Criminal Law and Procedure - Partial Insanity Affecting the Degree of a Crime

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Article 14 of the Louisiana Criminal Code\(^1\) exempts one from criminal responsibility on the basis of insanity only if he was “incapable of distinguishing between right and wrong with reference to the conduct in question,”\(^2\) at the time of the alleged crime. This test embodies the right from wrong rule which precludes the use of any other test for insanity at the time of the crime.\(^8\) This leads to the somewhat unrealistic conclusion that criminals are either totally sane or totally insane, a position which disregards the fact that “there are many degrees both of sanity and insanity; and the two states approach each other in imperceptible gradation.”\(^4\)

With the growth of the modern sciences of psychology and psychiatry, dissatisfaction with the ancient right-wrong precept has manifested itself in several new approaches to the perplexing defense of insanity. Those which have received the greatest attention are the “irresistible impulse”\(^5\) test and the Durham “product” theory.\(^6\) Another approach which has been steadily gaining recognition is that which allows consideration to be given mental impairment of insufficient degree to fall within the strict right-wrong test, but sufficient to negative the specific intent necessary for the commission of certain crimes. This is the doctrine of “partial insanity” or “diminished responsibility.”\(^7\) The rule has been characterized as simply another

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2. Ibid.

3. The following statements are representative of those which announce flatly that insanity must be either a complete defense or none at all. In Commonwealth v. Wireback, 190 Pa. St. 138, 151, 42 Atl. 542, 547 (1899), the court said: “Either the jury remain convinced of the prisoner's sanity ... or they are convinced of his insanity ...; there is no middle ground which the law recognizes.” In Kirby v. State, 68 Tex. Crim. 63, 74, 150 S.W. 455, 460 (1912), it was stated: “[W]e have but two classes of people, the 'sane' and the 'insane.' Actual insanity, however partial it may be, is, consequently, with us a defence, and not a mitigating circumstance, in a prosecution for a crime.”

4. 1 WHARTON, CRIMINAL LAW 90-91 (12th ed. 1932).

5. The leading case in support of this defense is Parsons v. State, 81 Ala. 577, 2 So. 854 (1887). See also PERKINS, CRIMINAL LAW 756-63 (1957).


7. In State v. Padilla, 66 N.M. 289, 347 P.2d 312 (1959), the Supreme Court of New Mexico was called upon to decide the merits of the doctrine under consideration. “The doctrine contended for by the defendant is sometimes referred to as that of 'diminished' or 'partial responsibility.' This is actually a misnomer; and the theory may not be given an exact name. However, it means the allowing of proof of mental derangement short of insanity as evidence of lack of deliberate
application of a generally accepted tenet that circumstances may interfere with the ordinary processes of a person's mind and render him incapable of the mental state which the law usually infers from a given act. 

For example, it is well settled that voluntary intoxication, while not a complete defense, may be taken into consideration to show that the defendant could not have formed the requisite specific intent necessary for the commission of the higher grade of a crime.

In the recent Louisiana decision of State v. James, the defendant had called a qualified neuropsychiatrist to the stand, and asked him to relate the findings and conclusions of a psychiatric examination which he had performed on the defendant prior to the trial. The defendant had not filed a special plea of insanity but had filed only a general plea of not guilty. The state objected to the admission of any evidence relating to the mental condition of the defendant at the time of the crime on the ground that no plea of insanity had been made. The trial judge, relying on State v. Gunter, and State v. Burr sustained the objection. On appeal, the Louisiana Supreme Court affirmed the trial judge's ruling on the basis of the rule of procedure that in the absence of a special plea of insanity timely filed, evidence of any "mental defect" at the time of the com-

or premeditated design. In other words, it contemplates full responsibility, not partial, but only for the crime actually committed." Id. at 292, 347 P.2d at 314.

The rule will be hereinafter referred to as the "partial insanity" rule.


11. Another ground for the objection was that there had been no appointment of a commission to examine the accused as to his mental condition at the time of the crime, as authorized by LA. R.S. 15:268 (1950).

12. 208 La. 694, 702, 23 So.2d 305, 307 (1945). In this case, the court made the following statement with regard to the interposition of a plea of insanity at the time of the commission of the crime when no special plea had been entered before trial: "In the absence of a special plea setting up as a defense defendant's insanity or mental irresponsibility, the issue of defendant's mental condition at the time the offense was committed did not arise in this case, and the judge did not err in excluding evidence on the issue and refusing to permit it to be submitted to the jury."

