New Diminished Responsibility

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Objectives

• Case Study
• Awareness of the core construct of Diminished Responsibility
• Specific issues related to alcohol and drug dependance
• Changes according to the Coroners and Justice Act 2009
Diminished responsibility

- Diminished responsibility is one of three special defences contained in the Homicide Act 1957 which exist solely for the offence of murder.

- Where the defence of diminished responsibility is successfully pleaded, it has the effect of reducing a murder conviction to manslaughter.

- The effect is to reduce criminal liability rather than to absolve the defendant from liability completely.

- Diminished responsibility is set out in s.2 of the Homicide Act 1957. There are three requirements of the defence of diminished responsibility which must be established by the defendant:

  1. Abnormality of the mind

  2. The abnormality must be caused by arrested or retarded development of the mind or any inherent causes or induced by disease or injury.

  3. The abnormality must substantially impair the defendant's mental responsibility.
abnormality of the mind

• Byrne (1960)

Byrne murdered a young girl staying in a YWCA hostel. He then mutilated her body. He did so as he was suffering from irresistible impulses which he was unable to control.

• Reasonable man would regard as abnormal.

• It has a **wide meaning** and encompasses the **inability to exercise will power and control**.

• The question of whether the defendant is suffering from an abnormality of the mind is for the **jury** to decide after hearing medical evidence.

• **Balance of probabilities**
The jury are not bound to follow medical opinion. It is ultimately their decision as to whether the defence should succeed.
State of mind so different that a reasonable man would term it abnormal
Which of the following are abnormalities of mind

Delusions
Hallucinations
Suicidal ideas
Schizophrenia
Jealousy
Pre-menstrual tension
Epilepsy
Chronic depression
The abnormality must be caused by arrested or retarded development of the mind or any inherent causes or induced by disease or injury.

- This has been interpreted by the courts as meaning that the abnormality must be caused by an **inside source** and that outside factors causing the abnormality such as alcohol or drugs can not be taken into account unless the abnormality was as a result of the disease of alcoholism or drug addiction or long term damage caused by the intake of such intoxicants:
Alcohol and Drugs
Gittens (1984)

- The judge directed the jury:
  - When considering the effects of alcohol and drugs on one hand and inherent causes (such as depression) they must decide which factor was the substantial cause of the conduct. Then only if the inherent causes were the major factor would diminished be established.
  - The jury convicted of murder on both counts and the defendant appealed.
    The murder convictions were substituted for manslaughter convictions on the grounds of diminished responsibility.

The jury should be directed to **disregard what, in their view, the effect of the alcohol or drugs upon** the defendant was, since abnormality of mind induced by alcohol or drugs is not (generally speaking) due to inherent causes and is not therefore within the section. Then the jury should consider whether the **combined effect of the other matters** which do fall within the section amounted to such abnormality of mind as substantially impaired the defendant's mental responsibility within the meaning of 'substantial' set out in R v Lloyd [1967]
For alcohol dependency to amount to an abnormality, it must have at the material time reached a level at which the brain had been injured by repeated insult from intoxicants so that there was gross impairment of judgement and emotional responses. In cases where brain damage had not been reached: drinking may have been involuntary which is described as occurring when an individual is no longer able to resist the impulse to drink. If the first drink of the day was not involuntary then the rest of the day was not involuntary.
Problems with Tandy

• Alcohol dependance without brain damage

• craving and loss of control over drinking
Alcohol abuse and abnormality

• Dietschmann [2003]

The appellant had been having a relationship with his aunt who was much older than him and was a drug addict. The appellant was sentenced to imprisonment for an offence he had committed and the relationship continued during his stay in prison. She wrote to him every day and visited him. Unfortunately his aunt died whilst he was in prison. A month before she died, the aunt gave him a watch. He reacted badly to the death of his aunt and had attempted suicide. He was released from prison a month after her death and began drinking heavily. He was also prescribed prozac by his doctor. Two weeks after his release was drinking with two men at the home where he was staying. They were dancing and the watch given to him by his aunt fell off his arm and the appellant accused Nicholas Davies of breaking it. He then punched and kicked him to death in a violent attack. He was convicted of murder and appealed.

• Appeal court;

• If he had not taken the alcohol would the killing still have occurred and if so met the requirements of diminished responsibility
• Lord Hutton,
• Despite the alcohol being voluntarily taken whether mental abnormality substantially impaired the responsibility for the actions

• Voluntary drinking can permit a defence of diminished responsibility
Alcohol Dependence
A man's act is involuntary if, and only if, he could not have acted otherwise. **Giving in to a craving is not an involuntary act, even if it is very difficult to do otherwise.** An alcoholic not suffering from severe withdrawal symptoms, who tops up his overnight level or who later chooses to accept a drink after he's reached his normal quota, is not drinking involuntarily."

The jury convicted him of murder and the appellant appealed contending that this was a misdirection.

Held:

Conviction for murder was quashed. This was a misdirection as it set the bar too high:
The defendant was an alcoholic. She killed her 11 year old daughter by strangulation after the daughter told her she was being sexually abused by her step father. On the day of the killing the defendant had drunk almost a whole bottle of vodka which was stronger than her normal drink of cinzano. At her trial she was convicted of murder and appealed.

