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M'Naghten v. Durham

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NO ONE WILL TAKE ISSUE with the proposition that enforcement of law is the chief means by which society keeps the peace within the social state. Having its beginning in the formerly recognized right of a party to seek vengeance against one who inflicted physical injury upon him, the enforcement of criminal law progressed to the point where it has become solely the province of the State, accomplished by the imposition of sanctions through the judgment of a court pronounced after trial of the issues as provided by law. The legal rights of persons whose personal or property interests have been injured by defendants acting in violation of law are the principal concern of the State, and the protection of such rights is the purpose of enforcement of criminal law. Many of the so-called safeguards circumscribing the power of the State in criminal proceedings have come about in order to assure a fair trial to the defendant. It is the purpose of these procedural requirements to protect a defendant in a criminal prosecution against the misuse of the power of the State. But these safeguards do not in any way change the purposes to be accomplished in a criminal prosecution. It is in every sense of the term a judicial proceeding, carried on as provided by law, to protect members of society against injury through criminal conduct.

It must be admitted that the process works backward. Rather than attempting to prevent the criminal (insofar as his unlawful tendencies can be anticipated) from indulging in his criminal depredations, the process is to impose penalties as punishment after the unlawful act has been committed, probably expecting that the penalty will deter further unlawful acts on his part. It is also considered that because of public knowledge of the imposition of sanctions by public authority upon an offender, resulting from antisocial conduct defined as criminal, others will be restrained from indulging in conduct of like character because of the fear of suffering similar punishment under like circumstances. This is not to say that the great ma-

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jority of the people, having a basic sense of social responsibility, and whose lives are directed in their social relation by an abiding sense of morality, do not, under some circumstances, need the persuasion of the public authority to resist criminal conduct.

One of the basic elements of most of the crimes as defined by statute (and at common law) that must be established in proving the guilt of a defendant is that the criminal act was knowingly and purposely done. There are, of course, varying circumstances within which the requirement of establishing a "guilty mind" as a prerequisite to legal guilt in a particular case is to be determined. In some cases, knowingly committing an act which results in harm to another is sufficient in itself, if the result was one which was reasonably foreseeable. In other cases a specific intent to accomplish a particular result must have been intended. There is also a class of cases where the performance of the act is sufficient to make out a case and constitutes a crime even though the mind is free of an unlawful purpose. The statutes in such cases make it the duty of the individual to comply with the law in all events, as necessary for the protection of the health and safety of the people. Just how mental incapacity is to be considered as a defense in these cases has been the subject of extended comment.

The subject of insanity as a defense to a charge of criminal conduct is one which is now in great controversy. The common law definition of what constitutes insanity of sufficient degree to be a complete defense in the commission of a criminal act, and under what circumstances "irresistible impulse" may be urged as a defense in a criminal act knowingly committed, is challenged by medical and some legal authorities. The prevailing rule, long established and followed by distinguished authorities, is that a defendant who does not have sufficient mental capacity to distinguish between right and wrong is not legally responsible for acts committed by him while in that state of mind. Such a defense, under the Ohio law, is affirmative in character, whereby the defendant must assume the burden of that issue and must establish such defense, properly pleaded, by the preponderance of the evidence.

Some writers have suggested that mental capacity, when it becomes an issue in a judicial proceeding, is a medical problem with which the lawyer is without competence to deal effectively. This contention must of necessity include the proposition that

jurors are also incompetent to determine the validity of such a defense when the question becomes an issue of fact which must be determined by judgments of laymen based on conflicting expert testimony of medical witnesses. It could be that, when psychiatry progresses to a point of reasonable certainty (which seems not in the near foreseeable future), the comparatively few mental incompetents (that is, those who could successfully establish the defense of insanity as now legally defined) could, after compulsory examination, be isolated from ordinary social activity and be subjected to necessary treatment. It seems probable, however, that the legal requirement of due process would bar any such attempt to put society in order by psychiatric examination. Some of the past results, historically recorded, in the release of dangerous criminals from prosecution, or their release after trial resulting in a verdict of not guilty by reason of insanity, where the rule of *M'Naghten*[1] was not the basis of determining their mental capacity, do not justify reliance alone on medical authority as to the degree of mental incapacity which will be a complete defense for criminal conduct.

