

Correspondence

Diminished responsibility: is it 'substantial'?

DEAR SIRS

Dr Green (*Psychiatric Bulletin*, August 1992, 16, 511–512) confronts the obscurity of the term “substantial” in section 2 (1) of the Homicide Act 1957 (not 1959, as twice cited), and casts doubt on the justice of the medico-legal process that leads to a verdict of manslaughter on the grounds of diminished responsibility.

The Act states: *Where a person kills or is party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing.*

Lord Chief Justice Parker, in the case of *Regina v. Byrne* (1960), indicated that medical evidence was important on the question of abnormality of mind, but whether impairment of responsibility “can properly be called ‘substantial’, [is] a matter upon which juries might quite properly differ from doctors.” This judgement implies that the expert witness can indeed be questioned on impairment, but that the jury may disregard such evidence.

A later Appeal Court ruling (*Regina v. Lloyd* (1966)) rather unhelpfully added: *Substantial does not mean total, that is to say mental responsibility need not be totally impaired, so to speak, destroyed altogether. At the other end of the scale substantial does not mean trivial or minimal. It is something in between and Parliament has left it to [the Jury] to say . . .*

The term substantial does of course indicate an issue of degree, but has a second dictionary definition of “real, actual or true” which perhaps better depicts the legal usage as in “substantial evidence”.

Real, actual and true impairment of responsibility accompanies an offence linked to psychopathological phenomena of the kind not ordinarily held to be reprehensible. Commanding hallucinations are a clear example, although the occurrence of psychosis at the time of the offence is sufficient. Disinhibition due to cerebral disease is included, while neurotic syndromes are so common that impulsiveness, irritability or violent obsessional thoughts should be present to establish a link to the offence. Personality traits such as aggressiveness and sexual deviancy, unless secondary to brain damage, are not sufficient, as these elicit condemnation. Voluntary intoxication, although a very organic psychopathology, is also of

course similarly reprehensible. True physical dependence on alcohol or drugs, leading to involuntary intoxication and aggression, is perhaps the most contentious, but will impair responsibility in severe cases.

Actual verdicts have roughly followed these lines, although The Butler Committee felt that the humane outlook of the medical profession allows stretching of the evidence. I suggest that the expert witness should offer consistent and rational guidance to the courts, so as to assist the legal process in its pursuit of justice.

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DEAR SIRS

I cannot answer Dr Green’s very pertinent question as a forensic psychiatrist (as he requests)*, but many years experience as a ‘layman’ working in the field of forensic psychiatry gives me the *impertinence* to make some attempt.

The imprecise notion of ‘substantial’ has bedevilled the Homicide Act, since its inception. Attempts to refine it have been singularly unsuccessful. In one case (*R. v. Lloyd*, 1967) the High Court indicated that it did not mean total nor did it mean trivial or minimal! In effect, within the existing law, psychiatrists are being asked to make *moral* judgements about an individual’s state of mind and the activities flowing from it. This should clearly be a matter for a jury to deliberate and decide upon. Kenny put the case for reform very succinctly when he stated: “The law should be reformed by changing statutes that force expert witnesses to testify beyond their science . . .” (Kenny, 1984; p. 291). The statutory change he advocates could be met by the removal of the mandatory life sentence for murder; a change that many voices of authority have advocated for some years but sadly has been resisted by successive governments. Until such a change occurs psychiatrists will continue to become involved in legal processes that serve as a source of perplexity and discomfort to all concerned.

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Reference

KENNY, A. (1984) The psychiatric expert in court. *Psychological Medicine*, 14, 291–302.

**Psychiatric Bulletin*, August 1992, 16, 511–512.