For alcohol dependency to amount to an abnormality

It must have at the material time reached a level at which brain had been injured by repeated insult from intoxicants so that there was gross impairment of judgement and emotional responses

In cases where brain damage had not been reached: drinking may have been involuntary which is described as occurring when an individual is no longer able to resist the impulse to drink

If the first drink of the day was not involuntary then the rest of the day was not involuntary
The appellant was an alcoholic and homeless. He had been abused as a child and had a bitter separation from his wife. He had been out drinking with a group of alcoholics known as the 'Breakfast club'. Having nowhere to stay for the night he was invited back to Fancis Ryan's house who was homosexual. The appellant was woken in the night by Francis who made sexual advances towards him. The appellant then brutally attacked him with a meat cleaver and a hammer 37 times resulting in death. The trial judge directed the jury:

A man's act is involuntary if, and only if, he could not have acted otherwise. *Giving in to a craving is not an involuntary act, even if it is very difficult to do otherwise.* An alcoholic not suffering from severe withdrawal symptoms, who tops up his overnight level or who later chooses to accept a drink after he's reached his normal quota, is not drinking involuntarily."

The jury convicted him of murder and the appellant appealed contending that this was a misdirection.

Held:

Conviction for murder was quashed. This was a misdirection as it set the bar too high:
Judgment given in *R v. Wood* [2008]

1. The need to decide whether brain damage has occurred or not is no longer appropriate.

2. Where *brain damage has occurred* the jury may be more likely to conclude that the defendant has an abnormality of mind induced by disease or illness.

3. An abnormality of mind is present if the *syndrome [alcohol dependence]* is of such an extent and nature that it constitutes an abnormality of mind.

4. In determining substantial impairment the jury must:
   - consider exclusively the *effect of alcohol consumed* by the defendant as a *direct result* of his *illness or disease*
   - *ignore* the effect of any alcohol consumed *voluntarily*.

5. In determining the possible impact and significance of an abnormality of mind constituted by alcohol dependence, the *jury* must consider:
   - whether the *craving* for alcohol was *irresistible* or not
   - whether consumption of alcohol in the period *leading up to the killing was voluntary* (and if so, to what extent) *or was not voluntary*
   - ultimately, whether the defendant’s mental responsibility for their actions when killing the deceased was substantially impaired as a result of the alcohol consumed under the baneful influence of the syndrome.

6. The need for every drink of alcohol to be entirely involuntary for a successful finding of diminished responsibility is not required.
Voluntary v/s involuntary

- The momentum of the judgment within Wood, although significant, appeared flawed by a seemingly semantic failing. **The requirement to consider exclusively the effect of alcohol consumed by the defendant as a direct result of his illness or disease and ignore the effect of any alcohol consumed voluntarily** indicated a need to return to the previous outdated standard within Tandy of considering the effects of each drink – arguably an insurmountable task.
Severity of alcohol dependence

1. Establishing the presence of an abnormality of mind depends upon the nature and extent of the alcohol dependence syndrome and broadly whether consumption of alcohol before the killing was fairly to be regarded as the involuntary result of an irresistible craving or compulsion to drink.

2. When deciding upon substantial impairment the jury should consider:
   - the extent and seriousness of the defendant’s dependency, if any, on alcohol
   - the extent to which his ability to control his drinking or to choose whether to drink or not was reduced
   - whether he was capable of abstinence from alcohol and, if so, for how long and whether he was choosing for some particular reason to decide to get drunk or to drink even more than usual
   - the defendant’s pattern of drinking in the days leading to the day of the killing, and on the day of the killing itself
   - notwithstanding his consumption of alcohol, his ability, if any, to make apparently sensible and rational decisions about ordinary day-to-day matters at the relevant time.
Conclusions

• "abnormality of mind" means a state of mind so different from that of ordinary human beings that a reasonable man would term it abnormal.

• Can you explain the abnormality in psychiatric symptomatology/ disorder

• Consider the nature and severity of alcohol/ drug dependance

• Reflect on the guidance to jurors!
Coroners and Justice Act 2009

- A person who kills or is a party to the killing of another is not to be convicted of murder if they were suffering from an **abnormality of mental functioning** (abnormality of mind) which:
  - arose from a **recognised medical condition** (causes)
  - substantially impaired their ability to do one or more of the following:
    - understand the nature of their conduct,
    - form a rational judgement or
    - exercise self control
  - provides an explanation for [their] acts and omissions in doing or being a party to the killing.
  - An abnormality of mental functioning provides an explanation for the conduct if it **causes**, or is a **significant contributory factor** in causing, the defendant to carry out that conduct.
abnormality of mind

• Replaced by abnormality of mental functioning
arrested or retarded development of the mind or any inherent causes or induced by disease or injury.

Replaced by

arose from a recognised medical condition
Substantially impaired the ability to do!!

One or more things

• To understand the nature of his/her conduct
• To form a rational judgment
• To exercise self control

• Replaces substantially impair the defendant's mental responsibility.
Provides an explanation for acts and omissions in doing or being party to the killing

• An abnormality of mental functioning provides an explanation for his/her conduct if it causes, or is a significant contributory factor in causing, him/her to carry out that conduct
Thank You