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Does the insanity plea allow the infringement of the public's right to security or is taking away the plea an infringement of yours?

By Nikita A Khandheria

[Preamble]

| *This paper will focus on an assessment of the plea 'not guilty by reason of insanity.' The piece will seek to interrogate how the mentally ill are treated by the judicial system, whether the NGRI plea is reasonable, and the ways in which the legislative system must adapt to ensure that mental health is prioritised.* |

Legislative representatives such as lawyers, judges, and even doctors are behind the curve in their understanding and recognition of the importance of motives, individual thought, and mental wellbeing. However, this lack of recognition and acceptance of mental health concerns is neither new nor unique to the generation past. People have always been visual thinkers and inherently question things they cannot see. Historically, the judiciary and legislative systems are not exempt from this tendency for being dismissive or suspicious of the mentally ill. Nevertheless, with mental health initiatives gaining traction in the widespread social consciousness, many have turned to question the plea 'not guilty by reason of insanity', a cornerstone ruling which has defined mental-health legislation for decades.

The *Plea of Insanity* has always been a legal ghost which consistently haunts the Supreme Court. Since its first usage, it has sparked debate over its justice as a punishment, its constitutional legitimacy, and the best approach to take in exercising such a plea. It is helpful to compare this to the approach taken for its more physical counterpart, 'Duress'. 'Duress' has been argued to be a mirror image of the insanity plea but is exercised in an external world rather than an internal space of legally acknowledged "mental insanity". Duress is called upon when a defendant faces a physical threat and is forced to commit a crime that they would not otherwise be committing. The legitimacy of duress as a legal plea has widely been accepted by both the public and the judicial system as an acceptable reason to receive judicial leniency. It is understandable that in cases of duress, a person does not have physical control and is being made to commit a crime against their own will, thus making it unjust to hold them accountable their actions. Many arguments for the insanity plea question what makes a mental entrapment different from a physical duress? Does an

individual who has committed a crime during a loss of mental control deserve the same leniency? In both cases, the acts are not representative of the person committing them. Unlike duress, the plea of insanity has been torn, questioned, and debated to no end. This evident double-standard centers around suspicion of the legitimacy of mental illness. If one is physically held and made to commit a crime it is forgivable, but if one is mentally influenced to commit a crime you risk the ultimate punishment. In almost all respects, the insanity plea is disregarded or understood as not comparable to its physical correspondent.

The disparities between the physical and the mental evaluation in law have frequently been discussed in previous papers. The question that this essay hopes to tackle is ‘whether it is both legal and moral for this difference to exist’. To understand why there is this debate surrounding the insanity plea, one must to understand what it is and where it originated from. The insanity plea has its roots back in the 14th century. In 1313, a source discussing the mentally ill depicted them as ‘witless’ and a risk to their own society.¹ This unjustly created prejudice against those with mental illnesses. The inability to perform ‘mundane’ tasks and fear of being lost in one’s self caused people to discriminate against the ill when it came to jobs, relationships and everything but accountability. This inherently unbalanced notation was carried into the 19th century and served as background for the *M’Naghten* case. In 1834, a Scottish woodcutter by the name Daniel M’Naughten shot Edward Drummond, who he incorrectly believed to be the Prime Minister. Although his identification of his target was inaccurate, his shot was not. Drummond died five days later of a fatal wound caused by said accident. Rare as attempts on the Prime Minister’s life were, the date remains in our history books as a momentous occasion due to the trial and verdict that followed. M’Naghten plead not guilty by reason of insanity. A case is set in stone when the defendant admits to the crime of which they have been accused, or so was thought in 1834. The plea of insanity, despite its present challenges, was even more difficult in the past. In order to enter a plea of “not guilty” and have a trial about the legitimacy of the crime (and the accountability of the defendant), the crime

¹ Andrew Chung, Lawrence Hurley, “U.S. Supreme Court lets states bar insanity defense”.

