

VIEWS ON THE USE AND ABUSE OF PSYCHIATRY

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WHEN a physician sees a patient he should assess him from two main aspects namely:

- (a) The Psychogenic aspect and
- (b) The Physiogenic aspect.

Where necessary or indicated he institutes special tests or investigations to exclude a possible organic cause for ? somatic manifestations and to establish confirmatory evidence of symptoms or signs primarily believed to be of organic origin but which may well be of psychogenic origin. Physicians should be able to make a psychiatric diagnosis and be able to treat at least minor psychogenic disorders. Only difficult cases of psychoneurosis and hysteria as well as probably all cases of psychopathic personality and incipient or marked psychosis should be referred to a psychiatrist.

The routine adopted by some physicians of referring all cases believed by them to be of psychogenic origin direct to a psychiatrist is to be condemned just as is the practice of psychiatrists who refer all their cases to a physician to exclude organic disease. Such physicians and psychiatrists are incompletely trained in my opinion. Their attitude is comparable to those who insist on eye specialists prescribing simple eye drops and their application by an "eye-trained" sister.

In some cases the patient is not assessed by the physician/surgeon from the psychogenic aspect. He is viewed as someone who has symptoms/signs which must be of organic origin. After varied investigations, the number depending on the tenacity of the physician, have been carried out with apparently negative results, the physician either out of frustration, and certainly with the wrong outlook, labels the patient in almost contemptuous fashion as "Functional" (a word which should be erased from medical terminology), "Neurotic," "Hysterical" or even malingering. It is not only in cases of irregular pyrexia of indeterminate origin that the patient may be so designated. Even in cases where the psychogenic origin of the symptomatology is, or should be, obvious, the obvious is ignored and what still finds itself described as a disorder of the heart, namely effort syndrome, is applied where the manifestations of a psychoneurosis would appear to be predominantly referable to the cardiovascular system. Neurocirculatory asthenia is no alibi and neither is cardiac neurosis.

Some physicians are even more tenacious in their search for organic disease and finally, in despair, the patient minus his appendix and gall-bladder is referred for psychiatric opinion.

Experience indicates that all trainee medical specialists should have six to twelve months' intensive psychiatric training in a mental hospital so that they can examine a case properly and make a true psychogenic assessment of every case whether or not the main or urgent treatment is essentially medical. Surgeons, gynæcologists and all other specialists could also benefit from a course on similar lines although of shorter duration.

We are all apt to talk of the normal or average man, but what or who is he? Surely the normal individual is a hypothetical subject whose qualities and characteristics exist only on paper or in the minds of theorists?

If every individual had a psychiatric case sheet it is probably fair to say that the majority of these case sheets, presumably the overwhelming majority, would make dull and uninteresting reading and would be considered "average" or well within "normal limits" for John Britain. Others, however, would show a history of psychoneurosis with or without somatic dysfunction of varying degree, of inadequacy, of perversions, of homosexuality, of psychopathic personality, of psychopathic trends or of incipient or frank psychosis. But only a small percentage of such individuals would not be considered good citizens and law-abiding people if the yard-stick of good citizenship included failure to be caught breaking the law. By such factors as their birth, training, environment, experience, education and respect for, or fear of the law as well as by their insight into their reactions to circumstances as well as their full appreciation of the lot of the transgressor, individuals learn to be law-abiding or near law-abiding citizens with varying degree of sense of duty be that voluntary, compulsory or considered expedient. Not only may authors and poets, great and small, be regarded as psychopaths, psychoneurotics, perverts or hysterics. "Everybody is queer but thee and me and thee's queerer than me." That is a point of view. However, the mere fact that an individual is a psychopath, a psychopathic personality or someone with psychopathic trends does not necessarily require that he should be certified. Furthermore an individual who is certifiable under existing modern standards need not necessarily be judged by any means as unfit to plead. It is remarkable how many individuals are considered certifiable or are only too ready to be so certified or be the subject of a truly psychiatric report when they find themselves in conflict with the law in respect of some charge for which the penalty may be severe or even death by judicial hanging.

I submit that an individual may be certifiable under modern existing standards but that if he has been able to maintain himself within or beyond the law of the land up till the time he committed a crime, and that crime may be murder, he should be considered fit to plead and his psychiatric disability should in no way affect the carrying out of the maximum penalty; be that death by judicial hanging. An adverse psychiatric report if properly used would act against the interests of a murderer or any other criminal and

would serve the cause of justice. Such reports are too apt to be used as "extenuating circumstances" or as an excuse to lessen the punishment for a crime, to obtain a reprieve or to obtain a decision of unfitness to plead.

