

The objectives of a diminished responsibility law essay



Historically the primary objective for the insertion of the defence of diminished responsibility into the Criminal Code 1899 (Qld) was to mitigate the compulsory death sentence then imposed for a murder conviction. With the death penalty now abolished the defence of diminished responsibility has been retained as a means of mitigating and to ameliorate the effect of the still current mandatory life imprisonment for a murder conviction in Queensland.

The rationale for the retention of this defence is that it provides an alternative to a conviction of murder for those accused who suffer from a mental infirmity that is short of qualifying for a defence of 'insanity'.

Arguably several advantages and disadvantages exist in respect of the retention of this defence.

Disadvantages

There are two main areas that have been subject to criticism in relation to the defence of diminished responsibility. The first concerns definitional issues leading to a lack of clarity and broadening of the defence. The second concerns issues of procedure, specifically the respective roles of expert witnesses and juries.

Definitional Issues:

It has been argued that the partial defence of diminished responsibility is too broad and cumbersome in its interpretation. This broadness of interpretation and breadth of the defence has arisen as a result of the ambiguity of the term 'abnormality of mind'.

The ambiguity arises with reference to the term ' abnormality of mind' as it is neither legislatively defined nor a term otherwise used by the psychiatric profession. [1] As a consequence, the meaning of abnormality of mind has been left to judicial interpretation on a case-by-case basis.

This interpretation on a case-by-case basis has led the term to be given often broad interpretation. It has been argued, so broad in fact that no coherent limits are able to be placed on the term and that; as a consequence, the defence of diminished responsibility introduces an unacceptable level of vagueness into criminal law.

Procedural:

Jury/Expert Witnesses

Due to the inability to coherently establish a list of conditions that qualify for the defence and the nature of the subject matter at hand, being the determination as to whether an ' abnormality of mind' exists the scope for individual medical practitioner opinion and judgment has increased.

A wider acceptance of individual interpretation by medical professionals has led to an increasing amount of conflicting opinions and evidence that a jury is required to unravel.

In addition to the concerns over a jury unravelling what is intrinsically complicated medical evidence, the conflicting nature of medical expert evidence arguably may give rise to too great a reliance on the opinions of expert witnesses which in turn may provide for an abdication of responsibility by the jury in determining culpability of the offender.

With such heavy reliance on medical expert testimony it must also be considered that this medical opinion relies predominantly on the information that an offender provides to a psychiatrist or psychologist and is thus is distinctly susceptible to fabrication.

Sentencing

In relation to current sentencing under the defence of diminished responsibility and according to the principle of the proportionality in sentencing as endorsed by the High Court in Veen (No1) [2] and Veen (No2) [3] an offender with a successful defence of diminished responsibility must receive a lighter sentence than a more culpable offender not suffering from an abnormality of mind.

This drives the concern that paradoxically the more dangerous and disordered the defendant, the shorter the sentence will be due to a successful defence of diminished responsibility.

This scenario is eminently demonstrated in the case of Byrne where the accused strangled a young girl then ‘committed horrifying mutilations upon her dead body’. [4] The accused was convicted of murder at trial but on appeal the conviction was downgraded to manslaughter based on a successful diminished responsibility defence.

An alternative to the retention of the defence of diminished responsibility that has been raised is the argument that the most efficient and flexible method for dealing with people who have substantially impaired mental functions short of qualifying for a defence of insanity is through the sentencing mechanism.

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This argument is premised by concerns over the submission of often substantial and irrelevant extenuating circumstances into a criminal trial due to the broad nature of interpretation currently permissible.

In support of this argument is the provision of the Sentencing Act that allows for the fact that an offender may be suffering from a mental disorder or an intellectual disability to be taken into account as a mitigating factor when sentencing. [5]

Advantages

The original purpose of the defence was to enable an alternative to a mandatory life sentence for an accused charged with murder. As Queensland maintains its position on mandatory life sentences it is arguable that the defence still serves the purpose for which it was created.

In addition to the initial purpose of creating the defence there are a number of societal and jury specific advantages to be gained from its retention.

Social Perspective

From a societal perspective it is important for there to be a distinction in law between murder and manslaughter as there is a different stigma placed on each. There is a need to retain the defence of diminished responsibility in order to allow an offender to have their offence of murder mitigated to manslaughter so that a difference in moral gravity may be placed on the offender in appropriate cases.

In rebuttal to the proposition that mitigating circumstances should be taken into account as part of sentencing as opposed to the retention of the defence

of diminished responsibility it is argued that with the stigma attached to a conviction of 'killing' another human being, society is much more likely to accept a reduced sentence based on a successful defence of diminished responsibility than for a reduced sentence for a murder conviction based on mitigating circumstances dealt with in the sentencing process.

A strong argument for this is that by allowing a judge to make decisions regarding the offender's culpability removes the jury from the decision process, 'as a mouthpiece for the community'.

The defence of diminished responsibility as it currently stands, provides that a jury will decide if the offender's culpability is substantially reduced and as such allows the jury as a representative of the community to determine the culpability of the offender.

It is argued that this jury/community participation in the process provides for more acceptance in the community in relation to sentencing passed on convictions of murder and manslaughter. This enforces the notion that sentences will be more readily accepted in the community if verdicts of the jury are addressing the question of culpability and not a judge.

Jury

This defence also enables jurors the ability to convict an offender of manslaughter when if the only option available to them was murder they may (perversely) acquit altogether.

Legally a significant advantage of the defence is that it offers an alternative verdict for an accused that was mentally disordered at the time of the killing

but does not meet the strict criteria for the complete defence of insanity. This position of an ‘intermediate defence’ offers flexibility for the jury in determining responsibility for an offence by degrees of mental impairment, ‘rather than according to a strict contrast between sanity and “insanity”’. [6]

Conclusion

In summary advantages and disadvantage remain in light of the retention of the defence of diminished responsibility.

Arguably the defence of diminished responsibility still serves the purpose for which it was originally created in respect of mitigating a mandatory life sentence for murder. The defence provides for greater community involvement in the process of determining an offender’s culpability for their crime and as such provides a significant advantage in the maintenance of societies trust and confidence in the criminal justice system.

Alternatively it has been argued that the defence should be abolished for being too broad and vague in its formulation, which is plaguing the practice of criminal defence with difficulties.

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