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Arguments on Abolition: Kahler v. Kansas the Case that Abolished the Insanity Defense

The insanity defense is not a new concept within the legal system, with evidence of protections for the mentally ill dating back to the 13th century. Despite its long-standing place in the legal world, it has remained a complicated issue with varying interpretations and what appears to be no clear definitions or obligations. With so much variety in insanity defense laws, the defense often appears in court with people questioning its constitutionality under the 14th Amendment, specifically the Due Process Clause. A critical case in the United States current understanding of the insanity defense is *Kahler v. Kansas*. In the case, Kahler, after being sentenced to death despite an attempted insanity plea, appealed to the court that Kansas had unconstitutionally abolished the insanity defense. In 2020 the Supreme Court ruled 6-3 in favor of Kansas, supposedly establishing that an insanity defense was not obligatory.

To provide a brief history of the case, in early 2009 James Kahler and his wife, Karen Kahler, had separated due to an affair and claimed domestic abuse. Later that year in November, James Kahler shot and killed his wife, two daughters, and mother-in-law. In his trial, the court provided varying types of evidence to support claims of mental illness, including psychiatric evaluation and a history of various psychiatric meds and mental illness diagnoses. Despite the evidence provided to the court of mental illness and a possible mental break, Kahler was

sentenced to death. James Kahler appealed to this ruling, arguing that the Kansas mens rea approach to the insanity defense was unconstitutional, violating his right to due process under the 14th Amendment. According to records, in the prior case *State v. Bethel*, Kansas had technically abolished the insanity defense, replacing it with their mens rea approach to cases; this application is seen later in *State v. Jorrick*, whose ruling is used by the Supreme Court in *Kahler*. The court was then presented with questions about whether there was a federally mandated way to deal with insanity in court cases and, more specifically, if the insanity defense could be abolished. In their examination of the case, the court looked at definitions of mens rea, due process, and the insanity defense as well as examining historical precedent. The court argued the case in 2019 and decided in 2020 to rule in favor of Kansas. The ruling seemed to state that there was no mandatory version of the insanity defense. However, the case also appears to set the precedent that the insanity defense can be abolished.

Appelbaum, Paul S. “Kahler v. Kansas: The Constitutionality of Abolishing the Insanity Defense.” *Psychiatric Services*, vol. 72, no. 1, American Psychiatric Association, 2020, pp. 104-106. <https://psychiatryonline.org/doi/epdf/10.1176/appi.ps.202000707>.

Appelbaum describes the concept of mens rea and its relation to the insanity defense, examining its use and application in *Kahler v. Kansas*. Mens rea, Latin for guilty mind, in modern law, is used to describe two concepts: one's understanding of actions and the intent behind those actions. However, mens rea can often be viewed as a singular concept, with increased focus on the intention behind actions. The Kansas mens rea approach focuses on this definition and the common understanding of mens rea's necessity for criminal liability. In

traditional insanity defenses the M’Naughten Standard or Rule, which was established by an old English case, is the most frequently used definition. The M’Naughten Standard is mens rea combined with the concept of insanity: the understanding and intention of actions in relation to a moral understanding of those actions. In *Kahler v. Kansas*, Kansas’ mens rea approach does not meet the same standards as traditional insanity defenses.

Appelbaum argues that there is a fundamental difference between mens rea and the insanity defense despite their connection. Under Kansas law, which takes a mens rea approach, if an individual appears to have understanding of actions or intent to harm, then they are guilty. However, under traditional insanity defenses, such as M’Naughten, even if the individual understands their actions or had intent, so long as they lack coherent moral reasoning, they cannot be held liable in court. The critical difference is whether mentally ill defendants can be held criminally liable. Additionally, the mens rea approach completely removes moral understanding. Appelbaum argues that moral understanding is a critical piece of defining insanity and that its removal, in combination with a shift in understanding of criminal liability, will lead to wrongful punishment. Using *Kahler* as an example, even though evidence of his insanity was presented to the court, they chose to focus on proof of intent behind Kahler’s actions, which led to his conviction. Appelbaum disputes this decision, arguing for the fact that mental illness does not prevent a majority of individuals from committing intentional actions, but it can affect their reasoning. He claims that this conviction is evidence that the Supreme Court’s decision will lead to wrongful conviction.

