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## THE CONCEPT OF TEMPORARY INSANITY VIEWED BY A CRIMINOLOGIST

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The study and definition of the concept of temporary insanity properly belongs within the field of psychiatry. After all, it concerns mental ailment and it is obvious that psychiatrists should have the greatest interest because they are specifically trained to deal with it. Nonetheless, the criminologist retains a lively and important stake in the problem of temporary insanity, chiefly because it cuts across his legitimate field and has an important bearing in criminological philosophy and practice. The problem of temporary insanity assumes a practical significance mostly in connection with court trials. It is introduced by defense attorneys in the form of a plea with the avowed purpose to bring about a mitigation in the rigor of the law. As might be expected, it is used with preference in first degree murder cases with the intent of preventing the imposition of a death penalty, or, in a no-death penalty state the mandatory life sentence. To quote Judge Morris Ploscowe<sup>1</sup>: "When a child kills a parent, or a parent kills a child who is incurably ill, or a husband kills a paramour of his wife, there is great reluctance to apply the drastic penalties of murder. In order to relieve the offender of criminal responsibility in such cases, the plea of temporary insanity is frequently entered. It is usually alleged that, at the time of the crime, the defendant acted under such great mental stress and mental tension, that he was unable to know the nature and quality of the act that he was doing, or that the act was wrong. Immediately after the homicide, the tension and mental stress is eliminated, and the defendant is able to function like any other human being".

As well stated by Judge Ploscowe, the assumption in these cases is, at least as presented by the defense psychiatrists, that the defendant reached such a state of emotional disorganization and personal breakdown just preceding the commission of the act that he actually arrived at the pathological state designated as insanity. It is right at this point where the criminologist is apt to register a bit of bewilderment if not outright confusion. How is one to differentiate the state of temporary insanity from those violent emotional explosions which precede and accompany the so-called crimes of passion?

As is well known to most students of crime, people who commit the so-called crimes of passion are usually described as being in such a state of upheaval at the time of the commission of the offense that their acts are attributed to "being pos-

<sup>1</sup> PLOSCOWE, MORRIS, *Suggested Changes in The New York Laws and Procedures Relating to the Criminally Insane and Mentally Defective Offenders*. JOUR. CRIM. L. AND CRIMINOL., 43, 318 (1952).

sessed." The classification called "crime of passion" denotes this very fact. It is felt that these people, too, are not acting reasonably, but are motivated chiefly by overwhelming passion. In short, their mental faculties are considered to be inoperative; they are thought to be unable to bring past experience to bear upon the present. Hence, they are incapable of establishing the inhibition to impulsive acts which under ordinary circumstances they are able to do. However, the law does not excuse such behavior, even though it recognizes the fact that it was committed under great emotional stress. While it accepts the fact that the individual was unable to deliberate about it, while it recognizes its impulsive character, the law classifies the act as a crime and describes a penalty for it. In contrast, a temporary insanity plea, if accepted by the jury, often brings about a not guilty verdict.

How does one explain this anomaly? In both instances one confronts behavior which is not subject to reason, which is purely uninhibited and impulsive, which contains features of the so-called "irresistible impulse". Yet the one is put down as insanity and the other is not. The one is viewed as satisfying the requirements of the McNaghten rule of inability to assist counsel owing to impairment of ability to differentiate between right and wrong, and the other is considered as outside the confines of the McNaghten requirements. How do psychiatrists arrive at the fine differentiating point which would in the final analysis make the difference between acquittal and imprisonment?

Is it possible for them to arrive at a diagnosis by questioning the offender about the events surrounding the offense, also family members and other contacts who had opportunity to observe the behavior of the offender prior to the commission of the act? If that is the way they arrive at their conclusions, how reliable are these facts? Certainly, the offender, who is working in collaboration with his defense attorney and is fully aware of the meaning and the value of the temporary insanity plea, will attempt to make as convincing a picture for the benefit of the psychiatrist as is possible to make. Family members and friends, too, are most obliging in describing the behavior of the offender prior to the act as rather peculiar, queer, and crazy. They are not only willing to speak to the psychiatrist about their convictions, but are willing to go on the stand before a jury and testify under oath to the effect that the behavior of the offender or defendant was highly abnormal for some time prior to the act. Interestingly, they can be perfectly honest in coming forth and giving testimony to this effect because practically all criminals of passion display a great deal of emotional tension and peculiar manifestations with reference to the object of their worry for some time prior to their offense. Any good defense attorney could marshal up sufficient evidence to support such contention. One could also show in most ordinary crimes of passion that once the defendant committed the criminal act, he calmed down and returned to a chastened, reasonable and repentant mood. In short, he returned to his senses.

#### WHAT IS THE PRINCIPLE OF CLASSIFICATION

What then is the ingredient which identifies one act as the result of temporary insanity and the other as just an ordinary crime of passion? Judge Ploscowe recognized the great difficulty in honestly differentiating between a crime due to temporary

insanity and the so-called crimes of passion. "There can be no question that pleas of insanity in the so-called unwritten law cases, and in cases of killing from so-called praiseworthy motives, are specious. They are entered merely to achieve a result, to save the offender from the death penalty for murder. If the punishment for murder were more flexible, and permitted a certain discretion to the Judge, there would not be the same pressure upon lawyers and defendants to enter pleas of temporary insanity in the aforementioned type of cases". One must qualify Judge Ploscowe's statement by pointing out that the temporary insanity plea is utilized in the so-called praiseworthy motive cases not only to save the offender from the death penalty for murder, but in the no-death penalty states it is resorted to chiefly to bring about a rather light sentence or a complete acquittal in place of the mandatory life sentence for first degree murder or the life sentence which is often imposed for second degree murder.

