United States v. Lyons: Toward a New Conception of Legal Insanity

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In *United States v. Lyons* (1984), the U.S. Fifth Circuit Court altered its definition of legal insanity to conform with recent recommendations of the American Bar Association and the American Psychiatric Association. This paper briefly reviews the social and legal context of the Court's ruling. The author then discusses the insanity defense's rationale and suggests an interpretation of the Court's new definition that should guide psychiatric testimony.

John Hinckley, Jr.'s, 1982 insanity acquittal provoked widespread shock, outrage, and calls for legal reform. By contrast, *United States v. Lyons*,[1] a 1984 decision that brought actual changes in the U.S. Fifth Circuit's definition of insanity, has attracted scant attention.

Robert Lyons was convicted in Louisiana on several counts of securing controlled narcotics. He appealed, arguing that, when he was originally tried, he should have been allowed to have experts testify that involuntary addiction and brain damage had caused a volitional impairment that left him unable to resist obtaining and using drugs. The U.S. Fifth Court of Appeals reheard the case *en banc* and agreed that expert testimony should have been permitted. However, Lyons' appeal also provided occasion for the Court to change the legal definition of insanity itself to agree with recent recommendations of the American Psychiatric Association (APA)[2] and the American Bar Association (ABA).[3] Henceforth, defendants in the Fifth Circuit may be acquitted only if they are unable to appreciate wrongfulness; they may not plead insanity on the grounds that they lacked "capacity . . . to conform [their] conduct to the requirements of the law," as had been possible following the Fifth Circuit's adoption[4] of the American Law Institute (ALI) insanity definition.[5] More recently, federal court cases have become subject to the new ABA/APA standard.[6]

This paper suggests that *Lyons* was a right decision made for the wrong reasons. Although based on common misperceptions about insanity trials and the "insubstantial objections"[7] of the in-

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sanity defense's detractors, *Lyons* is consistent with a conception of legal insanity that could help courts and experts avoid the philosophical pitfalls inherent in previous insanity formulae.

Following a brief discussion of the social, political, and theoretical issues affecting the *Lyons* decision, this paper develops an interpretation of the Fifth Circuit's new insanity standard. While it contrasts with what the Court probably intended, the interpretation presented here conforms closely to the implicit legal and moral concerns that historically have supported the insanity defense.

The *Lyons* Decision: A Brief Critique

In response to "extraordinary" public pressure to abolish the insanity defense entirely, the ABA in 1983 sought a rewording of the plea that would "restore public respect for the criminal justice system" and still "preserve a meaningful insanity defense."[3] For two decades, the ABA had supported the use of the ALI insanity definition, which excuses otherwise criminal acts if the defendant lacked "substantial capacity" to appreciate their wrongfulness or to "conform his conduct to the requirements of the law."[5] The ABA now supports an insanity standard that retains the ALI's "cognitive" criterion for exculpation—i.e., the inability to appreciate wrongfulness—but which eliminates the "volitional" criterion—the lack of capacity to conform conduct.

In adopting the ABA's recommendations, the *Lyons* court seemed swayed by popular and persistent views that insanity trials are courtroom "circuses," featuring battles between psychiatric experts who confuse jurors, endanger society, and help criminals exploit legal loopholes.[8–17] The judges echoed the APA's view[2] that jurors are more likely to be confused and to make errors if they or psychiatric experts are asked to speculate about a defendant's "capacity to 'control' himself."[1] The court majority adopted this perspective even though, as Judge Rubin noted in his dissenting opinion,[18] there is little empirical evidence that the existence or wording of the insanity plea endangers society or the legal system. Despite popular misconceptions to the contrary, the plea is only made in approximately one percent of cases,[11,14,15] often is advanced without disagreement among psychiatrists or attorneys,[19–23] often results in lengthy hospitalizations for acquittees,[24] and appears not to cause jurors special confusion.[25] Further, the "volitional prong" seems not to have posed distinct problems for jurors,[18] nor has it caused psychiatrists to disagree.[26]

The Fifth Circuit judges agreed with the ABA's belief that the legal system has, in recent years, attributed to psychiatry scientific skills and predictive powers that it lacks. The Court felt that most psychiatrists "now believe that they do not possess sufficient accurate bases for measuring a person's capacity for self-control"[1] and cited Richard Bonnie's[27] view that there is "no objective basis" for assessing strength of impulses or degrees of volitional impairment. The judges believed that an

insanity standard that concerned itself only with "cognitive" functioning would "comport with current scientific knowledge," would not be interpreted too loosely, and yet would allow jurors flexibility in judging the degree to which mental illness impairs someone's "grasp of reality." The word "appreciate" was chosen over "know" because it is rarely possible to say that a psychotic is *totally* unable to know something.

