[redacted]

Should we change the insanity defence?

1. Introduction

Presently, the division between law and medicine in the insanity defence creates arbitrary distinctions between the mad and the bad. These distinctions are damaging to the "moral integrity" of the criminal law, as they impair the law's ability to correctly attribute responsibility, as well as to achieve the principles of retribution, deterrence, and treatment. [1] Although the insanity defence is not frequently used and in practice these problems may be worked around, as a matter of principle it is essential that the law is seen to be fairly labelling crimes.[2] I will argue that law and medicine should be better aligned, so that the court can better infer the true experiences of defendants to correctly attribute responsibility. Ultimately, the question of insanity should remain a question for the law, reflecting "a moral conception of insanity and responsibility" in relation to the public interest, rather than a medical question of causation.[3]

2. What is the insanity defence?

The current formulation originates from the case of Daniel McNaghten, who was experiencing a persecution syndrome when he shot the then Prime Minister's secretary, believing there was a government plot against him.[4] The test is as follows:

> *"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*

[1] A preliminary note to explain that my references refer to various Western approaches to insanity, however I have included the features I think are relevant to the English insanity defence.
Richard Bonnie, 'The Moral Basis of the Insanity Defense' (1983) 69 American Bar Association Journal 194, page 194.
[2] Law Commission, *Insanity and Automatism* (Law Com DP, 2013) paras 1.10, 1.57.
[3] Patricia Erickson, Steven Erickson and Thomas Zeller, *Crime, Punishment and Mental Illness: Law and the Behavioural Sciences in Conflict* (Rutgers University Press 2008) page 2.
[4] *McNaghten's Case* 1 Car & Kir 130, ER Rep [1843-60] 229.

[redacted]

quality of the act he was doing, or, if he did know it, that he did not know that he was doing what was wrong".[5]

A key factor of the McNaghten test is that insanity is a legal defence and not a medical condition.[6] I will argue that this dichotomy reflects the different underlying assumptions and roles of law and psychiatry. In short, law assumes that everyone acts voluntarily, and the concept of criminal responsibility rests on this assumption, whereas psychiatry operates on determinism, "assuming that the presence of physical illness undermined the voluntariness of everyday action".[7] Throughout this essay, I will demonstrate that there is no valid justification for such a division of *criteria* between psychiatry and law. But in agreement with Robinson, I will argue that "psychiatric accounts… can rise no higher than a gloss on the main argument" as to how moral responsibility should be apportioned.[8] However, the decision as to *whether* the defence applies must remain a legal question of fact for the court, as the question often represents a balance between "protection of the public with fair treatment of mentally disordered offenders".[9] Achieving this requires change in the law, largely in line with the Law Commission's proposals, although I take issue with an automatic ban on cases concerning volition and personality disorders.

3. Why do we have an insanity defence?

i) Responsibility

The Law Commission convincingly state that "the true rationale of the defence is to deny criminal responsibility".[10] Our criminal justice system rests on this notion of capacity to act and reason

[5] (ibid).
[6] As per Tindal CJ at (n 4) page 234.
[7] Lawrie Reznek, *Evil or Ill?: Justifying the Insanity Defence* (Routledge 1997) page 26.
[8] Daniel Robinson, *Wild Beasts and Idle Humours: The Insanity Defence from Antiquity to the Present* (Harvard University Press 1998) page 234.
[9] (n 2) para 1.138.
[10] (n 2) para 1.52.

[redacted]

rationally, as underscored by the assumptions of free will that our criminal justice system makes.[11] Therefore, it would be "unfair to punish someone if he or she lacked the capacity to conform to the law".[12] This explains why insanity is a general defence that can be pleaded to all crimes. Free will is what allows the criminal justice system to apportion responsibility to actions, and consequently hold defendants to account on this basis. Without free will, our criminal justice system's notion of responsibility would crumble, and the system with it.[13] These notions engage the importance of fair labelling, as criminal responsibility "reflects society's judgment and attribution of blame", as signalled by subsequent punishment.[14] This finds support in Bonnie's argument that it "is essential to the moral integrity of the criminal law" that blame is fairly ascribed.[15] This retributive argument can be contrasted with psychological principles of treatment, which reflect a "utilitarian attitude toward criminal behaviour committed by the mentally ill".[16] As I will demonstrate, this loss of capacity underlies all possible versions of the insanity defence, therefore is key to understanding why we have such a defence. Without it, it would be difficult for the criminal justice system to address this lack of capacity, which is why I disagree with the arguments for abolition.

