Online archive 19

Daniel McNaughten (the McNaughten Rules)

Daniel McNaughten's trial for murder in 1843 led a jury to find him 'not guilty on the grounds of insanity.' This led to senior judges being asked to clarify the law. Their clarification meant that it became virtually impossible for the Law of England to develop, or to accept, the concept of diminished responsibility until the Homicide Act of 1957.

Daniel McNaughten, when aged 29 years, was a man of 'gloomy, reserved and unsocial habits', as his QC (Cockburn) described him. The way in which McNaughten's mental illness evolved is detailed in the evidence given at his trial. There can be little doubt that McNaughten's psychosis would today be diagnosed as paranoid schizophrenia. His delusions of persecution were directed against the Tories and so overwhelming did they become that he determined to murder the Tory Prime Minister of the day, Sir Robert Peel. He made elaborate preparations for the attack which went according to plan, except for one mistake: McNaughten mistook Peel's Private Secretary (Edward Drummond) for Peel and fatally wounded him.

McNaughten was arrested and disarmed by the Downing Street constable and was taken to Bow Street Police Court, where on interrogation he said: 'The Tories in my native city have compelled me to do this. They followed me to France, into Scotland, and all over England; in fact, they follow me wherever I go … They have accused me of crimes of which I am not guilty; they do everything in their power to harass and persecute men; in fact, they wish to murder me.' Similarly, at the time of the trial, after a considerable degree of persuasion to plead to the indictment, McNaughten hesitatingly admitted; 'I was driven to desperation by persecution'. The importance of this was threefold. Firstly, it shows the compelling nature of

McNaughten's delusions; secondly, it left no doubt that he knew precisely what he was doing: and thirdly, there could equally be no doubt that McNaughten was aware that he was committing a criminal act, even if in his tormented mind he felt justified (driven) to do what he did. 'The prisoner drew the pistol very deliberately, but at the same time very quickly. It was a very cool deliberate act', said an eye-witness at the trial.

The magnitude of importance of the McNaughten case can be measured by the unprecedented degree of medical involvement. Dr Edward Thomas Monro, the last of the Monro dynasty to be associated with Bethlem Hospital, examined McNaughten for the defence at Newgate prison. Also present at the examination were Sir Alexander Morison, Monro's colleague at Bethlem; Dr A.J. Sutherland, physician to St Luke's Hospital; and Mr. William McClure, a surgeon living in Harley Street. At subsequent examinations of McNaughten by Monro Dr Hutcheson, Physician to the Royal Asylum Glasgow, and Dr Crawford, also of Glasgow, were present. Independently, Mr. Aston Key of Guy's Hospital, and Dr Phillips, surgeon and lecturer at the Westminster Hospital, had examined McNaughten and gave evidence at the trial. Dr Forbes Winslow who later became an established authority in trials where a defence of insanity was raised, was also called. He had not actually examined McNaughten, but had merely been present as a spectator throughout the trial – a circumstance which led to much controversy and was the subject of one of the questions put to the judges by the House of Lords when later the famous McNaughten Rules were framed.

Pride of place amongst the medical witnesses at the trial was given to Dr Monro who spoke with the authority of 30 years experience on the 'subject of insanity'. His cross-examination

was understandably reserved for leading counsel for the defence, Alexander Cockburn Q.C. 'Do you consider that the delusions were real or assumed', asked Cockburn, to which Dr Monro replied categorically: 'I am quite satisfied that they were real. I have not a shadow of a doubt on the point'. Later in the trial, Monro declared: 'I consider the act of killing Mr. Drummond to have been committed under a delusion; the act itself I look upon as the crowning act of the whole matter – as the climax – as a carrying out of the pre-existing idea which had haunted him for years'. All the other doctors called to give evidence confirmed absolutely that McNaughten was insane. Dr Hutcheson, for example, stated: 'The delusion was so strong that nothing but a physical impediment could have prevented him from committing the act'.

