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THE RIDDLE OF LEGAL INSANITY

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This article should be enlightening to those who are puzzled by seemingly contradictory testimony offered by psychiatrists.—EDITOR.

On November Eleventh, 1952, an event occurred which is outstanding in our time in the field of criminology. On invitation from the Hacker Foundation of Beverly Hills a discussion seminar on the topic of "Criminal Responsibility" was held in the Hacker Clinic in Beverly Hills. The study presented by Dr. Marcel Frym was in itself a notable offering, but the circumstance making this event so unusual was that here in one place were gathered the essential personnel responsible for the administration of criminal justice in Los Angeles County. The approximately one hundred persons in attendance included judges from the criminal bench of the Superior Court, judges from the criminal division of the Municipal Courts, representatives of the district attorney's office, the public defender's office, court clerks, probation officers, social workers, members of the psychiatrists' panel of the Superior Court, psychologists and clergy working in the jails. In addition there were attorneys and some interested laymen. The panel itself was significant for it consisted of two superior court judges of the criminal division, a deputy district attorney, the professor of criminology of the U.C.L.A. Law School, the Dean of the School of Law at U.S.C., a Catholic priest working with the courts and in the jails, and the moderator was a member of the psychiatrists' panel. Seldom was such an impressive and authoritative gathering available to discuss such a wavering question as the matter of criminal responsibility.

The high point of the presentations and discussion was a question raised from the floor by a Judge of the Municipal Court of Los Angeles. He cited an instance in which there was brought before him a young man, a student of psychology, charged with a serious sexual offense. He considered the matter one of potential social hazard and signed the case over to the Superior Court for consideration of the matter of sexual psychopathy. Three eminent psychiatrists examined the young man. One reported him to be a dangerous sexual psychopath, a menace to society, and recommended confinement. The other two experts reported that he was not a psychopath, implying that he operated within the normal limits of human behavior. The judge was confused by this

divergence of opinion in a case that appeared to him to be so obvious, and he asked, with a note of criticism, why there should be such a difference in the appraisal of common clinical data by men who were capable. Here in a few words is the kernel of this problem that has been posed for a hundred years or more, and apparently we are only slightly closer to an answer today than in the days of the McNaghten rule.

It does not satisfy anyone's enquiry to cite the split votes of the Supreme Court in interpretations of a written document, the constitution, for it is well recognized that, like politicians, Supreme Court justices are classed as liberal or conservative, or frankly as Democratic or Republican, and their decisions are often colored by these affiliations. But doctors are close to the field of science and the examination of humans is supposed to be factual. Why, it might be asked, do scientists vary so radically in the interpretation of similar data? Is the field of psychiatry an art, a philosophy, or a science? It is evident that in forensic psychiatry, at least, the label of science is misplaced, for here there is predominantly theory and philosophy about which there is much difference of opinion. In the matter of criminal responsibility where the psychiatrist is called upon to render an opinion, he is not required to be factual; he is asked, rather, for his opinion of the case in terms of the facts available. If he chooses to place only a relative evaluation on the different facts, his opinion stands staunchly just the same. There is such a strong personal element in psychiatric opinion that on some occasions even prejudice enters into its formation. However, the matter is not so simple, for if we consider the factors involved and the wide semantic range in the *use* of terms employed by the different professions having to do with this matter, it takes on increasing complexity.

ORGANICISTS

The field of psychiatry is composed of three major groups of psychiatrists. These men are all physicians, duly recognized and approved. The largest, and by far the dominant group in American psychiatric circles, as well as in other parts of the world, are the organicists. These are specialists in the study and treatment of mental illness who view their patients in terms of anatomy, physiology, and pathology. They are the strict followers of the American medical tradition, stemming from William Osler, which contends that disease must be based solidly on pathology to justify its existence. The principles of this group are ably outlined in the book by Stanley Cobb.¹ In this same vein is Tred-

1. COBB, STANLEY. FOUNDATIONS OF NEUROPSYCHIATRY. Baltimore: Williams & Wilkins, 1941, xi+231.

gold's recent book² which accomplishes the phenomenal feat of discussing the field of psychiatry and ignoring practically all the advances in dynamic psychopathology of the past fifty years. This group may be divided still further into what might be termed "hard shell" and others who show a little inclination to recognize some of the instruments outside of the world of neurology. The more extreme organicists number among them neurosurgeons, neurologists, neurophysiologists and even research workers to whom there has been assigned the task of examining mental patients. The majority of them, however, are practical, hard-headed clinicians who base their conclusion upon demonstrable clinical data. They tend to wave aside conjectural symbolisms and refuse to accept dynamisms as explanatory of behavior. The organicistic outlook is toward precision in diagnosis, but negative as to prognosis. This explains their tendency to recommend "life imprisonment for sexual offenders"³ for they are a social hazard and nothing can be done for them. The organicistic opinion of legal insanity is restricted to frank psychoses in the Kraepelinian sense, where the individual is so confused or demented that obviously he was unable to discern right from wrong—or anything else. If all court psychiatrists were members of this group the controversy now waging would be greatly lessened.

