Substance abuse-induced dementia and insanity

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Substance Abuse-Induced Dementia and Insanity: Is Cause of the Mental Illness Relevant to Criminal Responsibility?

Abstract

This paper reviews the evolving stances on voluntary intoxication, addiction and the insanity defense. It will review all sides of the debate of culpability of voluntary intoxication, the debate among the sciences, along with the more informed knowledge on addiction and a more inclusive stance on intervention when sentencing an offender with addiction. Unlike involuntary intoxication, or unknowingly ingesting a substance that would cause them to become impaired, voluntary or self induced intoxication defined as an individual taking or ingesting, injecting, or by other means a substance knowingly, that causes intoxication. It is not enough to be an addict just as it is not enough to be mentally ill for an insanity defense. The debate can sometimes seem similar to the chicken or the egg, especially if an individual has prior mental health issues. More relevantly, when does or can an individual's addiction qualify or become plausibly applicable to involuntary intoxication. Neuroscience and psychology both play an important role in the questions at hand in this area.

When looking at insanity as a defense, the first thing that comes to mind is compromise between the public and our justice system. A defense comprised of our society's notion that criminals need to be punished, but the mentally ill should receive and are in need of treatment instead. Most notably the first recorded definition being in an English legal dissertation in 1581. Using words such as madman, lunatic, and natural fool, and doing acts

at the time of their lunacy, they were not culpable for their doings (Asokan, 2016).

The issues over recognizing and what constitutes insanity have been debated in courts for centuries, in 1724 a King Edward's court judge, Justice Tracy, developed what he deemed the wild beast test. A defendant was considered insane if he/she lacked the mental abilities no greater than an infant, brute, wild beast or lunatic (Stoll, 2009). Justice Tracy's concept of insanity was very narrow because it only pertained to those completely lacking mental processes or utilities. It was not until the M'Naghten case in 1843 that the concepts of insanity would become a tad wider in scope and become more of a common law, but not without controversy. M'Naghten was acquitted of murder after being evaluated by several medical professionals and found to have schizoid behavior, but under the Criminal Lunatics Act 1800, he was forced to be institutionalized for the rest of his life (Asokan, 2016). The M'Naghten rule was still restrictive to any person lacking reason, but does not recognize the lack of self restraint, yet it was responsible for other issues being raised concerning medical practitioners and their ability to assess the offenders state of mind during the time of the offense, as well as the importance of expert testimony. After the acquittal of M'Naghten, the public became angery over what they and the press considered being blatantly lenient because they felt that he didn't look " mad" and seemed to carry himself in a rational manner (Dalby, 2006). This would not be the last time an insanity verdict would cause an uproar. In 1981, John Hinckley's attempted assassination of President Reagan, once again a not guilty by reason of insanity verdict, relying on the ALI's Model Penal Code (which puts

the responsibility on the jurors), and the jury finding there to be lacking burden of proof of the test, caused fear of criminals being able to escape punishment and made the public's blood to boil. Congress almost immediately started their reformation and conceded the Insanity Defense Reform Act of 1984, re-establishing the M'Naghten test, incorporating the burden of proof to be on the defendant, and that an insanity defense can only be allowed if the defendant has clear and convincing evidence of having a severe mental disease or defect (Stoll, 2009).

Unlike involuntary intoxication, or unknowingly ingesting a substance that would cause them to become impaired, voluntary or self induced intoxication defined as an individual taking or ingesting, injecting, or by other means a substance knowingly, that causes intoxication, specifically in the Florida 2018 Statues, 3. 6(d) Voluntary Intoxication, 775. 051, is not a defense and evidence is not admissible to show lack of intent or insane. This Statue and the many others like it are seemingly, straight forward and pretty black and white, right? Well, not so much. Today most states still adhere to the basics of the Insanity Defense Reform Act 1984. In many states it is continuously evolving. Arizona, for example, has taken on a guilty but insane statute, seemingly contradictory in terms but still, it's close to the M'Naghten test yet genially combines the stigma and condemnation of the crime, while still trying to avoid the outcry of lenience (Stoll, 2009). In our court of law, there are two elements needed in order to find guilt beyond reasonable doubt, the wrongful deed (actus reus), or criminal intent (mens rea). The insanity defense, or not guilty by reason of insanity, submits that the defendant admits to the act, admits to the intent (mens rea), but was mentally

incapable of appreciating the consequences and unable to resist or control their actions (actus reus), and there for has no culpability to their crime (Weiner & Otto, 2013). Involuntary intoxication is not included in this, nor is other conditions such as pedophilia, kleptomania, pyromania, and psychopathy. The guilty but insane statue mirrors diminished capacity. This is when a defendant is acknowledged to have a mental impairment or defect and is incapable of having the intent to do harm; not considering the extent of guilt (Weiner & Otto, 2013), but rather basic guilt, therefore it is typically treated as reckless behavior and the defendant usually receives a lesser charge (manslaughter instead of murder).

