
Volume 1

Issue 1983 *Symposium-The Enforcement of Human
Rights Norms: Domestic and Transnational
Perspectives*

Article 15

1983

The Insanity Plea: The Uses and Abuses of the Insanity Defense

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Recommended Citation

Turbin, Ronald (1983) "The Insanity Plea: The Uses and Abuses of the Insanity Defense," *NYLS Journal of Human Rights*: Vol. 1 : Iss. 1983 , Article 15.

Available at: https://digitalcommons.nyls.edu/journal_of_human_rights/vol1/iss1983/15

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THE INSANITY PLEA, THE USES AND ABUSES OF THE INSANITY DEFENSE. By William J. Winslade & Judith Wilson Ross. New York: Scribner, 1983. Pp. xii, 226. \$15.95.

Reviewed by Ronald Turbin*

An objective, intelligent, and civilized creature from outer space, commissioned by interplanetary jurists to study the American criminal justice system, would stand by with incredulity as he observed confessed murderers being acquitted and returned to society after serving minimal periods of incarceration in mental hospitals. Even if told that only a small percentage of defendants ever get acquitted for reason of insanity or diminished capacity, the space alien would still report back to its sponsors that in the United States there are bizarre and dangerous quirks to an otherwise sound criminal justice system.

Similar to this visitor from outer space, the average American citizen now feels that our criminal justice system is strangely flawed. What is even more ominous is that the typical person is angry and feels betrayed by those men and women who are elected, appointed, and paid to protect our welfare. As William J. Winslade aptly states, the worst aspect of the insanity defense is that it has caused many, many Americans to hold lawyers, judges, and psychiatrists in contempt. This is indeed a tragic development of our times since these professions envelop those men and women who are engineers of both social and political change and the status quo.

William J. Winslade, Ph.D., J.D., a teacher of law and psychiatry at UCLA, and Judith Wilson Ross, a lecturer in the UCLA Department of Psychiatry, have produced in *The Insanity Plea, the Uses and Abuses of the Insanity Defense*, a well-written, intelligently thought-out, and thoroughly one-sided discourse on this most controversial subject.

According to the authors, our present day abuses of the insanity and diminished capacity defenses, the pleas that most laymen love to hate, stem from a basic confusion between two

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tenets of our culture—"to explain is to understand" and "ignorance is no excuse." It is only a small step from these contradictory axioms to the moral quandary of whether we disapprove of a specific act, or disapprove of the motive and intention of the perpetrator. Our legal system, reflecting this confusion and being caught in a maze of accountability, has permitted the judiciary to opt for the solution most often used in the technological and scientific 20th century—let the experts decide. Enter the psychiatrists and psychologists.

Needless to say, the psychiatrists and psychologists are no less confused. However, they are uniquely armed to present their confusion in a most appealing way. They speak a special language, no less esoteric than that of the legal profession, and employ tests and other accouterments to mask their own troubled outlooks and moral uncertainties toward the monumental tasks assigned to them. Thus, the dog has caught its own tail, as legal, scientific, and psychological theories developed over centuries chase themselves. The experts, lawyers, and judges get dizzy, the Hinckleys escape punishment, and the citizens alternate between anger, apathy, and occasionally, justifiable fury.

An additional factor contributing to the overuse of the insanity plea is the psychologization of our culture. A policeman who shoots an unarmed civilian, or a mother who pommels her child to death, will frequently and successfully plead insanity. An acquitting jury does not want to accept that a policeman, one of society's protectors, is capable of wantonly firing his service revolver, nor will the jury easily accept that a mother could murder her baby. Therefore, the twelve men and women, spurred on by popular psychology, will grasp at the insanity defense. At the same time, they escape the burden of knowing the reality that an otherwise normal cop or mother with immature impulses, can murder at any moment.

Winslade and Ross's study is filled with imaginative insights. They speculate that the American psyche makes it easy for juries to release murderers. Indeed, we are opposed to some forms of homicide, but accept and glorify other kinds of killing. American frontier life and the Civil War have broadened our national experience to approve of violence for "good causes." The frontier was inhabited by "good guys" and "bad guys." However, upon close examination, one has to conclude that the hero and

villain did pretty much the same kind of thing—both killed! Nonetheless, the mythological figure of our Wild West culture was the gunslinger who killed because it had to be done. Drawing the line at the sanctity of human life just wasn't accepted. The climax of *High Noon* occurred when the Quaker wife of the retired sheriff comes to her senses and pulls the trigger on the killer stalking her husband.

Our culture glorifies bad guys. The James Boys, John Dillinger, and Bonnie and Clyde are written about, sung about, and filmed. Some were protected from the authorities by "the people." It is therefore clear that we as a nation both accept and reject violent crime. The ambivalence of our attitude clouds our moral judgment.

Despite their attempt to be open-minded and fair, there is a villain in this book. It is the psychiatrist. Dr. Winslade and Ms. Ross contend that the assumption that psychiatry is based on scientifically tested theory and a body of knowledge, which is defined and measured in a statistical manner, is unfounded. This is obvious when we realize that a psychiatrist, unlike other expert witnesses, such as blood chemists and ballistic experts, cannot testify to anything with certainty. For example, while non-psychiatric expert witnesses may quibble among themselves about the certainty of a conclusion or the method by which it was reached, experts will rarely disagree among themselves at trial regarding the conclusion itself. In sharp contrast, different psychiatrists will actually testify to different conclusions at the same trial. Psychiatrists also do not base their testimony on statistically accurate tests, but instead on a series of interviews. Therefore, since their sole purpose is to place arbitrary but impressive-sounding labels on behavior which ordinary men and women can observe themselves, their testimony only confuses the layman and impedes the fact-finding process.