A great many institutional psychiatrists are organicists and deal mostly with psychotic cases. They are a badly overworked group and often to their dismay find that their time is taken up by administrative detail rather than actual work with patients. Still another segment of this large proportion of our specialists are men who have grown up with the specialty and carry with them impressions of their earlier experiences. They too do not give much credence to the newer trends, preferring to stay with their tried and more familiar procedures. In many instances the examination of prisoners or defendants before the court is a task added to an already redundant schedule of a busy psychiatrist. Frequently the time available to make the necessary examination is all too short. Experience in the last war when psychiatric appraisals were made on a mass basis has made some examiners defend the brief procedure.

2. TRECOLD, A. F. *MANUAL OF PSYCHOLOGICAL MEDICINE*. Baltimore: Williams & Wilkins, 1943, xi + 298, who states ". . . while diagnosis is a matter of opinion, it must not be assumed that this is therefore subjective and intuitive." This is not greatly different from MEYNERT, THEODOR. *PSYCHIATRY, A CLINICAL TREATISE ON DISEASES OF THE FORE BRAIN*. New York: G. P. Putnam & Sons, 1885, which frankly discusses mental changes in terms of the anatomy of the brain.

3. In a wave of public indignation over the matter of sex crimes in Los Angeles in 1950 a number of psychiatrists testified before an investigating assembly committee expressing this view.

Most examiners, however, will acknowledge that the more information available, the more definite the conclusions can be.

Indicative of the strong organic flavor in American psychiatry is the general set up of examinations given by the specialty boards certifying psychiatrists. Every candidate must pass highly technical examinations in neuroanatomy, neurophysiology, neuropathology and neurooentogeneology. This same state of affairs is showing itself in the proposed bill dealing with the licensing of clinical psychologists.⁴

PSYCHOANALYSTS

The next group of specialists in American psychiatry, holding positions of authority and recognition equal to those held by organicists, are much smaller numerically, but obviously more vociferous. They occupy a position at the opposite pole from the organicists. In the extreme they concentrate on the psychic with sparse attention to the physical. They are the psychoanalytically oriented psychiatrists. They are highly trained with a heavy emphasis upon psychoanalytic theory and techniques. They are generally a very positive group and give the impression that they have the answers. Many analysts are impatient and a little intolerant of others who do not hold the same views as they. They frequently state with authoritative certainty the origin and basis of behavior problems in terms of complicated intrapsychic dynamisms. An example of this is the following analysis of a case of alcoholism:

"Dynamically he went through a strictly regulated childhood, but because of the home situation he incorporated super-ego and ego-ideals of maternal rather than paternal derivation. Thus while still not having solved the oedipal conflict, but also while having derived a maternal super-ego, he becomes especially ambivalent toward his super-ego. Then in adolescence he reacts with compensatory oral aggressiveness, but begins to use alcohol on the one hand to support his oral dependency, and on the other hand to blur his sense of guilt over aggression and bolster a feeling of self-confidence which he never had, through a failure of paternal identification."

The psychoanalyst will comprehend this and have a semantic affinity with it, but the organicist will place his own evaluation and interpretation upon it. This is only reasonable, for one would expect the analyst who has lived and studied his concept, almost to the exclusion of other subjects, for five to ten years to place a greater meaning and significance upon the intrapsychic life of his patients than the organicists

4. Wherever collaboration between psychologists and medical men is resorted to to provide licensing legislation, the requirement of a knowledge of the basic sciences is included. This means subjects not ordinarily part of a psychologist's training, such as anatomy, physiology, chemistry, and pathology.

