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LEGAL INSANITY IN CRIMINAL CASES

Past, Present and Future

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Daniel M'Naughton's case happened in 1843, and to correctly understand the importance of this case we should first take a general glance over the law affecting insanity before 1843.

The early Saxon law made anyone who killed another liable to compensate the family of the deceased by paying the Bot and the overlord by paying the Wehrgeld. This price placed upon the head of every man was blood money which had to be paid irrespective of any punishment inflicted upon the killer. The penalty of death for the taking of human life was not strictly enforced and the insane person was regarded as an object for pity rather than punishment.

In Bracton's time we find the introduction of the Roman law and the doctrine of "mens rea." The basic principle of Criminal law is *"actus non facit reum nisi mens sit rea."* This means that a person may be legally responsible for his act although suffering under a delusion; that there is a distinct difference between responsibility under the criminal law and responsibility as defined by medical terms which differentiate between Sanity and Insanity.

Bracton is followed by Fleta, by Fitzherbert, by Staundford; they laid down the rule that an insane person is not punishable for three reasons, because he has no *mens rea,* also that to punish such a person serves no example to deter others, also that he himself is already punished by his madness. To the like effect is Coke's Institutes published about 1620.

Hale's Pleas of the Crown, dated about 1670, distinguishes between:

1. Idiots;
2. Dementia by accident;
3. Dementia by one's own fault;

and in Blackstone's Commentaries published in 1769 we find that the

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same distinctions are followed and the same rules are adopted. Thus the practice of the law continued for many years.

The question of the legal responsibility of an alleged insane person was decided by the jury and was in effect determined upon the evidence without reference to any special rule of law. The directions or charges of judges to juries differed only slightly; all the judges adopted the same merciful direction that if a person under a delusion committed murder then according to the nature and extent of the delusion he might not be responsible.

In 1800 occurred the celebrated case of Hadfield, a young man who deliberately tried to shoot King George III. He was defended by the celebrated Erskine whose speech for the defense is a model of learning and exposition on the law of Insanity. There is not the least doubt that Hadfield was insane and he was duly acquitted on the ground of his insanity.

In 1840 a young man named Oxford shot at Queen Victoria. He was clearly insane and he was acquitted, the verdict at that time being, as for years past, "Not Guilty on the ground of Insanity." The Queen was very much troubled and could not understand the nature of the verdict. She was then only about 23 years of age. Shortly after, in 1843, political disturbances were rife and Sir Robert Peel, the Prime Minister, was very unpopular. One of the hotbeds of discontent was Glasgow. From Glasgow came Daniel M'Naughton. He wandered about the country because he suffered from a mania of persecution. He believed that his persecutors were Tories and Jesuits. He tried to escape from these imaginary enemies by appealing for protection to the Chief of Police in Glasgow and when in London to a Member of Parliament but from neither did he get any assistance. He went over to France and there he was still followed by his invisible persecutors. Troubled and distracted, M'Naughton returned to England and made up his mind to kill the one person whom he thought responsible, namely Sir Robert Peel, the Prime Minister.

He made a mistake and shot the wrong person. Mr. Drummond who was Private Secretary to Sir Robert Peel and somewhat resembled him in outward appearance, was coming out from Sir Robert Peel's house on the way to the Prime Minister's offices when M'Naughton who had laid in wait for sometime, shot him dead. He didn't know either Drummond or Sir Robert Peel. He had never seen either of them. He had no personal grudge but as he told the doctor afterwards, "Every feeling of suffering which I had endured

for years rose up at once in my mind and I conceived the idea that I would attain complete peace by killing Sir Robert Peel"

M'Naughton was tried at the Old Bailey at a sitting of the Central Criminal Court before Chief Justice Tindal and Mr. Justice Williams and Mr. Justice Coleridge. It was unusual for a criminal trial to be held before more than one judge and it was seldom done except in cases of great importance. There were brilliant counsel on both sides and for the defense Alexander Cockburn, who was afterwards Lord Chief Justice of England, delivered a remarkable address to the jury. His speech was a masterpiece of oratory and learning, while his conduct of the case was extremely able. He cited in his speech numerous medical authorities, especially Dr. Ray of Boston, Mass., and his work on "The Medical Jurisprudence of Insanity," dated 1838, which shows that American authors were even then cited with approval in English law courts. He quoted extensively from Erskine's speech in the Hadfield case. He called for the defense eight medical witnesses, doctors of the highest repute. Two of them, Forbes Winslow and Phillips had not previously examined the prisoner. They were present in court and heard the evidence; beyond that they knew nothing of the case but they were allowed to give testimony based upon that experience as to their opinion of the sanity of the prisoner. This practice was afterwards condemned by the judges as contrary to the proper rule of law.

