

PSYCHIATRY,
THE LAW
AND
MENTAL HEALTH

By

STANLEY PEARLSTEIN



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PSYCHIATRY, THE LAW AND MENTAL HEALTH

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Chapter 1

INTRODUCTION

This is a monograph on insanity as viewed and conceived by the disciplines of psychiatry and law. Insanity differs from sanity in degree and not in kind. Some place on a theoretical line from zero (sanity) to one hundred (insanity) psychiatry, law and other disciplines of the social sciences place a mark, saying in effect, on this side is sanity and on this other side insanity. It must always be kept in mind that there is not a sudden change but a gradual almost imperceptible one. Most important, the different disciplines will disagree as to where this mark is to be placed for any single person and even within the same discipline, the mark may differ depending on the question asked. Thus in law, a person may have sufficient mental ability to make a valid will, that is, be pronounced sane, and at the same time, not have sufficient mental ability to have the necessary criminal intent to commit a crime, that is, be pronounced insane.

As Justice Holmes once wrote:

- There is no doubt that in many cases a man may be insane, and yet perfectly capable of taking the precautions, and of being influenced by the motives, which the circumstances demand. But if insanity of a pronounced type exists, manifestly incapacitating the sufferer from complying with the rule which he has broken, good sense would require it to be admitted as an excuse. ^{1/}

Definitions are of course of the utmost importance, and to simplify matters, the three elements of this book will be defined at this point. Unfortunately, the word insanity has no technical meaning either in law or medicine, and it is used by judges and legislatures indiscriminately to convey either of two meanings: (1) any type or degree of mental

defect or disease; (2) such a degree of mental defect or disease as to entail legal consequences, e.g. as to require commitment to a mental hospital, the appointment of a committee or guardian or to avoid a contract or relieve from responsibility from crime.^{2/} Hereinafter, the first meaning will be used in this popular sense of referring to the as yet undetermined mental status of an individual. Where this has been determined, more precise psychiatric and medical terminology will be used.

Psychiatry is the simplest element to be defined. It is merely that branch of medicine concerned with the study, recognition and treatment of disorders of the mind.^{3/} The alert reader will at once be curious or question whether this definition includes organic disorders of the mind. Strictly speaking from the point of view of medicine, it does not but since this is a book on the psychiatric and legal juxtaposition of insanity, it must cover both types of mental disorder. Actually, the medical specialty of neurology covers most organic mental diseases, although its exact definition is the branch of medicine concerned with the structure and organic functioning of the nervous system. An example of the interrelation of these two medical specialties will suffice. In order to qualify in the specialty of psychiatry, a doctor must not only pass the special boards on psychiatry but also several selected boards in neurology. This latter however does not qualify him as a neurologist. If he passes both sets of full boards, he becomes a neuropsychiatrist.

In order to define the third element, law, it is necessary to make a preliminary diversion into the field of political philosophy. Any community, i.e., a group of two or more people which has an actual or implied agreement or understanding by which peace and order are maintained is a polity. This is deliberately made broad enough to cover the situation of two castaways on a desert island to the complicated legal-economic-social structure of an entity like the United States of America.

Law then is the means by which an entity maintains peace and order internally, which is its polity. It is tripartite in organization consisting of making (legislative), interpreting

(judicial) and enforcing (executive). Any polity's legal system is always of this threefold nature even though one or two of these parts may seem to be absent as in the case of a dictatorship or the system inaugurated by the great law-givers of the world such as Moses, Solon, Lycurgus, Hammurabi or Mohammed.

Since this book concerns itself with Anglo-American law or the common law, a further complication ensues because the common law is inductive, reasoning from the particular to the general, introduced into Western thinking or philosophy by Francis Bacon, as opposed to legal systems based on Roman Law which is deductive, reasoning from the general to the particular. Thus in Anglo-American non-statutory law, we are confronted with a series of judicial decisions or precedents each defining insanity **for the purposes of that particular case**. From these individual cases, general principles can be induced (in popular parlance we generally use the words infer or deduce despite the fact that in logic they are diametrically opposed) from which theoretically a new situation or legal case can be determined.

