No excuses

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On Friday 30 June 2000 David Copeland was convicted on three counts of murder and three counts of causing explosions for which he received six life sentences.

David Copeland, also known as the nail bomber, had pleaded not guilty to murder but guilty to manslaughter on grounds of diminished responsibility on three counts. The factual evidence was clear; he had, alone, conducted a private campaign against black people and homosexuals. He learned from the Internet how to make nail bombs and he left bombs equipped with delayed timers in busy places on three separate occasions. The third time was in a public house frequented by gay people and it was on that occasion that some of the injuries were lethal, although all the bombs caused serious injuries. He was detected because he was filmed by a shopping precinct video camera and his picture was recognized by people who knew him. His flat was found to be a virtual miniature bomb factory and was also full of Nazi and other right wing paraphernalia expressing race hatred.

LEGAL BACKGROUND

In English Law there are two questions to be dealt with before someone is found guilty of a crime. The first concerns identifying the right person. The second question concerns matters such as intent and voluntariness, the so-called *mens rea*. Serious charges usually require clear evidence of intention and Hart[1] suggested that there are five regularly used excuses for such crimes—mistake, accident, provocation, duress and insanity.

Most jurisdictions allow some leeway for mentally disordered criminals. The tests of insanity in England and Wales were spelled out explicitly in the so-called McNaughton Rules in 1843[2]. For many people charged with an act of homicide, a defence under the McNaughton Rules on the ground of insanity was one of the few ways of escaping the death penalty. More liberal minded approaches in the 20th century gradually introduced other opportunities of escaping the ultimate sentence. First, women who had killed their newborn babies were allowed a path to a non-capital conviction on psychiatric grounds under the two Infanticide Acts of 1922 and 1938[3]. A later modification of the English Law was the introduction of the concept of diminished responsibility in 1957. This allowed the charge of murder to be reduced to manslaughter if the accused person was suffering from such 'abnormality of mind . . . as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing'. This was a specific defence for murder and it was clearly designed to allow discretion for sentencing. When the death penalty was abolished murder retained a mandatory sentence of life imprisonment, and so the diminished-responsibility laws are still used to allow more flexible sentencing (including life imprisonment) in cases where the court is satisfied that the killing took place as a result of mental disorder.

Mr Copeland was found to suffer from a severe psychosis, one which had been developing over many years, and which led to a delusional system concerning black people and homosexuals. Although he was initially remanded in custody in a maximum security prison he was found to be sufficiently mentally unwell to be moved, during the course of the remand period, to a high security special hospital, Broadmoor Hospital. A psychiatrist, instructed for the prosecution, argued that the psychotic state experienced by Mr Copeland did not amount to schizophrenia, the main diagnosis being a personality disorder. This was an isolated professional opinion set against evidence given by all the other psychiatrists who had seen Mr Copeland and in particular against the evidence of the psychiatric team at Broadmoor Hospital who had come to know the patient well. However, the jury favoured the minority view and Mr Copeland was convicted of murder.

As one of the examining psychiatrists I had no doubt whatever of the seriousness of Mr Copeland's mental disorder and the delusional nature of his actions. However, I also had no doubt that he would be convicted of murder not manslaughter. How could I be so sure?

Hadfield, McNaughton and Fooks

In 1800 James Hadfield, a Napoleonic war veteran, shot at George III when the King was attending the theatre. He missed and the King was unharmed. Hadfield had received serious head wounds in the wars against the French, and on

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examination just after the shooting he was found to be depressed and tired of life. There are very few clear records of his mental state but it is possible that he was trying to induce his own execution. He had been an excellent soldier until his injuries, after which he was described as becoming incoherent and 'deranged'. He was found not guilty on grounds of insanity. It is noteworthy, however, that nobody was injured in his shooting. The verdict caused political uproar and an Act for the Safe Custody of Insane Persons who have been charged with offences was rushed through Parliament, to ensure that someone found not guilty by reason of insanity was not set free but removed to a mental hospital.

In 1843 a deluded Scotsman by the name of James McNaughton came down to London with the specific intention of destroying the Tories, who were then in power. He waited in Downing Street and when the Prime Minister, Robert Peel, and his Secretary, Edward Drummond, emerged he drew two pistols. He discharged one and hit Mr Drummond who subsequently died, but he was overpowered by the Downing Street policeman before he could discharge the other.

Mr McNaughton had the benefit of one of the best lawyers of the day, Mr Alexander Cockburn QC. As Rollin[4] put it, had the victim of Daniel McNaughton's murderous assault been a person of no importance, the event would have scarcely troubled the waters of medicolegal history. As it was, 'the . . . consequence of the murder and the subsequent trial, and the verdict, ''not guilty on the grounds of insanity'', was to set up a veritable tidal wave of public alarm concerning the obvious defects in the criminal law which seemingly allowed madmen to commit murder and get away scot free'. *The Times* published this poem, entitled *On a Late Acquittal*:

> Ye people of England exult and be glad
> For ye're now at the will of the merciless mad
> Why say ye that but three authorities reign
> Crown, Commons and Lords?—You admit the insane.
> They're a privileged class whom no statute controls,
> And their murderous charter exists i their souls.
> Do they wish to spill blood—they have only to play
> A few pranks—get asylum'd a month and a day
> Then Heigh! to escape from the mad doctor's keys
> And to pistol or stab whoever they please . . .
>
> For crime is no crime—when the mind is unsettled[2].