had to be confessed. By confessing to the crime, a defendant forfeited their trial arguing over whether they were actually guilty.² Thus, pleading “not guilty” but accepting the crime meant forgoing your right to a trial about your actual act. This meant if they found the defendant not insane, they would be charged and imprisoned without any ability to reduce the sentence associated with the crime. As a result of this difficulty, lawyers have since been allowed to petition multiple pleas.³ The jury address the insanity plea last, allowing the defendant first to be found guilty of the crime before pleading not guilty on the grounds of insanity. In the M'Naghten case, the initial “not guilty” plea was the cleverest and most effective way to spin the story, since they did not need a trial to know that M'Naghten was going to be found guilty. This was the best way to not prejudice the jury and the lords before proving to them that M'Naghten was in fact not of sound mind at the time of the crime.⁴ Beyond the key difference in plea succession, the M'Naghten's trial followed a similar format to modern trials except with less specificity of demands. The defense after claiming the plea, (much like now), carried the burden of having to prove M'Naghten's insanity. This is another key area in which the plea of insanity is very unorthodox. In most circumstances, the prosecution must uphold the burden of proof to the court since as we are innocent unless proven otherwise. However, in the insanity plea it is the defense going against a general assumption: we are all sane until proven otherwise. It almost feels like a flipped trial.⁵

Proving insanity, thus, is as difficult as proving guilt. One cannot simply have a psychiatrist stand-in as an expert witness and offer their opinion on the defendant's mental sanity. Instead to prove insanity (like guilt), you require evidence from the past, present and sometimes future (such as appointments scheduled for a future date or prescriptions to be taken in the future). At the time of M'Naghten trial, the specificity of who could testify to his sanity was not established and so, his sanity was proven by calling upon the general

² Lord Justice Lloyd Jones, et al. 'Criminal Liability: Insanity and Automatism A Discussion Paper', pp.167-168

³ Sutcliffe, Eric. "Criminal Law: Plea of Not Guilty by Reason of Insanity: 174-83

⁴ Slater, Eliot, H. B. Kidd, and Jeanne Johnson Smith. "M'Naghten Rules."

⁵ Lord Justice Lloyd Jones, et al. Criminal Liability: Insanity and Automatism A Discussion Paper.p.124

populace -regardless of medical background- to testify that he was one of the 'witless' and thus, should not be held accountable for a moment of mental incapacity. The job of the defense has perhaps become more difficult in the modern judicial system. In order to use the insanity plea, they are now required to cite psychiatric professionals who may have previously identified the defendant was suffering from a mental illness. This is often followed by a defense psychiatrist, who is not asked to assess the defendant's present sanity instead is asked to discuss the defendant's prior actions which can include not avoiding arrest, not trying to cover up the crime, or going to a public place while covered bloodstains to prove said insanity.⁶ The M'Naghten trial was then sent to a vote by the House of Lords. The lords then were baffled by the main elements of the case, eventually finding M'Naghten not guilty by reason of insanity.⁷

This major win for the mentally ill in 1834, led to a legal revolution in approaches to defendants with longstanding or temporary mental illnesses. Soon, it became mandatory to hold an internal review by each individual country to assess how their judicial system fairs against the findings of the M'Naghten trial and the constitution. The M'Naghten trial established that if the defendant either did not know what they were doing at the time, or did not realize their actions were wrong, they cannot be held fully responsible for a crime.⁸ Many countries have embodied this idea in their national judicial systems. However, in the United States this has not yet -and might never be- established federally. The Supreme Court of the United States, despite their time spent analysing and reevaluating said verdict, has kept the people waiting for concrete legislation. They have never offered a direct law but instead verdicts that could be thought of as tangential. Thus, in order to assess legality in the US one is forced to take individual laws infer what they would mean in relation to the plea and connect them to previous verdicts.⁹ This can be seen in a few case studies such as 'Staples v the United States'. In this trial, the Supreme court found that a person's "mens rea" or motive carries a

⁶ All Answers Ltd. R v McNaughten M'Naghten Case Summary

⁷ Slater, Eliot, H. B. Kidd, and Jeanne Johnson Smith. "M'Naghten Rules." p.11.

⁸ Lilienfeld, Scott o and Hal Arkowitz. "The Insanity Verdict on Trial. pp.64-65.

