THE INSANATORY DEFENCE: HISTORY AND MODERN LAW APPLICATION

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INTRODUCTION:

The insanity defense is perhaps the most controversial of all criminal defense strategies. Several successful uses of the defense have caused public outrage in the united states and united kingdom. In some cases, it led to reforms of the defense.

The insanity defense roots in ancient Rome and Greece and has evolved over time. Today, most states use one of two insanity defenses.

THE BASIS FOR INSANITY DEFENSE

The insanity defense asserts that a criminal defendant is not criminally liable for their illegal acts due to their insanity. Insanity, in this context, refers to a specific mental illness or mental disorder.

A defendant asserting an insanity defense doesn't argue whether the law should hold them liable for their criminal behavior since they did not have the mental state to commit the crime.

In criminal law, the prosecution has the burden of proof in proving a criminal is guilty beyond a reasonable doubt. Most crimes require the prosecution to prove two things:

MENS REA: The alleged criminal intended to commit an act and bring about a desired result.

ACTUS REA: The act which the criminal intended occurred and was criminal.

The theory behind the insanity defense is that a person who is insane lacks the intent required to perform a criminal act. The theory is controversial because insanity itself is difficult to define and the circumstances in which a defendant may use an insanity defense to excuse criminal responsibility are challenging to characterize.

HISTORY OF THE INSANITY DEFENSE:

The insanity defense has a long history in criminal law, Courts in ancient Rome and Greece provided some defenses for people whose mental diseases led them to commit crimes.

Initially courts did not consider the insanity defense an argument that could acquit the defendant. Instead, it was a way for a defendant to receive a pardon or mitigate a sentence.

Depending on the jurisdiction, courts use one or a combination of the following tests for legal insanity;

The "M"Naghten Rule: Defendant either did not understand what he or she did, or failed to distinguish right from wrong, because of a "disease of mind". This legal test for the insanity defense is purely 'cognitive' and was established by British common law in mid-19th century. The M'Naghten rule was embraced with almost no modification by American courts and legislatures for more than 100 years, until the mid -20thcentury. It is used in a majority of US states and other jurisdictions around the world today.

The "irresistible Impulse" Test: As a result of mental disease, defendant was unable to control his impulses, which led to a criminal act. This is a purely "volitional" test. Essentially, the test allows for a defendant to be found guilty by reason of insanity if his or her mental illness was such that, although recognizing the wrongness of the offense, he or she was compelled to commit the offense anyway.

THE DURHAM RULE (1954): The Durham rule states that a criminal defendant is not criminally liable for an act resulting from a mental illness they had at the time of crime. It comes from the Washington DC federal court case.

In Durham, the defendant had a history of mental illness and a lengthy criminal record. Courts had institutionalized him three times. The mental health institution released him three times, and he committed criminal acts following each release. This particular case involved an alleged criminal act he committed two months after his third release.

THE WILD BEAST TEST (1256): The so called "wild beast test" was one of the first test for insanity. It originated in judge Henry, de Bracton's treatise, which was written in 1256.

An English case in 1724 described an iteration as the wild beast test. There, the court set out a person is insane if they were "totally deprived of his understanding or memory, and doth not know what he is doing, no more than an infant, a brute, or wild beast.

The wild beast test gave wide discretion to the trier of fact regarding whether a defendant possessed the required state of mind to commit a crime due to their alleged diminished capacity. But lacking a better option, courts used the wild beast for centuries

NEW HAMPSHIRE (1871): A New Hampshire court created a new test to determine insanity in 1871. In doing so, it rejected the M'Naghten test. The New Hampshire court ruled that a defendant is not liable for their criminal act if the act resulted from their mental illness.

The New Hampshire rule treats insanity as a question of fact rather than a question of law. As one professor notes, the test acknowledges that no universal tests exists to define and determine insanity. It leaves to the jury the question of whether a defendant did not act on their own volition due to a mental defect or whether the act was simply a

deviation from their normal personality.

MODEL PENAL CODE TEST (1962): The American Law Institute (ALI) Model penal code created an insanity defense in 1962. The MPC test states that a criminal defendant is not criminally liable if their conduct resulted from a mental disease or defect and:

- The defendant lacked the substantial capacity to appreciate the act was criminal; or
- The defendant could not conform their acts to the requirement of the law.

THE INSANITY DEFENCE ENDGAME

Defendants rarely raise an insanity defense. Of those that assert it, very few prevail. According to research, less than 1% of all criminal defendants raise the defense. Of those defendants, less than 30% prevail.

Given its low rate of success and general public hostility, To have insanity pleas, critics have suggested reforms to its current form.

One possible reform involves changing the defense altogether. For example, instead of a verdict of " not guilty by reason of insanity", the GBMI verdict could replace it. Another alternative is "not responsible by reason of insanity", supporters of these alternative argue that the term "insane" is outdated and carries a stigma, The proposed alternatives, they say, are more accurate descriptions of the verdict and may change public perception of the insanity defense.

Another criticism involves the fact that courts frequently commit those acquitted of a crime to a mental institution. These institutions may have conditions as bad as, or worse than prison. Also, those held in mental institutions generally do not know if or when the institution will release them. According to Dr Charles Patrick Ewing, author of "insanity: Murder, Madness, and the law", most convicted people sent to mental institutions will spend more time in a mental institution than they would have if the court sentenced them to prison.

A suggested reform for the mental institution issue is to incorporate more mental health resources into prisons, jails, or detention centers. Supporters of this reform argue it would be better to equip such facilities to help prisoners with mental illness and keep them safe.

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