I understand that it is commonly taught, that psychoneurotics always have insight into their condition while psychotics have not. In my experience there are obvious exceptions to that rule. Psychoneurotics do not necessarily have insight into their condition while psychotics may have insight into their condition. I believe that the term "controlled schizophrenia" recently used by a scientist in Great Britain on trial for alleged giving away of atom secrets (*The Scotsman*, p. 7, Feb. 11, 1950) is a reality. This description meets the case of the individual who appears law abiding to the outside world but whose other conduct—unknown perhaps to others but himself—is the very reverse. I submit that this Dr. Jekyll and Mr. Hyde type is common, if not just as originally described, at least in their attitude when accused of a crime for which the penalty is severe. Many of us have had dealings with this type who in my opinion formed a large part of the type who went absent during the war and who supported themselves in style, and often at great personal risk, for weeks or months or even years as leading racketeers, or as the close supporters of leading racketeers, in the large cities of various countries during and after World War II. On arrest they readily sought a psychiatrist. To do this they would give a history of "headaches," or blackouts or would swallow metal polish or buttons just to make sure. Inevitably they would be referred to a medical specialist to whom they were a constant "headache," so that organic disease might be excluded. Some would say in a most innocent manner, which they would always maintain, that they did not remember how they went absent. The last they remembered was being "blown up" and when it would appear after months of successful racketeering, requiring much initiative, resource, skill and personal daring, they "came to," they were afraid to give themselves up because they knew that they would not to be believed, so they just carried on! That was their story and they stuck to it. Their apparent sincerity and honesty almost made one feel that for a cap each should have a halo. Such individuals are most self-possessed and as artful as a cartload of monkeys. They vary with their social and cultural background. One of the very smooth types with a markedly privileged background I remember well. Prior to World War II he had been found guilty and severely punished for participating in a robbery characterized by particularly brutal violence. On completion of his sentence he must have been called up or volunteered for service, for he was referred to me in 1943. He did not know that I had been fully briefed regarding his past history. He had just been acquitted by a court martial on a question of unit funds and had suffered or developed a "breakdown." He was the smooth, long-haired, beautifully dressed, perfumed and well-manicured type with a cultured voice. Tearfully he told me how upset he was because, in spite of acquittal by a court martial, his honour was still doubted by his C.O. A few weeks later his "breakdown" appeared to have disappeared because I saw

him in a night club delicately perched on a stool by the Bar with a glass held in the approved spiv manner engaging a brace of V.I.P.s in conversation which they appeared to enjoy. They are wonderful company for a time. Such is the type whom the psychiatrists are so frequently called upon to examine and whom they would appear to defend at all costs to their professional standing and to the detriment of the professional standing of psychiatrists as a whole at least in the eyes of the public.

Psychiatry is a boon and a blessing when it is employed as it should be in the prophylaxis of mental disorders the early recognition of mental diseases and their diagnosis, treatment and management. Why therefore are psychiatrists held in suspicion by law-abiding citizens and appear to be adversely criticized by judges, sheriffs, the public and even by their medical colleagues? "We must not forget too, how often medical opinions are invoked in law courts to excuse antisocial activities. Murders, theft and financial default are attributed to brain-storms or alleged to occur during a loss of memory. The often conflicting evidence of psychiatrists and neurologists cause much public distrust and uncertainty" (Goodby, 1950). Is it because their value as expert witnesses is doubted, because they would appear to identify themselves with the accused in a court of Law and defend them as a mother would defend her child? Is this because it is so strongly ingrained in the Doctor that it is his bounden duty to save life at all costs and that the accused is his patient whom he must help in every way possible, come what may? Is it not wrong that a doctor should be a witness for the Defence or for the Prosecution instead of an expert witness, and therefore a neutral witness, called by the Defence or by the Prosecution in the true interests of justice so that justice will be done and the guilty will bear the full penalty for their crime? At times their reputation is drawn in the mud when a judge has to drag out of them information which is to seal the fate of the accused as regards responsibility and which information they would appear reluctant to give. Surely their attitude and that of those opposed to the death penalty is not affected by the feeling "there but for the grace of God stand I."

That a man may be considered fit to plead, be found guilty and sentenced to death for murder though considered certifiable is well borne out by the Norfolk murder trial in which James Frank Rivett was found guilty of the murder of a 17-year-old schoolgirl. The accused was considered certifiable at the time of the trial by two experts. The jury considered the accused "sane and fit to plead." Mr. Justice Stable described their verdict as a sensible one. After the two experts gave evidence for the Defence another Doctor said that Rivett had been preoccupied with an ill-formed fantasy of murder and his own self-destruction before the case. Yet the accused was found guilty and the judge after pronouncing the death sentence said "I am satisfied that the contribution the jury system makes to the administration of criminal law is invaluable" (*B.M.J.*, p. 380, Feb. 11, 1950). When the learned judge said these words I feel that he was echoing the sentiments of his professional

brethren, the public at large including the Medical Profession as a whole. Among the critics would be the wrongdoers. But I feel that if the attitude of this judge and especially the jury was generally adopted there would be fewer murders and crimes of violence.