The case for the prosecution finally collapsed after the evidence of Dr Forbes Winslow and Dr Phillips, who both appeared for the Crown, but both agreed unhesitatingly with the opinions of the doctors called by the defence. The foreman of the jury, without the jury retiring, returned the now famous verdict: 'We find the prisoner not guilty on the ground of insanity'. After the 'great commotion' created by his crime, and the high drama of his trial, McNaughten was admitted to Bethlem Hospital and then, in 1864, to Broadmoor Asylum (as it was then styled) where he died in 1865. The verdict precipitated a storm of protest in the press. *The Times* published letters and satirical verses which expressed the feelings of outrage. Queen Victoria herself was most displeased and wrote to Sir Robert Peel, the might-have-been victim of McNaughten's bullet.

> 'We have seen the trial of Oxford and McNaughten conducted by the ablest lawyers of the day – and they allow and advise the Jury to pronounce the Verdict of Not Guilty on account of Insanity when everybody is morally convinced that both malefactors were perfectly

> conscious and aware of what they did … could not the legislation lay down the rule which … Chief Justice Mansfield did in the case of Bellingham and why should not the judges be bound to interpret the law in this and in no other sense in their charges to the Juries?'

It was impossible for the Government to disregard the volume of public and royal discontent, which was echoed by the House of Lords in its debate of 6 March 1843. The Lord Chancellor suggested that an obsolete piece of constitutional machinery be revived so as to enable the House to take the opinion of the judges as to the law of England in the form of answers to specific questions put to them relating to a particular topic. On 19 June 1843, the judges gave their answers which together constitute what is known throughout the English-speaking world as 'the McNaughten Rules'. This was the time the Law was changed to find such offenders 'guilty but insane' an illogical concept which survived till the 1950s.

Of paramount importance in an historical context is the answer to the second and third questions, namely that the jury ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of committing the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong.

It is the last sentence, i.e. the 'right/wrong test' that confounded forensic psychiatrists and was to be the *casus belli* between them and the lawyers in criminal trials for over a hundred years.

Furthermore, judges were obliged to interpret the law accordingly. In this way, it became virtually impossible for the law of England to develop or to accept the concept of diminished responsibility (which had been accepted in Scotland since 1867) until the Homicide Act of 1957.

The case of McNaughten (1843), succeeded in transforming the legal concept of insanity in criminal cases. What had been brought home in the cases of Hadfield and McNaughten was the malignancy of paranoid delusions. These mental phenomena, they demonstrated, could be powerful and compelling and could affect the behaviour of those subject to them dramatically, and even disastrously.

The narrowest definition defining the limits within which mental incapacity undermines responsibility is embodied in the McNaughten Rules. A person is responsible for their actions when they are ‘labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act they were doing, or if they did know it did not know that it was wrong’.

This is a test of responsibility. Its strength and weakness are derived from its intellectualist nature, that is intellectual understanding of the nature of one’s actions and intellectual grasp of the accepted meaning of right and wrong. It provides a commonsensical definition of the minimum group about whose inclusion in the category of not-responsible there can be no dispute. It has been much criticised as being unduly exclusive. No one could suggest that it includes any who ought to be counted as sane.

The intellectualist quality of the McNaughten formula is a model of clarity and precision though there has been much argument attempting to stretch the formula to cover other than purely intellectual disorder (for example the idea of 'irresistible impulse'). The meaning attached to the words 'right and wrong' can also be held to mean 'consonant with, or contrary to, the law' which has the virtue of clarity.

Intellectual insufficiency can be tested by criteria external to the action which it is invoked to excuse. Insanity should be inferred from aspects of behaviour before and afterwards and the capacity to understand things that have nothing to do with his offence. This could avoid the circular argument that the offender 'must have been made to do such a thing.'

A departure from the McNaughten formula is the concept of motiveless behaviour. Anyone who knows what he is doing and knows it to be wrong but who has no intelligible motive for his action must be mentally sick, the sickness lies in the absence or irrationality of motive. The 'compulsive crime' label can be used when neither the subject nor anyone else is able to account for the behaviour.

The influence of a 'historic' trial on the fate of disordered offenders has been exaggerated. They had just as much chance of a favourable verdict in the half-century *before* Hadfield's case as after it. In the *middle* of the 18th century there was an increase in the number of successful insanity defences. As for McNaughten, Nigel Walker considered that much of what had been written about his case was as irrelevant as the way he spelt his name. The question is whether

the M'Naghten Rules really represented the common law of the time. Fitzjames Stephen, that Victorian expert on the criminal law, thought not.

Reference

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