The Insanity Plea:
A Defense for the Rights of All

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In 1941, Anthony and William Esposito attempted to rob a bank, and went on a shooting spree through Manhattan killing two people including one police officer. During their trial, the Esposito brothers ate paper, tore clothes off, barked like rabid dogs, and refused to eat for ten months, and they were still declared legally mentally fit for trial and punishment. To the average person, this behavior seems abnormal, unstable, and what most would define as insane. However, the surprising final conclusion was that they were in a state of hysteria about facing the death penalty, but were not legal candidates for the insanity plea. (Pittsburg Press, 54). How does one define, and more importantly identify insanity? Furthermore, how should the insane be punished when they have done wrong, but can not understand why? Human rights have been protected and expanded under the justice system throughout America's history, however, a significant amount of change has not come without the mistreatment that forces a shift in the eyes of society as well as the government's legal system. Although many see the Insanity Plea as an invalid and dangerous defense tactic, it is a necessary part of the judicial system, because it constitutionally protects the rights of the insane and mentally ill through the Fourteenth Amendment, and equal protection clause. The Insanity defense has evolved throughout history to further protect these rights. This can be seen in the *M'Naghten* case which provided a test for sanity, to provide a fair and safe trial for the criminally insane, the case of *Baxstrom v. Herold* in which equal protection was fought for, and *Jackson v. Indiana* where the guidelines for insanity were expanded to serve the greater public providing equal rights for all no matter the level of sanity or lack there of (Maeder, 28).

Today the insanity defense is known as one of the most controversial legal strategies in America. Although it was first used in Europe, and most commonly England, the defense

originated in the cultural traditions in Ancient Rome which debated that a man who is not sane can not hold responsibility for his actions (Dressler). Originally, in the 1500s, juries would acquit without a second thought to the defendant's mental stability. Throughout the next century, juries would be able to find the insane guilty, but then needed to consult the king for the final verdict. These two separate hearings and decisions were meant to provide the fairest possible judgement, and placement after the trial. Practical use of the defense arose in the early nineteenth century, when a slightly greater understanding of mental illness became relevant. Before being able to use the defense, there was a formal and legal test in Britain known as the Wild Beast test. First used in the 1800s, the test's purpose was see if the accused knew the difference between good and evil because if they did not they were not more than a "wild beast" or "brute." The questions tested the defendant's knowledge and memory of their actions, and how they felt it affected those around them (Melton, Poythress, Petrila, Slobogin, 187). Answers implicating a lack of memory or understanding provided void of responsibility due to their inability to differentiate between right and wrong (Robinson, 54). The vagueness of the test left a lot of room for interpretation, and was viewed as an excuse, rather than a defense. It shone a negative and harmful light "as to be not far removed from the brute" (Menninger, 112). Although it was created in Europe, America was where the defense made the most progress when its job became to protect rights given to the American people rights under the constitution and amendments.

The Supreme Court has always held one of the most important jobs in the nation's government making decisions about constitutionality to make sure the people always feel safe and equally represented. The Supreme Court holds the Judicial power in the government. This means they decide the constitutionality of actions by the president and residents of the United

States citizens as well as make sure rights are being upheld. The Supreme Court also makes ultimate decisions on laws for the country, and as the most powerful court, it hears cases appealed by smaller federal courts and state courts. These tend to be cases in which the verdict was controversial, or publicly disagreed with ("Insanity Plea Tests Legal, Medical Limits," Oberg). For this reason, the Supreme Court holds a large amount of responsibility for making the public happy while staying true to the nation's original laws and guidelines. The two courts under which the there was change for the insanity defense occurred were the Warren Court and the Burger Court. Chief Justice Earl Warren was the head of the Supreme Court from 1953 to 1969 around the time of the civil rights movement. His liberal push for desegregation and equality was key in his rulings during the time, and explain why he would be in support of equality for the mentally ill and clinically insane under the law (Smentkowski). Chief Justice Warren Burger led the Supreme Court from 1969 to 1986, and was more conservative, but still held onto the ideals of equality strongly enforced under Earl Warren. ("Warren E. Burger"). Without the Supreme court, the insanity defense would be misused more often than not, and would serve as an excuse for crime rather than a universally legal protection for the defendant.

