Defenses to Criminal Liability

The Insanity Defense

Here's the Reality of the insanity defense:

- defendants offer an insanity defense in <1% of all felony cases, & are successful only ~25% of that time
- defendants found not guilty by reason of insanity are often confined in mental institutions for many years, & in some cases for a longer time than they would have been incarcerated had they been found guilty
- few offenders "fake" insanity; most defendants who plead insanity have a long history of mental illness & prior hospitalizations
- in the large majority of cases, prosecution & defense expert psychiatrists agree on whether defendants are legally insane

History of Insanity Defense

- 350 BCE: Plato recommended in Laws that "if anyone be insane, let him not be openly in the town, but let his kinfolk watch over him as best they may, under the penalty of a fine"
- number of high profile cases involving attacks on monarchs/people in their service led to various tests of insanity
- many tests focused on impaired reasoning

The Insanity Defense: Myths & Reality

- insanity doesn't mean "mental disease/mental defect"
- mental disease & mental defect are medical terms while insanity is a legal term

insanity: the legal term that refers to a mental disease/defect that impairs the reason &/or will to control actions

civil commitment: noncriminal (civil) proceeding in which courts have the power to decide if defendants who were insane when they committed their crimes are still insane

Proving Insanity

The defense of insanity not only poses definition problems but also gives rise to difficulties in proving insanity at two critical times:

(1) when the crime was committed (sanity)

(2) when the defendant is charged & tried (competency)

- to overcome sanity presumption, defense has burden to offer some evidence of sanity; if they do, burden shifts to government to prove sanity

Tests of Insanity

Four tests determine whether people with mental disease or defects aren't responsible enough to blame & punish. In other words, they are excused from criminal liability:

(1) Right-wrong test (the McNaughtan rule). The oldest rule, it's used in 28 states & the federal courts.

(2) Irresistible impulse test. Only a few jurisdictions use this rule.

(3) Product test (Durham rule). It's followed only in New Hampshire.

(4) Substantial capacity test (the MPC test). This was the majority rule until John Hinckley attempted to murder President Reagan in 1981. It's still the rule in 14 jurisdictions but not in federal courts where it was abolished in 1984 & replaced with a return to the right-wrong test.

reason: psychologists call it "cognition"; the capacity to tell right from wrong

will: psychologists call it "volition," most of us call it "willpower"; in the insanity tests,it refers to defendants' power to control their actions

THE RIGHT-WRONG TEST (McNAUGHTEN RULE)

Boiled down to its essence, there are two elements to the right-wrong test created in McNaughten:

(1) The defendant suffered a defect of reason caused by a disease of the mind.

(2) Consequently, at the time of the act she did not know:

(a) the nature & quality of the act (she didn't know what she was doing)

(b) that the act was wrong

mental disease: most courts define it as psychosis, mostly paranoia & schizophrenia

mental defect: refers to mental retardation/brains damage severe enough to know what you're doing/if you know, you don't know that it's wrong

THE IRRESISTIBLE IMPULSE TEST: we can't blame/deter people who, because of a mental disease/defect know, that what they're doing is "wrong" but can't bring their actions into line with their knowledge of right & wrong

In 1877, the court in Parsons v. State spelled out the application of the right-wrong test with its irresistible impulse supplement:

(1) At the time of the crime, was the defendant afflicted with "a disease of the mind "?

(2) If so, did the defendant no right from wrong with respect to the act charged? If not, the law excuses the defendant.