An appeal was lodged in the Norfolk Murder Case, but it failed. Lord Chief Justice Goddard is quoted as saying: "Unless and until Parliament ordains that Schizophrenia, which was pleaded at the trial, is to be determined by a panel of medical men, it is to a jury that the decision is to be entrusted."

I submit that the plea "irresistible impulse" should be forbidden. Such a plea is apt to be made when a person of some social standing is accused of shoplifting or some other theft or when an individual is accused of a sudden attack, apparently out of the blue, and without rhyme or reason on another person or persons with or without fatal issue. What is an "irresistible impulse"? As no one can prove such a phenomenon exists surely its alleged existence is based on false premises. It would appear to me that a resistible impulse which is not resisted becomes an irresistible impulse when the conduct resulting therefrom brings the individual concerned into conflict with the law.

I believe that the McNaughten Rules are obsolete, an obstruction to justice and should be replaced. If a man suspected of murder is a congenital idiot and therefore has never been able to support himself any Jury would obviously find him unfit to plead and he would be detained during his Majesty's Pleasure. However, I submit that any accused, no matter of what type of crime he is accused, should, if a constitutional psychopath, be considered fit to plead, except in the most exceptional circumstances, and fit to pay the full penalty for his crime, if up to the time of his crime he has been able to maintain himself by his own effort. To consider such individuals "Guilty with diminished responsibility" is no alternative and no compromise. Such a precedent would lead to all evildoers being found guilty with diminished responsibility. Where would that lead us? Undoubtedly they all have diminished responsibility as law-abiding citizens if they commit crimes. The ends of justice would be put in jeopardy if "Guilty but with diminished responsibility" indicated a lessening of the degree of guilt with a lessening of the severity of the penalty that should fit the crime. Surely such a verdict should be to the detriment of the accused and not in his favour? If that were so, and I submit that is as it should be, then it would become a rarity for psychiatrists to be called for the Defence. The only exception would be when the psychiatrist's report would indicate:

- (1) A "normal" report which would be in the interests of an innocent man, and conceivably also of some murderers, or
- (2) That the accused up till the time of the crime, and since had not been capable of supporting himself and had required the care of some other person or persons, indicating that he was insane and truly unfit to plead, e.g. the congenital idiot or idiocy (acquired).

I believe that no psychiatrist should be allowed to be called for the Defence

where the accused is not allowed into the Witness Box during Trial, e.g. the case of John George Haigh and the case of Neville Heath.

Furthermore I would suggest that in all other cases the Defence should be offered the opportunity of having a psychiatrist's report rendered on their client. If they decide against this then after the verdict they should not be allowed to produce psychiatric evidence should an appeal be lodged or a reprieve claimed. Should the Defence decide to have a psychiatric report, so should the Crown; and both reports should be produced in Court and each psychiatrist liable to be questioned on them by the Defence, the Prosecution, the Judge and the Jury! Preferably such expert witnesses should be called by the Defence and by the Crown, but not be regarded as expert witnesses for the Defence or for the Prosecution but as expert witnesses in the cause of justice. Medicine must not take sides.

With such a system few, if any, accused not normally certifiable, or certifiable under existing standards but fulfilling the criteriae already mentioned of being fit to plead, would submit to a psychiatrist's report because it might prejudice their case contrary, it would appear, to the prevailing view.

On certain charges psychiatrists' reports are frequently to the effect that the accused would benefit from institutional treatment. That might be so, but might not many others who never get into the hands of the law benefit likewise? However true such a recommendation might be is it any reason or excuse why an accused should not be punished for his crime when there are fellow "sufferers" living within the law? An exception to this rule might occasionally be the life-long homosexual but all the same it should be borne in mind that many practising homosexuals avoid getting into the hands of the law by avoidance of their "natural" desires, by sublimation, by masturbation, by undergoing treatment voluntarily or by the judicious selection of suitable adult partners similarly afflicted and by the avoidance of "pick-ups," importuning or soliciting. This is a man-made world—so far, so lesbianism is not a crime.

What would happen if a near certifiable type were made the subject of a psychiatric report unobserved and without his permission whilst he was not in hospital or in conflict with the law? He would probably resent this most strongly and seek damages. Doubtless, he would seek a psychiatrist to prove him to be normal. Yet under present circumstances it is not difficult to believe that if such an individual subsequently appeared on a grave charge, he would rush into the arms of a psychiatrist with all speed. At times one is almost driven to believe that an "abnormal" is a "normal" who is being charged with an offence, especially a serious offence.

I believe that a great number of individuals who are considered successful in life are psychoneurotics and psychopathic personalities. Probably few of them have severe breakdowns or come into conflict with the law although some of the latter may owe that fact to their skill in avoiding the law. Be that as it may they have high morale in peace and in war and serve their

country well. The former vastly outnumber the latter, but it would be difficult to say which group has the larger percentage of distinguished members.

