
Mental State Defences in Criminal Law

STEVEN YANNOULIDIS

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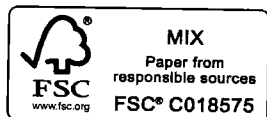
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Chapter 1

Introduction:

General Themes, Reform, Chapter Outlines

General themes

This book is concerned with the operation of the common-law defence of insanity and the related doctrine of automatism. In particular the book will focus on providing a consistent and principled approach to the reform of the insanity defence and the doctrine of automatism. In order to achieve this, the book will explore the appropriate boundaries of each of these in turn.

The defence of insanity and the doctrine of automatism each raise concerns reflecting their individual spheres of operation and development. The first part of this Introduction will outline several of the concerns relating to the defence of insanity and automatism individually. The second part of the Introduction will then indicate the broad issues to be considered, as well as the competing demands which must be balanced, by any reform proposal. The final part of the Introduction will provide an outline of the scope of each chapter in respect to both the general themes addressed and the options for reform discussed.

It will be argued that by including a volitional limb in the common-law defence of insanity, by using a refined notion of meta-responsibility in relation to drug-associated psychosis, and by introducing a new defence of impaired consciousness, a more consistent and principled approach to mental state defences may be achieved.

Insanity

Chapter 2 outlines the elements of the common-law defence of insanity which arose from the rules established in *M’Naghten’s* case in 1843.¹ In brief, for an accused to be afforded a defence, he or she must have experienced a ‘defect of reason’ arising from a ‘disease of the mind’ which affected his or her ability to know the nature and quality of the criminal act or that it was wrong. Some Australian jurisdictions now also include an added component of the effect of a disease of the mind on the ability or capacity to control the accused’s conduct.

The expressions ‘disease of the mind’, ‘mental disease’ or some other statutory variant are used to describe those internal conditions recognized by the law which, when resulting in a relevant incapacity, will give rise to the defence of insanity.

1 *R v M’Naghten* (1843) 10 Cl and Fin 200, 210.