⁹ Andrew Chung, Lawrence Hurley, "U.S. Supreme Court lets states bar insanity defense".

heavyweight on the verdict.¹⁰ Thus, if a person did not mean to kill their child, but instead save them from the demons she thought were inside them like Yates did in 'Yates v State' (a classic example of the insanity plea), would this mean they would be free to go? Despite this not being the motivating reason, Yates -a woman diagnosed with postpartum depression who tragically drowned her six kids in a tub in Kansas- as one of the 1% of individuals whose insanity cases have been ultimately acquitted.¹¹

Relevant cases such as 'Ford v. Wainwright' which stipulate a court cannot put someone to death if they are not mentally sane because it is a violation of their 8th amendment right should be seen as an indication that the courts must legally recognise insanity as a reasonable plea.¹² Since the only element being debated is whether the courts recognize insanity (suggests the judicial system should consistently acknowledge the plea of insanity as legitimate. Continuing along the same line of reasoning and combining the two verdicts: 'basing verdicts on motives' and 'accepting that some people are mentally ill and not in control of their impulses and thus, have clouded motives' begs the question of why the supreme court might disregard the constitutionality and fairness of the plea. When these two principles are accepted, there is no reason for an ill individual to be held accountable for a crime they could not have had the ability not to commit. In the context of governance, when a governing body is required to take a firm legal stance, it sets a precedent which can just as easily be extrapolated to apply to cases beyond the scope of the cases they intended to address. Due to this, the United States Supreme Court, a federal body responsible for representing 328.2 million¹³ has not formally taken a stance. This is incredibly significant because the first place to turn to investigate issues of legality is the Supreme Court. The constitution itself is a collection of national ideas which the Supreme Court must define in practice. As the US has not produced defining national legislation like the United Kingdom's Mental Health Act of 1983, the burden of choice shifts to the state legislatures. Thus, there are significant differences in which states have found the plea to be

¹⁰ Lord Justice Lloyd Jones, et al., 'Criminal Liability: Insanity and Automatism A Discussion Paper' p.122

¹¹ Lilienfeld, Scott o and Hal Arkowitz. "The Insanity Verdict on Trial. 64-65

¹² Ford v. Wainwright, 477 U.S. 399 (1986).

¹³ U.S. Census Bureau. Population Density

constitutional. Most states in the US have established some version of the insanity defense, finding that it would be unconstitutional not to allow one to prove that they were not of the sane mind at the time of the crime.¹⁴

Nevertheless, like with every state-specific law there are states like Idaho, Montana, Utah, and Kansas that have gone in a different direction and fully discarded the traditional insanity defense. This produces a divide among states in relation to outcomes- if you were 'fortunate' enough to be in Houston like Yates when you drown your kids you would have a chance of surviving, whilst if you found yourself in Kansas when you shot your wife and child to death, you would be put on death row since in Kansas the plea of insanity would be inadmissible. Both the minority and majority group of states have had to find some onus and constitutionality in their claims, arguing that the other option is unconstitutional and incorrect thus, creating a zero sum game around the division of these rights; the more you allow the defendant the less 'safety' you provide to the public- restricting one's rights for the other. As we continue our study into whether the *Insanity Plea* should be considered both constitutional and morally correct, we need to look at why each state chose to have the laws the way that they did. On the majority side of the states, we have a group that believes sending these people to jail is restricting both their right to just punishment and safety (a constitutional right). In most cases, the purpose of punishment is to deter individuals from repeating offenses while rehabilitating them reenter society. However, since this defense was made for 'people that are incapable of understanding their criminal actions and to help get them the treatment the need'¹⁵ jail as a form of rehabilitation might not be the 'just' and most effective punishment. These people that do not believe that what they did was wrong would gain very little by sitting in a jail without active rehabilitation. By finding someone guilty and sending them to jail, the government would be denying them the right full-time treatment which might be a more effective course of action to help them understand societal standards and moral guidelines. Further, this idea of restricting a person's right to treatment was found to be a breach of article 3 in *Keenan V. United Kingdom*,

¹⁴ Andrew Chung, Lawrence Hurley, "U.S. Supreme Court lets states bar insanity defense"

