St. John's Law Review

Volume 40, December 1965, Number 1 Article 5

Legislative Changes in New York Criminal Insanity Statutes

St. John's Law Review

lest it defeat its purposes. To discourage any attempt to defraud, it must be made clear from the outset that any compensation plan merely attempts to restore the victim to his former status—and nothing more.

It must be added that any tribunal established for maximum flexibility in the processing of a victim's claim should be carefully and simply constituted. The discretionary exercise of judgment would be impossible if a claim were routed through several levels of bureaucratic formality. At the outset, therefore, minor losses should be excluded from its purview, perhaps by establishing some reasonably minimal jurisdictional predicate comparable to the British three-week salary requirement.

Conclusion

The victim of a crime should be restored to his pre-crime status. The legal institutions presently in effect have failed in the great majority of cases to provide a means to effect such a restoration. This writer, therefore, advocates the adoption, on a state by state basis, of experimental systems of compensation for victims of criminal violence. If compensating authority is vested in tribunals with broad discretion, and if compensation is limited to the consequences of personal injury due to violent crimes, the major practical objections to such plans can be overcome. The material and psychological benefits which such plans would confer on the wronged victims are justification enough for their adoption.

Legislative Changes in New York Criminal Insanity Statutes

Introduction

Insanity has been a defense to prosecution for murder since the fourteenth century when the judiciary recognized that an insane defendant was not responsible for his actions because he lacked the mental capacity to formulate the vicious criminal intent which justified punishment.[1] Since that time the law has not kept pace

[1] Perkins, Criminal Law 738-40 (1957). For a concise history of the insanity defense see Judge Cardozo's opinion in People v. Schmidt, 216 N.Y. 324, 110 N.E. 945 (1915).

with modern sociological and psychiatric developments concerning the criminally insane.[2] Consequently, the law in most jurisdictions has remained substantially the same since 1843,[3] when the M'Naghten Rule was formulated.[4] New York, however, has recently enacted legislation in order to remedy some of the major defects in the M'Naghten Rule. This paper will attempt to provide an insight into this legislation by exploring the background of the new law as well as the terminology which it employs.

Early Development of New York Law

As early as 1816, New York courts had declared a defendant legally sane if he had knowledge of right and wrong in relation to his specific act.[5] The English M'Naghten Rule, which incorporated this right-wrong test, was subsequently enacted into law. Thus, Section 1120 of the New York Penal Law provided:

> a person is not excused from criminal liability . . . except upon proof that, at the time of committing the alleged criminal act, he was laboring under such a defect of reason as:
> 1. Not to know the nature and quality of the act he was doing; or,
> 2. Not to know that the act was wrong.[6]

This statute demanded a complete impairment or disintegration of the intellectual faculties before a criminal defendant could be declared legally insane.[7] It resulted in the absurdity that even if the defendant had only partial knowledge of both the nature and quality of his act and of its wrongfulness, he was deemed to be in control of his behavior and to possess the requisite *mens rea* for a criminal act.[8]

By the adoption of Section 34 of the New York Penal Law,[9] the legislature refused to recognize as criminally insane one who

---

[2] See WEIHOFEN, MENTAL DISORDER AS A CRIMINAL DEFENSE 2 (1954).

[3] *E.g.*, State v. Andrews, 187 Kan. 458, 466-69, 357 P.2d 739, 744-47, *cert. denied*, 368 U.S. 868 (1961); State v. Lucas, 30 N.J. 37, 67-72, 152 A.2d 50, 64-68 (1959); State v. White, 60 Wash. 2d 551, 585-93, 374 P.2d 942, 959-66, *cert. denied*, 375 U.S. 883 (1963).

[4] M'Naghten's Case, 10 C. & F. 200, 8 Eng. Rep. 718 (1843).

[5] For a discussion of early New York decisions see GLUECK, MENTAL DISORDER AND THE CRIMINAL LAW 154-55 (1925).

[6] N.Y. Sess. Laws 1882, ch. 384, § 1. The necessity of requiring knowledge of both nature and quality was set forth in People v. Kelly, 302 N.Y. 512, 99 N.E.2d 552 (1951).

[7] See Guttmacher, *The Psychiatrist As An Expert Witness*, 22 U. CHI. L. REV. 325, 326 (1955); Comment, 26 ALBANY L. REV. 305, 306-08 (1962).

[8] See Hall, *Psychiatry And The Law—A Dual Review*, 38 IOWA L. REV. 687, 696 (1953); Reik, *The Doe-Ray Correspondence: A Pioneer Collaboration In The Jurisprudence Of Mental Disease*, 63 YALE L.J. 183, 184 (1953).