But actually, no case is identical with a previous one or else there would be no need for litigation (justiciation) and we are left with a series of cases which should point in one particular direction, but often instead point in almost every direction of the compass. So while the term law as used herein has been accurately defined, when we come to determine the law as applied to a particular situation in which the decision turns on a definition of insanity, we find ourselves wallowing in a mass of verbiage. Shakespeare, not unacquainted with the law, gives to Hamlet, his most eloquent hero at his oratorical zenith the following reply to Polonius' query as to what he is reading, "Words, words, words." It is a pithy, laconic epitomization of Anglo-American law's greatest defect.

Footnotes

1/O.W. Holmes, Jr. "The Common Law," 1881 ed., p. 109.

2/Hinsie & Campbell, Psychiatric Dictionary, page 387B.

3/Compare the more detailed and psychoanalytically-oriented definition from Webster's Unabridged Dictionary, 3rd ed., contained in the Appendix.

Part I—PSYCHIATRY

Chapter 2

PSYCHIATRIC THERAPIES

Let us emphasize again that this book is not about insanity and psychiatry and law, a combination of elements in the sense of physics, but about psychiatry and law as they fuse on the subject of insanity, a new molecule chemically speaking. This is usually called forensic psychiatry which is defined by Dr. Winfred Overholser as "the application of psychiatric knowledge and techniques to legal procedures."^{1/} Psychiatry itself is a relatively new medical specialty and the word itself came into general usage only about fifty years ago.^{2/} Previously a specialist in mental illnesses was often called an alienist, and up to about forty years ago, the latter word was used more specifically to mean a forensic psychiatrist.

While psychiatric therapies are not properly a part of this book, they are dwelt on in this chapter at great length because of the importance to the intelligent layman in understanding the fusion of psychiatry and law above referred to. Also, as the reader will come to see, they complement the discussion of psychiatric disorders contained in Chapter 3.

The three portions of psychiatry covered here are curative psychiatry, preventive psychiatry and social psychiatry.

Curative Psychiatry

Classical Psychoanalysis

Psychoanalysis is probably the most important of the curative therapies since its invention by Freud (with Breuer) in 1893 made his reputation as one of the Titans of medicine, leading the Second Psychiatric Revolution as Zilboorg phrases it,^{3/} and its preeminence over all other curative therapies though the eclectic therapies have been making inroads on its one time near-monopoly.

Hinsie and Campbell's Psychiatric Dictionary defines psychoanalysis, paraphrased as follows: The separation or resolution of the psyche into its constituent elements. The term has three separate meanings: (1) Freud's procedure for investigating mental processes by means of free association, dream interpretation and interpretation of resistance and transference manifestations; (2) a theory of psychology developed by Freud out of his clinical experience with hysterical patients; and (3) a form of psychiatric treatment developed by Freud which uses the psychoanalytic procedure (definition 1 above) and which is based on psychoanalytic psychology (definition 2 above). Freud considered the cornerstones of psychoanalysis theory to be: the assumption of unconscious mental processes, recognition of sexuality (and aggressivity), and the Oedipal complex. Ernest Jones has delineated seven major principles of Freud's psychiatry:

1. Determinism—psychical processes are not a chance occurrence.
2. Affective processes have a certain autonomy and can be detached and displaced.
3. Mental processes are dynamic and tend constantly to discharge the energy associated with them.
4. Repression.
5. Intrapsychic conflict.
6. Infantile mental processes—the wishes of later life are important only as they ally themselves with those of childhood.
7. Psychosexual trends are present in childhood.

