MENTAL ILLNESS and the law

Tony Whitehead

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The names and personal details of all the patients referred to in this book have been changed to prevent their identification.

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Preface

This book is concerned with the laws relating to mental illness and the ways in which they may affect us. To understand the laws it is necessary to know something about mental illness, its treatment and the mental health services, and these subjects will be covered in the early chapters. The greater part of the book, however, will deal with mental health legislation, including the laws on fitness to be tried and to plead, diminished responsibility, testamentary capacity, power of attorney, the Court of Protection and the Mental Health Act of 1959. Two chapters describe the slightly different mental health legislation operating in Scotland and Northern Ireland. Examples of how the law works (or fails to work) will be discussed, and the final chapter will review the whole area.

For the past ten years a number of people and organizations have suggested that the Mental Health Act of 1959 should be amended. In November 1981 the Government published a Mental Health (Amendment) Bill, which contained a number of proposed reforms. This Bill may become law within the next year, so I have outlined the recommendations it contains in the appropriate parts of this book. For many people the Bill does not go far enough, and of course it may be further weakened, or even strengthened, during debate.

My interest in the subject of this book grew out of my work as a psychiatrist and the awareness this brings of society's attitudes to mental illness, as revealed in the various laws relating to the mentally ill and in their interpretation and implementation. Involvement with many people who had disturbed or offended against society, often because of mental illness, showed me the need for a straightforward book which would describe mental illness and the laws bearing upon it for all those who may become involved with the problems that can arise.

The book is intended both for professionals – including solicitors, barristers, magistrates, judges, social workers,

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doctors and the police – and for the general public, who can easily become ensnared in the complexities of law and medicine. Readers should acquire some basic knowledge about mental illness and come to understand the legal and medical attitudes towards the mentally ill. They will also discover what services exist and learn about the limits of psychiatric treatment, so that they can weigh the resources available against the advantages or disadvantages of drawing on them.

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1 Introduction

'When I use a word,' Humpty Dumpty said in a scornful tone, 'It means just what I choose it to mean – neither more nor less.' Lawyers and psychiatrists are rather like Humpty Dumpty in their tendency to take words we all use and give them special meanings, sometimes known only to themselves. Words like 'assault', 'anxiety', 'depression', 'indecent', 'obsessional', 'hysteria' are all used in everyday conversation, yet when the professionals get hold of them they take on a specific meaning, sometimes quite different from the common usage. Furthermore, the medical and legal professions, like all other trades and occupations, have a jargon of their own which can easily mislead and confuse the uninitiated. The function of language is communication, yet we seem occasionally to delight in depriving language of its ability to convey meaning to other people.

This book is about the law and its relationship to mental illness – an important subject, since any of us might suffer from a mental illness and as a result become involved with the law in some way. Not only does one in ten of the population suffer from an actual mental illness at some time in life, many more are affected by emotional disturbances. As a result they may be at risk, however slight, of becoming involved with the law in its relationship to mental illness, or of doing something that is actually illegal. Involvement with the law is not limited to the 'criminal' and to people who have 'nothing to do with us'; exceeding the speed limit is illegal and so are swearing in public and many other acts that are often done in ignorance of their unlawfulness. So it is useful for everyone to know something about psychiatry and the law in general, and about their interaction in particular.

Solicitors, barristers, magistrates, judges, social workers, probation officers, the police and doctors need not only to know about mental illness and the law, but also to be aware of what is available to the mentally ill in the form of treatment, care, support and accommodation. For example, a

judge may have to deal with a case in which the accused is clearly mentally ill; experts will be available to support and enlarge upon the diagnosis, and it may be strongly recommended that the accused should receive treatment. But unless the judge is aware of what treatment is possible and where it is available, he will find it difficult to come to a sensible and humane decision. The term 'treatment' is often bandied around without any explanation of what is actually meant. Some knowledge of psychiatric treatment makes it possible for the right questions to be asked and hence for helpful answers to be obtained.

It is easy to talk about normality, abnormality and mental illness, but difficulties arise when one tries to define the terms. Views and philosophies abound, each with its own definitions, explanations and modes of treatment; to attempt to discuss every theory would inevitably create even greater confusion. To avoid this I shall describe mental illness along orthodox present-day lines, while at the same time pointing out weaknesses in this approach and considering the merits of certain other theories.

