

Exploring premenstrual syndrome in criminal law



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Premenstrual Syndrome (PMS) has played a part in the malady of a women's life for many years. The development of Biological Theories has made law enforcement, attorneys, and even society study the connection biology has with individuals, particularly women for this manuscript, who commit crime. With the research gathered and studies performed, the court system has yet to adopt PMS as a suitable reason for defense. Until further evaluations of PMS can be studied, the validity of the previous test results will more than likely be questioned when introduced in court and it will be less likely to be generally accepted.

Biological Theory Analysis: Exploring Premenstrual Syndrome in Criminal Law

Crime in America happens any and everywhere, all the time and there will always be a lawyer out there trying to get criminals a lesser punishment or no jail time for their crime. An individual's biology comes into question when attorneys are trying to build a defense against any type of criminal activity. Schmallegger (2007) states that Biology Theory is a theory that maintains the basic determinants of human behavior, including criminality, are constitutionally or physiologically based and often inherited. There are several aspects that biological theories cover; however, the focus of this manuscript will be on body chemistry. Body Chemistry is the category that Premenstrual Syndrome (PMS) would be classified under. The definition of PMS will be examined, in depth and how it is connected to a women's life. Next, there will be a discussion on the symptoms that can occur in a women's body and further investigations on PMS cases that have been tried successfully. Furthermore, there will be a section addressing the opposing views of using PMS as a defense.

Literature Review

In order to discuss PMS, a definitive definition of this syndrome was needed. The definition was acquired from a known and highly recommended site called WebMD (20010) and this website has been providing informative information for many years. Along with the PMS definition, there was also a list of common symptoms that were provided that occurs when women are on their menstrual cycle.

Cullen and Agnew (2006) essential readings have an article that was delivered by David Rowe and it discusses the biological theories of nature and the exposure to individuals physical counter parts. Schmallegger (2007) speaks about the many aspects of biological theories of crime causation and its many assumptions; along with the body type of criminals and its' beginning stages of phrenology. Phrenology was first introduced in the 19th century and had the western world thinking more about the minds of criminals and punishment (Rafter, 2008).

There has been some debate among professionals when addressing the disorder of PMS. Gallant, Popeil, Hoffman, Chakraborty, & Hamilton (1992) have performed a study that showed no significant difference between women under the influence of PMS to women who were not. Despite this, there have been studies performed on the effects of other syndromes that have been connected to PMS. Gehlert, Song, Chang, & Hartlage (2009) studied the prevalence of Premenstrual Dysphoric Disorder (PMDD) and the effects it has on women and Gallant, Popeil, Hoffman, Chakraborty, &

Hamilton (1992) have participated in daily studies to confirm Late Luteal Phase Dysphoric Disorder (LLPDD).

Other research has been reviewed and compared to Dr. Katherina Dalton, an expert on PMS analysis and the effects that woman have while experiencing Premenstrual Syndrome (PMS) symptoms. Downs (2002) researched the Culpability of the PMS defense and its' evolvement into psychosis if not treated. Ostovich, and Sabini (2005) performed a study that compared men and women and the effects gender has when going through or reaching puberty in its' final stages.

Easteal (1991) discusses PMS in the courtroom and how the effects of PMS may cause automatism in certain women. There are sections that cover the controversy the disorder brings to women in society and its credibility issues men have about women and crime. Davidson (2000) explores several cases that have been tried in different judicial system and have had successful outcomes while trying to introduce a hormonal defense that connects PMS and postpartum psychosis.

Discussion

Biological Theory

Biological Theories make several assumptions which include (1) the brain being an organ of the mind and the locus of personality, (2) the basic determinants of human behavior, include criminal tendencies, constitutionally or genetically based (3) observed gender features may be partially the result of biological differences between the sexes and racial

groups, (4) much of human conduct is fundamentally rooted in instinctive behavior, (5) basic determinants of human behavior, include criminality, from generation to generation (inherited), (6) biological roots have become increasingly disguised, (7) some human is the result of biological propensities from developmental stages, and (8) interplay among heredity, biology, and the social environment provides the nexus for any realistic of crime causation (Schmallegger, 2006).

With that being said, biological theories began being dissected into stages to focus on the brain. Franz Joseph Gall was one of the first criminal anthropologists that studied the human skull and that study was called Phrenology. Many followed after his discovery and Rafter (2008) developed a book that described a diagnosis of criminality and other abnormalities by studying the contours of the skull. Although the skull had a number of interesting assumptions, phrenology eventually phased itself out as one of the crucial theories in identifying biological connections in crime. In time, analyst such as David Rowe gathered data on certain aspects of research that focused on the chemical messages, or neurotransmitters that transmit signals between neurons in the brain, e. g., serotonin, and the hormones that help regulate such things as responding to stressors (Cullen, & Agnew, 2006).

PMS means what?

PMS stands for Premenstrual Syndrome and the debate over using this ailment as an acceptable defense has been the topic of many argumentative discussions between professionals. WebMD (2010) defines PMS as ' the

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physical and psychological symptoms that occur in the week before a women's menstrual period'. There are over 150 common symptoms of PMS that most women experience and they categorized into three parts: Physical, Emotional, and Behavioral. Some of PMS symptoms include leg and stomach cramping, abdominal bloating, pack pain, Acne, breast swelling, anxiety, dizzy spells, anger, crying, Libido changes, accident prone, social isolation, hysteria, headaches, depression, mood swings, fatigue, insomnia, and many others (Easteal, 1991). For most women these symptoms appear for a short period of time, usually a week before the menstrual period and they disappear during or right before the cycle begins.