It seems reasonable to question whether a cognitive insanity definition will greatly decrease courtroom controversy, even if the change does have some public relations appeal. Appreciating a situation involves judging and valuing, and is, therefore, an activity that differs *in kind* from knowing facts about a situation. As a review of the Hinckley trial transcript shows,[28] deciding what "appreciate" means can give doctors and lawyers a good deal to disagree about. So, too, would the problem of distinguishing whether a defendant *could* not appreciate wrongfulness or merely *did* not. Removing the volitional prong could ultimately increase debate about insanity trials because the new definition seems to allow punishing "a person for conduct he had no ability to avoid."[18] Punishing persons "who truly cannot control their conduct" because of a lack of precise measurement, or to avoid conflicting testimony, seems patently unfair.[6]

The Volitional Prong: Problems with Measurement and Metaphor

The most important flaw in the *Lyons* reasoning is shared in part by the ABA and the APA opinions the Court cited. All three opinions fail to emphasize the crucial problem with the ALI insanity definition, which is not that it undermines public safety, or that it lacks scientific support, but that its volitional prong is philosophically unsound.

The ALI test's language suggests that some insane persons act crazily because they lack "the substantial capacity" to "conform . . . conduct." When told that individuals have the "mental capacity" to do something, we should not infer that some theoretically measurable entity (such as "lung capacity") allows them to perform certain actions.[29] We only mean that, in certain circumstances, they predictably do certain things, and this characteristic mode of acting endures over time. Individuals who are "incapacitated" cannot do all the things that they should normally be able to do. Calling tendencies or abilities "capacities" reifies and concretizes logical enduring behavioral patterns, making features of actions analogous to tangible entities one can see and measure. The word "substantial" only reinforces the quantitative metaphor, as though we mean "more than a little." There is nothing wrong with speaking about frequent behavioral patterns as though they were quantities of a certain size, strength, or volume as long as these metaphors do not confuse us into thinking that tendencies *really* are capacities. The Fifth Circuit majority's language about "measuring" suggests that they took the quantitative metaphor too literally.

The notion of conforming conduct does not occur often in ordinary

speech. It suggests that people engage in some peculiar process of shaping their actions much the way a potter shapes clay. In reality, there is no distinct action of conforming that is separate from conducting oneself,[29] except (again) in some metaphorical sense. Of course, people do sometimes think about alternative courses of actions and consider potential consequences, and, in the process, their behavior is affected. The authors of the ALI test probably felt that some mentally ill people cannot engage in such a process and therefore may not be criminally responsible for some of their actions. However, defining this incapacity via an implicit metaphor necessarily injects imprecision into the definition.

The ALI test's volitional prong is a twentieth century rewording of Isaac Ray's highly influential[30–32] belief that some insane persons are "irresistibly impelled to the commission of criminal acts."[33] Underlying the notion of "irresistible impulse" is an implicit conceptualization: because some crazy actions are difficult to account for using ordinary explanatory paradigms, they must be analogous to actions performed under duress. The next section explores our ordinary language explanatory paradigms, but let us examine first the compulsion analogy in some detail.

Aristotle recognized two excuses for actions: compulsion and blameless ignorance. Compulsion excuses because the motive for compelled actions comes from outside oneself; such actions are not performed by someone who is feeling a passion, but by one who acts as though he or she is in another's power.[34] One who acts under duress is the instrument of someone else's desire.