Today the defense is used in less than 1% of trials worldwide because of its continued failure in the court system. It used to be easier to cheat because the test for insanity was difficult to measure and many people were incorrectly diagnosed as insane or incapable of telling the difference between right and wrong. The fact that the defense is abused has caused a lot of anger in the public, and due to its absurd misuse, it has been widely viewed as a sham (Maeder, 53). There have been protests to have it removed. There has been recurring talk of its invalidity because many doctors believe that the medical field is a hard science requiring a high level of

accuracy and objectivity whereas law is a soft science observing human behavior through immeasurable criteria so it is difficult to combine the two when the are practiced and used so differently ("The Insanity Defense" Gado). However both are necessary when defending rights given and understood under the fifth and fourteenth amendments. The fifth amendment states:

> ...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb... be *compelled in any criminal case to be a witness against himself*, nor be deprived of life, liberty, or property, without *due process of law;* nor *shall private property be taken for public use, without just compensation* (Amendment 5, Bill of Rights)

Testifying with a mental illness or disease provides a higher chance for self-incrimination. If the defendant is not aware that their actions were in any way illegal or wrong they will likely not protest to being a witness against him or herself. When rights are taken from a participant in a court case due to a mental illness or defect without justification, this is technically personal or "private" property being taken away without compensation (Oberg). Closely connected to the Fifth Amendment in the way in which the both provide equality in court is the is the the Fourteenth amendment, which states:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State *deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws* (Amendment 14)

Due process must be upheld; providing the basic rights of life, liberty, and property, even when mental disease or defect is present. This amendment is also commonly known as the equal protection clause and was originally created to protect the rights of African Americans after the Civil Rights Act in 1866. It was created to protect rights in court so that subjective opinions towards groups of people based or race, religion, ethnicity, or mental state would legally not be able to cloud conclusions and verdicts. Throughout the mid and late 20th century, this defense

was seen as closely related to the mental health department, and when people were being sent away as not guilty by reason of insanity, there was an expectation that they would somehow be cured or helped which is why it became such a necessary action to take.

It is impossible to know what is going on inside another person's head enough to know whether they are sane or not. This question used to be answered with another question much simpler, and easier to comprehend: Do they act like a wild beast which contains evil, or do they act like a good human being ("Insanity Defense" Gale)? Today there are thousands of tests, but the first to ever appear was the M'Naghten test also known as the right and wrong test. In 1843, Daniel M'Naghten made an attempt to shoot the prime minister of England Sir Robert Peel, but instead shot Edward Drummond whom he had mistaken for the prime minister. During the mid 1800s, there was a high chance of M'Naghten being found guilty because no matter his mental state, when the murder was committed successfully, the result was almost always guilt (Maeder, 23). His defense attorney had a difficult time proving insanity because there M'Naghten had stalked the man he planned to murder and lied about his actions which would both involve some kind of awareness in the state of mind. Instead of talking about the behavior seen in the case, they used his past as evidence of odd behavior. They used the fact that he dropped from a successful business owner down to beggary, had complained of spies following him around, and had suffered from paranoid delusions (Maeder, 26). The main purpose of this test was to simply to make sure the plea was not being abused.