DiSilvestro, Michelle. "*Kahler v. Kansas*: The Supreme Court Case to Decide the

Constitutionality of Abolishing the Traditional Insanity Defense and Reconcile the Split

among the Circuits." UIC Law Review, vol. 53, no. 3, 2021, pp. 633-672. HeinOnline, <https://heinonline-org.ezproxy1.library.arizona.edu/HOL/P?h=hein.journals/jmlr53&i=65>

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DiSilvestro's research makes important note of the case's precedent as she examines *Bethel*, the Kansas case that abolished the insanity defense, and *State v. Jorrick*, a case representing its prior application, in order to analyze the Kansas law that is being challenged in *Kahler v. Kansas*. In *Bethel*, Michael Bethel had shot and killed his father and two women because he believed God told him to. Bethel, sentenced to death, appealed to the courts as well, arguing the same as Kahler, that his constitutional rights were being violated. He believed that his sentencing went directly against a "deeply rooted" historical precedent within the US. Kansas's Supreme Court, however, argued that the Constitution did not directly state a right to the insanity defense. Additionally backing their ruling, the court stated that a majority of the time, criminal law decisions were left to the discretion of the individual states and not federal issues. Post this apparent abolition of the insanity defense, and under the new mens rea approach in *State v. Jorrick*, it was more explicitly stated that the only reason for an application of evidence of mental illness was if it could disprove intent. Kahler's case proceeded similarly to both Bethel's and Jorrick's, with Kahler unable to sufficiently prove lack of intent as the court relatively disregarded evidence of mental struggles.

DiSilvestro argues that the court treatment of mentally ill defendants, along with an increase in sentencing, shows how the mens rea approach is leading to the increased punishment of the mentally ill. The main argument presented is that under traditional insanity defenses, the court is obligated to view and consider evidence of mental illness, regardless of other evidence.

Additionally, through the legal system and under the Cruel and Unusual Punishment Clause found in the 8th Amendment the mentally ill are not to be subject to prison environments or harsh conditions that normal inmates or convicts are subjected to. Under Kansas law, evidence of mental health is only relevant if it can disprove intent, and while defendants are given an opportunity to present this evidence, it is often after they have already been exposed to harsh conditions. DiSilvestro also cites *Bethel*, *Jorrick*, and *Kahler*, as well as an overall increase in sentencing, as evidence that the abolition of the insanity defense is leading to wrongful conviction of the mentally ill.

Dressler, Joshua. "*Kahler v. Kansas*: Ask the Wrong Question, You Get the Wrong Answer."

Ohio State Journal of Criminal Law, vol. 18, no. 1, Fall 2020, pp. 409-[vi]. HeinOnline, <https://heinonline-org.ezproxy1.library.arizona.edu/HOL/P?h=hein.journals/osjcl18&i=417>.

Dressler develops an interesting argument examining faults in court logic, describing how the Supreme Court appears to avoid the true question being asked, while also providing additional evidence and context for Kahler's original case, giving insight into how this may have affected the court's ruling. The evidence presented in court had included psychiatric evidence and an audio recording picked up by his mother-in-law's Life Alert system in which Kahler stated, "Oh sh*t! I'm going to kill her ... God damn it!" Under Kansas's mens rea defense, the psychiatric evaluation was essentially null and void, and the audio was considered a clear sign of intent to kill. However, regardless of Kansas law, there remains the question of whether, under traditional insanity defense definitions, Kahler would be considered insane. While not 100%

determinable, Kahler doesn't seem to fit traditional definitions and falls much more into a pattern of domestic problems and violence turning into tragic deaths. Dressler asserts that, in part, because of the case Kahler had and his lack of probable true insanity, the court was examining the wrong question. Dressler asserts that despite Kahler's appeal arguing that Kansas was obligated to recognize an insanity defense, the Court focused primarily on whether or not a specific insanity defense was required. He argues that due to the focus on the Due Process Clause, the court was focused on whether or not long standing practices for an insanity defense, including morality, was constitutionally required.

Dressler's main argument is that, regardless of ruling, if you ask the wrong question, you get the wrong answer. He believes that if the true question of whether courts are still required to provide an insanity defense had been focused on, the ruling would have possibly been different. This argument is based on his own observations within the court syllabus, particularly how the Supreme Court claims to be answering if the 14th Amendment mandates the insanity defense but in reality answers if the 14th Amendment mandates a specific version of the insanity defense. He argues that overall the court would have, if focused on the correct issue, ruled in favor of Kahler. In the syllabus he points out court agreement of precedent for an insanity defense and that the opportunity to provide evidence of mental illness is required. This almost appears to be saying from the beginning that yes, the court agrees with Kahler, and an insanity defense is necessary. Dressler then points to how the court also largely treats Kansas's mens rea defense as simply another version of the insanity defense despite directly stating *State v. Jorrick* as its abolition. He argues that the majority opinion seems to be in favor of an insanity defense, but due to the question being asked, they ruled against it.

"Kahler v. Kansas." Oyez, www.oyez.org/cases/2019/18-6135.