ii) The public and the individual

As the Law Commission highlighted, another tension at the heart of the insanity defence is "the overarching aim… is to balance protection of the public with fair treatment of mentally disordered offenders".[17] The defence is known as the 'special verdict', as if found legally insane the defendant

[11] Although this itself is debated, due to space I have accepted this view here, for more please see Victor Tadros, 'Insanity and the Capacity for Criminal Responsibility' (2001) 5 Edinburgh L Rev 325.
[12](n 2) paras A.89-A.92.
[13] As explored in Patricia Erickson, Steven Erickson and Thomas Zeller, *Crime, Punishment and Mental Illness: Law and the Behavioural Sciences in Conflict* (Rutgers University Press 2008) pages 9-14, 137.
[14] Law Commission, *Insanity and Automatism* (Law Com SP, 2012) para 2.121; Victor Tadros, 'Fair Labelling and Social Solidarity' in Lucia Zedner and Julian V Roberts (eds) *Principles and Values in Criminal Law and Criminal Justice: Essays in Honour of Andrew Ashworth* (Oxford University Press 2012).
[15] Richard Bonnie, 'The Moral Basis of the Insanity Defense' (1983) 69 American Bar Association Journal 194, page 194.
[16] Patricia Erickson, Steven Erickson and Thomas Zeller, *Crime, Punishment and Mental Illness: Law and the Behavioural Sciences in Conflict* (Rutgers University Press 2008) page 12.
[17] (n 2) para 1.138.

can be the subject of disposal order, which could involve a hospital or supervision order under Mental Health Act 1983.[18] This verdict is essential to understanding why the question of insanity is legal and not medical. Put crudely, it follows from society's attribution of responsibility and blame that those who are deemed mad will be treated, and those who are deemed bad will be punished.[19] But short of acquittal, the defendants will remain in custody either way.[20] As Walker notes, "a criminal lunatic might be as morally innocent as a man who had done harm by accident or in self-defence, but the danger of treating him as innocent was too great".[21] The utilitarian purpose that Walker persuasively articulates has also been expressed in judgements; the insanity defence operates "to protect society against recurrence of the dangerous conduct" either through treatment or punishment.[22] This reiterates why insanity is a legal rather than medical question, as it is determined in relation to the perceived danger that the defendant poses to the public. Therefore, the distinctions between punishment, treatment and acquittal are based on public policy.

4. Shortcomings of the current defence

Norrie makes a strong argument that the current defence is "too narrow in its test for insanity and too broad in terms of its concept of disease".[23] This can find support in Wootton's argument that the current law creates a paradox that "at a certain degree of gravity or irrationality, a crime ceases to be wicked and becomes merely a medical symptom".[24] However, I disagree with Wootton's argument that we should aim to jettison the distinction between law and psychiatry; they are distinct disciplines serving different purposes. Rather, we should adjust their current relationship by

[18] Mental Health Act 1983, s37, ss47-53
[19] Please note there is a third category of sane automatism, whereby the defendants receive an acquittal, as I will explore later.
[20] For more, please see Erving Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (Doubleday 1961). He argues that both hospitals and prisons are examples of "total institutions", however, space will not allow me to examine this argument in detail.
[21] Nigel Walker, *Crime and Insanity in England* (Edinburgh University Press 1968) page 81.
[22] *R v Sullivan* [1984] AC 156, [1983] 2 All ER 673, page 172.
[23] Alan Norrie, *Crime, Reason and History: A Critical Introduction to Criminal Law* (Cambridge University Press 2014) page 237.
[24] Barbara Wootton, *Crime and the Criminal Law* (Macmillan 1981) page 532.