Today this does not suffice for proper testing, but the right vs. wrong test was created in which the difference between right and wrong needed to be apparent to the defendant: did they know the crime they committed was wrong (Oberg)? This was proved through a series of basic

and general questions. This test consisted of of questions such as, “were you aware of your actions at the time of the crime,” “do you believe what you have done is wrong,” “do you understand the nature and quality of the actions you have committed?” (Melton, Poythress, Petrila, Slobogin, 206). This would supply the answer for the question of accountability because it is impossible to blame a defendant for a crime they did not realize they were committing. Since the creation of the right vs. wrong test, there have been other more accurate tests for sanity such as the Durham test in which multiple expert witnesses were asked to decide, based on their previous knowledge, whether the actions of the defendant were simply a “product” of mental disease giving the doctors and psychiatrists involved a more key position in the case, and the Model Penal Code, which split sanity testing into more defined categories. However, this set the groundwork for more advanced testing during trials to observe the validity of the plea for insanity to ensure the jury understood the circumstances of the case, and gave the fairest verdict (“Durham v United States” Justia Law).

This was the first time that the insanity defense could bar the conviction of the accused rather than provide a simple pardon. The official name of the verdict became not guilty by reason of insanity, meaning there is officially no responsibility for choices made (Robinson, 83). This also meant that at no time could jail time or punishment be enforced for the defendant on trial, but only hospitalization if absolutely necessary. Even when murder was effectively committed, which usually caused presumption of guilt, this gave the defendant a fair chance at a trial which provided them equal opportunity to those without mental deficiency (Maeder, 28). This allowed for the jury to not make the decision based solely on the actions of the defendant, but additionally on their state of mind during the time of the crime. The test showed that although the

accused may appear as though they are sane, mental illness may be less apparent or visible, and needs to be tested for. The M'Naghten rule was a historical breakthrough in which for the first time, being deemed criminally insane was seen as an illness in need of curing rather than an evil that needed to be locked away. The mentally ill finally had a sufficient voice in the court system, but they were far from being seen as equals.

The Equal Protection clause was originally created in 1868 to protect the rights of African Americans under the law. It was created after the Civil War, and directly after the Civil Rights Act. It stated that no state could deny equal protection of the laws to any person within their jurisdiction ("The 1960s" History.com). Throughout history people with a history of mental illness were seen as having lower brain capacities, which meant they did not deserve, and therefore were not given the same treatment even in the court system. This changed during the trial of *Baxstrom v. Herold.* The 1960s were a time in which racism and sexism still plagued the United States. However, it was a time filled with the hope of change and equality. Not only was this the changing opinion of the American people, but it was also a major cause leading to a shift in the Supreme Court. Throughout the 1960s, the civil rights movement, second-wave feminism, the gay rights movement, and the disability rights movement, all gained strength and some degree of success, and supported the new public perspective on the equality of human rights ("The 1960s" History.com). The most impactful on the evolution of the insanity defense is the disability rights movement. There were powerful forces behind the movement such as JFK and his Community Mental Health Act, and Mental Health America's success in having mental health services included in medicare (DiGravio, "Our History"). Kennedy believed in a new vision for the mentally ill in which they would be openly accepted and cared for (DiGravio).

With the political and societal influences, the court system was more easily able to follow the public's lead. Earl Warren was able to flourish in this context as his liberal view lent a hand to the more progressive vision of the nation (Smentkowski). These conditions are what also made it possible for those with mental defect, and temporary insanity to receive the same type of equality that the rest of the nation was opening up to.

In 1959, Johnnie Baxstrom was first accused of murder, and in 1961, while he was still in jail, the prison psychiatrist declared him insane during a routine workup. He was then transferred to Dannemora State Hospital, and when his sentence was up, he requested dismissal or transfer to a civil facility which he was denied ("*Baxstrom v Herold"* Oyez). There was not a sufficient enough reason to keep him at Dannemora, but under recommendation, and without his knowledge, he was forced to remain there, but then made an appeal to the Supreme Court. After further review, the Supreme Court stated that Baxstrom had been denied equal protection. Although the equal protection clause was created as an amendment for the general public, that fact that it was created as a response to the Civil Rights Act, created the misconception that it was to protect the rights of mistreated African Americans. Nevertheless, Baxstrom fit all of the criteria as he was not given a hearing, nor was he allowed or able to take part in the proceedings of his trial. Baxstrom was not given the proper representation, and therefore was not protected equally (Maeder, 125). All of these normally would have been provided if it was not for his mental state and previous convictions. Though equality was making strides in the right direction, the mentally insane tended to be shunted out of the natural rights of the majority. In the 1960s, equal treatment in the courts for the mentally ill was not given a second thought, until this case was brought to the attention of the Supreme Court.