Many people think of it as synonymous with Freudianism since it is the monument of its founder's work in medical psychology^{4/} and his well deserved claim to fame.^{5/} Essentially it is a depth psychology, using free association and the couch so that the therapist can be an unobserved observer and working on Freud's structural hypothesis of a tripartite mental apparatus denoted by him respectively as the id, the instinctual reservoir of man having its basis in the anatomy and physiology of the human being and which is in the unconscious, operates on the pleasure principle, seeks immediate discharge and is not concerned with reality or

consequences; the ego, the control apparatus of the psychic structure, responsible for perception, thinking, memory and judgment, controlling the gateway to motility (spontaneous motion), organizing and synthesizing, functioning on all three levels of conscious, preconscious and subconscious, characterized among other things by words, ideas, logic, order and a sense of time and operating at the conscious and preconscious levels on the reality principle, e.g. postponing a present pleasure in favor of a later, greater pleasure; and the superego, the latest to develop of the psychic structure, arising out of the ego at the time of the resolution of the Oedipus complex, containing the rewarding and punishing values of the parents, having the ego-ideal and conscience as different aspects and operating on all three levels but mainly on the unconscious.

All neurotic phenomena are the result of an insufficiency of the ego's normal function of control, either because the stimuli which the ego is asked to handle are too much or because it is too depleted in energy to handle the ordinary stimuli. A neurotic conflict, caused by the damming up of the instinctual tensions and the overwhelming of the ego, is structurally a conflict between the id and the ego, with the superego participating in a number of ways. In order to be a neurotic conflict, one aspect of it must be unconscious. The external world of reality also influences any neurotic conflict.

Classical psychoanalytic therapy's aim can be stated in a number of ways. Ultimately, it aims to resolve the infantile neurosis which is the nucleus of the adult neurosis, and thus do away with neurotic conflicts. From the ego's standpoint, it intends to make possible the ego's confrontation with the id, superego and the external world, so that these three agencies of psychic life will not force it to irrational and inappropriate acts and defenses. It seeks to make the unconscious conscious, to overcome the infantile amnesia so that the hitherto forbidden instinctual strivings and memories are made conscious. It aims to redistribute psychic energies so that the ego has more energy at its disposal once it is freed from the burden of maintaining

previous defenses thought to be necessary. Finally, psychoanalytic therapy differs from others in that it strives for structural, i.e. permanent changes in the relationships among the id, ego, superego and the external world.

There are several other concepts of Freud's to be mentioned in order to understand fully his classical psychoanalysis. Resistance refers to all the conscious and unconscious impulses, emotions, activities and motives of the patient which oppose the therapies aims to establish a rational ego. Defense is quite similar to resistance but refers only to the ego's conscious and unconscious operations. Transference is all the feelings that the patient experiences toward the analyst which are displaced from figures in his past. These feelings are intense, inappropriate, changeable, infantile and ambivalent. All psychotherapies are in part based on transference reactions, but psychoanalysis is the only one based on systematic interpretation of transference phenomena.

There are several systems of psychotherapy which, while not Freudian in the classical sense just described, are so close to Freud's and deriving so much from his writings, teachings and theories as to be called variants of psychoanalysis or quasi-Freudian systems. Among these are the therapies connected with the names of Harry Stack Sullivan, Erich Fromm, Karen Horney, Alfred Adler, Carl Jung, Otto Rank and Lewis R. Wolberg.

- The Interpersonal School

This covers Harry Stack Sullivan's contribution to the theories and techniques of psychotherapy and properly is one of the psychoanalytic therapies. Among man's basic drives, called "satisfactions" are his need for sleep, rest, shelter, food, drink and lust satisfactions, and these can be appeased only in interaction with others. An adult can satisfy these needs largely by himself, and thus Sullivan's thesis seems faulty. But Sullivan takes a dynamic view of man's life, and in the case of a newborn infant, it is obvious that man is dependent on others to satisfy his needs, originally his parents. And as he grows up and his needs and environments change, he similarly attempts to satisfy

his needs with others, arriving at security, tension or some intermediate stage depending on his success. Putting aside Freud's structural concept of id, ego and superego, Sullivan emphasizes the one-ness of the person and the interdependence of all.