13. 237 La. 1065, 112 So. 2d 713 (1959). Here, the trial court had sustained the state's objection to the introduction of evidence of a prior commitment of the defendant for examination at a state mental institution, because of the absence of a plea of insanity. The defendant argued that the evidence should have been admitted to assist the jury in determining whether or not the defendant had the necessary guilty knowledge or criminal intent to commit the crime charged (cattle theft). The court quoted from the Gunter case the passage set out in note 12 supra, and held the evidence of the prior commitment inadmissible. See also The Work of the Louisiana Supreme Court for the 1958-1959 Term — Evidence, 20 LOUISIANA LAW REVIEW 338 (1960).
mission of the crime is inadmissible.\textsuperscript{14} Under the applicable rules of criminal procedure, the case was correctly decided. However, while not dealing directly with the merits of the partial insanity theory, the case serves as a vehicle for discussion of the desirability of future incorporation of the doctrine into Louisiana law.

The basic idea upon which the partial insanity theory is bottomed was carefully considered as early as 1863, in Stephens' work on the Criminal Law of England.\textsuperscript{15} Impetus was given the growth of the rule in this country in 1881, by the United States Supreme Court's decision in \textit{Hopt v. People},\textsuperscript{16} in which the Court stated the rule with regard to voluntary intoxication broadly enough to cover mental defects:

"When a statute establishing different degrees of murder requires deliberate premeditation in order to constitute murder in the first degree, the question whether the accused is in such a condition of mind, by reason of drunkenness or otherwise, as to be incapable of deliberate premeditation, necessarily becomes a material subject of consideration by the jury."\textsuperscript{17} (Emphasis added.)

In 1915, in the leading case of \textit{State v. Anselmo},\textsuperscript{18} the Utah court fully adopted the doctrine; and in 1928, New York adopted the rule in \textit{People v. Moran}.\textsuperscript{19} The United States Supreme Court again considered the proposition in 1946, in \textit{Fisher v. United States}.\textsuperscript{20} The defense attempted to show that the defendant was

\textsuperscript{14} \texttt{LA. R.S. 15:261, 267, 268 (1950)}. It is to be noted that the present Louisiana procedure is retained in the Louisiana Law Institute's proposed revision of the Code of Criminal Procedure. The revision sets out three kinds of pleas to the indictment at the arraignment: (1) guilty, (2) not guilty, and (3) not guilty and not guilty by reason of insanity. The third plea raises all defenses going to the defendant's guilt or innocence, including the special defense on the merits of insanity at the time of the commission of the crime. All such defenses must be tried concurrently by the jury, pursuant to the rule of \textit{State v. Dowdy}, 217 La. 773, 47 So.2d 496 (1950). Under a plea of "not guilty," evidence of insanity at the time of the crime will be inadmissible, carrying forth the rule of the \textit{Gunter} case. \textit{State v. Gunter}, 208 La. 694, 23 So.2d 305 (1945); \textit{La. Code of Criminal Procedure Proposed Revision 16:2 (Draft March 1962)}.\textsuperscript{16} \texttt{STEPHEN, CRIMINAL LAW 92 (1863)}.\textsuperscript{17} \textit{Id.} at 634.\textsuperscript{18} \texttt{46 Utah 137, 148 P.2d 1071 (1945)}.\textsuperscript{19} \texttt{249 N.Y. 179, 163 N.E. 553 (1928)}.\textsuperscript{20} \texttt{328 U.S. 463 (1946)}. Commentary on this case includes \textit{Weihofen & Overholser, Mental Disorder Affecting the Degree of a Crime}, 56\texttt{ YALE L.J. 959 (1957)}; \textit{Taylor, Partial Insanity as Affecting the Degree of a Crime—A Commentary on Fisher v. United States}, 34\texttt{ CALIF. L. REV. 625 (1946)}; \textit{Note, 46 COLUM. L. REV. 1005 (1946)}.\textsuperscript{15}}
mentally incapable of forming the requisite intent, but the trial judge refused to instruct the jurors that they could take into consideration this factor in determining the degree of the crime. The Supreme Court affirmed the action of the trial court in a 5-3 decision. The majority refused to force a new doctrine of insanity upon the District of Columbia, where the case arose, and did not express an opinion on the merits of the partial insanity rule. Justice Murphy stated in dissent that "common sense and logic recoil" at the strict application of a rule which forbids the jury to find partially insane defendants "guilty of a lesser degree of murder by reason of their generally weakened or disordered intellect." This decision has been viewed as "more of a victory than a defeat" for the rule since three of the Justices were wholly favorable and the other five noncommittal.