Late Luteal Phase Dysphoric Disorder

The American Psychiatric Association (APA) began indentifying mental disorders of individuals and recording the data to one day create a manual that would assist medical professionals on how to classify certain syndromes by their symptoms. Late Luteal Phase Dysphoric Disorder (LLPDD) was developed to the DSM III-R to provide a systematic set of criteria for establishing a premenstrual mood disorder (Gallant, et. al., 1992). Some of the symptoms that women have to have include being sad, tearful, angry, anxiety, fatigue, insomnia, change in appetite, difficult concentrating as well as many other physical maladies. LLPDD was created so that professionals would be able to distinguish it from Premenstrual Syndrome (PMS) and diagnose criteria that included psychological disturbances that seriously interfered with work, ordinary social activities, relationships, and arise during the luteal phase of the menstrual cycle, ending within a few days of the onset of menstruation (Downs, 2002). Premenstrual Dsyphoric Disorder

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(PMDD) became the new name for LLPDD and the new studies aimed to determine the prevalence of PMDD using all four DSM-IV research diagnostic criteria (Gehlert, et., al., 2009). For the full diagnostic criteria of LLPDD, see Appendix A.

PMS Based Defenses

There have been cases as early as the late 1800's where a case of Premenstrual Syndrome (PMS) have been used in court. The cases used PMS as a opener for the suspect to eventually plead temporary insanity. Insanity has many variations of its' clinical interpretation, however, this manuscript will utilize the WebMD (2010) definition, which states insanity as ' the lack of understanding or having the mental capacity to enter into a rational state of normal responsibility'. In the United States (US) two fundamental requirements are common to test for when determining insanity. The two fundamental elements are: (1) the defendant must suffer from a mental disease or defect, and (2) a casual relationship must exist between the disease or defect and the criminal offense (Downs, 2002).

There is a defense that the US has recognized that is somewhat similar to an insanity plea and it is called automatism. Those who have studied insanity have connected the definition of automatism to insanity which states that individuals have an unconscious state of mind when committing a crime. Some researchers, such as Ostovich, & Sabini (2005) have tried to link the beginning stages of puberty to account for some of the outburst of crime latter scene in women and men. The study explored the young adults first encounters with adult social and sexual behavior, attitudes, and work

environment but the examination did not have enough evidence to support its' claim.

Another defense strategy is the diminished capacity (DC) diagnosis. Unlike automatism, a DC diagnosis is to focus on trying for a lesser sentence for the criminal act and not the conduct. If the defense handles the case with care and understanding, charges for heinous crimes will be reduced, which has been proven in several cases in England (Downs. 2002).

Use in the Courtroom

The studies that have been performed on women and their experiences with Premenstrual Syndrome (PMS) have evolved into PMS being used as a defense in criminal cases. Davidson (2000) devised a section in his research that takes a deeper look into PMS in the courtroom.

The majority of these cases took place overseas and has people across the globe interested in how the system had derived at some of their conclusions. One of the most notorious cases involved a woman named Craddock. Craddock was a barmaid in 1980 and she had murdered one of her co-workers. Craddock had many other crimes under her belt and she possessed a diary that kept a record of her violent behavior. An expert on PMS, Dr. Katherina Dalton was asked to review Craddock's case and determine if PMS had played a part in her crime. Craddock was found guilty of manslaughter (based on a plea of diminished capacity) and not murder due to the expert's testimony that PMS turned Craddock into a ranging lunatic. Later, a judge had further reduced her sentence by allowing Craddock to not receive any jail time but to be placed on probation and medical treatment of progesterone.

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Progesterone is one of the medications that has been given to women to alleviate some of their symptoms bring them back to some form of normalcy.

In the following year, 1981, Craddock had changed her name to Smith and managed to stay out of trouble until her dosage of progesterone was reduced. Smith had threatened to kill herself and a police officer on two separate occasions. Smith was once again convicted of all charges and still not awarded prison time. In the case of Regina v. Smith, Smith received probation relying on Smith's PMS in mitigation.

The first American case that used Premenstrual Syndrome (PMS) as a defense occurred in People v. Santos in 1982. Santos was being charged of child battering. The case was resolved through a plea bargain because Santos admitted to beating her child at the pre-trial. However, Santos claims that she suffered a black out due to PMS. This information was presented by the defense to the judge who still decided to plea in favor of the defendant and the case ended with Santos getting probation.

Controversy

PMS being applied to criminal law has bought about some resistance from a variety of people. The groups with the most to say about this topic are feminist groups. Feminist groups have their beliefs on this matter and do not want to give off the wrong impression of being un sympathetic. PMS is a disorder that should be considered under the proper conditions, as long as it does not stereotype all women and is not used frivolously for the defendants or the attorney's amusement in criminal proceedings (Easteal, 1991). There is also the concern that men who are being charged with domestic abuse will

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start to take advantage of PMS and use it to their advantage. In other words, men can claim that their wife become so annoying that he had to do something to make her stop. The fear of society not understanding Premenstrual Syndrome (PMS) and not realizing that all women falter to the same symptoms is what makes this syndrome so controversial.

Conclusion

Premenstrual Syndrome is a disorder that affects many women physically and in some cases, mentally. Several cases have applied PMS to a criminal defense and have been successful but the success came attached with mitigation to some form of insanity and as we all know, insanity is difficult to prove, not a frequently used defense and almost always raises some kind of controversy (Davidson, 2000). If more research and funding can be applied to the study of biological theories and the connection it has to women and PMS, maybe the acceptance of PMS as a criminal defense will be taken more seriously.