For example, suppose Jones points a gun at Smith's children and threatens to kill them unless Smith robs a bank for Jones, and suppose Smith has good reason to think Jones would carry out his threat. Smith might consider few if any alternatives to or consequences of robbing the bank, even though his moral principles inform him that bank robbery is wrong. Smith might be so scared that it wouldn't even cross his mind that bank robbery is illegal. Of course, a jury might not convict Smith because he acted under duress: Smith only wished to save his children and acted only as an instrument of Jones' desire to have the bank robbed.

The irresistible impulse notion suggests that some crazy behavior may be explicable by analogy to actions performed under duress, and excusable for that reason. When we regard crazy behavior as being compelled, we invoke a conceptualization of action that strongly parallels the situation of Smith, who is the instrument for a wish that is not his. To carry out the parallel, some agent must be substituted for Jones; because no actual agent is really present, an "internal" agent is invoked, with many of the features and powers of persons. Jones' making a real threat is paralleled by an intrapsychic threat or "wish" coming from "inside" Smith. Because, ordinarily speaking, only agents make threats, the internal compulsion is implicitly described or thought of as though it "coerces," or "forces," the mentally ill to make

"hard choices." "Internal impulses"—the phrase suggests a kind of pushing—take control of the mentally ill and override the capacity that ordinarily "conforms conduct" by opposing illegal actions.

The concretizing metaphors of analytic metapsychology (e.g., "character structure") have permeated our language and thought and encourage explanations of behavior that ascribe agency, beliefs, and desires to intrapsychic entities.[35] Phrases such as "asocial id" or "punitive superego" attribute personal qualities to terms which, in fact, only stand for mental processes or enduring aspects of the personality. As Bruno Bettelheim[36] suggests, "These abstractions are not at all that different from the personifications of the fairy tale" (p. 75).

Statements about crazy behavior that ascribe agency to intrapsychic entities such as "impulses" or "internal pressures" are homologous to statements that the insane are ruled by demons. The anthropomorphisms of the former mode of explanation are more subtle and use terms that *sound* mechanical and impersonal, but compulsion still seems to imply some agent's doing the compelling. Although metaphoric explanations have had heuristic value in the elaboration of metapsychological theories, another mode of explanation may be better suited to the task of formulating precise legal standards.

Rationality and Responsibility

Conviction and punishment are justified only because a defendant deserves them. The law presumes that most people are responsible, i.e, liable and accountable for their conduct,[37,38] but the law has a strong moral interest in identifying individuals whose conditions or circumstances make them undeserving of criminal sanction.[39] Among such individuals are those whose courses of action are for some reason not chosen freely and rationally.[40,41]

In ordinary conversation, explanations for rational courses of action chosen freely refer to the agent's beliefs or desires. If I ask Bill why he is burning firewood, Bill might answer that he wants to keep his house warm tonight, or that burning wood is a good way to heat his house. Either way, he renders his action intelligible by giving the practical reasoning for what he does.

Aristotle conceptualized these explanations as "practical syllogisms" of action,[42] a notion that emphasizes, according to Michael Moore,[43] "the close connection between rationality and the idioms in which we understand ourselves and our fellow men in everyday life" (p. 318). A practical syllogism has two premises, one specifying what the agent desires and the other specifying the beliefs the agent has about the means available to satisfy the desire. The "conclusion" of a practical syllogism is the agent's actions. Ordinary speech offers the practical syllogism in an ellipsis, because from either premise one can construe the other.

In asking Bill why he is burning wood, I anticipate that he will make his action comprehensible. In giving me as reason for his action a belief or desire, he implies that his action "makes

sense," that burning wood is a rational activity issuing from an agent using action to gain what he wants.[44]

When we explain an agent's action in terms of his belief and desire sets, we presume to know what those sets are, and whether he can achieve through action what he wants. Further, we presume that he is a rational creature who will act to satisfy his desires in light of his beliefs, and that he has no beliefs or desires that conflict—at least not to an overriding degree—with the beliefs and desires on which he is about to act.[45]

Actions explained by reference to beliefs and desires are precisely those sorts of actions for which we usually are deemed legally responsible, because they reflect rational, free choices. To say that a course of action was chosen *rationally* implies that the agent had the ability to select it from among alternative courses, and that given his beliefs, the action could be presumed to lead to fulfillment of his desires. To say that it was chosen *freely* implies that the agent had no beliefs or desires that mandated the choice. To say that the agent *chose* to act as he did is to direct attention to the belief and desire sets that could serve as explanation for his action, to what he "had in mind" in doing what he did.[46]

