertheless, the modern version of an insanity defense emerged from the attempted assassination of the British Prime Minister in 1843. In that case, Daniel M'Naghten shot Edward Drummond, an aide to British Prime Minister Sir Robert Peel. M'Naghten's goal was the assassination of the Prime Minister. Instead, he shot and killed Sir Robert's principal secretary.

Faced with a defendant that appeared to be insane, British courts came up with the so-called "M'Naghten Rules," intended to identify which defendants are insane, and thus are not to be held as criminally responsible for their actions.

In one form or another, the M'Naghten Rules have found their way into American jurisprudence. Most American jurisdictions allow some form of an insanity defense.

As the rule stipulates, an accused is excused from criminal punishment if "at the time of committing the act, the party accused was laboring under such a defective 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." As Professor Phillip E. Johnson of the University of California, Berkeley, explains, "Successful defendants under M'Naghten are also generally

so incapable of living in normal circumstances that there is no question of granting them freedom.” But that assessment is now clouded by the fact that so many mental patients are now released into the general population. There is very little assurance that an accused found to be not guilty by reason of insanity will be kept from the larger society for any lengthy period of time.

In essence, the M’Naghten Rule opened the door for insanity claims in criminal prosecutions—especially for violent and heinous acts such as homicide. Nevertheless, the legal elite has pushed the definition far beyond the M’Naghten Rule. The “Model Penal Code of the American Law Institute [ALI],” asserts that “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 substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.” That last phrase represents a radical expansion of the M’Naghten Rule.

Other jurisdictions have come up with their own definitions and rules. The real question is this—is the insanity defense itself morally justified?

A shift to more liberal interpretations of the law with respect to insanity defenses came to the attention of the American public when John Hinckley, the young man who shot President Ronald W. Reagan in a brazen assassination attempt was found “not guilty” because of his mental state. According to reports from the trial and investigation, Hinckley had intended to kill the President in order to gain the attention of a movie star.

As Professor Johnson explains: “By traditional standards Hinckley was dead-bang guilty of attempted murder and related crimes. But he came to trial in a federal court in the District of Columbia, in a legal culture that by this time had absorbed not only of the ALI defense but also its spirit. Hinckley, whose parents were both wealthy and devoted to him, had the benefit not only of the ALI standard, and of the testimony of expert witnesses with sterling scientific qualifications, but also the general principle of evidence that the burden of proof rests on the prosecution, not the defense. Thus the federal rule required the prosecutor to prove beyond a reasonable doubt that a demented man, who had attempted to assassinate a president for utterly bizarre reasons, was not insane.”

The American public was outraged at the verdict at the Hinckley trial. Facing such pressure, Congress adopted the Insanity Defense Reform Act of 1984 which tightened the requirements for an insanity defense in the federal courts. The act stipulates that the defense bears the burden to prove that, “at the time of the commission of the acts constituting the defense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts.” The act went on to assert: “Mental disease or defect does not otherwise constitute a defense.”

With the exceptions of Idaho, Kansas, Montana, and Utah, the states and the District of Columbia have their own definitions of legal insanity with respect to those accused of committing criminal acts. As psychologist Stephen Lally explains the general contours of these laws: “If you meet the criteria for insanity, . . . you are viewed as not being criminally responsible: In other words, your thinking was too disordered or your actions too impaired to have formed the intention to commit a criminal act, and so it is unfair to inflict punishment on you. This singular exception justifies treating all other defendants as competent and criminally responsible: They rationally chose to commit a crime and should be punished for their actions.”

As Professor Johnson argues, the very idea of a criminal prosecution requires the moral understanding that human beings are responsible for their actions. Without this basic understanding, the entire logic of the law collapses. Thus, the very existence of an insanity defense affirms, in its own way, the fact that the vast majority of criminal defendants are assumed to be absolutely responsible for their actions. The supposedly rare exceptions of those deemed to be insane constitutes a counter evidence.

But does the insanity defense make moral sense? In one sense, the finding that an individual is insane might well influence the character or nature of any punishment or sentence meted out after conviction. Nevertheless, it is morally problematic at the very least when individuals are found “not guilty” of acts they have clearly and undeniably committed.

In other words, the problem with the plea “not guilty by reason of insanity” is with the words “not guilty.” It is moral nonsense to argue that a person is not guilty of committing a crime if the evidence clearly indicates that they have done so. From a Christian perspective, there is no Scriptural warrant for assuming that anything described as “insanity” eliminates

moral responsibility.

Modern critics of the insanity defense have pointed to such issues as the fact that defendants with sufficient financial means are in a better position to hire “experts” who could argue for the insanity defense. This became an issue of public concern with regard to John Hinckley, but his case is hardly unique in this regard.

At a deeper level, the late Karl Menninger, a well-known psychiatrist, argued that the insanity defense should be abolished because it undermined the notion of individual responsibility. Menninger called for eliminating the insanity defense so that the sense of individual responsibility would once again be honored by the court. Similarly, Menninger warned that the concept of sin had ceased to be meaningful in modern society. Instead, immoral actions were redefined as in terms of social or psychological pathologies, and were increasingly treated as symptoms of illness rather than as signs of depravity.

The law must deal with a seemingly endless array of complications and special circumstances. Nevertheless, the burden of any civilized society is to maintain a rule of law that holds human beings responsible for their actions. Any legal system—which must by definition include the impact of fallible human beings—falls short of perfect justice in terms of its execution and administration. Nevertheless, society bears the positive obligation to hold persons accountable for their actions, in terms of both reward and punishment.

In the main, the existence of the insanity defense is a warning that we are all too ready to redefine sin in terms of lesser categories. Furthermore, we appear ready to deny moral responsibility when there is an apparent way out that avoids the need for that judgment.

The administration of justice must combine and balance justice and mercy—but this makes sense only in a context of clear moral order and authority. Courts must be allowed considerable latitude in the application of penalties, treatments, and other available options. But finding a guilty person “not guilty by reason of insanity” is an act of moral evasion—and we all know it.

