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ARTICLES

MORE ON McNAUGHTEN: A PSYCHIATRIST'S VIEW

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The McNaughten rule[1] stems from an immutable philosophical and moral concept which assumes an inherent capacity in man to distinguish right from wrong and to make necessary moral decisions. An apparent contradiction exists between this point of view and that advanced by students of human behavior whose thinking is based largely on data, experiences, and observations derived from clinical practice and psychoanalytic work. Clinicians have amassed considerable evidence which indicates that pathological states of either a functional or organic type can develop in individuals which may impair or nullify their capacity to make moral decisions, or which interferes with their ability to recognize a given act to be wrongful. Despite this, and the immense overall advances made in psychiatry during the past 30 years, no scientifically valid criteria has yet been established which would enable clinicians to project their findings into legal counterparts, especially into that narrow test of insanity adopted by most American courts.

A multitude of abnormal mental states extending from emotional maladjustments to severe dementias (deterioration of intellect), including all types of transitory mental states, are now recognized. In some disorders, consciousness may be profoundly clouded while in others the degree of dissociation may have less severe implications. In still others the characteristic findings involve delusional thinking, which ranges from those in which the paranoid mechanisms[2] are barely perceived by the untrained to obvious overwhelming delusional incoherence which even laymen can recognize. Some of these abnormal mental states arise from organic brain damage while others are classified as functional for the reason that no demonstrable brain damage exists. Included in this delineation are the "psychotic"[3] and "neurotic"[4] con-

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1. McNaughten's Case, 10 Cl. & F. 200, 8 Eng. Rep. 718 (1843).
2. Commonly delusions of persecution and grandeur.
3. A psychosis is any diseased condition of the mind characterized by mental aberration. The insanities are included. Failure to remember is an outstanding symptom. 2 GREY, ATTORNEY'S TEXTBOOK OF MEDICINE § 96.12 (3rd ed. 1960).
4. Neurosis is a vague and indefinite term that may include many conditions and a term not open to exact scientific definition except to say that we deal with a disorder of the nervous system not dependent upon any discoverable lesion. The common meaning includes traumatic neuroses, hysteria, and people who appear to be easily disturbed in relation to their emotions. *Id.* at § 96.15.

ditions. The McNaughten rule, because of its rigidity, is unable to accommodate this host of abnormal mental states. Whatever value the rule may have is negated by the fact that man's responsibility is measured in absolute terms. He is either infinitely responsible or not responsible at all; the rule requires an expert to testify in all black or all white terms. The greatest defect lies in the fact that the legal definition of insanity fails to take into account the wide range of conditions between the extremes of full responsibility and no responsibility at all. Measuring with such a narrow concept of responsibility has no realistic application when one considers the complexity of human behavior with the imponderable conflicts which affect it. The psychic, cultural-physical and psychological dissentions should all be considered. Yet in most of the courts of the land, the antiquated McNaughten rule is followed which pays little attention to the complexities of human behavior. One who has had the opportunity to observe homicidal trials notices a peculiar artificiality about the manner in which the insanity test is applied, and realizes that valid scientific needs are not met. Indeed, the whole question is approached as a matter of expediency rather than a matter of scientific truth. This rule of expediency is applied by some courts with an alarming degree of cynicism, resulting in basic injustices.

Laws change slowly, and for good reason, but the McNaughten rule appears to hold its ground with more than usual stubbornness. The resistance to change is deeply rooted and the widely spread sources of the resistance are largely emotional. Among jurists, attitudes vary. Some would retain the rules on practical grounds; others express frank anxiety over the effectiveness of substitute procedures. There are finally those who express fear that revisionists would threaten the whole concept of penology.

The opposition, too, is becoming more sustained. It comes not only from the medical but the legal profession as well—they base their case on the increased enlightenment concerning crime and criminals. The inspiring jurist Cardozo succinctly summed up the issue: "The present definition of insanity has little relation to the truths of mental life." If this be true little more should be said.

Indeed, the truths of mental life are such that actions of man are no longer judged in moral terms alone. This lesson is learned in everyday life, not only in our clinics but in our schools and homes. The problems of maladjustments and deviations from normal behavior arise from areas far removed from the surface. Conscious motivation no longer adequately explains behavior. Today our main understanding of behavior is developed by probing into the unconscious activity of man to uncover dynamisms which give us insight as to how and why man behaves the way he does. Even this may not suffice in instances where neuro-physiology plays an important role. Here the understanding of criminal-pathology is not limited to a grasp of psycho-

logical function alone, but also may necessitate an understanding of brain chemistry and metabolism.

