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Insanity and the Rule of Law

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Abstract. This article describes the effects of the construct of insanity on the rule of law.

The rule of law denotes a set of behavioral prescriptions and proscriptions backed by political authority. Adherence to these prescriptions and proscriptions are alleged to be the route to the welfare of whoever is judged worthy of experiencing such welfare. In this sense, all political entities have a rule of law.

Does the construct of insanity support or detract from a rule of law? Insanity usually denotes some set of psychological phenomena that--if accurately characterizing the violator of a behavioral proscription--absolves the violator of legal responsibility for the proscription. In essence, insanity constitutes an exception to the rule of law that becomes a rule of law. It both subverts and reinforces this rule.

Arguments that insanity merely subverts the rule of law through absolving a violator of responsibility ignore that the rule of law is at best a behavioral approximation to a world that entails not only behavior but thought, emotion, and motive. Insanity is a legal vehicle to better fit this behavioral approximation to the transbehavioral. Arguments that insanity merely reinforces the rule of law ignore that the option of absolution of responsibility can weaken the deterrent features of law as well as its moral and ethical force--assuming such force contributes to the welfare of those for whom the rule of law is created.

One of the biggest problems in understanding the effects on the rule of law of the insanity construct is the cumulative body of testimony in legal proceedings of many mental health professionals. These professionals--by law, precedent, and/or serendipity--are assumed to have uniquely valuable information in helping to determine whether the psychological phenomena associated with absolution of responsibility apply to a violator of law. The cardinal flaw of these professionals is conflating questions of legal essence with information of psychological import. For example, those of the mental health cloth may (with hubris) answer questions such as "did the violator know what he (or she) was doing and that the act in question was wrong?" They have no business doing so. At best they can provide fragments and narratives of biopsychosocial information that may have bearing on answering such questions. But the answers of such questions are for adjudicators such as juries to answer--not mental health professionals.

The fact that some legal jurisdictions accept testimony that conflates the legal and the psychological can subvert the rule of law--independent of the best intents of insanity constructors. Should, then, behavioral prescriptions and proscriptions be the be-all and end-all of the rule of law--in essence should behavior be reified as the law? Probably not, for this might be the height of moral and ethical insanity. (See Barnard, P.G. (1997). The psychologist as an expert witness in determining mental competency and insanity as a defense. *American Journal of Forensic Psychology*, 15, 19-36; Borum, R., & Fulero. (1999). Empirical research on the insanity defense and attempted reforms: Evidence toward informed policy. *Law and Human behavior*, 23, 117-135; Gibbons, P., Mulryan, N., & O'Connor, A. (1997). Guilty but insane: The insanity defence in Ireland, 1850-1995. *British Journal of Psychiatry*, 170, 467-472; Miller, R.D., et al. (1996). Forcing the insanity defense on unwilling defendants: Best interests and the dignity of

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the law. *Journal of Psychiatry and Law*, 24, 487-509; Uviller, H.R. (October 27, 1999). The defendant on the couch. *The New York Times*, p. A31.) (Keywords: Insanity, Psychology, Rule of Law.)