2 Mental Handicap and Mental Illness

Everyone seems to know something about mental illness; people call each other 'mad', 'neurotic', 'stupid' and use many other terms that imply mental abnormality. However, when it comes to specifying what is meant by these terms, difficulties immediately arise. I do not intend to begin by defining the concepts of health and mental health; this approach unfortunately creates more difficulties than it solves. There are many definitions of physical health, but none are really satisfactory; even the World Health Organization has failed to come up with an acceptable definition. If it is difficult to describe physical health, describing mental health presents even greater problems. One method of dealing with them is by considering the question of normality and abnormality.

Like madness and its synonyms, normality and abnormality are words in common use, and the people who use them generally have a clear idea of what they mean. A middle-aged city gentleman might describe the behaviour of a teenage football fan as abnormal, implying that he would never dream of donning heavy boots and team hat and scarf and spending a Saturday afternoon screaming abuse at the opposition (in similar garb but of a different colour) and encouragement at his team. Conversely, the teenage football fan might well describe the city gentleman, equipped with bowler hat, umbrella, pin-striped suit and briefcase, in terms that imply abnormality. Thus, one concept of abnormality is 'being different to oneself'. Clearly this view is not very constructive or helpful, yet it is close to one shared by many people, including professionals in the field of mental health. This is the concept of an 'ideal norm', in which the individual is said to be free of 'hang-ups', internal conflict, prejudice and everything else that might interfere with the enjoyment of a full, integrated life governed by intelligence and moral judgement. Of course such paragons do not exist, and even if they

did they would be merely moulded in a pattern created by other people. They would also be *ab*normal according to another method of classification. This is the statistical norm, the one we generally use, even when we are not aware we are doing so.

The statistical norm refers to qualities shared by a majority, and can be applied to any human characteristic from height to anxiety level in specific situations. When considering mental abnormality, this is the usual yardstick, but for it to have any meaning or be at all helpful, allowance has to be made for race, culture, education and the general moral values and beliefs of the community involved. Thus it may be statistically normal to believe in witchcraft in certain societies, but abnormal in others. This is to state the obvious, but the fact is sometimes overlooked, particularly since the increase in mobility of people throughout the world, with individuals from one culture settling in others of very different types. Further, it is important to remember that not only may someone from a different culture subscribe to different concepts of morality and belief, but also that such a person may describe symptoms of disease, or other abnormal sensations, in a way that can be so foreign to the culture in which he or she lives that the statements are misunderstood, or even interpreted as the product of a disordered mind. To claim to be possessed by a devil may suggest the presence of mental illness to a psychiatrist unfamiliar with a culture that not only believes in possession, but views certain symptoms as evidence of it.

The statistical norm has not always been the yardstick by which illness has been judged, and even today mistakes are made because of ignorance of what most people do or experience. Until quite recently masturbation was viewed as abnormal, and treatment was prescribed to prevent it. Masturbation is statistically normal, yet the view that it is abnormal still lingers.

One group of mental disorders that has always been defined using the criteria of statistical normality is that now described under the general heading of 'mental handicap'. Before going on to it I should explain a few terms. Mental disorder is an inclusive term that refers to all the categories of mental

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disability, ranging from mental handicap to psychoses and personality disorders. Mental illness is used to describe a sub-group of mental disorders, which includes psychoses and neuroses and will be described later. Mental handicap forms another sub-group: it is clearly differentiated from mental illness in that it is not an actual illness but an abnormality of intelligence. Usually present from birth, it can also be caused by certain diseases that attack the brain. Many people would consider that mental handicap is not in itself a subject for medical involvement, being more the concern of educators. Other terms that require definition will be described at length under individual subject headings.

Mental handicap

Mental handicap is a term now used to describe what used to be referred to as mental subnormality, and before that, as mental deficiency. Mental handicap, in essence, is a disorder of intelligence, which has been described by W. Stern as 'the general ability to adapt to new situations by means of purposeful thinking'. There are a number of tests used to ascertain intelligence; the result is usually expressed as an intelligence quotient (IQ), a comparison of the mental age, as obtained by testing, with the chronological age. The formula is:

$$IQ = \text{Mental age} \div \text{chronological age} \times 100$$

The idea of mental age is quite clear, but it must be remembered that a person's ability to think does not improve much after the age of sixteen. Thus the formula above is useful only for testing children, since for those over sixteen it would produce declining ratings that fail to describe the true intelligence of the individual. For example, a highly intelligent man with an IQ of 160 at the age of ten might have an IQ as low as fifty when he reached the age of thirty-two. This makes little sense. Consequently one has to make an age correction when calculating the IQ of people over the age of sixteen.