whose understanding of which in many instances is didactic and literary.⁵

When these matters are discussed and the various terms are bantered back and forth, expressions are used that are part of the vocabularies of each, and yet for each the meanings vary. A behavior problem then presents certain clinical data which is elicited on one occasion by an organicist and the same data at a later time by an analyst, and yet in each instance the picture is different. The problem that is to the organicist hopeless and an incorrigible social hazard, to the analyst is a clinical case with a very good prognosis. The two groups of psychiatrists see the same case through radically different perspectives. Although both use the same terms and presumably the same language, they are thinking different things and have different impressions when they do. The basic precepts of the psychoanalytic group are clearly elaborated by Fenichel.⁶ Fundamental differences between them and the organicists are nicely displayed in the debate carried on between Ben Karpman and the late Abraham Myerson.⁷ Another example is the fact that organicists, practicing as physicians, as they must to carry out their work, must be licensed, whereas, psychoanalysts are able to conduct a busy and lucrative practice without the necessity of a license, because in the strict interpretation of the law they are not practicing medicine. Freud himself wrote a treatise advocating the training of lay-analysts.⁸ Psychoanalytically oriented psychiatrists occupy positions of ethical responsibility and do serve the courts as experts and a majority of them are licensed physicians, but ideologically and philosophically they differ widely from the organically trained psychiatrist.

The complexity of this matter is increased by the fact that the psychoanalysts are divided among themselves into "Orthodox Freudians", "Neo Freudians", Jungians or followers of Carl Jung, individual psy-

5. BENJAMIN KARPMAN in PSYCHOGENIC ASPECTS OF HEADACHE. A Symposium, *J. Clin. Psychopath.*, 10, 3, 1949, states, "when an individual takes food against his will or he wants to express a reaction against the environment, his vegetative nervous system, in response to the emotional stimulus, makes the food come out in the form of vomiting. While in the physical sense this is vomiting, in a psychic sense it means rejection." It is clear that when the organicist speaks of rejection in this sense, he is really quoting the dynamicist, but at the same time his thought and meaning are of the physical mechanism of vomiting in terms of a physical stimulus, environmentally determined. In one case the cause is sought in the immediate situation, in the other in the developmental past of the individual.

6. FENICHEL, OTTO. *THE PSYCHOANALYTIC THEORY OF NEUROSIS*. New York: Norton, 1945, x + 703.

7. *QUART. REV. PSYCH. & NEUR.* 1948, 3, 379 and *ibid*, 1947, 4, 553-77. Myerson states "I object to the presumption by Dr. Karpman that Freudian psychiatry is the only dynamic psychiatry."

8. FREUD, SIGMUND. *THE QUESTION OF LAY ANALYSIS*. New York: Norton, 1950, p. 125, who states, "In Germany and America . . . every patient may be treated how and by whom he will, and any quack may set up to treat whatever type of patient he prefers, provided he assumes responsibility for what he does. The law does not intervene unless and until it is involved in respect to damages incurred in the treatment."

chologists or followers of Alfred Adler, Wilhelm Reichians, and also Theodore Reikians, those who adhere to the teachings of Otto Rank, W. Stekel and even Freudian disciples such as S. Ferenczi and Ernest Jones add some notes of their own that are perpetuated by their pupils. Each of these practitioners colors his conclusions a little differently than those of other schools, and the particular tenet or theory followed influences to a relative degree the semantics of the terms commonly used by all psychiatrists. This in turn definitely determines the conclusions and recommendations which such an examiner will make on the behavior problem he is studying.

What the psychoanalytic psychiatrists lack in number they make up in the volume of their writings. They are prolific writers and flood the literature; so much so that practically all psychiatric texts have some flavoring of psychoanalytic concepts. Many psychoanalytic terms have become common property of the whole field of psychiatry. Such terms as "conversion", "complex", "psychic conflict", "unconscious", etc. which are common almost every day lay terms stem from psychoanalytic productions. However, it is well to remember that the readers of these terms do not always understand them in the exact sense or in respect to the broad implications of the writer.

PSYCHOBIOLOGISTS

There is a third group of American psychiatrists, equally ethical and accepted and holding a status as respected as the two foregoing groups. These represent a newer addition to the specialty, and in a way have been specifically trained for it. They are the psychologically oriented psychiatrists and are most characteristically represented by the psychobiologists of Adolf Meyer.⁹ They are the most pragmatic and least dogmatized of all; for they do not espouse any particular school, nor are they loathe to use the developments in the realm of psychology.¹⁰ Other individuals who probably fit into this category are graduates of the Washington School of Psychiatry, followers of the principles of Harry Stack Sullivan, men coming out of the Menninger Clinic and the osteo-

9. The principles of Adolf Meyer are expressed clearly in his own words, "One of the most important lessons of modern psychiatry is the absolute necessity of going beyond the asylum walls and of working where things have their beginning; and experience shows that there only organized cooperation will achieve success. . . . But the dogma of perfect mental activity and diseases merely of the brain has led to a multitude of assumptions of brain anatomy and brain physiology which cannot stand the test of critical experimentation." COMMONSENSE PSYCHIATRY OF DR. ADOLF MEYER. New York: McGraw-Hill, 1948, p. 293.