[redacted]

aligning the language of the insanity defence's criteria, which will help the law to fairly attribute responsibility.

i) "Defect of reason, from a disease of the mind"[25]

The Law Commission highlighted that terms such as 'disease of the mind' "are not medical terms, but outdated legal terms" which represent the division between legal and medical understanding.[26] This has principled consequences for the attribution of responsibility, because this misalignment "may impede expert evidence of 'insanity'", as experts are required to translate a psychiatric condition to this legal concept.[27] For example, it is necessary to show that the disease of the mind deprived the defendant of the power of reasoning. This does not apply to defendants who "retain the power of reasoning but in moments of confusion or absent-mindness they failed to use the powers to the full".[28] Here, the law "takes a somewhat static view of mental disorder", whereby the focus is solely on reasoning.[29] This ignores the inability to control one's emotions or resist impulses, which are commonly considered characteristics of mental disorders according to medical understanding.[30]

Meanwhile, the insanity defence is indeed broad in its concept of disease, although I disagree with Norrie's assertion that it is "*too* broad".[31] Crucially, the defence mentions the "mind" rather than 'brain'.[32] Therefore, the insanity defence is not limited to mental illness, but any disease "which affects the proper functioning of the mind".[33] As a disease of the mind cannot arise from an external cause, this creates some arbitrary distinctions hinging on an apparent divide between internal and external causes. Additionally, it can be difficult for medicine to distinguish internal and external

[25] (n 4) page 233.
[26] (n 2) para 1.56.
[27] (n 2) para 1.57.
[28] *R v Clarke* [1972] 1 All ER 219, page 221.
[29] Jeremy Horder, *Ashworth's Principles of Criminal Law* (Oxford University Press 2019) page 164.
[30] (ibid).
[31] (n 23) page 237.
[32] (n 4) page 233.
[33] *R v Hennessy* [1989] 2 All ER 9, page 13.

causes.[34] As Reznek indicates, "everything… is a function of both external and internal factors".[35] This is problematic, as factors from external causes fall under the defence of sane automatism, which results in acquittal – quite distinct from detention following the special verdict.[36] As the line between the special verdict and acquittal is fine in many cases, this complicates the criminal law's ability to fairly attribute responsibility, and balance the fair treatment of the individual and public protection.[37] I find it difficult to justify such a tenuous distinction between internal and external causes, particularly when the focus ought to be on the capacity of the defendant to act freely and rationally. Therefore, I am not convinced by Norrie's assertion that the insanity defence is "*too* broad" in its concept of disease.[38] The insanity defence should not operate to arbitrarily distinguish conditions along the internal and external divide, but should focus where capacity is inhibited.

ii) Cognitive and wrongfulness limbs

Norrie's argument on the narrowness of the insanity defence is particularly strong with regards to the cognitive limb. As *R v Codere* (1917) established, if the defendant knows the physical aspect of their actions, they cannot rely on the insanity defence.[39] Here, the division between legal and medical understanding is stark. As Wallace elucidates, "commonly when someone is in the grip of such [psychiatric] conditions… does something wrong, she will know perfectly well that she is attacking the person".[40] Therefore, this requirement ignores medical understanding of such conditions, and how these affect the defendant's capacity, thus hindering the fair attribution of criminal responsibility.

[34] For example, it was discussed whether the criminal law should recognise defendant who suffered PTSD following rape as legally insane due to a stress disorder, or permit the defence of automatism as a result of the external factor of rape, please see *R v T* [1990] Crim LR 256.
[35] (n 7) pages 93-95.
[36] *Watmore v Jenkins* [1962] 2 QB 572, [1962] All ER 868
[37] As illustrated by the cases of *R v Quick* [1973] QB 910, [1973] 3 All ER 347; *R v Hennessy* [1989] 2 All ER 9.
[38] (n 23) page 237.
[39] *R v Codere* [1916] 12 Cr App Rep 21.
[40] R Jay Wallace, *Responsibility and the Moral Sentiments* (Harvard University Press 1994) page 168.

As mentioned above, this arm of the test also ignores other problems with the functioning of the mind, such as volition and emotion. As the Royal Commission on Capital Punishment cogently argued, this focus on physical acts is based on a concept of insanity that does not reflect medical understanding, "since insanity does not only, or primarily, affect the cognitive or intellectual faculties, but affects the whole personality of the patient, including both the will and emotions".[41] As they have the *potential* to affect capacity, the law should recognise these factors. As I will explore later, considering the development of psychiatry as a discipline, particularly in light of advances in neuroscience, since this statement was made, we can expect this argument to carry even more weight.