The public outcry, even though McNaughton had been taken off to Bethlem Royal Hospital, forced the judges to formulate the McNaughton Rules.

Twenty years later in 1863, a notorious killer by the name of Charles Fooks was charged with murder. He was described as 'viscious' and the evidence seemed to suggest that he suffered from sadistic, paranoid delusions[5]. A strong defence of insanity was put to a jury. However, the judge, Mr Sergeant Shee, directed 'you are not to be deprived of the exercise of your common sense because a gentleman comes from London and tells you scientific sense'. This direction did the trick; the jury returned a verdict of murder and the deluded Mr Fooks was hanged.

PETER SUTCLIFFE

It was the Peter Sutcliffe ('Yorkshire Ripper') trial of 1981 that clinched my opinion that Mr Copeland stood no chance of a diminished-responsibility verdict in front of an English jury. Mr Sutcliffe was charged with the murder of thirteen women. After his arrest he was found to have a classic florid schizophrenic illness including loud hallucinations which instructed him to kill the women. His delusional system embraced the idea that God had given him a mission to rid the world of prostitutes.

In the Sutcliffe case every psychiatrist who examined him found the same evidence of severe schizophrenia and a clear connection between the schizophrenia and the killings. So clear-cut was the evidence that the prosecution led by the Attorney General, Sir Michael Havers, was prepared to accept the plea of diminished responsibility to all thirteen charges. However, the judge was not so prepared and he ordered that the argument for diminished responsibility should be put to a jury despite of the lack of psychiatric evidence to do this. As the *News of the World* at the time put it, 'Mr Justice Boreham must have known well that psychiatrists and do gooders who sit on the paroles of the supposedly mad are all too fallible'. Several extraordinary days followed in which, in the absence of any psychiatric reports to help them, the prosecution argued that Mr Sutcliffe was making up a psychiatric story in order to fool the doctors. As the judge had clearly expected, Peter Sutcliffe was convicted of murder on all thirteen counts.

At that point in the trial an interesting and revealing change took place. One of the psychiatrists who had been pilloried by the prosecution for being gulled by a man feigning mental illness was now called to give psychiatric evidence again. He said 'in the light of the present knowledge of schizophrenia we believe that he [PS] should be kept in custody for the rest of his natural life'. The psychiatrist became a wise man, an 'expert', and Mr Sutcliffe was immediately sentenced to twenty concurrent terms of life imprisonment and off he went to Parkhurst Prison. Whether the psychiatrist should have given such evidence is too complex a question to debate here.

In Parkhurst Prison it was immediately apparent that all the doctors who had seen him were right. The prisoner was severely schizophrenic and needed to be in hospital. Regular

submissions to this effect fell on deaf ears at the Home Office until there was a change of Home Secretary. Two years after his trial Peter Sutcliffe was transferred to Broadmoor Hospital.

Mr Copeland was handled rather differently at the end of his trial. He had the advantage of already being in hospital at the time of the trial and so his movement to and from the court was from hospital rather than prison. The Home Office was consulted before the trial so that, in the event of a sentence of life imprisonment, as occurred, they were ready to agree to an immediate submission by the doctors for a transfer from prison to hospital.

CONCLUSIONS

As psychiatry advances and more and more is understood about the nature and therapeutics of severe mental illnesses such as schizophrenia and depression, doctors are apt to think that the only impediments to the proper management of such disorders are resources and administration. Legal history should teach them otherwise. Mental disorder is an abstract concept which arises from the vernacular and does not belong to the medical profession. It is quite clear that in a legal arena the concept belongs to lawyers and jurymen. On many occasions due deference is given by lawyers and jurymen to medical opinion, thus conferring apparent power to psychiatrists. This is an illusion because the power is on loan and can be withdrawn when the politics of a case, usually a high profile case, demand it. The mental-abnormality excuse used to mitigate many crimes of homicide is not available for cases deemed inexcusable by the newspapers, politicians and public opinion. If by some skilful advocacy an 'inexcusable' crime is excused, then a public outcry occurs after the trial. In the case of Daniel McNaughton the whole legal profession was put under pressure to change the rules and duly did so. In the case of Charles Fooks the judge made it quite clear that, for reasons which have been lost to us today, politics at the time were not going to allow this particular man to be excused on medical grounds. More recently both Peter Sutcliffe and David Copeland terrorized whole communities and were the target of intense feelings of public vengeance; any excusing of their crimes on medical grounds would have led to a public outcry which the courts and their jurymen circumvented.

Fortunately, forbidding any psychiatric excuse in these wholly exceptional cases does not, in Britain now, result in execution. Methods can be found to provide the convicted man with treatment. This is clearly an important piece of pragmatism. Victims can feel some sense of closure, and convicted people can be treated and rendered harmless.

REFERENCES

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