The Insanity Defense, Continued

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To find a person not guilty by reason of insanity in Texas, it must be shown that at the time of the crime the person did not know the difference between right and wrong.

This standard, applied in many other states, is a crude measure for something that cries out for subtlety. It is the reason that Andrea Yates was recently found guilty of murder, even though she was clearly, and by all accounts, mentally ill. The standard is fundamentally flawed and should be changed.

Consider the paranoid person who believes the neighbor's sprinkler, splashing over the hedge into his yard, is evidence of a secret plot to poison him. His dentist, in on the conspiracy, has placed transmitters in his teeth so he can be tracked. He tells the police; they do nothing. He knows it is a crime to murder his neighbor and the dentist, but what about what they are doing to him? What if he believes, additionally, that God has been sending him messages that the universe will be protected if he stops the evil plotting from spreading?

His tortured mind goes to work. Why did the police not intervene? Are they in on the conspiracy? He had better plan carefully. . .hide from the police. . .not forget to hide the evidence. . . . He is afraid, confused, and dangerous—struggling with his beliefs, his impulses, and his conscience.

Does this man know right from wrong? If he does not, then why does he hide the evidence? Why does he hide from the police? Does the patient's careful planning not show that he not only knew he would be committing a crime but that it was premeditated? Prosecutors in most jurisdictions would have no problem arguing that this man is a cold killer.

Clearly the "knowing-right-from-wrong" standard does not fit the true nature and complexity of severe mental illness. In attempting to make fixed and concrete that which is fluid and abstract, the standard locks on to what appears to be rational, but the standard ignores the irrational framework within which this behavior occurs. It seeks to explain the whole story by looking at a single piece—to make black and white that which is gray. It is precisely the gradations of right from wrong, however, that must be scrutinized in the case of mental illness and the insanity defense.

It has not always been like this: In the 1960s, the American Law Institute, a group of leading forensic psychiatrists and lawyers, recommended an insanity defense that was based on a person's ability to "appreciate," rather than "know," the wrongfulness of his act.[1] This difference is important because wrongfulness is not a simple concept. For instance, wrong in whose eyes? A person may know that an act is wrong in a legal sense—in the laws of humans—but, twisted by psychotic thinking and the delusion that these are God's wishes, the patient may think ". . .I am protecting the world from evil. . . ." He may believe that what he is doing is morally right.

And wrong to what degree? To appreciate the wrongfulness of an act would require an evaluation of the degree of wrongfulness as that wrongness was perceived by the person at the time of the act. For example, the paranoid person may know that it is wrong to wipe out the neighbor and the dentist, but he cannot appreciate how wrong it is, because he is convinced they are after him. When the police came to arrest Andrea Yates after she drowned her five children, she fussed over whether a glass was clean when one officer wanted a drink of water!

The American Law Institute further recommended that a person not be held criminally responsible for an act if, because of mental illness, he or she was powerless to control an impulse. Known as the volitional prong of the insanity defense, it meant that a person's self control was so weakened by mental illness that he or she would have committed the act

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even if there had been a policeman looking on. These recommendations were made into law in many jurisdictions.

All this changed in the aftermath of the trial of John Hinckley, who shot President Reagan and is now in a mental hospital. As has happened in the past with high-profile insanity defense cases, the public was so outraged at the outcome that policymakers stripped the standard of their careful reasoning and put back on the books laws that are reminiscent of a time when the mentally ill were burned at the stake.

Modern technology has proved what enlightened people have known intuitively: reason and emotion, two distinct regions in the brain that play off each other in the formation of "free will" and the behavior that is "chosen" as a result, are very poorly linked. Their lines of communication process information slowly. As neuroscientist Dr. Joseph LeDoux describes it: "Reason sits atop the emotions like a rider on a horse without reins."[2] It explains why we jump when we see something dark and thin on the pathway, only secondarily realizing that it is a stick, not a snake. It explains why smart people can have poor judgment. It also explains why, in extreme cases such as severe mental illness, a person's emotional state can so overwhelm reason and judgment that he or she chooses a heinous solution to a problem rather than a reasonable one. It explains why emotions, not just a person's ability to distinguish right from wrong, should be factored in when determining criminal responsibility.

Perhaps it is to be expected that the average person wants a standard for an insanity defense that exacts an eye for an eye, especially in the face of a particularly horrifying incident. However, we have a right to expect a different standard from our policymakers. We have a right to an insanity defense that shows an understanding of mental illness—one that shows that our own reason has not given way to emotions.

References

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