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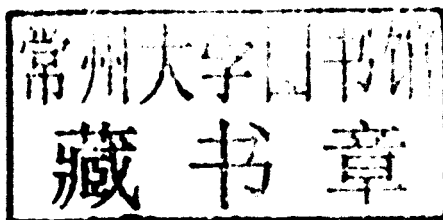


MENTAL HEALTH AND CRIME

Jill Peay

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Foreword

Analysing the links between mental disorder and crime must be one of the most daunting tasks confronting any scholar. It demands at least an adequate working knowledge of the substance and relations of very different and complex fields: criminology, law, sociology, politics, psychology and psychiatry; and it demands that those fields are properly mined, assessed, summarised and synthesised each time their arguments and methods are turned on diverse problems. Almost all the pivotal terms and definitions commonly in use have been or are actively contested, not only because they refer to such elusive and ambiguous phenomena, but also because they have very major consequences both for the administration of criminal justice and psychiatry, and for the lives of individual victims and offenders. Yet the problems they throw up require urgent, daily resolution. There are few who have the skills, learning and judgment to furnish answers, and it is no surprise that the field that has not been well-populated in the past.

A Professor of Law at the London School of Economics, Jill Peay is one of those very few. Her professional history includes a training in psychology at the University of Birmingham; reading for the Bar; employment as a research criminologist at the University of Oxford; and expertise as a socio-legal scholar. She has written copiously on mental health and crime, concentrating on issues raised by ideas of risk, dangerousness and compulsion; the office of the Director of Public Prosecutions; the application of human rights legislation; the working of mental health tribunals and of inquiries after homicide; and law reform, and the reform of the 1983 Mental Health Act, in particular. *Mental Health and Crime* draws on all that extraordinary range, and it amounts to what almost no one else could have accomplished: a virtually encyclopedic review of a massive theme, written judiciously in clear and intelligible language, and with great flair and authority. It treads step by step and with confidence to elucidate a chain of seemingly intractable problems. It has no rivals, and must be read by practitioners, students and scholars in all the disciplines that bear on its theme.

David Downes and Paul Rock

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This book, like most academic books, was a long time in the writing. As a result, the list of people to whom I am indebted is extensive. Rather than try to recall them all, at the risk of inappropriately excluding some, I would simply acknowledge that their contributions are many and varied. Indeed, some people will not realise that I have taken something away from reading their work, listening to them lecture or even just having a snatched conversation, and that I have gone on shamelessly to exploit and probably to misrepresent these nuggets. I know that I have behaved like a gannet, scooping up your gems and germs. I am grateful to you all.

In addition to all those who have given me wonderful support, wittingly and unwittingly, three people have gone way beyond what anyone could reasonably have expected. David Downes and Paul Rock read a draft text over the Christmas of 2009. I can't imagine what they sacrificed to do this; I just know that the scope of what I have written was immeasurably improved by their efforts. Andy Ward, who makes no claims of subject expertise, generously then read a further version and provided me with the kind of detailed corrections on my writing style that should and did make me squirm. He also has an aversion to academic writing. Subsequently I have tried to remove as many semi-colons, convoluted sentences and fog-infused paragraphs as possible; for which I hope you will all be grateful. None of these three are in any way responsible for anything with which you may disagree or dislike. I am.

But I also need to thank Al. He has nurtured me, my computer and our obvious incompatibilities. His technical expertise has rescued me on numerous occasions. But he has also taken me, by kayak, to places I would otherwise not have gone. And been there to photograph ideas I could not capture. His is the cover photograph.

Thank you.

Jill Peay
February 2010

Acronyms

AIDS	Acquired Immune Deficiency Syndrome
CNVs	Copy Number Variations
DoH	Department of Health
DPP	Director of Public Prosecutions
DSM	Diagnostic and Statistical Manual
DSPD	Dangerous and Severe Personality Disorder
DVCVA	Domestic Violence, Crime and Victims Act
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HMI	Her Majesty's Inspectorate
HIV	Human Immunodeficiency Virus
ICD	International Classification of Diseases
IPP	Indeterminate Sentence for Public Protection
MHA	Mental Health Act
MHRT	Mental Health Review Tribunal
NICE	National Institute for Health and Clinical Excellence
PET	Positron Emission Tomography
UKHL	United Kingdom House of Lords
WHO	World Health Organization
WMD	Weapons of Mass Destruction

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Introduction

This book is about mental health and crime; or rather, about mental disorder and crime since to some it seems almost a *sine qua non* that the commission of a crime signifies a state of disorder or disarray in the perpetrator. Significantly mental disorder is a term with sufficient expansionary capacity readily to embrace many forms of deviant or disconcerting behaviour, so its role in explaining crime has considerable and arguably growing prominence. This book questions that prominence by posing some ordinary questions that perhaps do not have conventional or comfortable answers; but the questions themselves are commonplace. Indeed, the contexts in which they are posed, those of the phenomena of mental disorder and crime, are so widespread as to be almost ubiquitous. This book is about the relationship, if any, between mental disorder and crime; and of the consequences that do or should stem from the establishment or refutation of any such relationship.

