Reaction Paper Assignment #2

The Insanity Goes On

The acquittal of John Hinckley in 1982 set off a groundswell of criticism against the insanity plea. It was thought that lawyers had manipulated the courts and abused constitutional protections in order to set a guilty man “free.” Many people, lawyers, legislators and newspaper editors, called for the abolition of the insanity defense. Over the next few years, thirty-nine states made dozens of changes in their laws regarding insanity pleas. Utah and Idaho completely abolished the defense at criminal trials. There was a strong perception that the insanity defense was a “loophole” in the law that let murderers escape justice. Congress passed major legislation which made sweeping changes in the way the insanity plea is used in American courts.

But it’s not only defendants and attorneys who manipulate the insanity defense. Journalists and politicians also abuse the NGRI plea for their own reasons. Politicians use it as a vehicle to capture the public’s attention and journalists report on it because they are aware there is a great deal of public interest in the subject. But rarely do they explore the issue with the kind of attention and accuracy it deserves. As we have seen, statistics confirm that the plea is vastly exaggerated as a “loophole” and rarely does it get anyone off a criminal charge. But the common understanding of the plea is exactly the opposite. Samuel Walker writes: “This misunderstanding explains the fact that nearly half thought it should be abolished and an incredible 94.7% thought it should be reformed” (Walker, 1994, p. 151). Of course, any criminal defendant can raise the issue of insanity, which is his or her right to do. Actually succeeding in that defense is another issue entirely. Even Kip Kinkel, 17, who shot 29 people in an Oregon school rampage in 1998, was unable to substantiate an insanity defense. So were David Berkowitz, Ted Bundy, Sirhan Sirhan, Henry Lee Lucas, Charles Manson and John Wayne Gacy.

But since the insanity defense is utilized almost exclusively in murder cases (it is extremely rare in any other type of offense), the publicity it receives is far out of proportion to its use. It has become part of the promotional apparatus of high profile criminal cases in modern times. The trials of Jeffrey Dahmer, Hinckley, David Berkowitz (The Son of Sam Killer) and the Lorena Bobbit mutilation case, are simply not typical of most criminal trials held in America any more than O.J. Simpson was a typical murder defendant. It is simply incorrect to assume that what happened in the O.J. Simpson trial happens in murder trials across the country. And yet, it is not difficult to find a press story or a television talk show that laments the O.J. trial as symbolic of all of that is wrong with criminal justice in America. Nothing could be further from the truth, since the Simpson trial is about as far as one can get from the ordinary workings of our criminal justice system.

Legal scholars, judges, attorneys and clinicians have tried for hundreds of years to come to some sort of mutually acceptable understanding of what criteria should be used to gauge a person’s culpable mental state. It hasn’t been easy. The complex turnings of the human mind are not so easily deciphered according to a prepared script. Even if the insanity defense were eliminated tomorrow, it would not eradicate the issues under consideration. Defense attorneys would still have to address culpable mental state and so would prosecutors. Mens rea assessment is open to either side.

Consider the Jeffrey Dahmer case. Dahmer was arrested in Milwaukee in 1991 after he had killed at least 13 victims. His apartment contained the remains of many young men who he had brutally murdered and dissected. He poured acid on his victims, cut them into pieces and preserved their heads and genitals. He treated, preserved and decorated the skulls of his victims. His crimes are a litany of perversion and torture that is rare even for sexually motivated serial killers. In court, his attorneys attempted to plead Dahmer not guilty by reason of insanity. But prosecutors were able to prove that Dahmer knew full well that killing was against the law and what he was doing was wrong. The insanity plea was not accepted in his case. If someone like Dahmer could not be categorized as legally insane, then it stands up to reason that the criteria for insanity must surely be a difficult standard to meet.

This is the reality of the insanity defense in America: difficult to plead, seldom used and almost never successful. But in that small number of cases where it is successful, it is sometimes manipulated or abused in a way that often grabs headlines and captures the imagination of the public. Ultimately, only a jury can decide the issue of insanity, which in itself may be the most controversial aspect about the insanity defense. In other words, people who have no training in the field, rarely come into contact with the mentally ill and have a minimal understanding of the issues involved, make legal, long-lasting judgments that are frequently based on shifting criteria. Or as U.S. journalist Bugs Baer (1886-1969) once wrote: “It’s impossible to tell where the law stops and justice begins!”
**M’Naghten Rules**

"Integrity has no need of rules"
Albert Camus (1913-1960) French philosopher and novelist.