[9] N.Y. Sess. Laws 1881, ch. 676.

suffered from a morbid propensity to commit prohibited acts with knowledge of their wrongfulness. Hence, it affirmatively rejected any insanity defense wherein the accused claimed that, although he knew the nature and quality of his act and that it was wrongful, he was under an irresistible impulse which compelled him to commit the act.[10]

Although the New York statutes remained in effect for many years, the harshness of such laws was readily apparent in many decisions of the New York Court of Appeals. Thus, in *People v. Moran*[11] the Court, in a per curiam decision, stated:

> the defendant is a "psychopathic inferior," a man of low and unstable mentality. . . . It is the law of New York, made binding upon the court by the enactment of a statute, that a youth of that order of mentality should suffer the penalty of death if guilty of the crime of murder.[12]

The court could not base its decision on the totality of the defendant's symptoms[13] but only upon his intellectual capabilities. Consequently, it was found that the youth did not lack *total* intellectual knowledge concerning the nature, quality and wrongfulness of his act; he was sentenced to execution.

Defects implicit in the M'Naghten Rule became especially apparent in the landmark case of *People v. Horton*.[14] The facts, in conjunction with the Court's decision, gave impetus to a proposed revision of the Penal Law.[15] In that case the defendant, an adolescent, was indicted for killing his father. In spite of the elicited facts supplemented by psychiatric evidence indicating the probability of mental disease,[16] the jury convicted the defendant of first degree murder. This conviction was based upon the defendant's conduct in planning and executing his father's murder. His deliberate acts indicated a sufficient degree of intellectual cognizance for him to be regarded as sane.

The Court of Appeals, in affirming the verdict, stated "the defendant cannot be excused from criminal liability because at the

---

[10] *E.g.*, People v. Carpenter, 102 N.Y. 238, 6 N.E. 584 (1886); Flanagan v. People, 52 N.Y. 467 (1873). See also Roche, *Criminality And Mental Illness—Two Faces Of The Same Coin*, 22 U. CHI. L. REV. 320, 321 (1955); Keedy, *Insanity And Criminal Responsibility*, 30 HARV. L. REV. 535, 546-48 (1917).

[11] 249 N.Y. 179, 163 N.E. 553 (1928).

[12] *Id.* at 180, 163 N.E. at 553.

[13] People v. Moran, 249 N.Y. 179, 163 N.E. 553 (1928).

[14] 308 N.Y. 1, 123 N.E.2d 609 (1954).

[15] Gutman, *People v. Horton: Is The M'Naghten Rule Adequate?*, 7 N.Y.L.F. 320 (1961).

[16] People v. Horton, 308 N.Y. 1, 17, 123 N.E.2d 609, 617 (1954) (dissenting opinion). See Gutman, *supra* note 15, at 325.

time of the killing his mind may have been disordered to a degree less than that which is fixed by Section 1120 of the Penal Law." [17]

The dissent vigorously attacked the Court for refusing to interpret the word "know" in the statute to include severe emotional disturbances which would affect the defendant's ability to understand that his act was wrongful.[18] Under such a construction, the defendant would have been considered insane because emotional disturbance had permeated his "inner consciousness" to such an extent that killing his father had been a reasonable act according to his judgment.[19]

In addition, the dissent thought that competent psychiatric testimony was being hindered by the Court's adherence to the original interpretation of the M'Naghten Rule. Any such testimony had to be limited to an examination of defendant's cognitive abilities [20] and the absence of emotional and volitional control was considered irrelevant. Consequently, the psychiatrist was forced to concentrate his attentions on only one aspect of the mentality of the accused.

The Proposed Solution

The aftermath of the *Horton* decision resulted in Governor Harriman's authorization of committees to study New York laws pertaining to insanity.[21] Before any constructive steps were taken, however, *People v. Wood* [22] was decided. The Court of Appeals, in sustaining a first degree murder conviction, observed that although one of the people's psychiatrists testified that the defendant's moral judgment had never developed, and that he was under an "inability to control his impulses," [23] he knew it was against the law to kill a human being. This knowledge alone was sufficient to deprive him of the defense of criminal insanity.