Cultural School

Fromm's work is usually called by this name and is also one of the psychoanalytic schools. He is more in the tradition of philosophy and sociology than the others considered here. He pictures man in relation to his culture and his attempts to fit in with it or to change it. He sees living as two types of relation to the outside world: acquiring and assimilating things, and relating to people. The orientation by which an individual relates himself to the world, partially or completely, forms the core of his character. In character types, Fromm lists the non-productive (or neurotic) and the productive (or healthy). The non-productive consists of the following types: the receptive orientation is typified by the person who feels that all that is good or necessary is outside himself, who needs love yet cannot give love, who looks for answers to others but makes no effort to get them himself and who looks for "miracles." He tends to optimism but tends to anxiety when the outside source of help seems to be dwindling. The exploitative orientation has the same premise as the receptive orientation, i.e. the source of all good is external to the individual. He takes what he can by cunning and action, and is pessimistic, suspicious and angry. The hoarding orientation believes an individual's security depends on what he can save or own. He attempts to possess others rather than love them. He is obsessively rigid and obstinate. The marketing orientation is peculiar to our times and comes into being in a highly organized capitalistic society such as America's. Success as a commodity is the only measurement and personal qualities have no value. Social mobility and the constant breaking and reacquiring of social ties leads to isolation, loneliness and a feeling of hopelessness and despair.

The productive character on the other hand is he who is able to use his powers and realize his potentialities. He is free and not dependent on someone who controls his powers. He is at one with himself, well integrated and an individual.

Fromm's aim is not merely to have the patient learn to adjust to his culture, but to have him realize his potentiality and individuality which may transcend his own culture.

Holistic School

Karen Horney's school of psychotherapy is called holistic, holism being defined as the concept that all aspects of living must be studied as a single entity. The study of the parts cannot explain the whole, because the latter is something different from the summation of its parts. There are several sciences relating to the person but none of the person. Physiology, psychology and sociology deal with artificially separated single aspects of the human organism, but there is no single science at present that studies the human person in its totality. The holistic viewpoint takes a stand diametrically opposed to Euclid; it insists that the whole is greater than the sum of its parts.

Together with Harry Stack Sullivan's interpersonal approach, Karen Horney's school represents the two chief branches within the "dynamic-cultural" school of psychoanalysis. Horney never explicitly formulated her methodology which was empirical, descriptive and intuitive, inductive and pragmatic and her primary interest was therapy. Theory was derived from therapy. It is growth oriented; it shows that much that previously was considered restricted by the individual's constitution merely represents a block which can be lifted or removed. Like Fromm's, it is an optimistic philosophy. She denies Freud's theory that man is by nature sinful or ridden by primitive instincts, which if true, cannot be relinquished by anyone. Hers is a morality of evolution wherein man progresses to a higher and higher level of morality of self and group by an ever increasing awareness and understanding of self.

Since her theories were never fully developed and she is, in effect, a disciple of Heraclitus, the classical Greek philoso-

pher whose theories are based on Becoming, not Being, it is easiest to study Horneyism by studying her four major books in order of appearance: "The Neurotic Personality of Our Time," 1937; "New Ways in Psychoanalysis," 1939; "Self-Analysis," 1942; and "Neurosis and Human Growth," 1950.

In the first, she develops and describes the neurotic person who lives among us, their many similarities and the effect of different cultures on the persons affected. Neuroses are generated as well by cultures as by individual experiences. Sociology comes into the picture to join with psychology in understanding and curing the neurotic person. Horney emphasized the complexity of cultures and the individual reactions to, with and against the norms established by them, whereas to Freud, culture was the mass product of individual biological drives.

While still remaining within the general fold of psychoanalysis, Horney aired her differences with Freud in her second major book, "New Ways In Psychoanalysis." She approved his doctrines of strict determinism of psychic processes, the determination of actions and feelings by unconscious motivations and that the latter, which drive us, are emotional forces. She agreed with his concept of repression, his emphasis on the meaningfulness of dreams, that neuroses arise out of conflicts, that neurotic anxiety plays a crucial role in neurosis, and that child experiences play an important role in neurotic development. However, all these ideas were formulated in ways differing from Freud's. Finally, she emphasized Freud's furnishing the methodological tools of therapy: the concepts of resistance^{6/} and transference and the free association method.