The controversy about the doctrine of partial insanity has brought into clear focus its strengths and weaknesses. It is said that modern science has long ago disproved the validity of the clearcut distinction between "sane" persons and "insane" persons which the right-wrong test necessitates. The argument most often advanced is that it is wholly illogical to permit intoxication and provocation to reduce the degree of a crime and to exclude mental defect as such a consideration. It is also felt that such a rule would be more in accord with modern penological theories, which call for a tailoring of the punishment to the criminal rather than to the crime. And the extremely pragmatic argument is made that the sympathetic jury often acquits the defendant when faced only with the alternatives of acquittal or undue punishment. As a result, many mental defectives may be released sooner than is desirable.

21. The defendant was shown to be a person of "psychopathic personality [and] predominantly aggressive type of behavior" who impulsively struck his superior with a piece of wood, killing her. Brief for the United States, p. 89, Fisher v. United States, 328 U.S. 463 (1946).
22. 328 U.S. 463, 492 (1946).
23. Ibid.
25. Perkins, Criminal Law 768 (1957); Weihofen, Mental Disorder as a Criminal Defense 177 (1954); Wharton, Criminal Law 91 (12th ed. 1932); White, Insanity and the Criminal Law 59 (1923); Keedy, Insanity and Criminal Responsibility, 30 Harv. L. Rev. 535 (1917); Weihofen & Overholser, Mental Disorder Affecting the Degree of a Crime, 56 Yale L.J. 959 (1957); Note, 79 U. Pa. L. Rev. 209 (1930).
27. Weihofen, Mental Disorder as a Criminal Defense 177 (1954).
28. Fisher v. United States, 328 U.S. 463, 492 (1946), Murphy, J., dissenting.
Several objections have been advanced. One attack is based on the difficulty which the jury will encounter in these "borderline cases." Fear has been expressed that the operation of the rule would lead to the establishment of a "barometric scale of insanity."\textsuperscript{29} This criticism is not convincing since the only "scale" involved is that which divides crimes into degrees.\textsuperscript{30} The analogies drawn by those who favor the rule, between intoxication, provocation, and partial insanity, are criticized on the basis that the former two arise out of objective facts, whereas a mental defect is a purely subjective condition, examination of which tends to confuse juries.\textsuperscript{31} A practical consideration, which brings into sight the far-reaching effect of the change to a partial insanity test, is the objection that if the test were extended to crimes other than murder, many partially insane criminals would receive short prison terms and be released from custody sooner than many sane and less dangerous criminals.\textsuperscript{32} The only answer to this objection lies in the addition of some provision for the \textit{treatment} as well as punishment of the partially insane.\textsuperscript{33} When this aspect of the doctrine is fully considered, it may be seen that it goes to the "very foundation of our penal philosophy [and] concept of responsibility."\textsuperscript{34}

Of the states to which the doctrine has been presented, it has been estimated that at least eleven have adopted it, and that at least four have rejected it.\textsuperscript{35} The courts in some other juris-

\textsuperscript{29.} Note, 30 Harv. L. Rev. 179, 180 (1930).
\textsuperscript{30.} Weihofen, \textit{Partial Insanity and Criminal Intent}, 24 Ill. L. Rev. 505, 523 (1930).
\textsuperscript{31.} Perkins, \textit{Criminal Law} 771 (1957); Weihofen, \textit{Mental Disorder as a Criminal Defense} 187 (1954); Taylor, \textit{Partial Insanity as Affecting the Degree of a Crime — A Commentary on Fisher v. United States}, 34 Calif. L. Rev. 625, 632 (1946); Weihofen & Overholser, \textit{Mental Disorder Affecting the Degree of a Crime}, 56 Yale L.J. 959, 976 (1957). A refutation to this objection is found in the dissenting opinion in \textit{Fisher v. United States}: "[J]uries constantly must judge the baffling psychological factors of deliberation and premeditation, Congress having entrusted the ascertainment of those factors to the good sense of juries. It seems senseless to shut the door on the assistance which medicine and psychiatry can give in this regard to these matters, however inexact and incomplete that assistance may presently be. Precluding the consideration of mental deficiency only makes the jury's decision on deliberation and premeditation less intelligent and trustworthy." 328 U.S. 463, 493 (1946), Murphy, J., dissenting.
\textsuperscript{32.} Weihofen, \textit{Partial Insanity and Criminal Intent}, 24 Ill. L. Rev. 505, 523 (1930).
\textsuperscript{33.} Ibid.
\textsuperscript{34.} Id. at 527.
\textsuperscript{35.} There is some variance in the estimates of the current status of the rule by jurisdictions. The estimate adopted here is that of the Supreme Court of New Mexico set forth in \textit{State v. Padilla}, 66 N.M. 289, 292, 347 P.2d 312, 314 (1959): "Throughout the United States, the problem has arisen in a great many jurisdictions, and it appears that at least eleven jurisdictions approve of the doctrine contended for by the defendant. These are California, Colorado, Connecticut,
dictions have used language in intoxication cases, similar to that used in Hopt, broad enough to include mental defects as well as effects of intoxication. 36