Psychiatry has an honest disagreement with the law. The law is based upon individual responsibilities and assumes that if we commit illegal acts, we must be punished. To the contrary, the foundation of psychiatry is determinism, which assumes that behavior is caused, shaped, or determined by past events. The authors believe that the courtroom is a most inappropriate battlefield for pitched battles between these two disciplines. When psychiatry battles to affirm its views from within the criminal

justice system, society is left wondering who is in charge of the show. It is as if the law is a snake who has swallowed the mouse of psychiatry. However, the mouse is indigestible and grows larger every day. Society does not know "whether what we have is a snake who has eaten an indigestible mouse, or a mouse who wears a very elaborate skin."

When psychiatry and the tenets of criminal justice battle it out in the courtroom, the question of whether the actor has chosen to be deprived, or is a victim of a larger determinism, becomes ritually enacted. The prosecutor argues that the accused is a person acting as an independent decision maker, while the defense attorney with his legions of psychiatric expert witnesses argues that the accused is himself a victim of forces beyond his or her control. Since these views are mutually exclusive and neither can be empirically proven, the question is placed in the hands and minds of the jury. Basically, if the jury likes, identifies with, and feels sympathy for the defendant, they will acquit him. However, they can escape collective responsibility for excusing his crime by rationalizing that psychiatric testimony mandated their verdict. Meanwhile, the psychiatrist whose testimony most influenced the fact-finders avoids the same burden of responsibility because it is the jury who renders the verdict and not the witnesses.

Conflicts between lawyers and psychiatrists, and the ensuing abuses created by these clashes, are illustrated by the stories of seven relatively notorious defendants and their trials. Most of the cases are recent and their retelling evokes memories of newspaper and magazine articles. Dr. Winslade and Ms. Ross narrate them in a novelistic style, interwoven with an intelligent but polemical analysis.

While it is impossible to retell the story of each case, a few of the individuals especially excite our interest. The history of Dan White, the San Francisco supervisor who shot Mayor George Moscone and fellow supervisor Harvey Milk, is extremely illuminating. White was elected from a conservative, blue-collar district and he represented the values to which his constituency adhered: diligence, loyalty, and honesty. He served on the Board of Supervisors and acquired the respect and friendship of Mayor Moscone. However, a year later, White, who was over-burdened by family and financial responsibilities, sum-

marily resigned his prestigious but low-paying position. Four days later he changed his mind, approached Mayor Moscone and requested that he be permitted to rescind his resignation. The Mayor was surprisingly agreeable and promised that if White's resignation could not be rescinded, he would be reappointed. However, after eleven days of political machinations, misunderstandings and recriminations, Mayor Moscone was on the verge of breaking his alleged promise to White. Shortly before the unfavorable decision was to be announced, the frustrated ex-supervisor used his 38-caliber revolver to shoot the Mayor and Harvey Milk, the latter of whom he believed was the instigator of his betrayal.

During the trial the jury learned that White, who was carrying the murder weapon, entered City Hall through a basement window to avoid a metal detector. After killing Mayor Moscone, he reloaded the weapon before calling Supervisor Milk into the office and shooting him. Nonetheless, the jury bought a diminished capacity defense and did not convict White of premeditated murder. Authors Winslade and Ross speculate that this apparent miscarriage of justice occurred because the jury was turned off by Moscone's political double-cross and felt sympathy and affection for Dan White. They focused on his admirable qualities which included industriousness, loyalty, dependability, and devotion to his family, and listened carefully to the defense expert witnesses who compassionately reduced his behavior to its psychological components and provided an excuse for reduced responsibility. As a consequence, Dan White will most probably face less than five years of imprisonment.

Among others, the authors also retell the stories of Tex Watson, one of the Manson murderers, and John Hinckley, the would be assassin of President Reagan. Tex Watson represents the opposite side of the Dan White coin. If ever a murderer deserved to be found insane, it was Tex Watson. The Manson murders themselves reflected insane minds. The victims, who were stabbed repeatedly even after death, were unknown to the killers, and the blood of the victims was used to write messages on the wall of the Polanski residence. Considering that the murderers used an enormous amount of mind-changing and debilitating drugs, they were clearly out of their senses. Tex Watson's trial produced a plethora of psychiatric testimony

which was so contradictory that it prompted the trial judge to comment, "[a]ll this psychiatric testimony leaves me cold. To me it is a lot of gobbledegook and double talk. . . . I wish we could get along without it, but I guess we can't." The authors conclude that Watson's conviction for first degree murder showed only one thing: the jury did not really care if Tex Watson was insane or not. The twelve men and women wanted to be certain that they would never see him walk the streets again.

According to the authors, the Hinckley trial demonstrated the heavy burden that the federal rule, which requires that the prosecutor prove a defendant's sanity beyond a reasonable doubt, places on the government. Based upon Hinckley's history, the jury had to acquit because the standard of proof demanded the jury to have no rational doubt as to his sanity before convicting him. The irrationality of this standard was demonstrated after the verdict when the members of the jury could not articulate their reasons for finding this would be mass-murderer not guilty.

The authors conclude their book by proposing some thought-provoking reforms of our legal system regarding the insanity plea. They would like it to be used as one of the determinants in selecting punishment or rehabilitation, or a combination of the two, in the sentencing process. Students of our criminal justice system, as well as interested laymen, will love or loathe the demands for change made by the authors, but all will be compelled to read every page and close the book with a greater understanding of the insanity defense.