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The Insanity of Men's Rea

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On March 30, 1981, John Hinckley attempted to assassinate President Ronald Reagan, believing it would attract the affection of actress Jodie Foster. He injured Reagan and four others in his attempt. Hinckley was taken to trial and found “not guilty by reason of insanity.” The Hinckley decision induced more public resentment than any other verdict in recent history.

Three quarters of the people surveyed for an ABC News poll felt justice had not been served. The public’s reaction spurred a variety of legal defense reforms in many states across the nation. Utah, Montana, and Idaho abolished the insanity defense altogether and adopted the mens rea approach in its stead. Though the mens rea approach may differ from the insanity defense superficially, the results of the two approaches are strikingly similar. The mens rea approach applies to a wider population of criminals. Utah, Montana, and Idaho’s attempt to reform the insanity defense is not an improvement on what many see as a flaw in the legal system.

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4 An approach rebutting the essential element of criminal responsibility: a guilty mind or criminal intent.
I. Definition of the Insanity Defense

A successful insanity defense calls for proof that “at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.”\(^5\) In other words, a successful insanity defense requires more than the presence of mental illness. The defense must establish that the defendant was unable to understand the severity of his or her actions at the time of the crime due to the mental illness.

II. The Mens Rea Insanity Defense

Mens rea can be defined as “an element of criminal responsibility; a guilty mind or wrongful purpose; a criminal intent.”\(^6\) The law necessitates that the crime must have involved “guilty knowledge and willfulness” in order to find a defendant guilty.\(^7\) The mens rea approach involves the negation of this essential component. The defense must prove that the defendant did not act with criminal intent. In addition to covering substantial mental illness as the insanity defense does, the negation of mens rea applies to other circumstances such as temporary insanity and momentary heat of passion.

III. Misconceptions

Opposition to the insanity defense is often the result of misconceptions that the defense is used too frequently and allows criminals to evade serving time in prison. Researchers have found that “even after being provided with correct information about such issues,


\(^{6}\) 7 WEST’S ENCYCLOPEDIA OF AM. LAW 38 (2d ed. 2005).

\(^{7}\) Id.
many individuals maintain their misconceptions.” In these instances, one may speculate that willful ignorance or prejudiced attitudes may account for the widespread disregard and perpetuation of confusion concerning the nature of the defense.

Many believe that the insanity defense assists criminals in evading being punished for their actions. This is, however, a gross misconception. In reality, a mere one percent of defendants plead insanity. The American Academy of Psychiatry and Law published a study of more than 8,979 insanity cases in 49 counties between 1976 and 1987. They found that twenty-six percent of those defendants were acquitted, mostly in cases where prosecutors agreed to the plea. Only seven percent of acquittals came from jury trials. It is clear that the insanity defense is rarely raised, and even less frequently successful. Nevertheless, Utah, Montana, and Idaho have turned to other ways of handling mental disorder in the courtroom, like the mens rea approach, presumably in order to ensure that guilty criminals are not acquitted as a result of a successful insanity defense.

IV. The Rhetoric and Result of the Two Approaches

Superficially, the insanity defense and mens rea are very different. The insanity defense applies only to claims of mental illness, while the mens rea approach applies to a broader population, examining all states of mind. Upon examination, one will find that the two approaches are only notably different in terms of rhetoric. The two approaches are, however, remarkably similar in terms of result.


9 Id. at 624.

A. Differences in Rhetoric

The implications of the term “mens rea” are similar but slightly different from the implications of the term “insanity.” Because mens rea “is the essential mental element of the crime,” knowledge of the defendant’s level of intentionality involved in his or her act is vital to delivering a verdict and determining the sentence. The US Department of State explains the importance of the mens rea component of a crime:

The U.S. legal system has always made a distinction between harm that was caused intentionally and harm that was caused by simple negligence or accident. Thus, if one person takes the life of another, the state does not always call it murder. If the killing was done with malice aforethought by a sane individual, it will likely be termed “murder in the first degree.” But if the killing occurred in the passion of a barroom brawl, it would more likely be called “second-degree murder,” which carries a lesser penalty.

Furthermore, a death that occurred as the result of reckless driving is considered “negligent homicide,” as the state would not consider such an action to be as serious as an intentional murder. To challenge the mens rea of a defendant is to assert that the crime was not committed with a level of intentionality that merits severe punishment.

Trial courts may interpret mens rea to encompass all varieties of mental illness, rendering abolition of the insanity plea futile. The presence of mental illness still potentially influences the verdict and sentencing of a defendant. In Montana, for example, the verdict associated with lack of mens rea is “not guilty by reason of lack of mental state.” The language in this verdict is very general; the phrase “lack

12 Id.
13 Id.
of mental state” lends itself to many circumstances including drug use and moments of passion. This expands rather than limits the number of defendants who might supposedly “evade” punishment due to their mental condition at the time of the offense.

In other instances, trial courts may define mens rea so narrowly as to discount all varieties of mental illness. The mens rea approach can be used in the courtroom either to acknowledge any level of insanity or disregard it altogether. For example, one verdict associated with lack of mens rea in Utah is delivered as “guilty and mentally ill at the time of the offense.” In this verdict, “guilty” and “mentally ill” are disconnected. It implies that guilt is not a result of the mental illness. The abolition of the insanity defense is presumably meant to limit the number of criminals to whom the defense applies. The mens rea approach, however, is too ambiguous; it only blurs the boundaries between those to whom this type of defense applies and those to whom it does not.