No medical evidence was called for the prosecution and at the end of the evidence given by the doctors for the defense the judges interfered and told the jury that they ought to acquit the prisoner on the ground of his insanity and a verdict of "Not Guilty on the ground of Insanity" was duly returned.

There was a tremendous outburst of popular fury. From the Queen downwards everybody declared that the law was unsafe and that it was high time things were altered. A debate ensued in the House of Lords and in that assembly were five Law Lords all of them men of eminence in the legal profession, each had held the office of Lord Chancellor. They induced the House of Lords to propound a series of questions to Her Majesty's Judges.

Thereupon five questions were duly prepared and the ten judges were requested to answer them. Nine of the judges replied together and this reply is known as "The Rules in M'Naughton's Case." One judge, Maule, drew an answer of his own which was more carefully guarded in language and yet wider in its scope than the other answer.

The rules laid down this test: *First.* "Was the accused at the

time he committed the act under any defect of reason arising from a disease of the mind so that he did not know the nature and quality of the act he had committed? Or if he did know this did he know the difference between right and wrong and that he was then doing what was wrong?"

Second. "If the accused was laboring under a partial delusion at the time of the act he is responsible to the law."

Third. "Medical witnesses at a trial ought not to be asked to testify as to the state of the prisoner's mind at the time he committed the act, merely basing their testimony on what they have heard at the trial itself." Such a method would involve a determination by medical men of the truth of the facts deposed to instead of by the jury, and it is for the jury alone to decide upon the facts. Only if the facts are not in dispute and if substantially the question is one of science, then may medical opinion be taken from a doctor who has attended the whole of the trial but has not made any personal examination of the accused.

These rules are so drafted that on their strict interpretation it may be said that few are mad enough to come within them. No doubt M'Naughton was mad. No doubt the three judges who tried him and directed his acquittal concurred in enunciating these rules. No doubt M'Naughton could never have come within the strict interpretation of these rules.

Since 1843 many cases have occurred in which the rules have been applied and the common sense view taken by the judges and by juries have on the whole achieved justice. In ordinary practice a distinction was clearly drawn in three cases. First, there may be insanity such as to render the accused legally irresponsible for the act he has committed. This is not a medical question.

Second, there may be insanity which renders the accused person unfit to plead at his trial. This is a medical question.

Third, there may be insanity which may render a person, who has been legally convicted and sentenced, exempt from the death penalty or other punishment. This is a medical question.

These three questions are three different cases and must be kept carefully distinct.

In 1883 came the History of the Criminal Law by Sir James Stephen, an epoch-making work wherein the whole law of insanity is skillfully dissected. Stephen criticised the rules in M'Naughton's case and would have added a third—namely, that if the accused is deprived by some disease of the power of controlling his own conduct

he is not responsible as a criminal, unless the absence or loss of such control has been caused by his own default, as for example, if he took drugs or drink so as to render himself unable to control the particular act which he committed.

Stephen sums up the M'Naughton Rules in the form of questions which should be left to the jury by the judge.

1. Was the accused aware of the nature and quality of his act, or did he know that he was doing wrong?
2. Was he suffering from any partial delusion the truth of which would have afforded him a defense?
3. Was he the victim of an uncontrollable impulse due to mental disease not occasioned by his own default which rendered him unable to control the particular act he committed and this although he knew and was aware of the nature and quality of the act?

"Uncontrollable impulse" is the vexed question which constantly recurs. There can be no doubt that the English law rejects the theory of uncontrollable impulse. The law exists for the purpose of teaching people to control their impulses. The law hangs a rope in front of the person who wants to say, "I did the act but I did it under an uncontrollable impulse, therefore you must acquit me." Between uncontrolled impulse and uncontrollable impulse is a great gulf, namely, that of "legal responsibility" and the same remark applies to the epithets "Unresisted motive" and "Irresistible motive." The object of the law is to teach a person self-control.

Directly one uses the phrase, "mental disease" comes the question, "What is the Mind?" Is it the brain, or the nerves, or both, or something more, or something which even a doctor cannot exactly diagnose, or properly describe in terms of speech.

Is any punishment ever inflicted in lunatic asylums upon inmates? Assuredly it is. In other words, may a person subject to delusion or otherwise insane be in some regard a fit and proper person to receive punishment? Certainly he may be.

Is the basic principle of the law practical sense, namely, that legal responsibility may be consistent with an unsound mind; this means for the purposes of justifying a conviction by a jury. Subsequently in awarding punishment the medical aspect of insanity may be considered as it may affect the degree of punishment.

