The European Journal of Psychology Applied to Legal Context 8 (2016) 63–68

The European Journal of Psychology Applied to Legal Context

www.elsevier.es/ejpal

Unpacking insanity defence standards: An experimental study of rationality and control tests in criminal law

Rebecca K. Helm*, Stephen J. Ceci, Kayla A. Burd

Cornell University, NY, U.S.A.

ARTICLE INFO

Article history:
Received 28 March 2015
Received in revised form 14 January 2016
Accepted 2 February 2016
Available online 26 March 2016

Keywords:
Insanity
Control disorders
Law and mental health
Juror decision-making
Legal standards

ABSTRACT

The present study investigated the impact of different legal standards on mock juror decisions concerning whether a defendant was guilty or not guilty by reason of insanity. Undergraduate students (N = 477) read a simulated case summary involving a murder case and were asked to make an insanity determination. The cases differed in terms of the condition of the defendant (rationality deficit or control deficit) and the legal standard given to the jurors to make the determination (Model Penal Code, McNaughten or McNaughten plus a separate control determination). The effects of these variables on the insanity determination were investigated. Jurors also completed questionnaires measuring individualism and hierarchy attitudes and perceptions of facts in the case. Results indicate that under current insanity standards jurors do not distinguish between defendants with rationality deficits and defendants with control deficits regardless of whether the legal standard requires them to do so. Even defendants who lacked control were found guilty at equal rates under a legal standard excusing rationality deficits only and a legal standard excluding control and rationality deficits. This was improved by adding a control test as a partial defence, to be determined after a rationality determination. Implications for the insanity defence in the Criminal Justice System are discussed.

© 2016 Colegio Oficial de Psicólogos de Madrid. Published by Elsevier España, S.L.U. This is an open access article under the CC BY-NC-ND license (http://creativecommons.org/licenses/by-nc-nd/4.0/).

Descifrar los criterios de defensa de la vesania: estudio experimental de las pruebas de racionalidad y control en derecho penal

Palabras clave:
Vesania
Trastornos de control
Justicia y salud mental
Toma de decisiones del jurado
Criterios legales

RESUMEN

Este estudio ha investigado la repercusión de los diversos cánones legales en las decisiones simuladas acerca de si un acusado es culpable o no por motivos de vesania. Una muestra de 477 estudiantes universitarios leyeron el resumen de caso relativo a un asesinato, pidiéndoseles luego que determinasen si había enajenación mental. Los casos diferían en cuanto a la condición del acusado (déficit de racionalidad o de control) y el criterio legal proporcionado a los jurados para que tomaran la determinación (Código penal modelo, McNaughten o McNaughten mas una determinación sobre el control). Se investigó el efecto de estas variables en la determinación de vesania. Los jurados rellenaron también cuestionarios que medían actitudes de individualismo y jerarquía y la percepción de los hechos del caso. Los resultados indican que con los criterios de demencia actuales los jurados no distinguen entre acusados con déficit de racionalidad y aquellos con déficit de control, aunque los criterios legales se lo exijan. Incluso los acusados que carecían de control fueron hallados culpables en la misma proporción con un criterio legal que disculpaba el déficit de racionalidad y con otro que excluía los déficit de control y racionalidad. Consiguió mejorarse añadiendo una prueba de control como defensa parcial a determinar tras la decisión sobre la racionalidad. Se comentan las implicaciones para la defensa de la enajenación mental en el sistema de justicia penal.

© 2016 Colegio Oficial de Psicólogos de Madrid. Publicado por Elsevier España, S.L.U. Este es un artículo Open Access bajo la CC BY-NC-ND licencia (http://creativecommons.org/licencias/by-nc-nd/4.0/).

* Corresponding author. Department of Human Development. Martha Van Rensselaer Hall. Cornell University. Ithaca, NY 14850.
E-mail address: rkh53@cornell.edu (R.K. Helm).

http://dx.doi.org/10.1016/j.ejpal.2016.02.004
1889-1861/© 2016 Colegio Oficial de Psicólogos de Madrid. Published by Elsevier España, S.L.U. This is an open access article under the CC BY-NC-ND license (http://creativecommons.org/licenses/by-nc-nd/4.0/).

In this study we explore an issue that is in the crosshairs of competing legal arguments, namely, we are interested in whether a partial defence based on lack of impulse control would help to fairly punish defendants who lack such control (by not holding them fully responsible) while simultaneously allowing the insanity defence to function as it is meant to, absent extrajudicial attitudes held by jurors. Finding such a standard is important, and can help to inform law, especially in jurisdictions such as Sweden that are considering (re)introducing an insanity defence (Radovic, Meynen, & Bennet, 2015). Despite much debate on control tests in the legal literature, little experimental research has tested the effects of including a control test as a defence in criminal cases.