Norrie's argument as to narrowness is also cogent when applied to the wrongfulness limb. As established in *R v Windle* (1952), there is a narrow interpretation of this arm, meaning that if the defendant knows that their actions are contrary to law, they will be deemed responsible.[42] This was noted in the American case of *Clark v Arizona* (2006), where it was deemed superfluous – if a defendant did not know what they were physically doing, they cannot have known that it was wrong.[43] This is a deeply problematic arm of the test, again out of step with medical understanding of how conditions affect understanding of right and wrong.[44]

5. Arguments for abolition

i) Conservative argument

Kadish unpersuasively argues that there is no need for the insanity defence because a defendant who does not know the nature and quality of what their actions has "a complete defence on the

[41] Home Office, *Report of the Royal Commission on Capital Punishment* (Cmd 8932, 1953) para 227.
[42] *R v Windle* [1952] 2 QB 826, [1952] 2 All ER 1.
[43] *Clark v Arizona* [2006] 126 S Ct 2709; Ronnie Mackay, 'Righting the Wrong? Some Observations on the Second Limb of the M'Naghten Rules' (2009) 2 Crim LR 80.
[44] (ibid).

merits to any such crime – namely, the lack of mens rea".[45] Admittedly, a strength of this approach is that it addresses concerns about the defence of sane automatism, as an absence of the actus reus would negate any criminality.[46] This would place all those who lacked capacity on an even footing; the law would deem them to all be equally lacking the necessary elements to commit a crime. However, a more convincing objection is that this approach could only operate where a crime requires mens rea. Therefore, if a defendant was charged with a strict liability offence, the law would completely ignore any "disease of the mind" and its impact on capacity.[47] Furthermore, I am persuaded by Reznek's argument that this approach is flawed in its understanding of psychiatric conditions; many of those who rely on the insanity defence have control over their actions, know what they are doing, and possess requisite mens rea.[48] For example, McNaghten decided to shoot someone, knew what he was doing in terms of shooting the gun, and intended to shoot. He possessed the necessary mens rea for murder, so should the law completely ignore the fact that he did so on the basis that a "disease of the mind" caused him to believe he was being persecuted?[49] If the law is to attribute criminal guilt on the basis of responsibility, I believe it should acknowledge the substantive difference between someone who intentionally shoots on as a result of a medical condition in comparison to someone who does and intends the same but on the basis, for example, of malevolence. As discussed earlier, it is essential to the "moral integrity" of the criminal law that it is fairly labelling crimes.[50]

ii) Radical argument

Radical abolitionists argue that the law should abandon the concept of mens rea altogether.[51] Following this, law would solely function to prevent socially harmful acts, regardless of intent.

[45] Sanford Kadish, 'The Decline of Innocence' (1968) 26 Cambridge LJ 273, page 280.
[46] (n 7) pages 295-296.
[47] (n 4); (n 2) paras 1.52-1.53.
[48] (n 7) page 296.
[49] (n 4) page 23.7
[50] (n 1).
[51] (n 7) page 296.

Consequently, the tension between law and psychiatry would dissolve. As Wootton argues, the "distinction between the punitive and remedial institution", between retribution and treatment, would also disappear.[52] Whilst abolishing the distinction between the mad and the bad may overcome the problems arising from and within these categories, I believe that this would overall be more problematic. Abandoning mens rea risks fostering "a model of responsibility that is incompatible with societal needs for law and order".[53] Space will not allow me to explore the arguments surrounding philosophical anarchism, but in short, this approach risks excusing everyone. If no one is forced to take responsibility or be punished for their actions, we risk "diminishing the already tenuous control they have on their antisocial impulses" and ridding the law of its potential deterrent functions.[54]

iii) Mental disorder as a myth

Halpern raises an interesting point that "there is neither a scientific nor effective way in which the degree of mental disease or defect can be measured so that a defendant can be fairly and reasonably found to be lacking in criminal responsibility".[55] Disease appears to be a value-laden concept which can change across societies and time; for example homosexuality was considered an illness in the DSM until 1973.[56] Although I accept that these are valid points as to the nature of mental illness, they are not strong enough to warrant abolition of the insanity defence. Instead, they serve as cautions for the law in relying too heavily on psychiatric evidence, bolstering the case that the decision of insanity should rest with the law. However, particularly given the advances in neuroscience since Halpern and Szasz made these points, such evidence does have the *potential* to