The present writer does not intend to be cynical. Yet, after observation of many cases, he cannot escape the conclusion that what differentiates a crime due to temporary insanity from the so-called crimes of passion is chiefly the financial standing of the defendant. The ordinary run of the mill defendant, who is unable to hire a high-class criminal lawyer for his defense, who is unable to pay the high fees of psychiatrists brought in for expert testimony, usually winds up with a prison sentence, should he commit a crime of passion, even though his motives were praiseworthy, or excusable, such as self-defense. It is true that in most such cases the juries and judges will pay attention to the so-called praiseworthy motives, to mitigating circumstances, and will not visit the full rigor of the law upon the defendant. Nevertheless, the fact is that ordinary, run of the mill individuals still end up with some sort of prison sentence.

On the other hand, financially well-heeled offenders who can resort to the best of legal talent for defense, including an array of prominent psychiatrists to establish a temporary insanity plea, many times get off scot-free through a finding of "not guilty". It is true that in some states, such as Michigan for example, the acquitted defendant is still committed to the state hospital for the criminally insane for observation of his mental condition with the proviso that he is to be detained until found completely sane and of no danger to society. From a practical point of view, however, this means not too much because in most instances the individual is found completely sane by the hospital doctors and a writ of habeas corpus can achieve his full release since, according to the committing law, it must be shown that the man to be held is still insane. A recent "cause celebre" in Michigan, when a dentist killed the paramour of his wife, took the above sketched course. His family, being able to afford the best legal help and the assistance of prominent psychiatrists, was able to obtain his complete release within a few months of the offense. It might be submitted that in this particular case it was shown by the prosecution and admitted by the defense that the defendant travelled in the neighborhood of two hundred miles in an automobile with the purpose of finding the intended victim and putting him out of the way. The offense, therefore, was not the result of a sudden and momentary fury, but of an intent which was demonstrably entertained for some hours prior to the actual execution.

To make a statement to the effect that the chief difference between a crime of passion and a crime due to temporary insanity is the financial status of the defendant is a rather serious indictment of our criminal procedure. It would imply that the great American legal tradition of equality before the law is seriously impaired. It would signify the appearance of serious cracks in the moral cement holding together the structure of our society. It would herald the advent of a cynical attitude toward our criminal law and procedure which would certainly not bode well for the maintenance of law and order. But, how can one arrive at a different conclusion when as a practicing criminologist one sees offenders arriving in the prison on various sentences for manslaughter or second degree murder etc. . . ., simply because they had second rate attorneys and no psychiatric testimony in their behalf? How can one think differently when in contrast one sees those, who can resort to the afore-mentioned assistance, escape scot free without any sentence whatsoever? This is simply a matter of practical observation.

One cannot forego, at this point, the opportunity to mention a favorite argument advanced by psychiatrists, who habitually offer the kind of testimony which establishes temporary insanity pleas, when the validity of their convictions is questioned. Such experts usually contend that, even if it were admitted that little difference exists between the so-called crimes of passion and the crimes allegedly committed as a result of temporary insanity, not much could, after all, be gained by sending the defendant to prison since, having discharged his emotional tension, since he passed through his so-called catathymic crisis, he would not be likely to commit a similar offense. The writer would superficially agree with this contention, but would advance his own argument to the effect that if this type of defense is admitted in some cases of crimes of passion why not utilize it in all cases of praiseworthy motives and thus save all such criminals of passion from having to be sent to a prison. Why shouldn't the courts provide the best of criminal lawyers and the same retinue of psychiatrists for all cases appearing before it on crimes of praiseworthy motives regardless of financial standing? In short, it would be highly desirable to re-establish the great American principle of equality before the law in all cases of this type.

The question then comes down to this: Is the plea of temporary insanity in crimes of passion to be recognized universally or is it to be thrown out altogether? One can think of a very serious argument in behalf of throwing it out altogether. It is contended here that, if the plea of temporary insanity, as utilized in crimes of passion, is permitted to remain the specious plea, designated by Judge Ploscowe, criminal law is in danger of losing whatever deterring value it might have. Cautious criminologists, who are not given to bold and sensational statements, will still contend, notwithstanding the many claims to the contrary, that criminal law does have a deterrent value for the so-called average citizen. They would agree that this deterrence is not a direct one, that is, an individual will not desist from the commission of a crime merely because there is a law against it on the statute books. They would also agree that what prevent the average citizen from committing a crime are his moral teachings and moral values more than criminal laws. But, they would strongly emphasize that moral values and moral habits cannot stand in a social vacuum without being powerfully reinforced by the laws of society, that is, by criminal law. Unless

criminal law provided a reinforcement and support for moral law and practices, there would be uncertainty and chaos with reference to what constitutes right and wrong in the present day. One must not forget, after all, that moral laws and practices originate from tradition and go back in history many centuries. Unless society through its laws gave them modern status, they would tend to fall into disrepute or disuse. Starting out then with this premise, unless society declared such acts of violence called crimes of passion reprehensible and punishable there would be no particular restraint on the behavior of the so-called average citizen in society. He'd be so confused and mixed up about what constitutes right or wrong in the present that he might take action into his own hands rather than restrain himself. Let us not forget that even the best adjusted people have moments of extreme anger and despair when they would be apt to commit a crime were they not restrained by moral considerations. Criminal statutes and penalties provide, after all, the most powerful reinforcement to moral ideas we could possibly erect.