(3) If the defendant did have such knowledge, the law will still excuse him if two conditions concur:

(a) If the mental disease caused the defendant to so far lose the power to choose between right & wrong & to avoid doing the alleged act that the disease destroyed his free will

(b) If the mental disease was the sole cause of the act

THE PRODUCT OF MENTAL ILLNESS TEST (DURHAM RULE)

product-of-mental-illness test (Durham rule): acts that are the "products" of mental disease/defect excuse criminal liability

- New Hampshire & Maine were only states to adopt product test but now only in New Hampshire

THE SUBSTANTIAL CAPACITY TEST (MODEL PENAL CODE TEST)

substantial capacity test: a person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease/defect he lacks substantial capacity either to appreciate the criminality (wrongfulness) of his conduct/to confirm his conduct to the requirements of law

- emphasizes both qualities in insanity that should determine culpability: reason & will
- defendants need not lack total mental capacity; test adds words "substantial

capacity" to remove possibility of requiring "total lack of reason" cognition test

- removes possibility that "irresistible" in "irresistible impulse" means total lack of knowledge/control
- use of "appreciate" instead of "know" makes clear that intellectual awareness by itself isn't enough to create culpability; emotional components of understanding are required
- the phrase "conform his conduct" removes requirement of a sudden "lack of control"
- MPC test has critics; some claim "substantial impairment" is "vague" & it allows too many defendants to escape criminal responsibility

The Defense of Diminished Capacity

diminished capacity: a failure-of-proof defense, in which defendant attempts to prove that the defendant, incapable of the requisite intent crime charged, is innocent of that crime but may well be guilty of a lesser one

diminished responsibility: an excuse defense in which the defendant argues, "what I did was wrong, but under the circumstances I'm less responsible"

- most states reject both types of diminished capacity
- diminished capacity & diminished responsibility apply only to homicide

The Excuse of Age

The common law divided children into three categories for the purpose of deciding their capacity to commit crimes:

(1) Under age 7. Children had no criminal capacity.

(2) Ages 7-14. Children were presumed to have no criminal capacity, but the presumption could be overcome.

(3) Over age 14. Children had the same capacity as adults.

waiver to adult criminal court: the juvenile court gives up its jurisdiction over the case & turns it over to the adult criminal court

judicial waiver: when juvenile court judges use their discretion to transfer a juvenile

to an adult criminal court

Most states have adopted the criteria for making the waiver decision approved by the US Supreme Court for DC. These include:

- the seriousness of the offense
- whether the offense was committed in an aggressive, violent, premeditated, willful manner
- whether the offense was against a person
- the amount of evidence against the juvenile
- the sophistication & maturity of the juvenile
- the prior record of the juvenile
- the threat the juvenile poses to public safety

The Defense of Duress

defense of duress: when defendants use the excuse that they were forced to do what they did

The Elements of Duress

There are four elements in the defense of duress:

(1) Nature of the threat. Death threats are required in some states. Threats of "serious bodily injury" qualify in several. Others don't specify what threats qualify.

(2) Immediacy of the threats. In some states, the harm has to be "instant." In others, "imminent" harm is required. In Louisiana, duress is an excuse only if the defendant reasonably believed the person making the threats would "immediately carry out the threats if the crime were not committed."

(3) Crimes the defense applies to. In the majority of states, duress isn't a defense to murder. In other states, it's a defense to all crimes. Some states are silent on the point.

(4) Level of belief regarding the threat. Most states require a reasonable belief the threat is real. Others demand the threat actually to be real. Some say nothing on the point.

The Defense of Intoxication

According to Professor George Fletcher, the defense of intoxication is "buffeted between two conflicting principles":

(1) Accountability. Those who get drunk should take the consequences of their actions. Someone who gets drunk as liable for the violent consequences.

(2) Culpability. Criminal liability & punishment depend on blameworthiness.

involuntary intoxication: an excuse to criminal liability in all states; it includes cases in which defendants don't know they're taking intoxicants/know but are forced to take them

- involuntary intoxication applies only under extreme conditions
- alcohol isn't the only intoxicant covered by defense intoxication; in most states, it includes all "substances" that disturb mental & physical capacities

The Defense of Entrapment

entrapment: excuse that argues government agents got people to commit crimes they wouldn't otherwise commit

- courts adopted two types of tests for entrapment: subjective & objective

SUBJECTIVE ENTRAPMENT

subjective test of entrapment: asks whether the intent to commit the crime originated with the defendant

