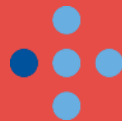


Criminal Insanity in Norwegian Law

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The Content of the Presentation

- I. Conceptual starting points
- II. Criminal insanity in Norwegian law
 - In the past and today
- III. A need for interdisciplinary discussion



Conceptual Starting Points





Foto: COLOURBOX

Only those who could and should have acted differently, and therefore deserves blame, are responsible and should be punished



What is Criminal Insanity?

- The criminal law is based on the ideas that:
 - individuals have the capacity of responsible behavior,
 - but that 'insanity' may negate or reduce this capacity
- Criminal insanity is to today related to mental disorders
 - large discussion on how criminal insanity should be defined
 - the legal rules vary across countries, and over time



A 'Mixed Model' Insanity Rule Paradigm

“ (...) at the time of the committing of the act, the party accused was labouring under such a defect of reason, from a disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.”

Queen v. M'Naghten, 8 Eng. Rep. 718 [1843]



Two Tracks

Criminally sane?

Criminal insane?

Punishment

No punishment

'Dangerous'?

'Dangerous'?

Preventive detention

Special detention



Criminal Insanity in Norway





Foto: STIAN LYSBERG
SOLUM/NTB scanpix

The Rule Applied in the 22 July Case

To be liable for punishment the offender must be accountable at the time of the act. The offender is not accountable if, at the time of the act, he/she is

- a) under 15 years old,
- b) **psychotic**,
- c) severely mentally disabled, or
- d) suffers from severe impairment of consciousness.



A 'Medical Model' of Criminal Insanity

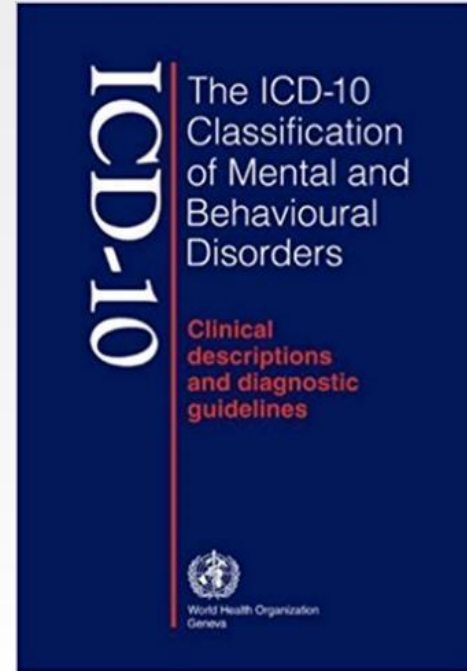
- Insanity is defined **exclusively** with mental disorder
- **No requirement** that the disorder influenced the crime
- Based upon a **long tradition**, established 1929
- Justified through arguments of **legal certainty**
- Based on a belief that **psychiatry** can deliver clear answers



Criminal Insanity as a Matter of Diagnosis?

“(...)The Court's conclusion thus far is that the defendant did not have symptoms that fulfil the general ICD-10 criteria for schizophrenia, the way these criteria are normally applied in clinical and scientific practice.”

/Oslo District Court



Post 22 July Critique and Legal Reform



Foto: Rett24 (2019),
NOU (2014: 10)



Haynes Firda Melvær ta fram lovforslaget for Stortinget onsdag. (Foto: Stortinget)

Stortinget vedtok omstridt tilregnelighets-reform

Onsdag innførte Stortinget begrepet «skyldevne» i straffeloven. Samtidig byttes «psykotisk» ut med «sterkt avvikende sinnstilstand».

The Current Criminal Insanity Rule

A person that at the time of committing the act is under 15 years old is not accountable. The same applies to a person a person who at the time of the act is **not accountable due to a**

- a) **severe divergent state of mind,**
- b) severe impairment of consciousness or
- c) high degree of mental disability

When deciding whether a person is not accountable according to the first section, a-c, emphasis should be placed on the degree of **failure of understanding reality and functional ability.**



New Rules – New Problems (and Some Old)

- How should we understand and evaluate impaired reality testing and functional impairments?
- What should the forensic experts inform the judges about, and on what basis?

How should we relate criminal insanity to mental disorder?



◉ KRIM OG HENDINGAR I VESTLAND

25. august 2020 kl. 13:31 Sotra-drapet: – Styrket mistanke - Retten mener mistanken mot 20-åringen som er siktet for drap på sin mor på Sotra 30. mai er styrket, skriver BT. Mandag ble 20-åringen fengslet for åtte nye uker. Bergen tingrett mener dødsårsaken samsvarer med det siktede skal ha forklart vitner at han gjorde. Siktede nekter straffskyld.



FOTO: KJELL JØRAN HANSEN / NRK

Kongsberg-siktede varetaktsfengslet i fire uker

Espen Andersen Bråthen, som er siktet for drapene på Kongsberg onsdag kveld, er besluttet varetaktsfengslet i fire uker.



Politiet fortsetter arbeidet i Kongsberg etter at en mann drepte fem personer onsdag. Foto: Terje Pedersen / NTB



KNIVDREPT: I denne boligblokken i Arbos gate på Majorstua ble 24-åringen funnet drept mandag ettermiddag. To døgn etter er ingen pågrepet for drapet. Foto: NTB scanpix

Majorstua-drapet: Dette vet vi så langt

Det er nå to døgn siden den 24 år gamle mannen ble funnet brutalt drept med kniv i kollektivet på Majorstua i Oslo. Fortsatt er gjerningspersonen på frifot. Politiet jobber på spreng, men har ennå ingen mistenkte i saken.



Foto: Bjarlie Johannessen / NRK

Skjermbilder: NRK (2020), TV2 (2018),
Altaposten (2021), NRK (2021)

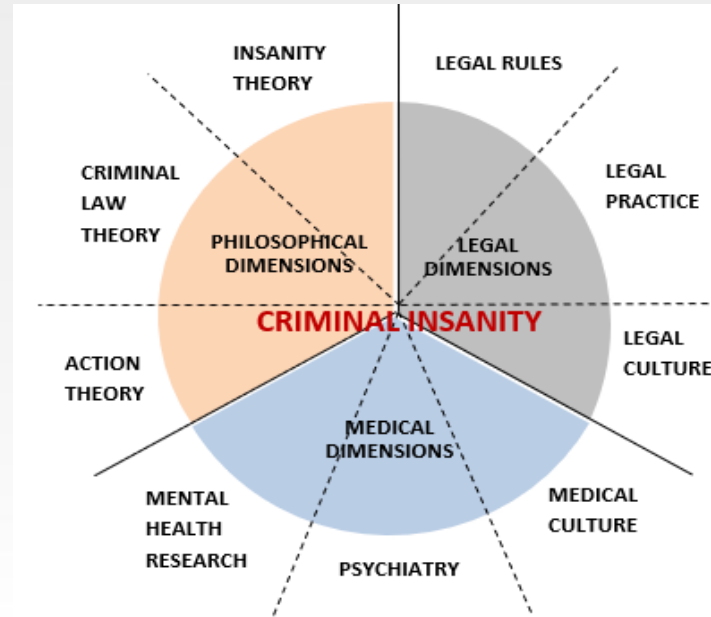
Kvinne drept på Byåsen i Trondheim

A Need for Interdisciplinary Discussion



A Multifaceted Problem

To develop the law,
we need input from
many disciplines



Let us Start...

Philosophical perspectives

Perspectives from psychiatry

Perspectives from legal practice



Thank you for your attention!



Haukeland University Hospital



UiO : Universitetet i Oslo



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