Science is ever evolving in the area of substance abuse and psychosis, although most court systems have not adapted to or even recognize the disease model of addiction (Davis, 2018). It is not enough to be an addict just as it is not enough to be mentally ill for an insanity defense. The debate can sometimes seem similar to the chicken or the egg, especially if an individual has prior mental health issues. More relevantly, when does or can an individual’s addiction qualify or become plausibly applicable to involuntary intoxication. Neuroscience and psychology both play an important role in the debate at hand in this area. Australian neuroscientist David Eagleman, contends that neuroscience is essential and can fundamentally change our customs of sentencing in our court system. He wants the courts to relinquish the idea of punishment, deeming it unjustified and retributive, and turn its attention towards the direct management of criminals by deterring these behaviours in order to protect the public. American psychologists Joshua Greene and Jonathan Cohen contend that

neuroscience by revealing impairments in the process mechanics of human behavior will have us then thinking instead that we are all impaired and occasionally impulsive and unable rather than unwilling to abide to ethical accountability, in a sense, so therefore no one has the free will to choose their actions and consequently they do not deserve any just punishment for their criminal behavior (McCay, 2016). It is widely recognized that addiction is associated with changes in the brain, but the controversy of this very complex and very multifaceted issue is in the naming and associating it as a disease. If we are go by the newest neurological understandings of addiction, then this becomes relevant in the court room because if in fact addiction is a disease, does that not involve a mental defect and the mental inability of appreciating the consequences and unable to resist or loss of conscious control of their actions (actus reus)? Those who would disagree do so on the grounds that, even though researchers agree that addiction has correlation with the brains processing abilities pertaining to memory, reward, and perception, and that the addict seems to have conditioned stimuli responses influenced by external and internal factors as well as by conscious and unconscious urges, it is still not fully agreed upon whether the addiction is a product of the pathology of a neurobiological ailment or maybe epigenetic processes, or even question maybe it is simply the brains manifestation taking form because of the addiction itself (Farisco, Evers, & Changeux, 2018). In other words, during an assessment, the forensic clinician must establish whether or not the offender was unable to control their criminal behavior or was a rational choice made by their real self (Blakey & Kremsmayer, 2018), to overrule a more moral decision, unconcerned with its outcome or consequences. In addition, in the courts are more concerned

about these assessments not about the offender's guilt, but more about their risk of reoffending and dangerousness (Gkotsi & Gasser, 2016). Some scholars argue that given this knew neuroscientific understandings of impulse control and rational tests, the insanity standards of today are outdated, and due to our society's fear of crime and insecurity, the forensic clinician, both in treatment and in assessing or continuous re-evaluation, is put under more and more scrutiny. The law states that an individual is responsible for their action, irrelevant of its cause. Neuroscientific opinion of criminal behavior and lacking moral decision making is an individual's biological flaw and can be treated with therapy and medication, thus continues to challenge forensic psychiatry and put it under pressure, as well as in ethical dispute (Gkotsi & Gasser, 2016).

In conclusion, with the question of should cause of mental illness relevant to criminal responsibility, the answer seems to be both yes and no. This is where our scientific and legal concerns tend to differ. The legal side and our society want culpability, and doesn't make it its course to make known disorders or illness, and science is more interested in treatment than retribution (Asokan, 2016). I believe these two concerns could truly merge and form an ethical joint verdict and agreement. With more informed neuroscience concerning addiction and its potential of blurring the lines of voluntary intoxication, it is an opportunity for forensic clinicians to not only assess mental capacities using information gathered from the defendants past, their time of offense and current incarcerated behavior, as well as what type of substance is being abused along with its characteristics when being abused, but also suggest to the courts more effective interventions

stemming from the mental health disorders associated with substance abuse, thus treating the defendant while incarcerated. Punishment and treatment become more intertwined. A reformed Model Penal Code rule well-versed on substance abuse and its affects, allowing the judge the option to add a contingency management plan, aiding in reducing the chance of recidivism, as well as keeping the public safe.

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