The state of New York then made the claim that no matter mental state, or crime history, every defendant is entitled to the same rights ("*Baxstrom v Herold*" Oyez). While they acknowledged it may at times seem unsafe letting the insane free, they will not be released as free, but would be hospitalized and further hospitalization can be required. It became the only way to protect the rights of all in the most constitutional way possible. This case brought up the issue of due process. Due process states that all citizens must receive fair treatment through the Judicial System. The mentally ill were not seen as capable of participating as normal contributors or members of the judicial system lowering their place in society ("Insanity Defense" Gale). Pressure from strong political figures as well as organizations appealing to the general public put pressure on the Supreme Court to raise the protection of the mentally ill to the proper standards (DiGravio). Equality has been preached in America since its beginnings, and is stated many times in the constitution and its amendments, and this case illustrates how views of the mentally ill changed as they became seen as an equal part of society.

Not only is the insanity defense during a trial difficult to deal with correctly, the treatment of the patient once they are admitted into a psychiatric ward or hospital has shown to be just as controversial throughout history. Theon Jackson was a 27 year old man who happened to be deaf and mute with brain capacity of a 5 year old. In 1972, he was charged with a with two counts of petty theft. Before Jackson testified, he took the non-comprehension test, a sanity test in Indiana to prove his extremely low competency ("*Jackson v Indiana*" Oyez). Jackson was not able to comprehend not only the crime he had committed, but why he was being punished for it. The 1970s were still part of a greater movement for equality. Many people were surprised that Chief Justice of the time, Warren Burger, was in such support of the liberal movements when he

was a very conservative man. The Burger Court fought for equal rights, for all including African Americans, women, gays, and as shown in this case, the rights of the mentally challenged ("Warren E. Burger"). This specific case expanded far past the conflict of right vs. wrong, because the defendant had trouble understanding much more than the necessary facts of the trial and the responsibility for his actions. Although this wasn't a right vs. wrong issue, it still fell under insanity due to the mental state of the defendant (Spencer, Frank). This case expanded rights for those under the insanity defense. The testing and restrictions were not as clear as they had previously been, but this led to a wider range of people who could potentially be protected, and therefore feel adequately represented under the defense.

Theon Jackson's post trial care was not dealt with correctly. He was sentenced to permanent hospitalization after two minor crimes he did not even realize he was committing. This was clearly involuntary hospitalization which was the reason for the appeal made by his mother. This pressed the issue of civil commitment vs. criminal commitment and was also a statute issue:

> "Statute speaks in terms of insanity, the determinative principle as to whether or not he will be committed on the one hand or held to trial on the other, and go to trial is the determination of his comprehension or lack of comprehension to understand the nature of the proceedings and to assist his counsel in defense" (Spencer, Frank 6:11).

Jackson most likely would have been committed anyway, but for a much smaller amount of time, in a safer facility. He was not a threat, so putting him into a facility with others who had committed many more serious crimes was dangerous to his well being. The appeal, and the case it made attacked the care system of mentally ill defendants after being placed in hospitalization. Once in the hands of the Supreme Court, Jackson's case was voted 7 to 0 in he and his mother's favor ("Jackson v Indiana" Oyez). This case improved the treatment of the acquitted as well. The

