

## Due Process Clause Does Not Require States to Adopt the M’Naughten Moral Incapacity Test in Insanity Defenses

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### U.S. Supreme Court Ruling Supports State Discretion in Fashioning Insanity Defense

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In *Kahler v. Kansas*, 140 U.S. 1021 (2020), the United States Supreme Court considered the constitutionality of a state’s ability to exclude the moral incapacity test in determining culpability and therefore blameworthiness, originally formulated in *M’Naughten Case*, 8 Eng. Rep. 718 (H.L. 1843). In a 6–3 decision, the Court ruled that the Constitution’s due process clause does not compel states to acquit a defendant who, because of mental illness, could not tell right from wrong when committing a crime.

#### Facts of the Case

James K. Kahler was married to Karen Kahler, with whom he had two teenage daughters and a 9-year-old son. In early 2009, Ms. Kahler filed for divorce and moved out of their home with her daughters and son. Over the course of the next several months, Mr. Kahler’s personal and professional life deteriorated. Unable to perform his work duties consistently, he was fired from his job in August 2009. In 2009, Ms. Kahler and her children were at her grandmother’s house in Kansas for Thanksgiving. Mr. Kahler drove to the house,

entered the home, and shot Ms. Kahler twice, then shot her grandmother and his two daughters. He allowed his son to flee, but all others were killed. Mr. Kahler was arrested the following day and was charged with four counts of first-degree murder.

Prior to trial, Mr. Kahler’s defense filed a motion before the Kansas Supreme Court asserting that the state’s particular form of dealing with insanity claims by taking into account only *mens rea* violated the Fourteenth Amendment’s due process clause. They asserted that this allowed the conviction of a mentally ill person who could not differentiate right from wrong. The court denied this motion.

At the state trial, the defense argued that Mr. Kahler’s mental illness had rendered him unable to control his behavior. The defense argued that, at the time of the murder, Mr. Kahler had major depressive disorder as well as obsessive-compulsive, narcissistic, and histrionic personality traits. Both the prosecution and defense presented expert psychiatric testimony. At the end of the trial, Mr. Kahler was found guilty of capital murder, with the jury only needing to consider the intent to kill. At sentencing, Mr. Kahler offered further evidence of mental illness to mitigate his sentence. The jury chose the death penalty.

After conviction, Mr. Kahler appealed a second time to the state supreme court, again arguing that the state’s exclusion of the moral incapacity test was unconstitutional, as well as several other challenges related to the conduct of the trial. In the appeal, Mr. Kahler challenged the 1995 state law (Kan. Stat. Ann. § 22-3220 (2007)), which limited the mental condition defense to a mental disease or defect that negated the *mens rea* or M’Naughten cognitive test. The Kansas Supreme Court rejected the appeal and noted a prior precedent in *State v. Bethel*, 66 P.3d 840 (Kan. 2003), in which the court decided that the Kansas statute limiting the defense to culpable mental state did not violate the U.S. or Kansas Constitutions.

Mr. Kahler appealed to the U.S. Supreme Court, which granted a writ of *certiorari* in March 2019. Mr. Kahler’s petition presented the long-standing historical precedents before and after *M’Naughten* for the moral incapacity component in mental condition defenses. The petitioners emphasized that a defendant’s culpability has been historically connected to the ability to determine right from wrong. Mr. Kahler argued that Kansas’s statute is unconstitutional because it eliminated an element of the

insanity defense that is historically central to the insanity defense. Relying on a decision in *Leland v. Oregon*, 343 U.S. 790 (1952), he argued (and the dissent agreed), that to exclude the moral incapacity part of *M Naughten* in the insanity defense in Kansas “offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked fundamental” (*Leland*, p 798).

The government argued that the Court has historically recognized states’ rights to largely determine the nature of their criminal law and procedures. In addition, because there has been a variety of definitions and interpretations of insanity, the moral incapacity part of *M Naughten* is not an approach inherently required by the due process clause.

#### Ruling and Reasoning

In *Kahler v. Kansas*, the Court affirmed that the Constitution’s due process clause in the Fourteenth Amendment does not require that “Kansas adopt an insanity test turning on a defendant’s ability to recognize that his crime was morally wrong” (*Kahler*, p 1037).

The cognitive capacity test permits examination of whether a defendant was able to understand what he was doing when he committed a crime. This contrasts with the moral capacity test, which permits examination of whether the defendant could distinguish right from wrong with respect to the criminal act.

Justice Elena Kagan, joined by Justices Roberts, Thomas, Alito, Gorsuch, and Kavanaugh, wrote the majority opinion. In *Clark v. Arizona*, 548 U.S. 735 (2006), the Supreme Court categorized four “strains variously combined to yield a diversity of American standards” (p 749) for considering when a mental illness might absolve a defendant of criminal culpability. Two of these strains (i.e., the cognitive capacity and the moral capacity) are found in the *M Naughten* case. In addition, jurisdictions have embraced the volitional incapacity and the product-of-mental-illness test as other approaches to address the interplay between mental illness and the law in insanity defenses. The Court pointed out that even that taxonomy does not do justice to the complexity of the field. The Court reviewed the variations across jurisdictions that attempted to limit or fashion the insanity defense. Whereas many state jurisdictions preserve the moral incapacity test, this too has variations. Some jurisdictions embrace a moral

wrongfulness test that is measured by the defendant’s awareness of legal wrongfulness, whereas other jurisdictions have determined that an objective moral standard is the correct approach to the moral capacity test in insanity. The Court reasoned that Kansas’s choice to preserve the cognitive capacity test (*mens rea*) from *M Naughten* and to eliminate the moral incapacity test is no different than other state’s choices to limit and fashion the insanity defense. Mr. Kahler argued that Kansas had effectively eliminated the insanity defense by limiting the question of criminal responsibility to only the cognitive *mens rea* component of *M Naughten*. The Court concluded that the moral incapacity element was found in sentencing and disposition considerations and had not been removed completely from the process.