The Temporary Commission on Revision of the Penal Law and Criminal Code, continuing the work of the Harriman committees, attempted to foster bills which would aid defendants who commit criminal acts impulsively, due to mental disease, although they have knowledge of the wrongfulness of these acts. The bill, designed to remedy the defects of the M'Naghten Rule, was based upon the Model Penal Code.[24] It provided:

---

[17] *Supra* note 16, at 12, 123 N.E.2d at 614.
[18] *Id.* at 21-22, 123 N.E.2d at 618-19.
[19] *Id.* at 18, 123 N.E.2d at 617.
[20] *Id.* at 19, 123 N.E.2d at 618.
[21] Gutman, *supra* note 15, at 325-26.
[22] 12 N.Y.2d 69, 187 N.E.2d 116, 236 N.Y.S.2d 44 (1962).
[23] *Id.* at 75, 187 N.E.2d at 120, 236 N.Y.S.2d at 49.
[24] MODEL PENAL CODE § 4.01 (Proposed Final Draft No. 1, 1961). The Code provides "(1) A person is not responsible for criminal conduct if at

1. A person may not be convicted of a crime for conduct for which he is not responsible.
2. A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity:
   (a) to know or to appreciate the wrongfulness of his conduct; or
   (b) to conform his conduct to the requirements of law.
3. The terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.[25]

By excusing a defendant who lacks substantial capacity to know or appreciate the wrongfulness of his act, the Model Penal Code stresses the defendant's capacity to function and to relate his knowledge to his acts.[26] Thus, an accused is considered legally insane despite the fact that he is capable of verbalizing about the wrongfulness of his act.[27] The drafters of the Model Penal Code made use of the words "substantial" and "appreciate" to contrast the new approach with the M'Naghten Rule. They refused to construe these terms, however, believing that the sense of justice of the jury would control.[28]

The most important contribution of the Code is the recognition that it is not just or expedient to subject persons to punishment if they cannot conform their behavior to the requirements of law. It does not use the term "irresistible impulse," since this phraseology suggests that only sudden or spontaneous acts might be excused.[29] Instead, the Code would include as legally insane all those who have substantial knowledge of the wrongfulness of their act, yet lack the ability to conform their conduct to law.

---

the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law. (2) As used in this Article, the terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct."

[25] *Interim Report of the State of New York Temporary Commission on Revision of the Penal Law and Criminal Code,* 15, 17 (Feb. 1, 1963) [hereinafter cited as *1963 Interim Report*].

[26] Comment, 26 ALBANY L. REV. 305, 310-13 (1962).

[27] *Fourth Interim Report of the State of New York Temporary Commission on Revision of the Penal Law and Criminal Code,* 13 (Feb. 1, 1965) [hereinafter cited as *1965 Interim Report*].

[28] MODEL PENAL CODE § 4.01, comment (Tent. Draft No. 4, 1955). Insufficient knowledge concerning psychopathic personalities who engage in repeated criminal or anti-social conduct has produced conflicting opinions as to the most effective legislative treatment of these persons. Recognizing the weight of opposition that would confront any extension of the defense of insanity to the psychopathic personality, the drafters of the Model Penal Code added subsection 3 to minimize the controversy which they felt might impede enactment of the Code. Allen, *The Rule of the American Law Institute Model Penal Code,* 45 MARQ. L. REV. 494, 504-05 (1962).

[29] Allen, *supra* note 28, at 500-01.

The Temporary Commission on Revision of the Penal Law and Criminal Code, following the guidelines of the Model Penal Code, recommended the repeal of Section 34 of the New York Penal Law. It provided a bill to be added to the Code of Criminal Procedure which would permit a psychiatrist to make complete statements concerning the mental capabilities of the defendant and to explain and clarify his diagnosis and opinion within the framework of the new law.[30]

By passage of these bills in conjunction with the repeal of section 34, the Commission hoped to introduce a fundamental change in the New York Penal Law. It expressly provided in its recommendations that the word "know" be given a specific connotation when it is applied to one who appears mentally unstable. A person who has no concept of the consequences of his acts cannot be deemed to possess the "knowledge" requisite for legal sanity.[31] "The knowledge that should be deemed material in testing responsibility is more than merely surface intellection; it is the appreciation sane men have of what it is that they are doing and of its legal and moral quality." [32] In addition, the Commission stated that total impairment of the ability to know or control one's actions is not and should not be a prerequisite for mental instability.

> Even in the most extreme psychoses, there is often some residual capacity to know or to control; and, judging after the event, the psychiatric expert hardly can declare on oath at the time of the disputed action the actor was totally bereft of knowledge or control.[33]

After considering the Commission's proposals, the legislature enacted the following statute:

> A person is not criminally responsible for his conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity to know or appreciate either:
> (a) The nature and consequences of such conduct; or
> (b) That such conduct was wrong.[34]

It may be observed that the statute in its present form reflects certain significant departures from the M'Naghten Rule as it appeared in former section 1120. The addition of the words *"disease*

---

[30] N.Y. CODE CRIM. PROC. § 398-b, as amended, N.Y. Sess. Laws 1965, ch. 593, § 2 (effective July 1, 1965). "[A] psychiatrist who has examined the defendant . . . [may testify to] the capacity of the defendant to know or appreciate the nature and consequences of such conduct, or its wrongfulness."