Fifth Amendment's requirement of due process means that all legal rights owed to a person must be respected, so during hospitalization after trial, the mentally ill must still be treated fairly (Menninger, 67). Another view of the Fifth Amendment claims that private property may not be taken for public use. Essentially placing Jackson in unnecessary and permanent hospitalization, the court had stripped him of his rights which belong solely to him, therefore taking his private property away. After a person used the insanity defense and was declared not guilty by reason of insanity, a common misconception was that they were incapable of life outside an institution, so many defendants were placed into permanent care against their wishes once again, taking away their rights ("What Happens to the Criminally Insane After Court" NPR). Those who serve a prison sentence, are allowed to enjoy the same freedoms and status as other free citizens, so the mentally ill, should be legally bound to the same opportunities. The insanity defense was created to protect not to punish, so the Supreme Court made it clear that just because the insanity defense is in use, does not mean rights are thrown to the side.

When a person uses the Insanity defense for the wrong reasons, they are doing nothing but punishing themselves further. Research has shown that the majority of defense attorneys assigned to cases using the insanity plea have their defendants drop the defense. Historically, the methods for treatment of the insane in hospitals and asylums, specifically in the mid twentieth century was cruel and harsh in an attempt to rid any disease causing insanity or illness. Some of these methods included shock therapy, and other forms of "physical" therapy, many of them harmful. In the 1960s, the government failed to sufficiently fund mental hospitals leading to their poor conditions (Torrey, 80). Mental institutions were not a top priority of the time, and although through the court, the rights of the mentally ill and clinically insane appeared to be expanding,

once out of the courtroom, there was not as much progress intended to be made. They did not then, and still have not to this day received the proper amount of government funding for the number of patients, and amount of supplies necessary to maintain a very healthy and beneficial environment for the attendees. There was also a lack of public support due to the fact that the public rarely rallies behind a cause for mental institutions with support either because of a lack of knowledge and understanding, or for fear (Robinson, 146, Maeder, 149-150). On average, a person declared not guilty by reason of insanity would spend more time with a lack of freedom than if they had just gone to jail and served their sentence, so it really makes little sense to misuse the defense ("What Happens to the Criminally Insane After Court" NPR). There are no significant benefits. The abuse of the Insanity defense has decreased greatly over the years as the system has become stricter, and testing has become more accurate so the debate that the defense should not be used due to its inaccuracy has lost its argument.

It is a sad fact that proper and natural rights for the mentally ill and clinically insane were only brought to justice after mistreatment. A large number of American people were missing their ability to participate in their own trials, their ability to leave treatment when fit, and the simple fairness and equality that would be expected in the United States Judicial system (Maeder, 52). In most cases, the court tends to follow the lead of public opinion, rather than being the force that influences it. In this case, when they received a push for the equality of these rights, and granted, the events of the time were very convenient, the court was given no choice but to provide for the mentally ill in the same way they would for any other person. While these rights were already ingrained in the constitution and amendments, it took the will of the people to make them a reality in the government, and enforced in laws. Then, once the Supreme Court

took notice, the issue became more public, which is why learning about the defense through the lens of the specific court cases does give the impression that the supreme court had the most influence on the expansion of rights of the mentally ill under the insanity plea.

The insanity defense has evolved successfully throughout history from a test of beastiality to a necessary part of the judicial system protecting the rights of all Americans. The defense has become a safe protection of rights as seen through the examples of the M'Naghten case, the *Baxstrom v Herold* case, and the *Jackson v Indiana* case where official testing, proper participation, and well deserved kinder treatment became not only available, but necessary. The jobs of the constitution and amendments were being done, but action of the enforcers was not being taken. The wrongful uses of the insanity have slowly but surely decreased, leaving no basis for a strong opposition and providing safety for those who may not be able to protect themselves in the court. The misconception that the insanity plea is an easy way out misused by the wealthy and cunning to get out of jail time and punishment has been proven wrong time and time again. The insanity defense may appear to be more difficult today because of its history of abuses, but it is necessary in the judicial system because of the way it provides equality of rights for all.

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