But Horney did differ with Freud's biological orientation and the genetic, mechanistic, dualistic, evolutionist nature of his thinking. As did many before and after her, Horney severely criticized Freud's libido theory, feeling that unwarranted analogies and generalizations were poor evidence, that the validity of data concerning erogenic zones was highly dubitable, that it gave a distorted perspective on human relationships, that it attempted to explain the whole

from the part and that it limited therapeutic possibilities.

Freud regarded narcissism as instinctually derived, arising from the libido, which being of limited quantity, furnishes less for the narcissist to give to others as love since he expends so much more on self. He assumed normal self-esteem and self aggrandizement to be narcissistic phenomena, differing only quantitatively from the neurotic. Horney, taking a more cultural viewpoint, looked upon narcissism as self-inflation, not self-love with a need not for love but for admiration from others. A narcissist, being alienated from himself, actually cannot love self or others. Narcissistic trends arise frequently, not because rooted in biology, but because our culture produces and places value on them. Fears and hostilities are stimulated and spontaneity curtailed by imposed standardization. Striving for prestige is a culturally prescribed method of overcoming fears and inner emptiness. Freud's philosophy, "The goal of life is death" naturally conflicted with one that held the goal of life is living, and inspiring human hopes of changing and growing.

In actual treatment, Horney valued Freud's discovery that one could use therapeutically the patient's emotional reactions to the analyst (transference) but rejected the idea that these were reactive infantile feelings. She criticizes this as leaving out of account the patient's actual character. Freud's suggestion that the analyst be like a mirror restricts his spontaneity according to Horney. Instead she postulates an analyst who functions as a whole person, using his personal analysis, self analysis and therapeutic efforts to help his patient. Freud's ego was considered by Horney to be a neurotic phenomenon which was not inherent in human nature. It was caused by the squelching of the spontaneous self, leading to an alienation from self. Her therapy aimed at restoring the patient's spontaneity, his faculty of judgment, his spiritual self.

In Horney's third book, "Self-Analysis" she discusses the feasibility, desirability, types and limitations of self-analysis. She contends that the focal point in the whole neurotic structure is what she calls neurotic trends, which are the attempted solutions to early psychic disturbances

which in turn become the source for further disturbances.

These early disturbances cause the basic anxiety which is characteristic of all neurotics and consists in feeling helpless and alone in a potentially hostile world. To cope with this, the child develops neurotic character trends. When moving **towards** people, he accepts his own helplessness, yet tries to win their affection and to lean on them. When moving **against** people, he takes hostility for granted, yet determines, consciously or unconsciously, to fight. When moving **away from** people, he wants neither to belong nor fight, but to keep apart. In each attitude, one of the elements involved in the basic anxiety is overemphasized: helplessness in the first, hostility in the second and isolation in the third. For a normal person, there is no reason why these three attitudes should be mutually exclusive. Each can be used in its proper function, they can be mingled or fused as the occasion demands and by complementing each other, a harmonious and integrated whole can be achieved. But in the case of a neurotic, this cannot happen since neurotic trends are compulsive, indiscriminate and contradictory. And what started within the family extends to all relationships in life, ultimately invading the entire personality and this conflict born of incompatible attitudes constitutes the core of neurosis and is best denominated basic.

Using these basic concepts of Horney which are developed exhaustively in this book, a neurotic during an interruption in analytic treatment or after completion may help himself further to develop a more healthy personality, but Horney warns that it is a radical way and a hard way but not impossible.

Horney's fourth and final book, "Neurosis and Human Growth," is an epitomization of all her previous work and a summary of her theories and concepts. She begins on a high philosophical note defining, in the context of a "Morality of Evolution," man's essential nature which she sees as good, constantly striving onwards and upwards toward self-realization, which every individual seeks unless deprived of a chance to grow. Life is dynamic, never being,