The time has now come for society to honestly appraise the facts and to face the McNaughten controversy directly. When we find ourselves in the position of needing to execute a pathological killer to satisfy certain retaliatory impulses, stored up as a result of the commission of a heinous crime, and to give permanent assurance that this offence will not recur, then let us acknowledge candidly what we are doing. Let us not delude ourselves that we have accorded the defendant a fair consideration through due process of law and have weighed all the moral and psychologic issues involved. We are seeking the extermination of a dangerous person and we are seeking revenge.

Wise judges recognize the two sides to this difficult question and the immense difficulties of reconciling theory and practice. They also know that were the death penalty eliminated, the McNaughten rule would become an obsolete vestigial: Indeed, the entire McNaughten issue will be by-passed when penal treatment takes into account not only the offense, but the condition of the offender as well. The McNaughten rule will be forgotten when penal treatment is so organized as to provide rehabilitation to the offender while at the same time allowing reasonable punishment to preserve what deterrent effects it may in fact have.

Since the clinician's case against existing procedures is primarily based on clinical data, a review of certain aspects of psycho-pathology is necessary. It should first be noted that the incidence of pathological crime is very high. In classification studies in penal institutions this writer observed the incidence of severe psychopathy in as many as forty percent of all inmates. As much as one-fourth of these offenders belonged to psychotic groupings. Although a criminal act may appear to have had conscious and rational determinants, a careful study, utilizing modern clinical techniques, may demonstrate that much more significant unconscious elements contributed causally to the behavior pattern of the criminal. While the behavioral act appears to be consciously directed, unconscious processes remain its true determinants.

Criminologists have long known that we cannot understand the true nature of criminal behavior by observing that narrow field of mental activity called consciousness. Rather, we must center our studies on the total individual including his psyche conscious and unconscious. Consideration must also be given to that vast complex covering affective needs, psychological experiences, neurogenic, biological and even constitutional factors. Disturbances in any of these areas may profoundly influence behavior. It thus becomes clear why adequate studies in psychopathology involve careful and detailed case studies. Also helpful and necessary are the utilization of tech-

niques which probe deeper into the individual's thought processes (*e.g.*, narcoanalysis, hypnosis, and electroencephalographic studies), clinical psychologic testing procedures including psychometric and projective tests, and thorough physical examinations. The data gained from these diverse approaches may shed considerable light on why the offender acts as he does, and may provide a clinical orientation useful in treatment and in prevention of such disturbed behavior.

There is one particular psychopathologic condition among the many observed in connection with criminal behavior which is of particular interest. This is a mental state characterized by a splitting off of consciousness, better known as a "dissociative reaction." Dissociative reactions may appear in mild or severe forms. A few develop following the criminal act itself; more often, the criminal act is perpetrated in the course of the dissociative reaction. Often consciousness may be clouded to a varying degree. What actually takes place in a dissociative reaction and the psychological mechanism involved should be of vital importance to anyone interested in determining responsibility.

In the acute dissociative episode, powerful unconscious psychologic tensions split off from the rest of the personality and its controls, and temporarily gain ascendancy as a conscious motivational force for a short period until the crisis is over. How exactly this may come about is not always discernible. The normal control mechanisms may be weakened by external environmental stresses, by internal psychic stresses or by chemical agents such as alcohol or certain drugs. Coincidentally certain present day life events may simulate certain traumatic early life situations, and activate primitive emotional reactions appropriate to that early time but now carried out with the savage strength of the more physically mature individual. Once the acute episode is over, the person will not know the reason behind his behavior and may attempt to rationalize his act. He may well have an amnesia for the events of the crime. It is particularly important where acts of violence occur, for it is here that it is most often observed. This state of affairs should certainly be anticipated since anyone who must utilize an assaultive or homicidal solution to his problems is clearly suffering from a severe personality disturbance. This observation is borne out in studies of hundreds of cases where violence occurred.

An impartial scientific exposition of this curious phenomenon is difficult to attain in the courtroom. A well-meaning expert finds himself helpless in the crossfire of partisan interrogation, and in the overall confusion, his orderly scientific presentation of the subject can easily degenerate into a semantic exercise. After all, the issue is "sane or insane." Does he know right from wrong? One judge, unsympathetic to psychiatric data, wished to reduce the testimony to the barest elements. Did the defendant know he had a gun in

his hand or did he think it was a tomato? If this judge was convinced that the defendant believed he was holding a tomato, he might have entertained the concept of insanity, although to a psychiatrist such a response would represent simulation rather than psychosis.