Beginning, therefore, with the proposition that the determination of unsocial conduct must be by or through the judicial process after the act charged was committed, the question of the mental capacity of the defendant as affecting his responsibility for social misconduct needs definition in terms as clear and as easily understandable by the average individual as is possible. Mental capacity, when an issue in a criminal action, is a question of fact for the jury the same as any other fact in issue in a judicial proceeding, and cannot be finally determined by the professional guess of a member of the medical profession. This has been the process by which the facts upon which social rights and duties have been determined since the advent of the common law, and in a free society no one has ever suggested a sounder way to proceed.

The certainty and clarity of the definition of insanity in *M'Naghten's Case,* as a defense in a criminal proceeding, cannot be questioned. Its critics attempt to condemn it, but they do not suggest a rule of certainty to take its place. While the rule of *M'Naghten's Case* was not promulgated in the forensic atmosphere of a trial, yet the question was presented to the judges under circumstances such that, when they pronounced

[1] M'Naghten's Case, 10 Cl. & Fin. 200, 8 Eng. Rep. 718 (1843).

their conclusions as to what state of mind constituted a defense in a criminal act, the rule pronounced had the force of law, as shown by its almost universal acceptance by courts of last resort where the question has been at issue.

The mental competence of a defendant charged with crime is assumed in most jurisdictions, and the defense of insanity, whereby the defendant's act is claimed not to have been knowingly and purposefully done because of lack of mental capacity, as indicated is an affirmative defense. (In some jurisdictions, where insanity is suggested, the burden of proving mental competence is placed on the State). The issue, no matter on whom the burden of proof is placed, is what state of mental incapacity must be found by the trier of the facts in order to relieve the defendant from the imposition of the penalties under law for the commission of a public wrong. The question is crystalized in part by the controversy between *M'Naghten* and *Durham*.[2] The latter case injects the so-called rule of "irresistible impulse" into the issue as a question of fact which, if established, creates a complete defense, preventing the imposition of sanctions and releasing the defendant from all control by public authority except the judgment of the psychiatrist of the institution to which he may be committed for medical care. The importance of this fact, that a defendant is entitled to discharge from the criminal charge, where he can show that he lacked mental capacity to resist doing the unlawful act which he knew to be wrong or unlawful when committed, seems to have been lost sight of. This must be true unless the rules applicable to persons found not guilty because of insanity are made applicable to those who are able to distinguish between right and wrong, but who claim to be unable to resist doing the criminal act, so that they may be committed for institutional care in the same manner as those found not guilty by reason of insanity.

The purpose of the criminal law is to protect society against the depredations of antisocial persons. The enforcement of this law supports that trait of character which governs most people as to their social responsibility. Without such personal restraints, which result from social principles governing the conduct of the great majority of our people, free democratic institutions would soon disintegrate. A free people can only be free by enforcing,

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[2] Durham v. United States, 214 F. 2d 862 (1954).

even against themselves, the obligations necessary to preserve the social order, without which all basic rights would be lost.

Therefore, we return to the question of whether or not *M'Naghten* or *Durham* represents the rule of law best affording protection to society and justice for defendants charged with conduct destructive of community safety.

In *M'Naghten's Case,* the judges concluded:

> 1. Notwithstanding that a party accused did an act which was itself criminal, under the influence of insane delusion, with a view of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable if he knew at the time that he was acting contrary to law.
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> 2. If the accused was conscious that the act was one which he ought not to do, and if the act was at the same time contrary to law, he is punishable. In all cases of this kind, the jurors ought to be told that every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defense on the ground of insanity, it must be clearly proved that at the time of the commission of the act the party accused was laboring under such defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or as not to know that what he was doing was wrong.
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> 3. A party under a partial delusion must be considered to be in the same situation as to responsibility as if the facts in respect to which the delusion exists were real.
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> 4. When an accused person is supposed to be insane, a medical man who has been present in court and has heard the evidence may be asked as a matter of science whether the facts stated by the witness, supposing them to be true, show a state of mind incapable of distinguishing between right and wrong.