The dissenting opinion, written by Justice Breyer, insists on the existence and importance of a historical precedent referring to concepts of mens rea and the M'Naughten standard while also examining the protections of the Due Process Clause. The dissent explains that the Due Process Clause protects rights in court that are considered fundamental. While not explicitly stated, this concept of fundamentality appears to be largely defined by its historical background. In the provided historical precedent, a consistent definition of the insanity defense exists, dating back to the 13th century and containing the same basic principles: that someone who lacks intent and understanding should not be punished under law. More specific definitions began to arise in the 1700s, defining understanding as an ability to distinguish between right and wrong. The dissent further argues that the current common law understanding of mens rea greatly overlaps with the traditional insanity defense. Often beyond just intent, mens rea now typically includes an aspect of moral capacity or understanding of right and wrong. These are used to counter majority opinion in combination with the dissenter's main argument that the majority ruling, permitting Kansas's abolition, sets a dangerous precedent. Breyer argues that under Kansas law a large portion of mentally ill defendants will be punished. Noteworthy is the way he illustrates this concept, stating that a defendant who kills someone because they believe that person is a dog would not be convicted; however, a defendant who kills someone believing their dog told them to would be convicted. The argument being made is twofold: that Kansas's abolition of the insanity defense is unconstitutional and that due process should protect an insanity defense that includes moral capacity.

The majority ruling, written by Justice Kagan, in contrast, claims that there is no constitutional requirement for a specific insanity defense. While the court does begin by agreeing with Kahler that, yes, some sort of protection for the mentally ill is required, they believe that Kansas law does provide this protection, citing a defendant's ability to provide evidence of mental illness to the court. The majority ruling emphasizes a messy and complex history of insanity and its defense with no distinct definitions of insanity or any evidence of an obligated insanity defense style. The court further examined prior cases like *Clark v. Arizona*, in which intent or cognitive capacity was removed from Arizona's definitions in the defense. The majority opinion used this case as well as others to argue that there was no obligation for a specific set of rules or a specific definition of what the insanity defense should look like. They emphasized the right of states to govern over criminal law and that this was not something that required federal regulation. It was also argued that even under due process there was no fundamentality of foundational concepts to the insanity defense, like the M'Naughten rule. Essentially, the insanity defense was never strictly required to contain certain elements, and the M'Naughten Standard was just commonly adopted. Thus the majority argued in favor of Kansas, stating that no, Kansas law did not violate due process. This ruling also arguably allowed for the abolition of the insanity defense.

Larkin, Paul J. Jr., and GianCarlo Canaparo. "Are Criminals Bad or Mad: Premeditated Murder, Mental Illness, and Kahler v. Kansas." *Harvard Journal of Law & Public Policy*, vol. 43, no. 1, Winter 2020, pp. 96-114. HeinOnline, <https://heinonline-org.ezproxy1.library.arizona.edu/HOL/P?h=hein.journals/hjlpp43&i=9>
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Larkin maintains the majority opinion in *Kahler v. Kansas*. He examines the 14th Amendment, specifically the Due Process Clause, finding that Kansas's mens rea approach is not unconstitutional or in violation of due process. Due process is a legal concept meant to limit government ability to act oppressively and requires the legal system to provide individuals with certain rights. Essentially, due process deals with what aspects make up a fair trial and protects those aspects. Kahler argued that one of the things protected by the Due Process Clause was the insanity defense; however, according to Larkin, there is no reason to believe this. He references the precedent case *Chapman v. United States*, which determined that due process protected and required fair procedures within court; however, it didn't directly define concepts like mens rea and left definitions, defenses, and conduct to courts to determine. It's also explained in *Chapman* that the due process clause did not necessarily create or allow for the creation of new fundamental rights within criminal law and that it was a separate issue from fundamental rights like freedom of speech or the right to marriage. Due process is simply meant to protect fundamental rights, not define them. *Clark v. Arizona* is also cited, arguing that Arizona's change to the insanity defense directly mirrored that of Kansas's change, which, when combined with no precedent for a required insanity defense, makes the point that the M'Naughten Standard for the insanity defense would not be considered fundamental and thus not protected.

Larkin argues that the Due Process Clause does not protect the insanity defense and that the foundation of Kahler's appeal is nonexistent. While Kahler strongly argues that the Kansas abolition of a traditional insanity defense violates the constitution and his right to due process, or a fair trial. Larkin illustrates that through precedent rulings and Supreme Court definitions of due process, there is no evidence of the insanity defense being constitutionally protected. He

illustrates that there is more precedent showing a lack of constituency throughout history than anything that is strong enough to be considered a fundamental right. Further, there is the argument that the Due Process Clause doesn't define specific laws or defenses and focuses on specific requirements of the court that would have been present in Kahler's case. The Due Process Clause largely emphasizes the ability of states to determine the best way of defining things like insanity and that it is a state's issue, not a federal issue. Larkin argues that Kansas law more clearly defines liability, placing criminal responsibility on intent instead of on an unclear definition of insanity. Additionally, Larkin finds that under the mens rea approach, defendants still have ample opportunity to provide evidence of mental illness. Larkin feels that the Supreme Court's ruling was correct and that Kansas law was constitutional, as the insanity defense itself is not fundamental.