Conversely, the term “insanity” is very specific. It refers only to a state of mental illness. According to West’s Encyclopedia of American Law, a person must be “so mentally disturbed that her irrationality or compulsion is impossible to control, that person lacks responsibility as a moral agent.” This term does not apply to a person who commits a crime after willfully taking a hallucinogenic drug. It also does not apply to a person who willfully refrains from taking medication prescribed to control a mental disorder. It certainly does not apply to a person acting on an impulse of passion. Unlike mens rea, a term that is broad enough to include all of these circumstances, “insanity” refers only to a person who lacks self-control or understanding due to mental illness. In Colorado, if it is determined that a defendant’s actions were a result of mental illness, the verdict

16 UTAH CODE ANN. § 77-16a-102 (West 2004).
17 WEST’S ENCYCLOPEDIA OF AM. LAW, supra note 6, at 407.
18 Id.
is delivered as “not guilty by reason of insanity.” In Arizona, the associated verdict is “guilty except insane” if it is determined that mental illness was the cause of the defendant’s actions. These verdicts clearly implicate mental illness as a factor, where Utah’s verdict keeps guilt and mental illness disconnected.

Ultimately, both the traditional insanity defense and mens rea approach question the mental state of the defendant. Both methods ask the jury to decide whether or not the defendant likely committed the crime with malicious intent. The insanity defense limits itself to the mental health of the individual. The mens rea approach, however, is at liberty to extend itself to other circumstances or even discount mental illness altogether.

**B. Similarities in the Results of a Successful Defense**

The results of a successful defense, however, do not differ significantly between the two approaches. The outcome of a successful insanity defense causes much concern for the layperson, even for individuals who know that the insanity defense will not allow criminals to get off without punishment. Many fear that the insanity defense simply places criminals in a hospital and releases them shortly thereafter to repeat their crimes. This is an exaggeration of the truth. In practice, the outcome of a successful insanity defense and the outcome associated with a successful mens rea rebuttal are very similar: they both result in hospitalization.

In Arizona, where the insanity plea has been retained, the individual is committed to a state mental institution and put under the custody of the Psychiatric Security Review Board upon receiving a “guilty except insane” verdict. The individual can apply for his or her case to be reviewed after 75 to 120 days depending on the severity of the offense. If the board deems the individual fit for society, the board gives the individual a conditional release. This means that the individual is still under the custody of the review board, which

21 Hans & Slater, *supra* note 3, at 207.
will set a plan for the individual's reform. If he or she violates these conditions, the individual stands trial once more to decide whether or not the release should be revoked. If the board does not find the individual fit for society, however, he or she must wait twenty more months before applying for review again. 22 This procedure is typical among all states that retained the traditional insanity defense. For example, the process is identical in Colorado, except the individual must wait six months before applying for review. 23

The procedure for release is virtually the same in the states that favor the mens rea approach. For instance, when an individual is found "not guilty by reason of lack of mental state" in Montana, he or she is committed to a state mental institution for a period of time lasting no longer than the maximum sentence. After 180 days, he or she can request an examination. 24 If the individual is found to be fit to return to society, he or she is given a conditional release. If the board does not deem the individual fit to return, he or she must wait for one year before applying again. 25

In any state, individuals can obtain release, but care is taken to keep dangerous criminals off the street. For offenders committing crimes involving bodily harm or substantial property damage, it must be established that this individual will not create considerable risk to another person or another person's property due to mental disease upon release. For more serious offenses, the government must be informed that "release of the individual is under consideration," and a request may be made for a hearing concerning the affair. Ultimately, evidence suggests that the guilty party will often spend more time in the institution after utilizing the insanity defense than he or she would have served in a penitentiary. 26

Though the length of time an individual must wait between reviews is slightly different between states, the procedure resulting from the success of a traditional insanity defense and the mens rea

23 COLO. REV. STAT. ANN. § 16-8-103 (West 2006).
25 Id. § 46-14-302.
26 WEST'S ENCYCLOPEDIA OF AM. LAW, supra note 6, at 408.
approach are essentially the same. In the end, the mens rea approach seems to be little more than the insanity defense masquerading under a different name, possibly merely to appease the public’s concern over the issue. The insanity defense is, however, more explicit than the mens rea approach in specifying to whom the defense applies.

V. Conclusion

Many misguidedly believe the insanity defense to be an easy way for a criminal to escape punishment. In reality, the insanity defense is rarely raised and seldom successful. When it is successful, the result is generally hospitalization, not release. A few states have abandoned the insanity defense altogether, believing the adoption of the mens rea approach to be more effective in keeping criminals off the streets. This approach has, however, proven to be little more than a more generalized approach to reach the same result. Given that the insanity defense does not satisfy the general public and the mens rea approach is no improvement, action must be taken. Either further reform of the insanity defense should be considered, or efforts should be made to ensure that the general public gains a more accurate education regarding the nature of the insanity defense.