The net result of the *M'Naghten* pronouncement is that, in asserting the defense of insanity, it must be established that the defendant lacked mental capacity as defined under the law; that is, that as of the time the act was committed the defendant could not, because of disease of mind, distinguish between right and wrong.

Also, under the law of Ohio, when the defendant establishes insanity (as thus defined) by the preponderance of the evidence, he is to be found not guilty, even though all of the other elements of the crime are established.

There are, of course, many stages or degrees of mental illness. Only in cases where by reason of insanity the defendant is without mental capacity to control his conduct within the standards necessary to protect basic public morals and safety, should the law grant complete immunity from the imposition of sanctions for conduct constituting a criminal act.

As compared with the definite rule of *M'Naghten,* the *Durham* case introduces uncertainty into the law of criminal responsibility and abdicates the responsibility of the courts in this field, where the issue of insanity is presented to the uncertainty of the psychiatric expert. Durham was a derelict with a long history of mental institutional care, his attendance at such institutions resulting in almost every case as the aftermath of a trial on a charge filed against him for some criminal act. In the main case he was charged with housebreaking. At the trial a lay witness was permitted to give his opinion of the state of the defendant's mental health, which was that the accused was of unsound mind. However, the psychiatrist, while testifying that the accused was of unsound mind, stated that he could not say that the accused was unable to distinguish between right and wrong. Upon this state of the record the trial court found the defendant guilty. Upon appeal the judgment was reversed. The opinion of the appellate court was divided into two parts, the second dealing with the rule to be applied in determining the mental capacity of a person charged with crime, which capacity is necessary if he is to be held liable for his criminal conduct. Perhaps it is better to state the question as being the test to be applied on the issue of what mental capacity is necessary in order for a defendant to be held responsible for committing an act which constitutes a crime. The court, after claiming to disregard the "right and wrong" test, as one discredited from a medical viewpoint, even as supplemented by the so-called "irresistible impulse" rule, stated the rule to be that non-liability must result when the accused is shown to be suffering from an undefined diseased mental condition which deprived him of the will power to resist the impulse to commit a criminal act, although he knew that what he was doing was wrong, or in violation of law. In place of this expanded definition of what defective condition of mind, by reason of disease or congenital defect, constitutes a complete defense to a criminal charge, the court held the rule to be simply that "an accused is not criminally responsible if his unlawful act was

the product of mental disease or mental defect." In explanation of this statement of the suggested rule, the court said:

> But under the rule now announced any instruction (to the jury) should in some way convey to the jury the sense and substance of the following: If you, the jury, believe beyond a reasonable doubt that the accused was not suffering from a diseased or defective mental condition at the time he committed the criminal act charged, you may find him guilty. If you believe he was suffering from a diseased or defective mental condition when he committed the criminal act charged, you may find him guilty. If you believe he was suffering from a diseased or defective mental condition when he committed the act but believe beyond reasonable doubt that the act was not the product of such mental abnormality, you may find him guilty. Unless you believe beyond reasonable doubt either that he was not suffering from a diseased or defective mental condition or that the act was not the product of such abnormality, you must find the accused not guilty by reason of insanity.

The result of this decision is to open up the floodgates of uncertainty as to criminal responsibility in cases where insanity is claimed as a defense, or in jurisdictions where, when such claim is made, the State must prove the mental soundness of the defendant. The issue, where insanity is claimed as a defense, is not concerned with the character of punishment that should be imposed in the event that guilt is established. The issue is whether or not the defendant is subject to sanctions of any kind whatever, because of the criminal act committed. When, under the law of criminal procedure, a defense is properly established, or where the burden of such issue when claimed is put upon the State, and the jury finds for the defendant, such verdict releases the defendant from the control of the court even though the act committed was in fact a crime.

