

The role of mental disorder in insanity pleas

“Are psychopaths legally insane” raises the interesting question of what the role a mental disorder should play in determinations of legal insanity. Both the M’Naughton Rule and the Model Penal Code (MPC) require that defendants suffer from a mental illness in order to count as legally insane. Mental illness, however, is usually not regarded as *sufficient* for an insanity plea. One must show, in addition, that the psychiatric symptoms suffered by the defendant are sufficient to impact her ability to avoid wrongdoing (for MPC) or to know what she is doing or that it is wrong (for the M’Naughton Rule). Some, like Moore, have argued that showing that a defendant suffers from a mental illness might itself be enough to show that he lacks the capacity for responsibility. If so, psychopathy may itself be an excusing condition. Anneli Jefferson and Katrina Sifferd argue that there are general reasons to be skeptical about this idea. Why? Because mental disorders are too heterogeneous. Two people can suffer from the same diagnosable mental illness—as determined by the *DSM-5* or the *ICD-10*—and have quite distinct impairments and difficulties. Moreover, most mental disorders appear to be dimensional by nature. As Michael Hengartner and Sandrine Lehmann point out in a recent article, psychiatric disorders do not represent “discrete taxa, i.e., clearly demarcated disorder entities that reliably delineate disorders from each other (between-disorder boundary) and normality from disease (within-disorder boundary).” (Hengartner & Lehmann 2017) Psychopathy is no exception. And although psychopaths have documented cognitive and affective deficits, neither one of them is sufficient to show that psychopaths, in general, lack the capacity to avoid wrongdoing.

I have great sympathy for Jefferson and Sifferd’s argument that since psychopathy is not a uniform category, it cannot serve as the basis of an insanity defense. Whether or not a defendant meets the basic conditions of sanity should be determined on a case-by-case basis. So far, so good. But now things become tricky. If it is not a mental disorder that excuses, but the occurrence of a certain symptom, then that symptom is surely what is excusing. As Hengartner and Lehman point out, however, there is no clear distinction between normalcy and mental illness. So-called ‘normal’ people often hear voices, have delusions, or suffer from paranoia. If that is right, it seems that we should simply abolish the mental illness condition on insanity. But before we do so, one important worry needs to be addressed. How do we know that the defendant suffered from a psychiatric symptom of such severity that, at the time of the crime, she did not know what she was doing or that it was wrong, or that otherwise prevented her from avoiding wrongdoing? The answer is, of course, that we never can. The only thing we *can* do is look for indicators that increase the probability that the defendant’s reason (or motivation) was, in fact, significantly impaired. But it is exactly here that we are usually able to fall back on a psychiatric diagnosis. By contrast to the non-disordered, people who suffer from mental illness typically experience relevant symptoms in a more pronounced fashion and with greater

regularity. It is therefore much more likely that such a person would have committed their crime under the influence of psychiatric symptoms sufficient to excuse her action. Without a diagnosis of this kind, we must look for other reasons to argue for impairment or inability. But where would we look?

The worry, as I see it, is that although Jefferson and Sifferd are surely right that mental disorders are so heterogenous that they cannot themselves excuse, we may still be in need of a mental disorder diagnosis for an insanity plea. This may be fine, as far as they are concerned. A deeper worry begins to creep in, however. And that is that by showing that mental illnesses are too heterogeneous to shoulder the burden of establishing an insanity plea on their own, have we not also shown that they cannot serve as supporting evidence that the defendant was, in fact, relevantly incapacitated at the time of the crime?

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Reference:

Michael P. Hengartner and Sandrine N. Lehmann: "Why psychiatric research must abandon traditional diagnostic classification and adopt a fully dimensional scope: Two solutions to a persistent problem. *Frontiers in Psychiatry*, 07 June 2017 (<https://doi.org/10.3389/fpsy.2017.00101>).