In 1843, Daniel M’Naghten, a Scottish woodcutter, shot and killed Edward Drummond, secretary to England’s Prime Minister Sir Robert Peel in London. He acted under the belief that he was actually shooting the Prime Minister because M’Naghten believed there was a plot against him. When M’Naghten reached trial, his attorneys pleaded that he should be acquitted because he was obviously insane and did not understand what he was doing. M’Naghten was later acquitted of the crime. Later that same year, the House of Lords issued the following ruling:

“To establish a defense on the ground of insanity, it must clearly be proved that, at the time of the committing of the act, the party accused was laboring under such a defect of 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 was wrong” (Melton, 1997, p. 191).

This edict became know as the M’Naghten Rule and for over a century, this was the standard for the insanity defense. As for Daniel M’Naghten, after his acquittal, he was sent to Bedlam and other institutions where he languished in the shadow world of the insane for several decades until his death in 1863.

The late 19th century was a time when scientific ideas were rampant. This explosion of science was partly brought on by the publication in 1859 of one of the most influential books ever written, *The Origin of Species* by Charles Darwin. The Darwinian concepts of survival of the fittest, natural selection and hereditary traits revolutionized biological science and were applied to many other disciplines. Ideas were evolving rapidly during this era in every medical, scientific and psychological field. Things were changing quickly in the legal profession as well. Dedicated lawyers and judges searched for workable solutions to the controversies that plagued the nation’s courts. The confusing ideas about mental diseases and the complexities of the human mind did not lend themselves well to the rigid dimensions of codified law.

**The Problem With Psychiatrists**

“A psychiatrist is a fellow who asks you a lot of expensive questions your wife asks you for nothing “
Joey Adams, U.S. comedian.

America’s standards for the insanity defense, during the period 1954-1984, received a great deal of criticism because of cases like Torsney and White. Psychiatrists were given a powerful voice in the nation’s courts and the results could often be infuriating to the public. Psychologists, whose profession revolves around the endless ambiguities of the human mind, were asked to make decisive judgments about an individual after seeing a prisoner only once or twice. This was absurd according to many people. Sometimes psychologists treat their patients for years in dozens of sessions without coming to a solid conclusion or understanding of their mental problems. And those judgments by court appointed psychiatrists could have a tremendous impact on a criminal trial and its outcome.

"Psychiatrists and psychologists are often put in the same position as economists who are asked to predict things that no one is capable of predicting. Those with the honesty and realism to say they can’t do it are likely to be brushed aside...” writes Thomas Sowell in *The Insane Insanity Defense* (Sowell, 1994, p. A10).

Psychiatrists also have been known to slant their findings toward the side that pays them. This is a dangerous tendency that corrupts testimony and blurs the truth in front of a jury who is already suspicious of “expert” psychological testimony. That suspicion has been fostered by some spectacular failures and abuses by psychiatrists who explain the behavior of criminals with the twisting idiom of clinical definitions. And psychiatrists themselves are notorious for their disagreements on the same issues. For every psychiatrist that testifies on the stability of a defendant, another one will quickly follow who will testify to a completely opposite conclusion. Frequently, there is no common consensus among psychiatrists, a fact that has devalued the profession in the eyes of the public and lessened the impact of their testimony in a court of law. What does it matter if a defendant had a less than perfect childhood? How does that relate to a vicious murder that may have been committed twenty or thirty years later?

There is also the natural danger that clinicians mostly identify with those on their own economic and social level. When dealing with patients who are much different than themselves, psychiatrists can be oblivious to their problems. One forensic psychologist went so far as to say: “I hate to say this, but I don’t like to work with poor people...They are talking about stuff that doesn’t interest me” (Rowe, 1984, p. 325). Undoubtedly, few doctors could be as honest. Another common problem is forensic psychologists are paid professionals and therefore, usually accessible to only the wealthy class.