The mechanisms involved in the dissociation phenomenon are somewhat akin to the mechanisms observed in the neurosis known as conversion hysteria. Through the use of hypnosis, Freud established the first insight into the unconscious process, and the manner by which it finds expression in a physical or mental symptom. These early discoveries permitted him to build his theory of neurosis, and to define the curious and intricate role played by unconscious psychological mechanisms. In hysteria, one observes how part of the psyche, repressed and unconscious when strongly charged, can split off from the main stream of consciousness and gain an autonomy of its own design. This is the explanation for that rare condition known as the dual personality.

Knowledge gained in the study of hysteria can be of value in analyzing offenders since among many, one often denotes something comparable to hysterical mechanisms at work A thorough analysis of these individuals points up the manner in which their deeply repressed instinctual needs split off from conscious controls in terms of behavior. Also exhibited is a failure on their part to recognize the real psychologic reasons for their behavior. Physicians for many years were bewildered by patients who suffered from a loss of body function (blindness, paralysis, etc.) for which no organic explanation could be found. They were even more intrigued by the calm and complacent response of the patient ("la belle indifference") to his disability. They could not satisfy themselves that the patient lacked voluntary control, thus there existed the temptation to accuse him of malingering. The impression of deception was strong. The frustrated therapist predicated his treatment on the assumption that the patient was accountable for his symptoms and voluntarily able to dispense with them. Today, with greater enlightenment concerning the mechanisms of dissociation and conversion, the approach has changed.

Quite often one finds a passive, inhibited, innocuous looking offender, on the surface quite respectable and compliant, who has been involved in acts which include arson, sexual aggression and violence—acts which do not appear in keeping with his surface impression. In probing the personality of such an individual, one generally uncovers crucially significant etiologic factors which were masked from view. A good example of this is the case history of an attractive, conforming and intelligent young woman who killed her husband with a gun. As the amnesia cleared, she explained her act on the basis of fear, panic, and self defense. Her husband, who had been drinking, threatened to do her bodily harm. Exploring the deeper mental activity of this woman yielded a clearer understanding of what had actually occurred. Over a long

period of time resentment and hostility for a very possessive and controlling mother had been built up in this woman. The resentment could not be expressed because of an equally strong need to be protected and cared for by her mother. She entered into marriage as a means of escape, but found that her husband related to her the same castrating and controlling attitudes that the mother had previously expressed. During one particularly intense argument, she saw in him the image of her mother, and she killed him. Her real target was her mother; her husband was the helpless victim of displaced primitive infantile feelings.[5]

Arguments concerning states of dissociation receive little attention at insanity hearings. Examination of the defendant is usually made at a considerable period following the occurrence of this acute transitory phenomenon. Equilibrium has been restored in the personality and there is little overt evidence of mental disturbance, even in cases where the latent condition was of a psychotic nature. Mental probing with depth techniques might reactivate the process, but such examinations are rarely employed in pre-trial situations. At best, these psychological disturbances occupy a borderline position, although from a purely medical point of view, a serious question concerning responsibility can be raised.

The situation differs however in the case of the psychotic (medically insane), whose condition presents a much more gross type of pathology. Here reality testing is impaired, disturbances in mood may exist, and delusional thinking may or may not be present. Unless the dementia is very obvious, the McNaughten rule, applied in its strictest sense, may find such a person sane. One has to bear in mind that with the McNaughten rule, a person who, though reacting to a delusion, recognizes a given act to be wrong is still held responsible for his act. The capacity "to know" is tested and interpreted differently by the contending parties.

A delusional condition, as any clinician knows, can exist in persons who are clearly oriented to their physical environment. Such an individual recognizes people, he knows the date, he can correctly add a row of figures, he may open the window to get some air and he may recognize the gun to be a gun. This same person may be suffering from the worst form of insanity. Often prosecutors innocently seize upon the presence of such a clear orientation as absolute confirmation that a defendant knows what he is doing. This type of mistake must be corrected and the responsibility of this task rests with the clinician. He must more clearly impart an understanding of a psychosis to his legal colleagues, thereby making the contradiction of "a madman whose mind appears clear" understood and accepted.

5. Query—Is there criminal responsibility here any more than with a somnambulist for events occurring in his sleep-walking? The phenomena occurring in the above case involve similar mental processes.