10. ELIASBERG, WLADIMIR in *Psychopathy or Neurosis. An Expert's Opinion*, J. CLIN. PSYCHOPATH., 1946, 8, 275, states "The Projective Methods, Among them Rorschach and graphology may prove useful in every case. The final diagnosis, however, belongs to the clinician because the most important method is still the clinical analysis of the case at hand."

pathic psychiatrists. Here, however, a distinct flavor identifies each and conditions to some degree the opinions expressed. The basis of this category of specialists is outlined in some detail by Yacorzinski.¹¹

Psychologically oriented psychiatrists are physicians using the material of psychiatry and psychology. They are indoctrinated into the clinical practices of both fields and have acquired a familiarity with the tools and techniques of each. They are, however, conscious of the individual as a medical problem and are eclectic in meeting his needs. They utilize consultants from other specialties to identify and evaluate all behavioral manifestations and work closely with them, very much as the organicist does. They utilize, however, a psychodynamic approach to the understanding of their cases and plan the outcome of their work in terms of the dynamic mechanisms. They in contrast to organicists rely to a great extent, upon psychotherapy for the treatment of their patients. In contrast to psychoanalysts they regard their patients as psychobiologic units and not as psychic projections. Their interpretation of their examination data is couched in terms used also by the other categories of psychiatrists, but they have meanings and a significance peculiar to them.

As if the complexity of the problem were not great enough with this wide divergence of viewpoint, still another subdivision of psychiatric examiners must be made. There are, for example, those psychiatrists who make their tests and render their reports as doctors, but there are also those, who from long experience in the courts, with attorneys, or from some secret longing, try to be attorneys. These examiners use procedures common to attorneys and appear to be eliciting evidence rather than a case history. They will frequently quote questions and answers verbatim as if it were a deposition, with the intent in mind of proving by the statements of the patient that their conclusion is true.¹² This is far from the task of the physician-psychiatrist who very frequently must deduce the facts from statements that fail to elucidate. What the patient says is poor evidence from a medical standpoint; it is good only when a legal point is being made by a lawyer.

It is a common experience for examiners to find that the story told by a defendant varies considerably from that told to a probation officer, or

11. YACORZINSKI, G. K. *MEDICAL PSYCHOLOGY*. New York: The Roland Press, 1951, xviii + 535.

12. This is a problem closely related to the matter of confessions about which there is some difference of opinion among legal authorities. For example CHARLES T. MCCORMICK in *Some Problems and Developments in the Admissibility of Confessions*, J. CLIN. PSYCHOPATH., 1946, 8, 193, states, ". . . in most American courts, hardened into a rigid rule based upon the premise that confessions generally are an unreliable class of evidence."

even a signed confession at the time of arrest. It is the examiner's task, not to challenge the veracity of his examinee, but to enquire as to why. Most examiners have found that with the establishment of rapport with the defendant a markedly improved narrative is elicited. If the psychiatrist were able only to form his opinions upon the narrative of the defendant, he would frequently become a dupe. As we know, that is not the case, for examiners form opinions and come to conclusions that very often are at variance with the defendant's statements. To present data in the form of a deposition possibly is intended to make it easier for the attorneys and judges, who will read it, to understand the data. This is hardly necessary and it is questionable if it attains that objective. It is almost a predigestion of the psychiatrist's thinking of the case. Another effect of this method of reporting is that, being in legal form (some psychiatrists even use legal forms with their names printed upon them, much in the manner usual with attorneys), it is a matter of consistency for the attorney to read the terms in light of his legal understanding, and a new semantic complication enters into the evaluation of legal insanity. This is further emphasized by the tendency of some psychiatrists to quote the law, but here "a little knowledge is a dangerous thing," for without a thorough indoctrination into legal theory and some guidance in the complicated maze of the workings of law, an innocent quotation may change the meaning, to an attorney, of the whole report.

ADDITIONAL GROUPS

This matter could be carried further for in every instance where the question of legal insanity is raised, not only are the psychiatrists, who are the experts and determiners of the matter, involved, but also judges, attorneys, both prosecutors and defense, court clerks, court reporters who write the record of proceedings and often introduce the words that comprise them, probation officers, the jurors who decide the case, the religious worker interested in rehabilitation and even the bail bond agent contributes to the matter in some way. However, to do so would extend the scope of this study and make it a little cumbersome. It is hoped that with an understanding of the variations in semantics a better plane of action may be determined. It can be seen that only confusion may be expected when the solution of a problem is attempted by a number of solvers each on a different level and each speaking a different language using the same symbols.