

No memory: The ultimate defence? An insight into John Locke's jurisprudence

By Kevin Tang

Introduction

In Mobile, Alabama, 33 years ago, Vernon Madison shot dead a police officer, Corporal Julius Schulte. Since April 1985, justice has taken a winding path for Madison. He has waited almost a lifetime to die. Madison has developed severe dementia while incarcerated. He recalls nothing of the past. He is the perfect example of the philosopher's *tabula rasa* – a clean slate. Should he be punished further? The circumstances of Madison's case can be considered through John Locke's *An Essay Concerning Human Understanding* (1690), a seminal natural law work in jurisprudence from the Enlightenment.¹

Background

On Australia Day this year, Madison was due to be executed by lethal injection. However, 30 minutes before the execution, Justice Clarence Thomas of the United States Supreme Court granted Madison a stay of execution.

The US Supreme Court will hear Madison's petition this year. In 1986, the US Supreme Court made a ruling that the execution of a person who does not understand the reason why they are being executed is a violation of the 8th Amendment to the United States Constitution which prohibits 'cruel and unusual punishment'.

In 2016 the Circuit Court of Appeal made a ruling on Madison's case. In a nutshell, according to Madison's perception of reality, he had not committed the murder and therefore could not understand the reason for his possible execution for murder.

Is a person who cannot remember committing a crime capable of understanding why they are being executed? Or in other terms – can a person who cannot remember performing a deed be held morally responsible for it and suffer the consequences which might flow? This goes beyond discharging the requirements for punishment. Can such a person be the locus for moral guilt?²

Lockean view

This brings us to the jurisprudence of John Locke (1632 – 1704), an English philosopher and physician. He was one of the most important philosophers from the Enlightenment, a father of liberalism and supporter of Sir Francis Bacon's notion of a social



contract. Locke was a proponent of natural law and rights. According to Locke's view, Madison should not be executed. If one is unable to recall performing a specific action, one is then not the same person as the person who did perform the specific act. It should be noted that Locke defined a person as a purely forensic notion³. A person is only used to locate moral responsibility⁴.

Madison's perception, at this moment in time, is that he did not commit the crime. John Locke would say that Madison cannot therefore be held morally responsible for the murder. Madison is a different person from the murderer of 1985.

Moral responsibility – can you remember committing the crime?

Let us take Dr Jekyll and Mr Hyde. Dr Jekyll has no control over when he becomes Mr Hyde and he cannot remember anything about Mr Hyde's escapades or actions. Is Dr Jekyll responsible for the crime of Mr Hyde? Answer: No. Dr Jekyll cannot be morally responsible for what Mr Hyde does because he is unable to remember what Mr Hyde did. Lockean jurisprudence says that Dr Jekyll and Mr Hyde are two different people⁵.

In this instance, the transition from Dr Jekyll to Mr Hyde is involuntary. It might be somewhat different if Dr Jekyll could turn into Mr Hyde voluntarily, and he knew that Mr Hyde was accustomed to committing crimes, then Dr Jekyll would be (to an extent) morally responsible for Mr Hyde's crimes.

Another example is that of a person who knows they act badly while drunk, but does not remember doing anything untoward

when they wake up the next morning. If you know that you behave badly after drinking, then not remembering the events is no excuse. The rationale in this case is that if a person did not drink excessively, and exercised greater control, they might not have become inebriated⁶.

Naturally unjust

Locke would assert that the sober person is not exactly the same person as the drunkard on a rampage. One didn't exert enough control earlier to curb the possibility of the criminal rampage later on. There is indirect moral responsibility at that juncture (derivatively). Nil recall doesn't make it any better, and moreover it should not relieve a person of moral responsibility. It was a foreseeable consequence.

Madison is a case which exposes the Lockean natural law point. One cannot be morally responsible for something that one cannot remember doing⁷. There is a distinction between direct and derivative responsibility. That is the crux of the issue.

Perversity: No memory. No crime. No punishment.

Of the 180 or so death row inmates in Alabama, three have been incarcerated for longer than Madison. Madison cannot remember his crime that day in April 1985 due to his severe vascular dementia which developed after a series of strokes. He is legally blind and has mobility problems.

Madison has become grey and ashen as he hovers between death and life. The darkness may consume him. Will the executioner come before God? It will all happen soon. John Locke's scholastic theory says that Madison is not guilty of any crime and is not a murderer. He does not understand *now* why he is going to be executed. Let's not over-philosophise the reality.

END NOTES

- 1 Ed. Fraser, Alexander Campbell *John Locke An Essay Concerning HUMAN UNDERSTANDING* by Oxford Clarendon Press 1894 Book 1 and Book 2.
- 2 See Note 1 Book 2 Chapter XXVII page 467.
- 3 See Note 1 Book 2 Chapter XXVII page 468.
- 4 See Note 1 Book 2 Chapter XXVII page 461 and 462.
- 5 See Note 1 Book 2 Chapter XXVII page 461.
- 6 See Note 1 Book 2 Chapter XXVII page 462.
- 7 See Note 1 Book 2 Chapter XXVII page 464.