Then there are the psychoneurotics and psychopathic personalities with low morale and a well-developed instinct of self-preservation especially when employed in an occupation or in an unpleasant environment not to their own immediate personal advantage. They decide to get away from it all and the initiation of the aggravation of their "normal" somatic manifestations is essentially voluntary. Later these pass beyond conscious control with the result that somatic manifestations become so marked as to pass eventually to a state indistinguishable from hysteria. Now hysteria has been called sub-conscious malingering. Some believe that definition bears close scrutiny. Why then, if so many if not all individuals have points of interest to a psychiatrist, should, except in the exceptional cases already mentioned, a psychiatrist report be called for at all in a legal case other than out of purely academic interest? I submit that, as present used, they are an impediment to the law and could quite well be done without in many cases. An intelligent Jury being able to decide whether or not a man is fit to plead and if fit to plead then able to be found guilty and sentenced to death without dramatic calls for reprieve. The E.E.G. is another potential menace which has now appeared. Soon prisoners will refuse to be tried until the Judge, the Jury and the Counsel for the Crown have all been found to have a normal E.E.G. and a psychiatrist's report. It is understood that in America at least 1 in 200 of the population suffers from epilepsy. Nation-wide application of the E.E.G. might greatly increase the percentage.

I believe that the position in which psychiatrists have found themselves is not of their own choosing. They have been forced into this position of deciding responsibility instead of advising regarding an individual's responsibility as a law-abiding citizen. That is all that they should have to say in their capacity as expert witnesses. The jury should alone decide an individual's responsibility for a crime, and they should decide whether or not he is guilty. They may make a recommendation for mercy. If an individual is found guilty of murder then the penalty is death by judicial hanging and there the matter should end, until the case is reviewed by the Home Secretary (England) or the Secretary of State (Scotland).

Psychiatry is not new and, although the practice of psychiatry by those trained in its use has increased manifold since the outbreak of World War II, it is still passing through a very difficult teething stage. Furthermore it must learn to crawl before it can walk.

The use of psychiatry and the skill of the psychiatrist—evident most certainly outside Law Courts—is welcomed by the Medical Profession and by the enlightened public. The benefits of skilled Psychiatry are apparent in everyday medicine. What a pity that its reputation is suffering because of its use in Legal cases. "Trick Cyclists" once an expression of amusement and then affection is once more being used in contemptuous fashion, all because of the medico-legal aspect of psychiatry.

Suggestions have been made to introduce degrees of murder, but surely the "degrees" of murder which exist at present are all that is necessary, namely murder and manslaughter in England and murder and culpable homicide in Scotland.

CONCLUSIONS

- (1) The McNaughten Rules should be abolished.
- (2) Fitness to plead should be decided by a jury after perusal of psychiatric reports, questioning of the psychiatrist by them and their personal impression of the accused. The Norfolk Murder Trial is a case in point.
- (3) Whether or not an accused is certifiable under existing standards the verdict after a trial should be "Guilty," "Not Guilty," or of course, "Not Proven," in Scotland. The jury may or may not make a recommendation for mercy if the accused is Guilty. If the verdict is Guilty, the sentence should be Death.
- (4) In all cases of constitutional psychosis the criteria of fitness to stand trial should be that the accused, up to the day of the crime, had been mentally able to support himself whether lawfully or unlawfully.
- (5) Except in cases, obvious to a layman, where the individual is unfit to plead, psychiatric reports should merely be a statement of fact concerning the individual's psychogenic constitution, and not to be used as a method of evading justice in whole or in part.
- (6) Psychiatric reports should be forbidden for the defence when the accused is not allowed into the witness box.
- (7) The Defence should not be allowed to request a psychiatric report should an appeal be lodged or a claim for a reprieve made if one was not called for during the trial. When a report is called for it should be produced in Court in every case for study and cross-examination by the Judge, Jury, the Defence, and the Prosecution.
- (8) Psychiatrists should not behave as witnesses for the Defence or for the Prosecution but as expert witnesses, and therefore neutral witnesses in the cause of justice. Their reports should not influence the course of justice in cases fit to plead.
- (9) The suggested verdict of "Guilty but with diminished responsibility" should be dropped at once.
- (10) In all trials the two verdicts in England and the three verdicts in Scotland should remain, and so should the two "degrees" of murder in England (murder and manslaughter) and in Scotland (murder and culpable homicide).

ACKNOWLEDGMENTS

Thanks are due to Colonel Simson, late R.A.M.C., A.D.M.S., Lowland District and my Commanding Officer Lieut.-Colonel M. J. Kohane, M.C., R.A.M.C., for permission to forward this paper for publication.

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