IDEAS ON LIBERTY
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Does Insanity "Cause" Crime?

"The madman is not the man who has lost his reason. The madman is the man who has lost everything except his reason."
—GILBERT K. CHESTERTON

For 300 years we have sidestepped confronting the truth about human desperation and depravity, and the horrors the desperate and the depraved can inflict on us and themselves.

In November 1999, Andrew Goldstein, a man with a long history of psychiatric encounters, was tried for murdering a young woman named Kendra Webdale by pushing her under a New York subway train. The defense was insanity. The jury was unable to agree on a unanimous verdict. Goldstein will be retried this spring.

There was no dispute that Mr. Goldstein pushed Ms. Webdale to her death. Nor was there dispute about what, regardless of the jury's verdict, was to be Mr. Goldstein's fate for the foreseeable future: he would be deprived of liberty (by being incarcerated in jail, a mental hospital, or a hybrid institution called a "forensic facility").

The problem is that whenever a person factually guilty of committing a serious crime pleads insanity, the jury is asked to answer an intrinsically nonsensical question, namely, what "caused" the defendant to commit his wrongful act: his self or his mental illness? If the former, then he is a guilty victimizer. If the latter, then he is an innocent victim (of insanity). I say the question is nonsensical because regardless of whether a person is (deemed to be) sane or insane, he has *reasons, not causes,* for his action. If we regard the actor's reasons as absurd or "crazy," we call him insane or mentally ill. However, that does not prove that an alleged condition ("insanity" or "mental illness") caused him to commit the forbidden act. In short, the insanity defense combines and conflates two problematic elements about "insanity": (1) what is "it" (as a phenomenon or disease)? and (2) does it cause and excuse bad behavior?

Although no one can define insanity, nearly everyone believes that he can recognize it "when he sees it." Still, the question remains: What is "it"? In principle, this question ought to be debatable. In practice, it is not: all socially recognized authorities agree that insanity is a brain disease.

For the sake of clarifying the issue before us, let us admit that (false) claim. In that case, insanity is similar, say, to Parkinsonism or a stroke, brain diseases diagnosed and treated by neurologists. A brain disease may, indeed, be a cause. But a cause of what? Typically, of a behavioral deficit, such as weakness, blindness, paralysis. No brain disease causes complex, coordinated behaviors, such as the

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crimes committed by Andrew Goldstein or John Hinckley, Jr.

The insane person is, after all, a person, a human being. Only legal tradition and psychiatric-professional self-interest, not facts or logic, compel the law to frame the jury's task as a choice between deciding whether an insane defendant is bad or mad — guilty (by reason of free will) or not guilty (by reason of insanity). If a "mad killer" is sick, he could—like an HIV-infected killer or a tubercular killer—be imprisoned for his crime and "treated" for his illness in prison.

Millions of people are said to be mentally ill or insane. Not all of them commit crimes. Although a mad person such as Mr. Goldstein is regarded as being mad much of the time or even all of the time, he kills only some of the time. When a mad person kills someone—just as when he petitions a court to be released or eats his dinner—he does so because he decides to do so. Hence, if the madman commits a crime, justice demands that we take him seriously and punish him for his deed.

From Solution to Problem

The insanity defense, as we know it, is a relatively new cultural invention. I believe it is not possible to understand the problems it causes unless we understand the problems it solved in the past and solves today.

The "crime" that led to the creation of the insanity defense was not murder, but a deed long considered even more heinous, namely self-murder, or suicide, punished by both ecclesiastic and secular penalties: the suicide was denied religious burial and his estate was forfeited to the Crown's Almoner.

Because punishing suicide required doing grave harm to innocent parties—that is, to the suicide's children and spouse—men sitting on coroner's juries eventually found the task to be a burden they were unwilling to bear. However, prevailing religious beliefs precluded repealing the laws punishing the crime. The law now came to the rescue of the would-be punishers, offering them the option of finding the self-killer *non compos mentis* and hence not responsible for his deed. In the eighteenth century, it became a matter of routine for juries to arrive at the posthumous diagnosis that the suicide was insane at the moment he killed himself. (The criminal law against suicide was repealed only in the nineteenth century, by which time it had been replaced by mental health laws.)