¹⁵ Lilienfeld, Scott and Hal Arkowitz. "The Insanity Verdict on Trial. 64-65

for exactly this reason. Putting someone in jail that is mentally ill has increasingly shown in studies a correlation to the risk they pose of hurting themselves or killing themselves.¹⁶ Additionally, it is the responsibility of a justice system, who are aware likelihood of suicidal thoughts or actions increases without treatment in detention centers, to allow the defendant to prove that they are not fit to be imprisoned. A defendant must be able to defer or receive a more lenient punishment where they require additional mental support.¹⁷ On the other side are the minority states, that are more focused on protecting the rights of the public and believe that an individual should be treated with leniency with regards to a crime simply because ‘they do not understand what they were doing was wrong and get away with it’ and because for the government to ‘protect’ them, allowing them on the streets is a violation of the public’s 14th amendment right.

In essence, the *Insanity Plea* in its current form necessarily restricts either the rights of the public or of an individual. Several alternative pleas exist which try to balance the possible outcome of this increasingly difficult decision. An example of such is the hybrid plea, which allows defendants to plead ‘guilty on grounds of mental insanity’. This plea has been adopted by 20 states in the United States and allows an ‘ill’ defendant to receive the treatment they need from their jail cell. This allows them to both serve time for the crime they committed and recover to be rehabilitated back into society, which some might argue is the primary role of the criminal justice system. However, as ideal as this solution or any other sounds, many critics still disagree with the punishment. In cases of mental duress or instability, the justice system regularly shows a double standard in convicting the defendant. Others yet again would argue that these mentally ill are not criminals and putting them in with criminals will turn them into criminals like it did in the Stanford prison experiment. Lenient convictions for those struggling with mental health are still a controversial feature of legislative systems worldwide. The answer is not absolute, but the discussion is increasingly relevant as societies seek to confront inherent biases surrounding mental health.

¹⁶ Sherry Colby, “Does the Constitution Require the Insanity Defense?”

¹⁷ Sutcliffe, Eric. "Criminal Law: Plea of Not Guilty by Reason of Insanity: 174-83

Bibliography

Chung, Andrew, and Lawrence Hurley, "U.S. Supreme Court lets states bar insanity defense" in US Legal News, (March 2020). <<https://uk.reuters.com/article/us-usa-court-insanity/u-s-supreme-courtlets-states-bar-insanity-defense-idUSKBN21A2E>>

Lilienfeld, Scotto and Hal Arkowitz, "The Insanity Verdict on Trial." *Scientific American Mind* 21, no. 6 (2011).pp. 64-65. Accessed October 22, 2020. <http://www.jstor.org/stable/24943226>.

Lord Justice Lloyd Jones, Elizabeth Cooke, David Hertzell, David Ormerod, and Frances Patterson, "Criminal Liability: Insanity and Automatism -A

Discussion Paper." British Law Commission, (June, 2013)

http://www.lawcom.gov.uk/app/uploads/2015/06/insanity_discussion.pdf

"R v McNaughten M'Naghten Case Summary", November 2018, [Accessed October 25, 2020.] <<https://www.lawteacher.net/cases/r-v-mnaghten.php?vref=1> >

Sherry Colby, "Does the Constitution Require the Insanity Defense?", *Verdict* (June 5th, 2019). [Accessed October 25, 2020.]

<<https://verdict.justia.com/2019/06/05/does-the-constitution-require-the-insanity-defense>>

Slater, Eliot, H. B. Kidd, and Jeanne Johnson Smith. "M'Naghten Rules." *The British Medical Journal* 2, No. 4899 (1954): 1289-290. Accessed October 25, 2020 <<http://www.jstor.org/stable/20361665>>

Sutcliffe, Eric. "Criminal Law: Plea of Not Guilty by Reason of Insanity: Cal. Penal Code §§ 1016, 1026, 1027." *California Law Review* 19, no. 2 (1931): 174-83. [Accessed October 25, 2020.] doi:10.2307/3475856.

"U.S. Census Bureau. Population Density", 1960. *Social Explorer*. [Accessed October 30, 2020]