In paranoids, an impressive sequence of logic can be observed in which every argument is supported by evidence, or what they believe to be evidence, and also by extensive documentation. The systematized delusional condition becomes increasingly complex as the person, from real experience, collects facts which support his contention. The half truths, the falsifications, the misinterpretations of experiences may all escape notice except by a trained observer. Students of mental pathology recognize that delusional thinking is a crucial factor in insanity. Where a true delusional idea exists, it cannot be considered an "isolate," but it must be looked to as part of a basic, widespread and infiltrative disturbance in the total thinking process. The deeper one probes, the more extensive is the evidence of pathology. Moreover, from experience it is known that delusional trends are nourished by powerful emotional tensions which are sufficiently strong to impair the capacity to test reality and to project distortions of perception into the environment. Delusional ideas have a transcending impact on behavior—at times to the exclusion of any other consideration. That part of the personality which remains intact becomes the helpless vehicle which carries out the mandate of the delusional needs. Since delusional thinking may become the dominant and all-pervasive element in the personality, a defendant may appear to know what he is doing because he can carry out a plan and know how to use a weapon, yet may not distinguish the true nature and quality of his act, nor the implication of it.

These principles are well illustrated in the Horton Case[6] which concerned an 18-year-old boy who was dominated by the singular thought that he must kill his father. By such means he would satisfy an all-powerful need to possess his mother. There were no conflicts over his objective, he had no scruples, nor would he compromise. He had one and only one thought: the death of his father. Questions of sanctions, the death penalty, rightness and wrongness were issues that received no consideration. When the act was consumated, no remorse was experienced. The emotional response remained flat. Among medical experts not involved in partisan roles there appeared to be general agreement that this youth was schizophrenic. However, the issue of the youth's sanity was not decided on this basis, but rather, on his capacity to know intellectually that his act was wrong.

More recently, a serious minded bible student was obsessed with the impulse to kill a young woman with whom he had been intimate. The impulse to kill appeared to arise from a delusional sense of guilt when she refused to marry him. He proceeded to carry out his homicidal plan. There appeared to be no compromise, and redemption was to be gained only through her death. Murder was the ritual of purification. This represented his deepest moral sense. Here again, the electric chair, life imprisonment, other fac-

6. People v. Horton, 308 N.Y. 1, 123 N.E.2d 609 (1954).

tors which are believed to be deterrents were of no consequence in his reasoning.

The apparent problem which faces the courts in such cases is the inability to relate the medical facts to the legal judgments. The psychiatric point of view stresses the basic incapacity of the offender to "know" what he is doing. The prosecution, approaching the problem from a different vantage point, will show that the defendant was able to form an intent, to deliberate his plan, and to carry out in logical sequence a number of steps to achieve his goal. This, they feel, is sufficient evidence to sustain responsibility.

There are many case histories which illustrate the dichotomy between the legal and the medical points of view. For example, in a recent study, an old paranoid was involved in one difficulty after another. He repeatedly lost his position because of clashes with his superiors. He recited a long list of fancied abuses, he misinterpreted the motives of everyone and saw in the actions of others, designs harmful to himself. He threatened legal reprisals and became involved in diverse litigations, each one enmeshing him further in difficulty. As the injustices mounted the need for solution became increasingly urgent. If this person were to attempt a solution to his problem through some criminal act, what would be the status of his responsibility? He is skilled, intelligent, scholarly and oriented. He could be shown to have mental capacity, that is, to "know": On the other hand, the criminal act is quite clearly the product of a delusional state of mind.

Deluded individuals rarely develop true moral insight. A middle aged man waited in death row for his execution. His crime of violence had distinct paranoid markings. Twenty years previously he had committed a somewhat similar offense. He suffered from extreme jealousy coupled with delusions of infidelity. With death only weeks away the defendant was solely concerned with the righteousness of his cause and with the injustices suffered. He walked to his death still focusing on details to prove his point rather than with concern that he was about to die.

Attention will now be drawn to yet another group of mental ills, an area which is characterized by defects in the controlling mechanism. The capacity to control one's impulses has not received much attention except for the issue of "irresistible impulse" allowed in some states. This question arises most often in cases where "compulsion" is the main symptom. There are offenders who suffer from compulsions so intense in character that there is serious question as to their capacity to contain themselves. Unlike the other clinical conditions described, these persons recognize the full moral implications of their acts. They may suffer from intense remorse, but are relatively helpless in the struggle against their instinctual surges. In these situations the ego faculties appear to remain intact. The most typical compulsive crimes include arson, kleptomania and the sexual group encompassing voyeurs, exhibitionists, pedophiles.