Amongst the ordinary questions that will be addressed are: does mental disorder cause crime? Are mentally disordered offenders as culpable for their offending as normal offenders? To what extent, if any, are their mental disorders treatable? How can we fully protect the human rights of those deemed mentally disordered offenders, when they have caused damage to others, and perhaps damage of an irreparable nature? And what consequences do the answers to these questions have in respect of how we should deal with those who have offended and who co-incidentally have mental disorders? This last question is posed in such a long-handed way since it is almost certainly inappropriate and misleading to refer to such people as 'mentally disordered offenders'. Indeed, do the answers to any of these questions differ if one poses them the other way around? For example, does crime cause mental disorder? Or do those with mental disorders who have coincidentally offended have any different expectations with respect to how they should be treated by the criminal justice and health systems? One illustration of just how complex these issues are will suffice at this point: if serious mental disorder reduces one's culpability for offending, does it make more likely an early return to society following some period of incarceration because the mental disorder can be treated; or does it make such a return

less likely, leading to a form of preventive detention, because if the disorder cannot be treated the individual poses more of a threat of future offending than his or her comparator ordered offender? This is one of a number of conundrums that this book will address.

It is not hard to bring to mind images of those about whom the book might be concerned: Peter Sutcliffe, the 'Yorkshire Ripper', who was convicted of murdering thirteen women; Christopher Clunis, who killed Jonathan Zito in a sudden and unprovoked attack at Finsbury Park tube station; and Dennis Nilsen, who killed and dismembered the bodies of young men lured to his flat. But should we add the likes of Joseh Fritzl from Austria, Dr Harold Shipman, or Fred and Rosemary West? Or Ian Huntley, who killed Holly Wells and Jessica Chapman, girls aged only ten years at the time? It might be expected that a book with the title *Mental Health and Crime* would focus on this range of the mad and bad; many do. But that is not the intention here. Indeed, all of these individuals were held criminally culpable, albeit that that culpability was reduced in the case of Christopher Clunis. These offenders largely did not benefit from any allowance that might have been made with respect to their mental state, even though a number of them did ultimately find themselves confined in psychiatric rather than penal institutions. Rather the book will examine some of the issues thrown up by the many thousands of sad and difficult individuals who find themselves in conflict with the criminal law, incidents that occur on a daily basis. It will also venture briefly into territory that is much less accessible: the offending sleep-walker, where reason is not present in any meaningful form, or those living under what Terry Pratchett has coined 'the fog of Alzheimer's'. The issues concerning those who have offended in the most serious way invariably inform the book, in part because they comprehensively infiltrate the popular understanding of this field, and in part because it tends to be only in the most serious cases where psychiatric evidence is tendered and examined. But my intention is that these most serious cases should not unduly skew the book's content. Rather the focus will be on understanding some of these difficult issues, and trying to understand them across the range of offenders and the spectrum of disorders. In so doing, the archetypal case should be one of criminal damage or theft by someone whose mental inadequacies may never feature, as they perhaps should, in the assessment of culpability. It is a superficially less enticing prospect for the reader, but I hope keeping it in mind will make the book ultimately more enriching.

The first half of the book examines the knotty problem of the links between mental disorder and crime; and by way of introduction to this material the book starts with a very basic description of some of the key concepts; some readers might wish to move quickly through this introductory material. Then the book looks at some of the human rights related issues, since these are likely to be fruitful in thinking about the borderlines between deviance and disorder, and thus the justifiable distinctions between those deemed fit to

punish and those for whom mental health professionals have a legitimate role; and in the final chapters the book examines some of the difficult terrain of culpability and treatability, through the problematic extremes of disorder and offending, and the consequent issues of process. In so doing, it looks at offending behaviour whilst in a state of automatism, which may indeed not constitute 'crime' as such; and the problem of 'dangerous and severe personality disorder', which may not constitute a 'disorder' as such. Both of these extremes pose their own problems for the criminal justice process.

Mental disorder and crime, the matters that form the core of the book, evoke largely negative images, and their co-occurrence in the term 'mentally disordered offender' is likely to be doubly unattractive; each term reinforcing the other's negative attributes, rather than moderating them by providing a mitigating context. For as Bolton (2008:xv) has observed, although the medical model of mental disorder provides some saving graces where disorder is couched as illness or damage, should that model be rejected the likely perception is one of 'sin, corruption, immorality, inadequacy and irrationality, these signifying in each case the opposite of what is regarded as the highest good'. These are not things that happen to one, but rather something for which one is assumed to be morally responsible. Whether one might be responsible for poor mental health looks, at first blush, unlikely. But since in the current climate responsibility for one's physical health seems ever more prevalent, with increasingly urgent calls to moderate one's drinking, consume the requisite portions of fruit and vegetables and take regular exercise, it is not inconceivable that responsibility for good mental health may similarly emerge as a social expectation. In stark contrast, criminal behaviour is, and largely has always been, regarded as being primarily in this mould; not as something that happens to one, but rather as a species of event for which one is responsible. Inflicting damage on others, whether maliciously, recklessly, or merely thoughtlessly, is something for which one should be held culpable and liable. These two conflicting rationales are unlikely easily to be reconciled when they compete for explanatory dominance within any one individual.

