

Should the Defence of Loss of Control Replace the Partial Defence of Diminished Responsibility?

Essay Question

Should the partial defence of loss of control replace diminished responsibility, or do both defences continue to serve distinct and necessary purposes in English criminal law? Critically discuss.

Overview

The partial defences of **loss of control** and **diminished responsibility** reduce murder to voluntary manslaughter but are based on fundamentally different principles. The loss of control defence focuses on a defendant's emotional reaction to provoking circumstances, whereas diminished responsibility recognises reduced culpability resulting from an abnormality of mental functioning. This essay critically examines whether the continued existence of both defences is justified or whether a single, unified defence would provide greater fairness and consistency.

Main Issues to Critically Analyse

1. Historical Development

- Problems with the former defence of provocation.
- Why Parliament introduced the Coroners and Justice Act 2009.
- The rationale for retaining diminished responsibility.

2. Purpose of Each Defence

Evaluate whether the two defences protect different interests.

Questions include:

- Is loss of control concerned with human frailty?
 - Is diminished responsibility primarily a medical defence?
 - Are they overlapping in practice?
-

3. Problems with Loss of Control

Critically discuss:

- The requirement of a qualifying trigger.
- Delayed revenge exclusion.

- Difficulty proving genuine loss of self-control.
- Gender and cultural criticisms.

Cases may include:

- *R v Clinton*
 - *R v Dawes*
 - *R v Jewell*
-

4. Problems with Diminished Responsibility

Analyse:

- Reliance on psychiatric evidence.
- Expanding medical diagnoses.
- Expert disagreement.
- Whether mental illness should reduce criminal responsibility.

Cases:

- *R v Byrne*
 - *R v Golds*
 - *R v Dietschmann*
-

5. Academic Debate

Evaluate arguments such as:

Arguments supporting replacement:

- Simpler legal framework.
- Greater consistency.
- Reduced overlap.

Arguments opposing replacement:

- Emotional impairment and mental illness are fundamentally different.
- Medical conditions deserve independent legal recognition.
- Different moral justifications require different legal defences.

Possible Conclusion

A first-class essay would likely conclude that although overlap exists, the two defences address different forms of reduced culpability. Rather than abolishing diminished responsibility, reform should focus on clarifying the boundaries between the two defences and improving consistency in their application.

Key Authorities

Cases

- *R v Clinton* [2012]
- *R v Dawes* [2013]
- *R v Jewell* [2014]
- *R v Byrne* [1960]
- *R v Dietschmann* [2003]
- *R v Golds* [2016]

Legislation

- Coroners and Justice Act 2009
- Homicide Act 1957

Academic Sources

- Ormerod & Laird
- Herring
- Ashworth
-