The celebrated English jurist William Blackstone (1723–1780) recognized the subterfuge and warned against it: "But this excuse [of finding the offender to be *non compos mentis*] ought not to be strained to the length to which our coroner's juries are apt to carry it, viz., that every act of suicide is an evidence of insanity; as if every man who acts contrary to reason had no reason at all; for the same argument would prove every other criminal *non compos*, as well as the self-murderer." It was too late. By validating the fiction that suicides could, *post facto*, be *found* to have been *non compos mentis*, the law had crafted a mechanism for rejecting responsibility—the criminal's for his deed, the jury's for its duty—and, aided by the medical profession, wrapped the deception and self-deception in the mantle of healing and science.

We must keep in mind that the impetus for excusing self-murder did not come from its ostensible beneficiaries, the victims of the law against suicide. Clearly, it could not have come from them: the self-killer was dead; his family, bereft of means and reputation, was powerless. Instead, the impetus came from those who needed it and had the political clout to make law and medicine embrace it—judges and lawyers, coroners and mad-doctors. Coroner's juries and judges could thus evade the burden of having to impose harsh penalties on the corpses of suicides and the widows and children they left behind; and physicians could pride themselves for saving innocent persons from suffering for the sin-crimes of "insane" self-killers.

The result of the practice of routinely excusing suicides of their sin-crimes by viewing them as insane was that persons suspected of being suicidal began to be incarcerated in insane asylums. Soon that, too, became a routine practice and reinforced the belief that persons who kill themselves or others are insane, and that the insane are likely to kill themselves or others. □

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The Stakeholder Fallacy

by Norman Barry

As the saying goes: "There is more than one way to skin a cat." And former collectivists, embarrassed by the dismal failure of economic planning to provide any kind of life for the people unfortunate enough to live under it, have been quite creative in discovering new ways to undermine capitalism. Some of these efforts come from *soi-disant* philosophers who, in search of employment, have discovered "business ethics." However profitable to the practitioners this is, it is in no sense an entrepreneurial discovery. Company directors, stockholders, and assorted "fat cats" (unskinned) are daily bombarded with demands for business to be "socially responsible"; it is a request that many managers are only too happy to satisfy: after all, working for "society" is surely more morally pleasing and less demanding than working for the shareholder.

The business ethicists' current fad is to demand that the traditional profit-seeking corporation be transformed into a curious (and unspontaneous) business enterprise consisting entirely of stakeholders. The shareholders, the people who put up the capital and bear most of the risks, are apparently only one part of this heterogeneous collection. As prominent American stakeholder theorists William M. Evan and R. Edward Freeman assert: "The reason for paying returns to owners is not that they 'own' the firm but that their support is necessary for the survival of the firm."[1] The ultimate purposes of an enterprise, and the decisions made within it, should be determined jointly by all the groups who play a part in its functioning. These groups—primarily workers, suppliers, residents of the community in which the enterprise is located, and bankers (who in some economic regimes, such as Germany and Japan, are also equity holders)—should have an equal share in all decisions that the firm has to make. Indeed, there is really no limit to the groups that might claim to be stakeholders, since almost anyone can assert at least a nodding acquaintance with the activities of the business. The annual reports of many publicly quoted companies are prefaced by soothing references to what they have done for their organization's myriad stakeholders. Leading "New Democrats," such as former Labor Secretary Robert Reich, find the allure of stakeholderism quite irresistible.[2]

But it is not difficult to show that behind the anodyne language of stakeholderism lies a sinister doctrine indeed. It is an idea and practice, the ideologues claim, that is perfectly compatible with capitalism, but in fact it undermines the defining feature of that economic system: the exclusive rights of ownership. What the doctrine amounts to is the democratization, or even worse, politicization, of what is essentially an individualistic economic institution. It is no coincidence that stakeholder groups are frequently called

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