After defendants presents, some evidence that the government persuaded them to commit crimes they wouldn't have committed. Otherwise, the government can prove disposition to commit the crimes in one of the following ways:

- defendants' prior convictions for similar offenses
- defendants' willingness to commit similar offenses
- defendants' display of criminal expertise in carrying out the offense
- defendants' readiness to commit the crime

OBJECTIVE ENTRAPMENT TEST

objective test of entrapment: if intent originates with the government & their actions would tempt an "ordinarily law-abiding" person to commit the crime, the

court should dismiss the case

Syndrome Defenses

syndrome: group of symptoms/signs typical of a disease, disturbance, or condition

PREMENSTRUAL SYNDROME (PMS): excuse that PMS led to the defendant committing the criminal acts

There are three obstacles to proving the PMS defense:

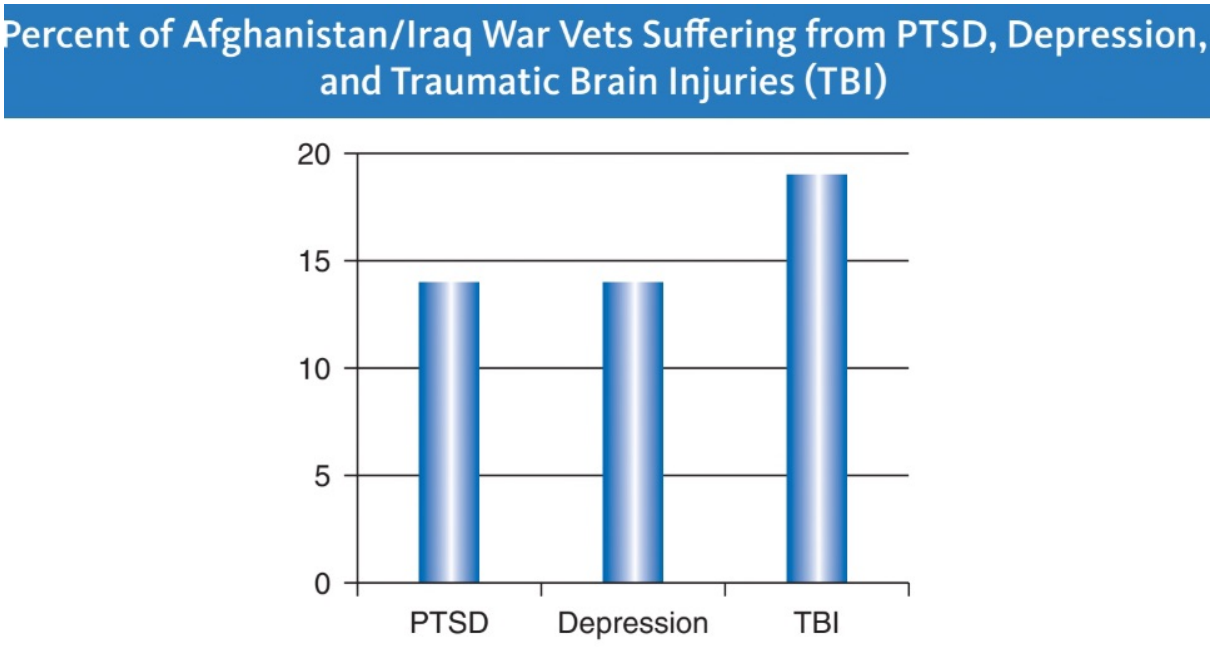
(1) Defendants have to prove that PMS is a disease; little medical research exists to prove that it is.

(2) The defendant has to suffer from PMS; rarely do medical records document the condition.

(3) PMS has to cause the mental impairment that excuses the conduct; too much skepticism still surrounds PMS to expect easy acceptance that it excuses criminal conduct.

POST-TRAUMATIC STRESS DISORDER (PTSD): excuse that argues the defendant, wasn't responsible because of PTSD

- PTSD, depression, & traumatic brain injury (TBI) are most frequent from blasts/ other head injuries



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