Reviewing precedent in *Clark v. Arizona*, *Leland v. Oregon*, and *Powell v. Texas*, 392 U.S. 514 (1968), the Court reasoned that it had already declined to require a “single canonical formulation of legal insanity” (*Clark*, p 753). The majority said that the “moral capacity test” was not a fundamental component of the insanity defense. The Court concluded: “We therefore decline to require that Kansas adopt an insanity test turning on a defendant’s ability to recognize that his crime was morally wrong . . . . Kansas takes account of mental health at both trial and sentencing. It just has not adopted the particular insanity defense Kahler would like. That choice is for Kansas to make . . .” (*Kahler*, p 1037).

#### Dissent

Justice Breyer, along with Justices Ginsburg and Sotomayor, filed a dissenting opinion. In short, the dissent agreed that states should have “broad leeway” in defining crimes and criminal procedures, including the ability to shape the insanity defense. It was the dissent’s view, however, that Kansas had done more than simply redefine the insanity defense, rather they had eliminated “the core of a defense that has existed for centuries: that the defendant, due to mental illness, lacked the mental capacity necessary for his conduct to be considered morally blameworthy” (*Kahler*, p 1038). Justice Breyer offered an extensive analysis of why the moral capacity test in *M Naughten* meets the *Leland* threshold of the due process clause. The dissent reviewed the historical common-law background that linked criminality to reason, free will, and moral understanding. Justice Breyer reviewed early English and American law that

likewise ties culpability to moral understanding. Justice Breyer concluded that 45 states, the District of Columbia, and the federal government recognize an insanity defense that takes into consideration the blameworthiness of a defendant, and that blameworthiness is tied to the defendant's understanding and appreciation of the moral wrongfulness of his or her actions.

Discussion

*Kabler* now joins several U.S. Supreme Court decisions that shape the contours of the insanity defense in the United States. In *Kabler*, the Court resisted setting a national standard for the insanity defense. While the dissent is quite effective in pointing out the historical and case law traditions that argue for a moral incapacity standard consistent with the *Leland* threshold, the majority comes to a different conclusion. Clearly, respecting a state's rights to shape criminal law and procedure is consistent with a long line of previous Court decisions, yet Justice Breyer offers a vivid example that a psychotic man who has the delusional belief that a dog commands him to shoot another man will not have the protection of an insanity claim in Kansas, while the psychotic man who shoots another man who he believes to be a dog will benefit from the Kansas fashioning of the insanity defense. This example may trouble many who approach the insanity defense and understand mental illness from a clinical perspective. It is exceedingly rare that psychosis involves such a distortion of reality that a person actually has the delusion that another man is a dog. But many of us have observed delusional distortions, deific commands, and other psychotic perceptions that direct a person to act in a violent fashion, believing perversely that the act is morally justified. The phenomena of psychosis (i.e., its impact on reason, decision-making, emotion, perception, judgment, restraint, behavior, and rationality itself) all were notably absent in this decision.

## The Right to Bear Arms and Persons with Mental Illness

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### Forfeited Second-Amendment Rights Due to Mental Illness Cannot Be Restored by Passage of Time or Claims of Rehabilitation

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In *Beers v. Atty Gen. of U.S.*, 927 F.3d 150 (3d Cir. 2019), the U.S. Court of Appeals for the Third Circuit considered whether a defendant's constitutional rights had been violated when a federal district court barred him from owning firearms due to a history of involuntary psychiatric commitment. Federal law 18 U.S.C. § 922(g)(4) (2005) prohibits the possession of a firearm by anyone who has been adjudicated as a "mental defective" or committed to a psychiatric institution. Bradley Beers challenged the constitutionality of this federal statute, as it applied to him, on the claim that a substantial amount of time had passed since his hospitalization and he had been rehabilitated. The Third Circuit affirmed the district court's judgment that Mr. Beers remained a member of the historically barred class of persons prohibited from owning firearms, and, as such, the statute was constitutional as applied.

#### Facts of the Case

On December 28, 2005, Mr. Beers was involuntarily hospitalized in a psychiatric facility after he told his mother he was suicidal and put a gun to his mouth. His commitment was extended December 29, 2005, and again January 3, 2006, as the examining physician concluded he was suicidal and required hospitalization. After his hospitalization, Mr. Beers attempted to purchase a handgun but was denied after a background check revealed he had a history of an involuntary psychiatric commitment. Mr. Beers had no further treatment for mental illness after 2006. In 2013, he was evaluated by a physician who opined that it was safe for him to handle firearms. Mr. Beers subsequently filed a complaint with the U.S. District Court for the Eastern District of