[52] Barbara Wootton, *Crime and the Criminal Law* (Macmillan 1981) page 532.
[53] Seymour Halleck, 'Responsibility and Excuse in Law: A Utilitarian Perspective' (1986) 49 Law and Contemporary Problems 127, page 143.
[54] (n 7) page 260.
[55] A Halpern, 'The Insanity Defence: A Judicial Anachronism' (1977) 7 Psychiatric Annals 41, page 46.
[56] KMW Fulford, 'Value, Action, Mental Illness and the Law' in Stephen Shute, John Gardner and Jeremy Horder (eds), *Action and Value in Criminal Law* (Oxford University Press 1993); (n 7) pages 4, 242-243.

show why a defendant did or did not lack capacity at the time the crime was committed, and thus represent value in the court's decision as to whether the defendant should be held responsible.[57]

iv) Causation

Halpern also makes another, somewhat convincing, point that "there is no morally sound basis to select a mental disease or defect as a justification for exculpability while excluding other behavioural determinants".[58] This does find some support in the behavioural sciences.[59] However, Moore's argument is more persuasive. He states that if we were to accept that all events are caused, "this view would eliminate responsibility entirely as a viable concept".[60] This would reflect psychiatry's traditionally deterministic approach but would be flawed in terms of the deterrent function of the criminal law, similarly to the radical abolitionist argument. Also, if determinism and responsibility are equal, then "raising assumptions about the causation of behaviour by mental illness as the ground for excusing the mentally ill is a needless distraction".[61] However, causation and responsibility must remain distinct. The rationale behind the insanity defence ought not to be causation but a lack of rationality and free will, as I have articulated above.

6. Do the Law Commission's proposals address the current shortcomings?

i) Adjusting the relationship between law and psychiatry

The Law Commission proposed a new defence of "not criminally responsible by reason of a recognised medical condition" (NCRRMC).[62] A strength of this would be that the language of the defence would be better aligned with medical understanding, rather than the 19th century concept

[57] As demonstrated in Lisa Claydon and Paul Catley, 'Abolishing the Insanity Verdict in England and Wales: A Better Balance between Legal Rules and Scientific Understanding?' in Sofia Moratti and Dennis Patterson (eds) *Legal Insanity and the Brain: Science, Law and European Courts* (Hart Publishing 2016).
[58] (n 55) page 46.
[59] For example, please see Patricia Erickson, Steven Erickson and Thomas Zeller, *Crime, Punishment and Mental Illness: Law and the Behavioural Sciences in Conflict* (Rutgers University Press 2008), Chapter 6.
[60] Michael Moore, *Placing Blame: A Theory of the Criminal Law* (Oxford University Press 2010), pages 599-600.
[61] (ibid).
[62] (n 2).

of a "disease of the mind".[63] The defence would also extend to physical medical conditions, thus dissolving the arbitrary distinction between internal and external factors.[64] Consequently, the line between mad and bad would be drawn on the basis of a RMC, rather than hinging on where the defect of reason originated from. Furthermore, the court would deem which medical conditions are 'recognised', allowing for public policy considerations – for example, excluding involuntary intoxication.[65] This would bolster the "moral integrity" of criminal law, as the standard would be the same across RMCs, better reflecting a focus on defendants' lack of capacity.[66]

Meanwhile, the substance of the current test would remain. The defendant would have to show that by reason of this RMC, they were unable to form a rational judgement and understand the wrongfulness of what they had done. Both elements would be extended, addressing some of the issues mentioned above. The inability of form a rational judgement would extend beyond the narrow focus on cognitive factors to include an understanding of the circumstances and consequences of the act in question, which would better align with psychiatric understanding and assessment.[67] Also, the wrongfulness limb would adopt the Canadian approach, whereby the defendant only needs to appreciate that the act was something they ought not to do.[68] Therefore, this would extend beyond the arbitrariness that a focus on what is legally wrong currently brings. These assessments would remain with the court, as based on psychiatric evidence, allowing for morality and public policy to remain relevant considerations.

