

BOOK REVIEW

The Insanity Defense: A Philosophical Analysis. Wojciech Załuski. Cheltenham, UK; Northampton, MA: Edward Elgar, 2021. 140 pp. ISBN: 978-1-80037984-8. US\$117.00.

The Insanity Defense: A Philosophical Analysis is a brief but rich analysis of the insanity defense through a personalist philosophical view of human nature.¹ This is a viewpoint that emphasizes humans as rational and endowed with free will. In analyzing the insanity defense, Wojciech Załuski weaves together a philosophical-anthropological approach to understanding free will with evaluations of scientific understandings of human nature, including criminology, cognitive psychology, and evolutionary theory.² The author cogently argues that the insanity defense cannot be appropriately examined without analyzing complex questions of human agency and free will.

Załuski lays out the purpose and basic philosophical underpinnings of the book in the Introduction and acquaints the reader with the concepts driving the analysis in subsequent chapters. Prominently, the author introduces four models of criminal responsibility based on two components: (1) the mental state of the individual and (2) how the individual's mental state impacts their criminal responsibility. The first model is the Standard Model, which assumes the mentally sane can be held criminally responsible for their actions, and the mentally insane cannot be held responsible. Second is the Perverse Model, in which the mentally sane are not held responsible, and the mentally insane are held responsible for their actions. The third model is the Negative Equalization Model, where both the mentally sane and the mentally insane are not held responsible, and the fourth is the Positive Equalization Model, in which the mentally sane and the mentally insane are both held responsible for their actions. The Standard Model is identified as the dominant model.

Chapter 1 looks closely at the philosophical foundations supporting recognition of the insanity defense. The author focuses on analyzing and critiquing various conceptions of criminal responsibility and discussing two accounts of mental illness: (1) the Affirmative Account and (2) the Negationist Account, which is connected to the anti-psychiatry movement. Załuski's examination of the Negationist Account of mental illness is particularly strong and provides the reader with insights into the interconnections among criminal justice, psychiatry, psychology, and philosophy, especially how historical developments in one area impact the other areas. For example, the author summarizes the history of the "deinstitutionalization of mental illness" in the US in the 20th century and how deinstitutionalization shifted the mentally ill from mental hospitals into the criminal justice system and prisons (p. 56). In examining the philosophical foundations of the insanity defense in Chapter 1, Załuski provides support for the argument that legal systems should recognize the insanity defense and that free will provides the most accurate conception of human nature to justify retributive punishment.

Załuski identifies two primary variants of the insanity defense: (1) the cognitive variant and (2) the cognitive-volitional variant. The cognitive variant assumes individuals are not responsible if the individual did not understand the nature of their act or the act's negative normative quality. The cognitive-volitional variant adds a volitional component, which assumes individuals are not responsible if they could not control their actions. Chapter 2 looks closely at the cognitive component, which requires an individual to have factual knowledge—meaning they understand the nature and quality of their actions—and normative knowledge—meaning the individual knows that their actions are wrong according to legal and/or moral norms. The author begins with a brief overview of the

¹ Personalist philosophy emphasizes the person as the central point of inquiry.

² Philosophical anthropology is a philosophical discipline that examines human nature through the analysis and critique of scientific and humanistic conceptions of human nature.

historical developments of insanity defenses to provide context, followed by an examination of controversies concerning the cognitive component. The controversies further highlight the interconnections among criminal justice, psychiatry, psychology, and philosophy and how developments in one area impact other areas. The author gives the example of delusions and the difficulties of defining characteristics of delusions, especially within a criminal context.

Chapter 2 includes a section on psychopaths in which the author briefly describes psychopathy and analyzes the main arguments against finding psychopaths criminally responsible and the primary counterarguments. The author supports a solution in which psychopaths are “held morally and legally responsible for all immoral and illegal acts” (p. 85). Although Załuski acknowledges that this solution may be “overly unjust,” he ultimately states that “this injustice is an inescapable feature of human justice, especially legal justice” (p. 87). Chapter 2 also includes a section, which is a bit of an off-topic tangent, examining the line between “badness and madness (evil and mental illness)” (p. 91). Specifically, the author considers arguments for and against the idea that individuals engaging in extremely evil, hideous acts cannot be punished since those acts, in and of themselves, are evidence of their madness. The author surveys various philosophical thoughts on the concept of extreme evil. This section could serve as a foundation for future scholarship. Ultimately, the author argues that the cognitive component should be understood narrowly; the individual is only required to have “mere knowledge” of the quality and nature of their acts and of the difference between wrong and right (pp. 101–02).

Chapter 3 analyzes the volitional component and examines the complexities of understanding and conceptualizing will. Załuski distinguishes between will as a decisional power and will as a post-decisional power. Will as a decisional power is the view that will is the power to initiate action. The author sees will as a power, not a disposition. Many scholars reject the conception of will as a decisional power. Will, as a post-decisional power, “manifests itself *after* making a decision and is responsible for an effective realization of one’s goals and plans” (p. 111). The author situates will as a motivational tool of self-regulation and self-control. Many scholars support the existence of will as a post-decisional power. In a brief subsection on “The Unity of Will,” Załuski seems to try to argue for unifying the two concepts but leaves a more thorough analysis for other scholars or later works.

Chapter 3 also provides brief synopses of some objections to the volitional component, including epistemic objections, the non-existence objection, and the slippery slope/threat to formal justice objection. Epistemic objections highlight the inability to determine if an individual chose not to resist an impulse or whether the individual could not resist an impulse. The non-existence objection argues that irresistible impulses are rare or do not exist; therefore, individuals are always active participants with the ability to control their actions and resist impulses. The slippery slope/threat to formal justice objection highlights the concern that accepting the existence of a volitional prong to the insanity defense will lead to the acceptance of less serious mental issues as defenses for failures of volition, such as the “affluenza” defense. Załuski ends Chapter 3 by broadening the critiques of the volitional component to include crimes of passion—crimes committed in response to provocation—and provides a brief examination of the gendered history of crimes of passion.

Załuski ends *The Insanity Defense* with a brief epilogue that encapsulates the prior chapters and advocates setting “the threshold for a successful insanity defense at a high level,” as is found in many common law systems (p. 131). The author also includes a thorough bibliography of sources to help the reader and future scholars expand on the concepts discussed in the book.

The Insanity Defense is written for readers familiar with both common law systems and continental legal systems, prominently the US, Canada, Germany, France, and Poland. The book does not provide a strong comparative analysis of the insanity defense as used in these legal systems, but Załuski’s examination can be used to frame future comparative work.

Załuski attempts to include a lot of information and analysis in under two hundred pages of text. In attempting to present various viewpoints and understandings of the philosophical groundings of the insanity defense, it is at times difficult to discern the author’s own intentions and individual assertions. The author’s voice is sometimes obfuscated by long quotations and restatements of other scholarly assertions. Despite these issues, *The Insanity Defense* is a valuable contribution to the literature on philosophy and criminal justice. Specifically, the book highlights the interconnectedness of criminal justice, psychiatry, psychology, and philosophy and how developments in one area impact other areas.

The Insanity Defense is of most interest to scholars of criminal law and criminal justice as well as psychiatrists and psychologists, especially those involved in the criminal justice system. It is of particular importance to scholars examining theories and justifications of criminal punishment. The reader will benefit from a basic understanding

of philosophical concepts, prominently examinations of free will and personalism. As with most philosophical writings, *The Insanity Defense* inspires more questions than answers, but this is the strength of Załuski's book. It inspires rich meditations about free will, human agency, and criminal responsibility.

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