Using this ordinary language paradigm of rational action assumes that a number of the agent's mental powers are unimpaired. If a person were unable to exercise these powers normally, we would say he suffered from a "mental illness."[47] There are a number of ways that the actions of the mentally ill may be unintelligible under the paradigm and therefore not blameworthy.[42,45] Actions may be senseless: no beliefs or desires could explain them; they really seem not to be choices at all. Or they may be based on beliefs that are irrational and unamenable to reason. Or they may not make sense in light of beliefs or desires that could be ascribed to a reasonable agent; such actions may seem intentional, but the agent's apparent desire is unintelligible to us as a motive for action.[48] Or such actions may be motivated by conflicting beliefs and desires, some of which are unconscious. Unconscious beliefs and desires are sometimes incoherent or inconsistent. Acting on such beliefs and desires will often be irrational because it will be self-defeating and contrary to other things one believes or desires. The law presumes that persons are able to resolve conflicting beliefs and desires, to order preferences, and to make reasonable and consistent inferences based on what they perceive.[46]

Interpreting the *Lyons* Insanity Standard

The foregoing discussion suggests a line of interpretation for the Fifth Circuit Court's new criterion for legal insanity, i.e., being "unable to appreciate the wrongfulness" of otherwise criminal conduct. The word "appreciate" denotes an activity that extends beyond the exercise of the mental powers involved in knowing something. Knowing is linked to activities such as perceiving, learning, ascertaining, remembering, and distinguishing. Appreciating—derived from the Latin *appretiare*, to set a price, to appraise—has a different

scope. One who is able to appreciate is able to set a value, to estimate aright, perceive the full force of something, to be sensitive to delicate impressions or distinctions.[49]

Appreciating is, in its fundamental sense, closely related to activities such as selecting and choosing. Individuals who, at a given time, are able to appreciate what they do are able to distinguish and evaluate alternatives in light of their beliefs and desires, to take into account expectable consequences, and to estimate accurately actions' moral worth (their rightness or wrongness), without suffering any constraints on, or impediments to, their judgment. One might argue, as does Robert Marcus,[50] that criminals only pay "lip service" to moral norms and prefer to rationalize misdeeds rather than appreciate their wrongfulness. But one who rationalizes criminal acts must appreciate that society disapproves of the deeds being justified. Moreover, the question posed by insanity trials is not whether the defendants actually appreciated their actions correctly, but whether they *could* have.

Judges and attorneys operating under the Fifth Circuit's new insanity criteria should ask psychiatrists to offer to jurors their expertise concerning what precludes people from being able to appreciate their actions' moral status. Individuals who are able to appraise the moral worth of a proposed course of action must have moral and factual knowledge of what they are doing, plus the ability to integrate this knowledge to judge the moral quality of the action.[46] Psychiatrists should be asked to ascertain whether defendants had the moral and factual knowledge and the integrative ability requisite for criminal responsibility, and to explain to courts whether and how mental illness may have compromised the defendants' appraisal of the circumstances surrounding the acts of which they are accused. This should not require psychiatrists to comment on a moral issue, because it concerns only the presence and impact of mental disorders that might impair a defendant's appreciation, a matter well within the special knowledge of psychiatrists.

The broad, comprehensive interpretation here suggested for being "unable to appreciate" wrongfulness uses language and conceptions of action that conform to our everyday usage and ways of describing people. Governed by the *Lyons* standard, psychiatrists (and those who listen to them) will not be distracted by hypostatized entities such as "cognition" and "volition," by inherently imprecise legal paradigms and metaphors, or by a temptation to "measure" reified "capacities." The new standard, properly interpreted, will direct psychiatrists', lawyers', and jurors' attention to the issue that really concerns them, whether a course of action was the outcome of rational, free choice.