[31] *1963 Interim Report* 12.

[32] *1963 Interim Report* 13.

[33] *1963 Interim Report* 14.

[34] N.Y. PEN. LAW § 1120, as amended, N.Y. Sess. Laws 1965, ch. 593 (effective July 1, 1965).

or" preceding "defect"; the substitution of *"substantial capacity to know or appreciate"* for "not to know"; the replacement of *"consequences"* for "quality"; and the use of *"conduct"* in place of "act" comprise these changes. However, it is also to be noted that the statute, as enacted, rejects the Commission's suggested formulation of section 2(b), which would have exculpated a defendant who lacked the substantial capacity "to conform his conduct to the requirements of law." Further, the new law fails to incorporate the Commission's proposed subsection 3 which would have defined mental disease or defect as excluding an "abnormality manifested only by repeated criminal or otherwise anti-social conduct."

By the addition of the words "substantial capacity to know or appreciate," it would seem that the new statute broadens the requirement of mere "knowledge" imposed by the M'Naghten Rule. Thus, the new language offers a test more psychologically valid in that a defendant possessed of mere surface knowledge can be determined criminally insane because of his lack of understanding of the legal and moral import of his conduct.[35] It is evident that an accused, although possessed of sufficient cognitive powers to be deprived of the defense of insanity under the M'Naghten Rule, might at the time of the act lack the substantial capacity to "know or appreciate" its nature or consequences, or to perceive its wrongfulness.

An interesting question for analysis with respect to legislative intent is posed by the legislators' rejection of subsection 3 as recommended by the Commission. The resultant exclusion of abnormalities manifested solely by the criminal or anti-social conduct of psychopathic or sociopathic persons from the definition of "mental disease or defect" [36] would appear to be a restatement of former section 34, which was, significantly, repealed by the same legislature. Thus, it seems that the legislature has evinced at least a possible willingness to extend the defense of insanity to a defendant whose morbid propensities toward criminal behavior may constitute the requisite "mental disease or defect" which deprives him of substantial capacity to "know or appreciate."

It is also interesting to examine the significance of the legislature's refusal to enact subsection 2(b) of the Commission's recommended bill, which provided that a defendant would not be determined criminally insane if he lacked the substantial capacity to conform his conduct to the requirements of law. The effect of this refusal would seem to exclude the possibility that an accused can be deemed insane when driven by "irresistible impulse" to commit criminal acts where he possesses the substantial capacity to know or appreciate the nature and consequences or wrongfulness of such acts.

---

[35] *1965 Interim Report* 13. See note 28, *supra.*
[36] See *1963 Interim Report* 17.

Conclusion

The new statute constitutes a significant improvement over the M'Naghten Rule. The emphasis is now to be placed on the defendant's "substantial capacity to know or appreciate" and not merely upon the presence or absence of knowledge. The new law appears to provide an appreciably broader basis for psychiatric testimony in criminal trials, and hence, a more penetrating psychological insight into the defendant's mental stability will be permissible. Although the testifying psychiatrists may be expected to differ on the specifics in their analyses, it is the jury which will render the ultimate decision. Thus, the new statute appears to substantially conform to the intent of the drafters of the Model Penal Code, who sought to give the jury a larger role in criminal cases where the defense of insanity is invoked.[37]

THE GOVERNMENT CONTRACT: ITS BURDENS AND BENEFITS

Introduction

In this age of ever-expanding governmental activity, it is incumbent upon the general practitioner to be acquainted in some degree with the highly specialized field of government contracts. By "government" contracts are meant contracts for goods or services entered into between private parties and a governmental agency. Although the general rules of contract law apply to both "private" contracts and "government" contracts,[1] due to its superior bargaining position, the government is able to impose conditions which enable it, ex parte, to modify the terms and obligations of the original agreement. This comment will deal with the government's ability to so modify its contracts through a "changes clause," and with the effects of this clause upon the government and the private contractor.

The "Changes Clause"

Present in every government contract is the so-called "changes clause." This clause is inserted by the government, through its agent, the government contracting officer, and enables it to unilater-

---

[37] MODEL PENAL CODE § 4.01, comment (Tent. Draft No. 4, 1955).

[1] See, *e.g.*, Tenney Eng'r, Inc., ASBCA No. 7352, 1962 BCA ¶ 3471 (accord and satisfaction), 1 CCH GOV'T CONT. REP. ¶ 6790.185 (1965); Tankersley Constr. Co., ASBCA No. 2363 (1956), 6 CCF ¶ 61,938 (parol evidence rule), 1 CCH GOV'T CONT. REP. ¶ 6790.71 (1965).