The difficulty of stating the legal meaning of "irresistible impulse" as a defense for knowingly committing a criminal act is one which its proponents have not been able to overcome. Certainly, where one has sufficient mind to distinguish between right and wrong, it is almost impossible to designate the point of transition from an act committed as a result of an irresistible impulse, said to be the result of disease of mind whereby he is relieved of all legal responsibility, and an act under like circumstances resulting from an overpowering passion, which, because of weakness of mind the defendant was unable to resist. Take the case

of one seeking exoneration from criminal liability because he acted under an irresistible impulse said to result from disease of mind in the performance of an act known to be wrong. If, for example, the defendant knew that a policeman was standing by when the urge to commit the act was being considered, are there any cases on record where the defendant nevertheless surrendered to the so-called irresistible desire to commit an unlawful act? Has anyone ever known a kleptomaniac or pyromaniac to act otherwise than in secret? The fact that the defendant knew that the act was wrong would be a deterring factor, with the officer or other observers at hand. But this would not be so if the defendant could not, because of disease of mind, distinguish between right and wrong, or have conscious knowledge of his wrongful conduct. In the latter case, exemption from legal sanctions is justifiable, while in the case of one acting under a so-called irresistible impulse in the known performance of a criminal act, release from sanctions cannot be justified. If the sanctions to be imposed should be of a different character in the case of one acting under irresistible impulse than those generally imposed under the law, such change, if justice requires it, is a legislative matter. All criminal conduct is abnormal, and only where all control is lost because of disease of mind or mental incapacity to distinguish between right and wrong should the release of the wrongdoer from the imposition of sanctions be permitted.

The Supreme Court of Washington in the case of *State vs. Maish,*[3] reviewed the leading cases on this question, and concluded that irresistible impulse to do an act which the actor knows to be wrong, whether or not induced by or growing out of mental disease, is not such insanity as will relieve the doer of the act from criminal responsibility. The court cites and follows *State vs. Harrison,*[4] and *State vs. Knight.*[5] In the *Harrison* case, after quoting with approval *State vs. Nixon,*[6] the court stated:

> It seems to me to be very dangerous to life to tell juries that a party may know the nature of his murderous act, and know and be conscious that it is wrong and criminal and yet be excused if he did the act at command of irresistible

[3] State v. Maish, 29 Wash. 2d 52, 185 P. 2d 486 (1947), 173 A. L. R. 382.

[4] State v. Harrison, 36 W. Va. 729, 15 S. E. 982 (1892), 18 A. L. R. 224.

[5] State v. Knight, 95 Me. 467, 50 A. 276 (1901).

[6] State v. Nixon, 32 Kan. 205, 4 P. 159 (1884).

> impulse; thus eliminating the knowledge of the wrong of the act as an unessential unimportant element in the test. I do not regard it essential to the safety of the parties charged.

Also, in the case of *State vs. Cumberworth,*[7] the court, after conceding that if one is incapable, because of disease of mind, of entertaining a criminal intent he must be exonerated, said:

> But to extend the doctrine of immunity to cases where the actor knows that he is doing what is wrong but claims his inability to resist doing the act, even though such lack of resistance is claimed to be the result of disease of mind, is to project the judicial process into the realm of uncertainty and speculation.
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> If there should be a need to change the character or degree of punishment to be imposed on one guilty of crime, because of partial mental incapacity due to disease of mind including "irresistible impulse," or, the long standing rule as to what degree of mental disability is sufficient to constitute a complete defense on the ground of insanity, such changes in the law should be the subject of legislation and not judicial decision.

As was said by the Supreme Court of South Carolina in *State vs. Gilstrap,*[8] the doctrine that a criminal act may be excused or mitigated by an irresistible impulse where the offender has the mental capacity to appreciate his legal and moral duty in respect to it has no place in the law.

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[7] State v. Cumberworth, 69 Ohio App. 239, 43 N. E. 2d 510 (1942).

[8] State v. Gilstrap, 205 S. C. 412, 32 S. E. 2d 163 (1944).