The psychiatric nature of these disorders is quite obvious and treatment may be achieved within the framework of correction. Presently, efforts are being made to develop special treatment facilities. Some of the more progressive states have made a beginning through special statutes regarding the compulsive sex offender. The special treatment afforded this group may include placement in a hospital type setting with an indeterminate sentence.

An undesirable facit, which is enhanced by the McNaughten rule, is that the medical expert often creates a poor impression in court. Popular image sets him up as either a confused incompetent or as an unethical partisan prepared to become an advocate of the highest bidder. Such evils do occur at times and they do reflect unfavorably upon the entire profession. However, the effort of the medical expert is put to a greater disadvantage by the limitation of the legal insanity concept and by the narrow manner in which it is applied.

Criminal psychopathology is rapidly becoming a specialized branch of psychiatry. Clinical efforts are being directed to a deeper understanding of the psychological factors involved in the causation, development and end results of crime patterns. An attempt is being made to show the relationship between personality disturbances and the crime committed. Also, increased emphasis is being placed on the so-called character disorders. The chronic difficulties in these individuals stem from early disturbances in their family and personal relationships. Greater insights are being obtained concerning the neurotic manner in which they handle their traumatic experiences. In time, we shall be able to classify with greater accuracy the causal mechanisms, the dominant motivations and the modes of expression of this important group of cases. Repetitive criminal patterns are often symptomatic of character disorders and are usually refractory to treatment. The label of "psychopathic personality" commonly denotes this group. The term "psychopathic personality" implies a "definite entity," which however, is not the case. There is a widely prevalent tendency to include under this broad term practically every aberrant condition short of gross dementia. This is particularly unfortunate inasmuch as borderline psychotics and latent psychotics are often included in this category. In the courtroom the diagnosis "psychopath" is used with the special emphasis that psychopaths are "sane." Not infrequently the schizophrenic[7] is labelled psychopathic for the particular purpose of supporting testimony to the effect that he is responsible.

Few forensic experts would feel comfortable describing a person as schizophrenic and then rendering testimony to the effect that this schizophrenic knew the nature and quality of his act. In general, medical men regard psychosis as a condition which impairs or nullifies responsibility. In schizophrenia and other psychosis, the ego is not intact, but rather is damaged and disrupted. Reality testing is impaired and the response to reality is

distorted. Contrasting with this, the ego of the neurotic generally remains intact even when the personality loses control over part of its function. The neurotic may know and partially understand the nature of his act, and its moral qualities, as for example, in the case of compulsive criminals who perceive the immorality of their acts and experience appropriate guilt. On the other hand, to identify the acts which arise from a delusion, or from other aspects of a schizophrenic process, as those of a medically sane individual simply on the strength that the physical environment is apparently well perceived, or on the basis that the patient can engage in a logical sequence of premeditated movements is fallacious. It contradicts the concepts of medical responsibility, violates common sense, leads to abuse in applying the McNaughten principles, and basically destroys the very spirit which created it.

When a prosecutor decides to try a case, he can, except in rare instances, prove any psychotic "sane." Thus, a prosecutor may find himself in the very unenviable position of having to seek the maximum penalty lest he be charged with weakness by his electorate. The emotionalism surrounding a major case and its political implications are factors which cannot be ignored under our present judicial system.

When reading psychiatric testimony, one finds pages and pages of what is basically irrelevant nonsense pertaining to whether the offender knew what he was doing and why. This can be expected since many times the expert is being forced into the role of an advocate. Attempts are made to relate disparate medical and legal concepts resulting in an outpouring of semantics which serves to confuse all principals in the trial including the jury. If the McNaughten rule is applied for the purpose of providing greater safety to the public, then this fact should be recognized. The rule should not be employed as a "smoke screen" to carry out the peculiar retaliative philosophy.

Even as a punitive device, rigid application of the McNaughten rule misses the mark since the death penalty is applied less frequently and life sentences generally permit release from prison after 10 or 20 years. The McNaughten rule will ultimately die, not because the debate will be resolved, but because of the eventual evolution in penology. One sees in the future that individualization of treatment will increasingly prevail, that death sentences will be abolished, and that isolation and treatment will dominate our penalties. Special facilities will be established for the habitual and abnormal offender. An enlightened philosophy will prevail that affords full protection to the welfare of society while it directs its attention to the care and treatment of the offender. Research will add to our knowledge of cause and effect, and will contribute to efforts at prevention and treatment. Institutional care will be so geared as to ensure that those offenders who do return to society will, in all reasonable likelihood, not revert to prior dangerous patterns of behavior.