ii) Automatic exclusions

A key issue with these proposals is the automatic exclusion of personality disorders and incapacity to physically control one's actions. Considering the capacity-based responsibility upon which law

[63] (n 2) paras 1.129, 4.57; (n 4).
[64] (n 2) para 4.56.
[65] (n 2) paras 4.84-4.92.
[66] (n 1).
[67] (n 2) paras 4.19-4.32.
[68] *R v Chaulk* [1990] 3 SCR 1303.

should operate, the absence of the capacity to exercise free will and rationality ought to suggest a lack of responsibility. With regards to personality disorders, the Law Commission justify this on the basis that "the evidence for the… [personality disorder] is simply evidence of what might broadly be called criminal behaviour".[69] Meanwhile, the exclusion of the inability to control actions is based on the notion that it is "not possible to determine scientifically between an impulse which *has not* been resisted and an impulse which *could not* be resisted".[70] Although I appreciate these evidential issues, and the consequent utilitarian concerns for social order, they do not justify automatic exclusion. Under automatic exclusion, the court would have no discretion to consider the impact of these factors on capacity – I refer to my above arguments that legal insanity is a matter for the law to decide, in light of the public policy considerations. To do otherwise "puts the mental health professional in a role as the gatekeeper of evidence", which is particularly alarming considering the uncertain nature of many psychiatric diagnoses and diagnostic techniques.[71] As Claydon and Catley have argued in the context of volition, advances in psychiatry can mean that psychiatric evidence may shed light on capacity.[72] This was demonstrated by a study of an individual's behaviour and brain tumour, where it was found that he "could not refrain from acting on his paedophilia despite the awareness that the behaviour was inappropriate".[73] Likewise, Kinscherff highlights that new evidence may suggest personality disorders may actually be endpoints for earlier mental disorders.[74] Therefore, I would argue that to better align with changing medical understanding, and allow for the court to *consider* such evidence, but by no means be bound by it, there should be no automatic exclusion.

[69] (n 2) para 1.90.
[70] (n 2) para 4.51.
[71] Robert Kinscherff, 'Proposition: A Personality Disorder May Nullify Responsibility for a Criminal Act' (2010) 38 JL Med & Ethics 745, page 749; Martha Farah and Seth Gilliham, 'Neuroimaging in Clinical Psychiatry' in Anjan Catterjee and Martha Farah (eds) *Neuroethics in Practice* (Oxford University Press 2013).
[72] (n 57).
[73] (n 57); Jeffrey Burns and Russell Swerdlow, 'Right Orbitofrontal Tumor With Pedophilia Symptom and Constructional Apraxia Sign' (2003) 60(3) Archives of Neurology 437.
[74] (n 71) page 748.

7. Conclusion

If the criminal law is to maintain its principle of only punishing defendants who are criminally responsible on the basis of capacity, the insanity defence must be reformed to align better with medical understanding. Abolition would not strengthen the "moral integrity" of the law, as the conservative and radical arguments do not adequately reflect the notion of capacity-based responsibility that underpins criminal law.[75] The Law Commission's proposal of NCRRMC would ensure that the insanity defence remains a legal question which reflects the law's perception of free will, responsibility and public policy. However, the automatic exclusion of personality disorders and incapacity to control one's actions is contrary to a capacity-based model of criminal responsibility. This would risk an unfair attribution of responsibility, as well as shifting decisions onto medical professionals at the expense of an evaluation of the public interest. Nonetheless, the defence of NCRRMC would simultaneously update the language of the law of insanity, aligning the criteria of medical understanding with that of the court. This would allow better evidence to be given, thus ensuring judgements that better reflect the true mental state of the defendants. For this reason, it is essential to the criminal law's principle of fair labelling that the insanity defence is reformed largely in line with the Law Commission's proposals.

Word count: 3482

[75] (n 1).

[redacted]

Bibliography

Articles

Bonnie R, 'The Moral Basis of the Insanity Defense' (1983) 69 American Bar Association Journal 194.