One caveat is necessary: the term 'mentally disordered offender' is itself contentious. It is used throughout this book as shorthand for a number of different potential manifestations; for someone with a mental disorder who may have offended, for someone who has offended who may have a mental disorder, and for those where certainty about the presence of both mental disorder and offending can be established. But it also includes those where, because of the peculiarities of the processes of establishing criminality and mental disorder, neither is, in fact, either present or still present. And these confusing multiple presentations mean that one can never be certain whether one should conceive of the mentally disordered offender as an offender with a right to a proportionate measure of punishment or as a mentally disordered person with a need for a health intervention; or both in some ineffable mix, challenging us all to re-examine our preconceptions.

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Mental health and crime

The link between mental illness and crime is well known.
(General Synod, 13 Feb 2008)

The first chapters of this book examine the complicated relationship between mental disorder and crime. Teasing out the various strands makes considerable demands. By way of introduction it is important to bear in mind the broad range of the manifestations of mental disorder: personality disorder, learning disability, and psychotic disorders such as schizophrenia, have at one time or another all been deemed to be mental disorders. But equally, some of these manifestations have, at other times, been contested as properly falling within a definition of mental disorder. At present, the legal definition of mental disorder under s 1 of the Mental Health Act 1983 (MHA 1983), as amended by the Mental Health Act 2007, is ‘any disorder or disability of the mind’; a definition seemingly so broad as to include the world at large. Indeed, it includes many who might consider themselves, and who might be considered by others, to be mentally healthy. For example, whilst learning disability needs to be associated with ‘abnormally aggressive or seriously irresponsible conduct’ in order to invoke a number of the Act’s other sections, it is not wholly excluded (see s 1(2A) and (2B) of the MHA 1983). Similarly, whilst ‘dependence on alcohol or drugs’ alone is not considered to be a mental disorder (s 1(3)), the Code of Practice 2008 under the MHA 1983 (Department of Health 2008: para 3.8–3.12) sets out the situations in which such dependence might bring one within the scope of the definition of mental disorder.

The scope of offending behaviour is similarly wide, embracing property and commercial crimes, offences of personal violence (from the petty to the most heinous) and a host of other activities which do not immediately come to mind as offences, but which range from the terrifying and bizarre to the merely ridiculous. The likelihood therefore of there being any straightforward relationship between the constructs of mental disorder and crime is small. And whilst a number of texts (eg Stone, 2003; Littlechild and Fearn,

2005) have sought to describe the process whereby the criminal justice system in England and Wales deals with mentally disordered offenders, there is less available in an accessible form that reflects on the fundamental nature of the relationship. Indeed, even those texts that engage admirably with the difficulties (for example, Blumenthal and Lavender, 2000) tend to take mental disorder and violence as their focus, and then trail in its wake issues of risk prediction and management, without really grappling with crime *per se*.

So what fundamental questions dog the field? Does mental disorder cause or contribute to offending behaviour; does engagement with the criminal justice process through offending lead or contribute to mental disorder; does the occurrence of mental disorder make offending less likely; does engagement with the criminal justice process reduce the incidence of further offending and/or lead to the successful treatment of mental disorder; are crime and mental disorder generally unrelated, but the relevant populations of those with mental disorder and those who have offended overlap by reason of other factors (discrimination, exclusion, poverty etc)? Are offenders who have mental health problems coterminous with people who have mental health problems who offend (James et al, 2002)? Indeed, whatever the complex nature of the relationship between crime and mental disorder, that relationship has implications for the relevant procedures utilised in both the criminal justice and mental health systems. Do those procedures and systems deal fairly and equitably with either or both mentally disordered people who have offended, or offenders with mental disorders?

Whilst the latter parts of this book focus on questions of how mentally disordered offenders are processed by the criminal justice and health systems, and whether those dealings are indeed fair and equitable, the first chapters examine the fundamental nature of the relationship between mental disorder and crime, and the evidence relied upon to support the various assertions made. This is difficult terrain and it will be necessary to proceed slowly, charting a path through definitions of crime and mental disorder, and of concepts of causation. There will be a slow descent through levels of detail, both in respect of particular types of crime, and particular types of disorder. And paradoxically, as one digs into the detail, the evidence becomes more persuasive in respect of the logic of limited associations, but at the same time the empirical strength of those associations is undermined because of the progressively smaller number of people involved. Moreover, it simultaneously becomes evident that the associations are not between particular disorders and particular crimes, but between the specific symptoms people can experience at given times, the context in which they experience them and the likelihood of the occurrence of particular kinds of behaviour.