A tentative draft of the American Law Institute’s Model Penal Code includes a very succinct statement of a rule which could lend needed flexibility to the insanity defense. It provides:

“Section 4.02. Evidence of Mental Disease or Defect Admissible When Relevant to Element of the Offense. (1) Evidence that the defendant suffered from a mental disease or defect shall be admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense.” 37

Article 10(1) of the Louisiana Criminal Code 38 defines specific criminal intent as “that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act.” 39 Where the accused is able to prove that he was incapable of forming this specific criminal intent due to a mental defect, such proof should not be precluded. If the essential element of specific intent is found lacking upon consideration of such evidence, commission of the particular crime requiring this element is a legal impossibility. Admission of such evidence should not be inhibited by a restrictive substantive right-wrong rule of criminal law 40 which is rapidly losing its utility in a complex

Indiana, Nebraska, Ohio, Rhode Island, Tennessee, Utah, Virginia, and Wisconsin. Whereas at least four jurisdictions have apparently rejected the theory. These states are Arizona, Idaho, Missouri, and Nevada. Several other jurisdictions, without enumerating them, have not squarely passed upon the question, although five apparently approve of the doctrine and three possibly reject it.


37. MODEL PENAL CODE § 4.02(1) (Tentative Draft No. 4, 1955). The comment to this article is sufficiently pertinent to be set out here in full: “1. Paragraph (1) resolves an issue as to which there is a sharp division of authority throughout the country. Some jurisdictions decline for reasons of policy to accord to evidence of mental disease or defect an admissibility co-extensive with its relevance to prove or disprove a material state of mind. See e.g. Fisher v. United States, 328 U.S. 463 (1946). We see no justification for a limitation of this kind. If states of mind such as deliberation or premeditation are accorded legal significance, psychiatric evidence should be admissible when relevant to prove or disprove their existence to the same extent as any other relevant evidence.”


39. Ibid.

40. Another argument for the admission of such evidence may be advanced along procedural lines, as opposed to that set out in the text having to do with the substantive definition of “legal insanity.” Article 261 of the Code of Criminal Procedure lists four kinds of pleas to an indictment: (1) guilty, (2) not guilty,
society in which psychiatric and psychological developments are leading to greater understanding of the insane and partially insane. Modern penological techniques are aimed at greater individualism of punishment and it seems in keeping with these advances in penology that the law continue its revision of the insanity defense in conformity with recognized advances in psychiatry and other sciences.

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(3) former jeopardy, and (4) insanity. The rules of criminal procedure discussed in such cases as the Gunter and Burr cases, supra, deal specifically with the insanity of the defendant at the time of commission of the alleged crime. It would seem that the defendant should be able to claim that he was unable to form the specific intent because of a mental defect under a simple plea of not guilty, just as he is able to assert any other reason for the absence of this requisite intent under such a plea. It would further appear that the rules formulated for the introduction of evidence of insanity at the time of the alleged crime should be held to apply only where the defendant contends that he is wholly exempt from criminal responsibility because of insanity, and not where he is seeking to have a mental defect, short of insanity, considered as bearing on his ability to form a specific intent. Were this procedure followed by the courts, the definition of "legal insanity" set out in Article 14 of the Louisiana Criminal Code would not operate to restrict the admission of evidence of mental defect, in the absence of a special plea of insanity.