Burns J and Swerdlow R, 'Right Orbitofrontal Tumor With Pedophilia Symptom and Constructional Apraxia Sign' (2003) 60(3) Archives of Neurology 437.

Denno D, 'The Myth of the Double-Edged Sword: An Empirical Study of Neuroscience Evidence in Criminal Cases' (2015) 56(2) Boston College Law Review 493.

Halleck S, 'Responsibility and Excuse in Law: A Utilitarian Perspective' (1986) 49 Law and Contemporary Problems 127.

Halpern A, 'The Insanity Defence: A Judicial Anachronism' (1977) 7 Psychiatric Annals 41.

Kadish S, 'The Decline of Innocence' (1968) 26 Cambridge LJ 273.

Kinscherff R, 'Proposition: A Personality Disorder May Nullify Responsibility for a Criminal Act' (2010) 38 JL Med & Ethics 745.

Mackay R, 'Righting the Wrong? Some Observations on the Second Limb of the M'Naghten Rules' (2009) 2 Crim LR 80.

Books

Claydon L and Catley P, 'Abolishing the Insanity Verdict in England and Wales: A Better Balance between Legal Rules and Scientific Understanding?' in Sofia Moratti and Dennis Patterson (eds) *Legal Insanity and the Brain: Science, Law and European Courts* (Hart Publishing 2016).

Erickson P, Erickson S and Zeller T, *Crime, Punishment and Mental Illness: Law and the Behavioural Sciences in Conflict* (Rutgers University Press 2008).

Ewing CP, *Insanity: Murder Madness, and the Law* (Oxford University Press 2008).

Farah M and Gilliham S, 'Neuroimaging in Clinical Psychiatry' in Anjan Catterjee and Martha Farah (eds) *Neuroethics in Practice* (Oxford University Press 2013).

Fulford KMW, 'Value, Action, Mental Illness and the Law' in Stephen Shute, John Gardner and Jeremy Horder (eds), *Action and Value in Criminal Law* (Oxford University Press 1993).

Goffman E, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (Doubleday 1961).

Norrie A, *Crime, Reason and History: A Critical Introduction to Criminal Law* (Cambridge University Press 2014).

Reznek L, *Evil or Ill?: Justifying the Insanity Defence* (Routledge 1997).

Robinson D, *Wild Beasts and Idle Humours: The Insanity Defence from Antiquity to the Present* (Harvard University Press 1998).

Tadros V, 'Fair Labelling and Social Solidarity' in Lucia Zedner and Julian V Roberts (eds) *Principles and Values in Criminal Law and Criminal Justice: Essays in Honour of Andrew Ashworth* (Oxford University Press 2012).

Wallace RJ, *Responsibility and the Moral Sentiments* (Harvard University Press 1994).

Wootton B, *Crime and the Criminal Law* (Macmillan 1981).

Cases

Attorney General v Hayes [1736] 25 ER 792.

Bratty v Attorney General for Northern Ireland [1961] UKHL 3, [1961] 3 All ER 523.

Clark v Arizona [2006] 126 S Ct 2709.

McNaghten's Case 1 Car & Kir 130, ER Rep [1843-60] 229.

R v Chaulk [1990] 3 SCR 1303.

R v Clarke [1972] 1 All ER 219.

R v Codere [1916] 12 Cr App Rep 21.

R v Hennessy [1989] 2 All ER 9.

R v Quick [1973] QB 910, [1973] 3 All ER 347.

R v Sullivan [1984] AC 156, [1983] 2 All ER 673.

R v T [1990] Crim LR 256.

R v Windle [1952] 2 QB 826, [1952] 2 All ER 1.

Papers and reports

Law Commission, *Insanity and Automatism* (Law Com SP, 2012).

Law Commission, *Insanity and Automatism* (Law Com DP, 2013).

Home Office, *Report of the Royal Commission on Capital Punishment* (Cmd 8932, 1953).

Scottish Law Commission, Report on Insanity and Diminished Responsibility (Scot Law Com No 195, 2004).

Home Office, *Report of the Committee on Mentally Abnormal Offenders* (Cmnd 6244, 1975).

[redacted]

Statutes

Mental Health Act 1983.