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CONSTITUTIONAL LAW-DUE PROCESS-BURDEN OF PROVING INSANITY AS DEFENSE TO CRIME

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CONSTITUTIONAL LAW—DUE PROCESS—BURDEN OF PROVING INSANITY AS DEFENSE TO CRIME—Defendant was convicted of first degree murder after having pleaded insanity as a defense to the charge. He appealed to the Supreme Court of Oregon, alleging that the Oregon statute, which required an

accused pleading insanity to prove it beyond a reasonable doubt,[1] violated the due process clause of the Fourteenth Amendment[2] because it placed on him the burden of proving his inability to premeditate and intend the criminal act. The defendant relied in part on the fact that Oregon is the only state requiring insanity to be proved "beyond a reasonable doubt," while other states require at most that the accused show it "clearly." The Supreme Court of Oregon held that the statute did not violate the due process clause.[3] On appeal to the United States Supreme Court, *held*, affirmed. The due process clause of the Fourteenth Amendment does not limit a state's determination of its policy with regard to the issue of insanity as a defense to crime. *Leland v. Oregon*, 343 U. S. 790, 72 S. Ct. 1002 (1952).

Although it has been universally assumed that the due process clause of the Fourteenth Amendment precludes the conviction for crime of a person committing acts while insane,[4] it is also clear that insanity is governed by legal, and not psychiatric, standards.[5] The principal case, in effect, gives to the states unlimited freedom in determining the scope of the insanity defense. At the same time, the Court has limited the application of *Davis v. United States*,[6] to trials in the federal courts. In the *Davis* case, the Supreme Court held that an accused is entitled to acquittal of the crime charged, if upon all the evidence there is reasonable doubt whether he was sane at the time of the crime. The principal case illustrates that the state's policy in regard to the problem of preventing the acquittal of sane persons on grounds of insanity will be sustained. Therefore, since it seems that the insanity defense can be taken away from the jury, if the state's policy so dictates, the decision permits solution of one of the problems in this area, viz., the difficulty of using a jury of laymen to make a determination of insanity from the evidence of conflicting experts.[7] It is, moreover, in accord with prior cases holding that the due process clause of the Fourteenth Amendment does not limit the states to ancient procedures, provided that the procedures used are in accord with fundamental notions of fairness.[8] Justices Frankfurter and Black dissented on the theory that the presumption of sanity, with a burden of proving insanity beyond a reasonable doubt, as required by the statute in this case, cast the burden of proving his lack of intent on the alleged criminal. They felt that the jury could not understand that it might find the defendant not guilty by reason of lack of intent or premeditation,

[1] Ore. Comp. Laws 1940, §26-929.

[2] ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law. . . ."

[3] State of Oregon v. Leland, 190 Ore. 598, 227 P. (2d) 785 (1951).

[4] Davis v. United States, 160 U.S. 469, 16 S.Ct. 353 (1895); Sinclair v. State, 161 Miss. 142, 132 S. 581 (1931); State v. Strasburg, 60 Wash. 106, 110 P. 1020 (1910).

[5] See Taylor, "Partial Insanity As Affecting The Degree of Crime—A Commentary on *Fisher v. United States*," 34 CALIF. L. REV. 625 (1946); WEIHOFEN, INSANITY AS A DEFENSE IN CRIMINAL LAW 2-3, 14-15, 409-410 (1933).

[6] Supra note 5.

[7] WEIHOFEN, INSANITY AS A DEFENSE IN CRIMINAL LAW 426-429 (1933).

[8] Maxwell v. Dow, 176 U.S. 581, 20 S.Ct. 448, 494 (1900); Hurtado v. California, 110 U.S. 516, 4 S.Ct. 111 (1884).

although the defendant had not sustained the burden of proving that he was insane. The majority and the dissent did not disagree that the states might experiment with ways of dealing with the insanity defense but rather on the narrow question of the constitutionality of the degree of proof required. However, it seems that the dissenters would not permit the states to abolish the defense of insanity as a part of the trial proper and submit the determination to a qualified body of experts. The dissent relied in part on the nonexistence of this very strong burden of proof in any other state. In truth, however, the identical burden of proof was once to be found in the decisions of other states,[9] and some state legislatures have even attempted to abolish the defense entirely.[10] Placing such a heavy burden of proof on the defendant does not prevent his introducing evidence that he did not premeditate the crime or that he did not intend to do the criminal act. The jury's inability to understand the difference between insanity and lack of intent exists regardless of the degree of proof required; the problem is one of proper instructions to the jury. Although the opinion of the dissent lacks logical strength, nevertheless there is the humanitarian consideration behind it that there should be no trial, conviction, or execution of insane persons.[11] This is undeniably one of the mores of our society, but it should be realized that experimentation is vitally needed and the judiciary by imposing rigid standards under the due process clause would impair the flexibility which is now needed to effect reform of this phase of the law.

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[9] State v. De Rance, 34 La. Ann. 186 (1882); State v. Spencer, 21 N.J.L. (1 Zab.) 196 (1846).

[10] Wash. Laws 1909, c. 249, §7, Rem. & Bal. Code 1910, §2259, held unconstitutional in State v. Strasburg, supra note 5; Miss. Laws 1928, c .75, Miss. Code Ann. (1930) §1327, held unconstitutional in Sinclair v. State, supra note 5.

[11] See Justice Frankfurter's dissents in Solesbee v. Balkom, 339 U.S. 9 at 14, 70 S.Ct. 457 (1950), and Fisher v. United States, 328 U.S. 463 at 477, 66 S.Ct. 1318 (1946).