Two examples will demonstrate how the phrase "unable to appreciate," properly interpreted, helps clarify issues of criminal responsibility. Consider a defendant accused of shoplifting. It is his practice to sell what he steals and use the money to buy drugs, to which he is addicted. Assume that he is like Robert Lyons, who claimed his

addiction resulted from medical treatment, so that his drug dependence was not entirely his fault. Something in our sense of right and wrong suggests that, even though we might forgive the defendant for being addicted and for desiring to use drugs, we should not forgive his shoplifting. The reason may be found in how we explain his stealing: to get money to buy drugs. This statement refers to the desire that motivated the defendant and that was his reason for doing as he did. The statement adequately explains the defendant's actions and treats him as a rational agent whose acts reflect his desires and his beliefs about how he can satisfy those desires. The explanation also suggests that the defendant should be able to appreciate his act's wrongfulness because stealing with intent to sell requires planning and organized concealment.

When the actions of addicts are attributed to a "loss of control" over drug use, logical features of behavior become implicitly personified, and a philosophical morass is created. Explaining the addict's behavior as being caused by his loss of control tempts one to think of addiction metaphorically, as though it were an agent able to "compel" addicts to commit various acts involved in obtaining or using drugs. Focusing on features of action that affect appreciation prevents this imprecision and eliminates the need for arcane legal debates about whether impulses are resistible. This does not mean, however, that the *Lyons* definition would not excuse *some* individuals who psychiatrists say have problems with impulses.

Consider a kleptomaniac, also accused of what seems like ordinary shoplifting. The APA's current *Diagnostic and Statistical Manual of Mental Disorders* (DSM-III-R)[51] terms kleptomania a "disorder of impulse control." Because kleptomaniacs are not psychotic, the authors of the ABA, APA, and *Lyons* opinions probably felt that kleptomaniacs fall under the volitional prong of the ALI insanity test; with the volitional prong removed, kleptomaniacs would be subject to legal sanctions just like any other shoplifter.[52]

Some kleptomaniacs are not just ordinary thieves, however, and treating them as just thieves doesn't seem right. Psychiatrists can help jurors see why, if the interpretation here recommended for the Fifth Circuit Court's ruling is used. Psychiatrists will not be tempted to attribute blame to ill-defined, anthropomorphic impulses that control kleptomaniacs, or to an absence of some capacity to conform conduct that ordinarily opposes impulses. Instead, psychiatrists will direct jurors' attention to what defendants could appreciate about their deeds.

Psychiatrists might testify that kleptomaniacs generally *know* that stealing is wrong and that they often are genuinely puzzled about why they steal things they do not need.[53] They sometimes experience a distinct "tension," which stealing relieves. They often do not realize that they will steal until they have already entered a store, and their "chances of apprehension are not fully taken into account."[51] Jurors hearing such testimony will understand why we may have a moral inclination to treat kleptomaniacs differently from other

thieves. It is not that kleptomaniacs are controlled by their impulses, but that they seem not to integrate their knowledge about stealing as do most persons. Kleptomaniacs, in other words, seem not to appreciate their actions' wrongfulness. Psychiatrists who help jurors understand facts about defendants in ways that clarify our moral sentiments provide evidence crucial to the task of adjudicating moral responsibility, and ultimately, guilt or innocence.

Conclusions

The new ABA/APA insanity standard, made law in the Fifth Circuit Court's *Lyons* ruling, will not greatly diminish courtroom controversy, the crime rate, or the uproar that follows acquittals in highly publicized insanity trials, nor does the new standard help the law to conform to current scientific knowledge.

The primary importance of the *Lyons* decision is philosophical. If one of the purposes of the law is to reflect generally shared moral judgments, then the law is best served by definitions that capture the bases of our moral sentiments. The ability to evaluate one's actions is closely tied to the concept of legal personhood[46] and to our ordinary way of explaining people's deeds. Not being able to appreciate one's actions' moral status is *the* feature of mental illness that excuses from criminal responsibility, because such inability entails that one's actions will not be the outcome of rational choices. Unlike volition, appreciation is a notion unencumbered by ambiguous metapsychological constructs or the ill effects of overextended metaphors. Using inability to appreciate wrongfulness as the insanity criterion keeps us focused on the essential features of culpability; only because of this does the *Lyons* ruling represent an important jurisprudential advance.

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