Recently, in 1922, was Ronald True's case. The accused murdered a young woman with whom he was cohabiting and stole her jewelry, sold it and spent the money. For years True had been regarded as a queer person and he was a chronic drug taker. At his trial no doctors were called for the prosecution but four doctors gave

evidence for the defense and certified that he was then insane and in their opinion he must have been so at the time of the offense. Each of them had frequently conversed with him in jail. The judge, Sir Henry McCardie, discussed the M'Naughton Rules at full length with the counsel on both sides within the hearing of the jury. The case lasted five days, an unusual time. The judge delivered a long charge to the jury, carefully reviewing all the evidence and explaining the law, particularly the M'Naughton Rules and he expressly suggested an extension of those rules adopting the view of Sir James Stephen, namely, that although the accused might know the physical consequences of his act and that it was morally wrong for him to do it and that he would therefore be punishable by law, yet if by mental disease he was deprived of the power of controlling his actions at the time of the act, the jury might find that he was insane and return a verdict of "Guilty but Insane." Such a verdict would mean that he would be confined as a lunatic and would not be executed.

The jury only took half an hour to consider their verdict and convicted True of wilful murder. An appeal was taken and the Lord Chief Justice with two other judges affirmed the conviction on the ground that there was evidence before the jury on which they could, as a matter of fact, find their verdict, and the appellate court referred to Sir Henry McCardie's charge to the jury as "an extension of the rules in M'Naughton's case and they expressly reaffirmed M'Naughton's case and said, "If you go beyond these rules you are in a sea with no shore."

Directly after the conviction True was examined by four doctors on behalf of the Crown who unanimously reported that he was then insane. Thereupon the death penalty was not carried out and he was confined as a lunatic. A popular outcry followed and a committee of leading lawyers was appointed by the Lord Chancellor to reconsider the M'Naughton Rules and the defense of insanity in criminal cases. Before they delivered their report in 1923 this committee received a report from the British Medical Association which was in favor of retaining the existing law with certain modifications as to the doctrine of uncontrollable impulse. Also they received a report from the Medico Psychological Association containing recommendations to sweep away all the present rules and to substitute other rules for the jury which were largely of a medical character.

The report of the Lord Chancellor's Committee pointed out that the M'Naughton Rules were originally intended as a test to decide

whether an admitted lunatic might be legally responsible for his act but that there was no report of any case where the rules had been used for any such purpose. When the rules did come to be so used, in True's case, the jury took a common sense view and convicted the accused.

The committee also pointed out that M'Naughton's case does not profess to define disease of the mind but only states what degree of mental disease may negative any criminality. And this is a question of law, just as much as the question at what age a child may become legally responsible for crime.

The law is only concerned to know whether the mental condition of the accused negatives the existence of *mens rea*. The legal test is directed to the condition of the intellectual or cognitive faculties.

The law is that a person of unsound mind may be criminally responsible. If a person intends to do a criminal act and has the capacity to know what the act is and that the act is one that he ought not to do, then he commits a crime. Whether he should be punished for this is not necessarily the same question. This distinction must be always carefully borne in mind. It cannot be too strongly insisted upon.

The committee goes on to recommend an extension of M'Naughton's Rules, in consonance with the opinions of Sir James Stephen and Sir Henry McCardie. They adopt the report of the British Medical Association that a person if prevented by mental disease from controlling his own conduct may not be legally responsible, unless the absence of control is the direct and immediate consequence of his own default; such control must be with reference to the particular act charged and not a mere general lack of control.

In 1924 a bill was introduced before the House of Lords proposing to alter the law as to insanity in criminal cases by Lord Darling who had for many years acted as a judge, but it was rejected by the House of Lords as being inadvisable for the purpose suggested.

The correct wording of the verdict of a jury in a criminal case where insanity is proved is still open to question. For many years the English law followed the practice of recording a verdict that the accused was "not guilty upon the ground of insanity." This did not mean that he escaped punishment because he was usually dealt with as a lunatic and confined in some suitable institution. He was not allowed to go scot free and he was not allowed to go into private custody.

Largely due to the influence exerted by Queen Victoria and her advisers the Trial of Lunatics Act 1883 provides for a special verdict in such cases as these, namely, that the accused is "guilty of the act but was insane at the time he did it." The consequent result being that the accused is dealt with as a convict and is immediately taken to the criminal lunatic asylum.

The committee of 1922 in its report expressly states that in their opinion this verdict ought to be altered and that the law should adopt a special verdict, namely, that the accused did the act charged but is not guilty on the ground that he was insane so as not to be responsible according to law for his actions at the time of such act. The practical result with regard to the subsequent detention of the accused would be the same as heretofore.

In Canada the law practically follows the English Rules. In South Africa the law follows the M'Naughton Rules but also admits the third extension of the rule which was suggested by Sir James Stephen and adopted by Sir Henry McCardie and is now recommended by the Committee of 1922. In 1916 in the case of *R.* v. *Ivory* it was expressly held that if, due to mental disease, the accused has lost the power to control his conduct in reference to the act charged he may not be responsible to law.