Current Insanity Standards–Rationality and Control Tests

The current criminal law governing insanity acknowledges that some criminal defendants are not responsible for their actions due to a lack of rationality, meaning the defendant lacks the capacity to appreciate the nature or wrongfulness of their acts. However, a defence excusing a defendant who had a general ability to understand the nature and wrongfulness of their acts but was incapable (or meaningfully incapable) of resisting an impulse to commit the offence (a 'control test') is more controversial (see Morse, 2002; Morse, 2009; Penney, 2012; Redding, 2006). Different jurisdictions differ in the test that they use to determine whether a defendant is not guilty by reason of insanity (NGRI). In the United Kingdom, insanity is currently decided based on rationality only (The McNaughten Rule), so only defendants with rationality defects are excused and those whose defence rests on lack of control are deemed ineligible for a NGRI verdict. In the United States, 21 states use the McNaughten Rule (based exclusively on the defendant's judged rationality), 16 states and the District of Columbia use the Model Penal Code, a test based on deficits in both rationality and control, 8 states and the federal system follow an adaptation of the Model Penal Code in which the defence is allowed only for cognitive dysfunction when the defendant is unable to understand the criminality of his conduct, and 6 states have abolished any form of the insanity defence (Robinson, 2014). In addition, since 1982, 12 states have adopted the guilty but mentally ill verdict (GBMI). Ideally, if the jury finds the defendant GBMI, he will be evaluated and treated before returning to prison to finish the sentence. In practice, however, these defendants are typically assigned longer sentences and don't receive any treatment (Desmond & Lenz, 2010).

Problems with Current Insanity Standards

Researchers and legal scholars have pointed out that rationality tests that do not allow any defence based on lack of control have become outdated given our current understanding of neurological basis and psychological conditions that place one at risk for impulse control deficits (Penney, 2012; Redding, 2006). Neurological evidence now provides insight into compulsion and lack of impulse control and highlights not only the neurological basis of lack of control, but also its neuroanatomical distinctiveness from lack of rationality (Hyman & Malenka, 2001; Penney, 2012). Legal scholars give examples of cases where neurological damage, specifically damage to the frontal lobe (for details on the significance of the frontal lobe, see Barth, 2007), has led individuals who are seemingly rational to commit horrific crimes (for example, see Carrido, 2011).

However, others are worried that even given its separate etiology from a rationality deficit, allowing defendants to plea on the basis of a deficit in impulse control will result in too many being characterised as NGRI. A test assessing lack of impulse control could logically lead to a wide array of defences based on 'caused' behaviour, as Professor Stephen Morse suggests, the 'XYY defence', and the 'rotten social background defence.' (Morse, 1995). This is highly important in relation to the complex concept of personal responsibility in the criminal law: the law is based on the fact that although our actions may be caused, we are still personally responsible for them (Vincent, 2010). Control tests are particularly controversial because defendants in these cases are rational agents.

In addition, there are practical problems with current standards. Firstly, research suggests that extra legal attitudes are playing a significant role in juror determinations of insanity. In particular, it has been shown that jurors tend to use their own construct of what insanity is rather than the legal definition (Finkel & Handel, 1989; Skeem & Golding, 2001), and that legal attitudes and biases are resulting in inaccurate categorisations of defendants and a failure to follow judges' instructions (Peters & Lecci, 2012).

The idea that juror conceptions of and attitudes towards insanity (rather than legal standards) are determining their verdicts is supported by empirical analysis of real legal cases. In one study, Callaghan and colleagues investigated the frequency and rate of insanity pleas and acquittals in eight states based on data from sample counties (Callaghan, Steadman, Mcgreevy, & Robbins, 1991). Looking at the states using either the Model Penal Code (i.e., states that employ a test for rationality and a separate test for control deficits) or McNaughten (rationality test alone), the highest acquittal rate for not guilty by reason of insanity or NGRI (percentage of NGRI pleas that resulted in acquittal) was in Washington (87.36%), a state that uses the McNaughten test with the burden of proof on the defendant. Both states using the Model Penal Code with the burden of proof on the defendant had lower acquittal rates (New York–43.34% and Wisconsin–28.24%). In addition, the number of defendants who made insanity pleas per 100 felony indictments was not consistently higher in the states using the Model Penal Code. Although the highest rate of pleas was in Wisconsin (1.59 per 100), the second highest rate of pleas was in Ohio, a McNaughten state with the burden of proof on the defendant, and the rate of pleas in New York was only 0.3 per 100 felony indictments. Due to multiple other differences between the states, it is impossible to make firm conclusions from comparisons of the Model Penal Code and McNaughten states here. However, the data do suggest that the standard used may not affect the number of pleas, or the rate of acquittals.

These problems with the current insanity defence standards may be compounded by increasing use of neuroscience in NGRI cases (Gurley & Marcus, 2008; Schweitzer & Saks, 2011). Evidence suggests that jurors find neuroscience-based evidence to be more persuasive than psychological evidence or evidence of family history (Rendell, Huss, & Jensen, 2010; Schweitzer & Saks, 2011). This could mean a defendant's liability could come to be determined by the extent to which an abnormality could be detected in their brain rather than any legal standard.

Addressing the Problems: The McNaughten+ Proposal

One solution to current problems with the insanity defence would be to ask jurors to make a rationality determination and then a separate control determination. This would have the advantage of forcing jurors to think specifically about any abnormalities that a defendant might have and how they should be categorised (giving less manoeuvrability based on extra legal opinions). Psychological theory suggests this would be advantageous as focus on specific rules requiring detailed and conscious processing is associated with "Type 2" thinking, which is predicted to be more accurate and less biased (Evans & Stanovich, 2013). Using this standard would also mean that rationality and control tests could be treated differently while both being acknowledged as at least partial defences. For

Download English Version:

https://daneshyari.com/en/article/318659

Download Persian Version:

https://daneshyari.com/article/318659

Daneshyari.com