In Australia the extension of the M'Naughton Rules is adopted, the accused is not liable if at the time of the act he suffers from mental disease or under a natural mental infirmity which deprives him of the capacity to understand what he is doing or of the capacity to control his actions or of the capacity to know that he ought not to do the particular act.

Any medical criticism of the law and of lawyers is valuable just so far as it correctly appreciates this fundamental legal principle, namely, that the law is for the benefit and the protection of Society as a whole against the one who by his act has broken the rule prescribed by Society for its own protection. The law has erected as a working principle a test of legal responsibility and this test predicates that a person of unsound mind may still be responsible under the law. It must be remembered that criminal responsibility in law applies in many other cases besides murder. Any attempt to weaken the criminal law with regard to all these other instances of evil doing would break the weapon of the law and would assuredly encourage evil disposed persons to take chances in breaking the law and it would undoubtedly diminish the security of Society against the attack of

the individual. Legal insanity cannot be limited to murder cases. It extends as a principle right through the criminal law.

Let us abolish the defense of insanity in every criminal trial, thus we shall provide a simple solution to most of our present difficulties. Let the plain question of fact be first decided by a jury—"Did the accused commit the act charged against him?" If "Nay" then the accused goes free, but if "Yea" then let any needful inquiry about insanity be made before any penalty is fixed by the law or by the court. Let this inquiry be based upon medical testimony adduced by both sides before the judge but not before a jury.

To properly weigh and to value skilled medical evidence about disease of the mind or delusions or other questions of insanity requires the trained skill of a professional man, especially when highly technical terms are constantly used by the medical witnesses, where very intricate points are discussed, where serious conflict of scientific opinion frequently occurs. The judge is the person designated by the Constitution to protect the welfare of the people, to mete out justice to every man. He is fitted by professional knowledge to estimate the value of expert evidence, by judicial training to be impartial. Let the decision therefore rest with the judge as to how far the insanity of the accused is proved and how far it should affect or entirely dispense with any punishment.

In the simpler cases of stealing and of sexual aberrations this is obviously the prudent plan. In such matters the issue of fact is usually not open to doubt, it is practically admitted and the accused is therefore found by the jury or by the magistrate in a summary trial, to be guilty of having committed the act charged against him. Then should follow investigation about any alleged insanity conducted when necessary by the lawyers and the doctors according to the rules of evidence in a court of law.

Such a course of practice would largely obviate the recurrence of recent public spectacles of alienists wrangling with alienists and disputing with lawyers in notorious murder trials to the disgust of the people and to the disgrace of the law. Thereby the evil repute attached to alienists' evidence would be changed into the atmosphere of a scientific inquiry conducted before a skilled professional mind, before an unprejudiced and impartial tribunal devoid of emotional appeals to the ignorant prejudices or the easily excited passions of a jury. The doctors and lawyers will get their fees, there will be ample scope for the employment and payment of the highest skill in both professions on both sides in any cases where there is

"money behind it" and the work will be done with greater decorum and greater efficiency.

No stigma attaches to a person who is found to have committed a criminal act and to have been insane at the time. "Poor fellow" one says, "he needs to be taken care of." The mere finding of guilty or not guilty in such special cases would not create in the public mind any sense of shame about the accused, nor will it bring any disgrace upon him.

Moreover we must remember that always first comes the public welfare and the public safety. Second comes the care for the innocent victim of the criminal act. Lastly should we deal with the accused party, but his interests ought not to be considered in preference to these other paramount securities of freedom.

The law changes slowly. There is always a gap between popular feelings, the passions of the hour and the permanent body of the law. Recent years since M'Naughton's case have increased our sources of information, they have added something to our knowledge but little to our understanding and nothing at all to our judgment. The law does not ignorantly invade the field of medicine. Neither should medicine attempt to dictate in the domain of law. The law limits its purview in these matters to a proposition which affects only the question of responsibility under the law, namely, the liability to be convicted for committing a criminal act. But the law does not attempt to apply the same medical proposition or the same medical principle in the realm of punishment. When the law comes to consider the question of how the accused should be dealt with by way of punishment then it adopts the definition and assistance of medicine in deciding upon the quality and the quantity of the punishment. Medical criticism should not be based upon imaginary conflicts between the lawyer and the doctor as to conceptions of insanity.

Each profession is a servant of the state. Indeed medicine is in its noblest conception the handmaid and minister to the whole body politic. Service is the soul of the medical profession. If these two great public servants dispute with bitterness each loses some of its power to confer good upon society. Let us avoid the asperities of discussion. Let us strive together in generous emulation to serve our country. Let us march forward together conscious of our high calling, imbued with a noble spirit to consecrate our learning and our skill towards the amelioration of the wrongs and the sufferings of mankind.