If the intelligence of a large sample of people is measured it is generally found that fifty per cent have an intelligence quotient between seventy and 130, and if the results are plotted on a graph it will have a peak at the 100 level. Thus,

those with an IQ below seventy or above 130 are statistically abnormal – having a very high intelligence is just as abnormal as having a very low one, something that is often forgotten. Extremely high intelligence does bring with it many problems, sometimes of such a nature that the highly intelligent individual behaves in a manner which is overtly abnormal and disturbing to others.

An individual with an IQ below seventy is considered to be mentally handicapped. The Mental Health Act of 1959 does not use the intelligence quotient as a method of defining mental handicap or severe mental handicap, but uses the terms subnormality and severe subnormality. Subnormality is defined as:

> a state of arrested or incomplete development of mind (not amounting to severe subnormality), which includes subnormality of intelligence and is of a nature or degree which requires or is susceptible to medical treatment or other special care or training of the patient.

Severe subnormality is defined as:

> a state of arrested or incomplete development of mind which includes subnormality of intelligence and is of such a nature or degree that the patient is incapable of living an independent life or of guarding himself against serious exploitation, or will be so incapable when of an age to do so.

Thus the mentally handicapped individual has a low intelligence of a degree that necessitates special training, while someone who is severely handicapped is so disabled that he or she is unable to live an independent life and always requires the help and support of people of normal intelligence.

The Mental Health (Amendment) Bill suggests that the terms subnormality and severe subnormality used in the principal Act be changed to mental handicap and severe mental handicap. It also proposes new definitions of these conditions:

> In this Act 'severe mental handicap' means a state of arrested, or incomplete development of mind, which includes severe impairment of intelligence and social functioning.

> In this Act 'mental handicap' means a state of arrested, or incomplete development of mind (not amounting to severe mental handicap), which includes significant impairment of intelligence and social functioning.

Mentally handicapped individuals can and do live normal, full lives, but many are easily influenced by others and a few commit offences, either because of this influence, or because they do not understand that what they are doing is illegal. Here the measure of mental age is perhaps more useful and comprehensible than the intelligence quotient, since it seems to give a clearer picture of the individual's ability and understanding of the law. But it can be misleading; tests of intelligence are not infallible, and if a man has a mental age of perhaps eight when in fact he is thirty-five, this does not mean that he is simply an overgrown eight-year-old. Ageing brings with it an improved understanding of life and an increase in knowledge whether the individual is mentally handicapped, of normal intelligence, or a genius. Intelligence testing cannot reveal all these factors, but it is still a useful guide to an individual's ability to manage independently and survive in the real world. The point I am trying to make is that while mental handicap does diminish a person's responsibility, it is important to assess each individual fully before coming to any conclusion, rather than simply taking an IQ rating as evidence of an individual's ability to manage independently, or degree of his or her self-reliance.

Intelligence is inherited, but it can be affected by environmental factors. Where inheritance of intelligence is concerned, the phenomenon known as deviation towards the mean needs to be taken into account. This means that through a number of generations there is a tendency for particular characteristics, such as intelligence, to move towards normality. Parents with low intelligence tend to have children a little more intelligent than they are, while highly intelligent parents tend to have children with slightly lower intelligence than themselves. I make this point to dispel the not uncommon fear that people of low intelligence produce extremely unintelligent children. This myth has caused considerable misery in the past, causing mentally handicapped individuals to be incarcerated and isolated from members of the opposite sex.

The majority of mentally handicapped individuals simply have a lower intelligence than normal, without any specific cause. However there are specific conditions that can cause mental handicap, severe mental handicap in particular. There may be damage to the foetus while it is still in the womb, or to the baby during the process of birth, or by disease after birth. Diseases of the mother may affect the child; German measles and syphilis are two well-known examples. The use of tobacco and alcohol by the pregnant mother or the effects of irradiation may harm the foetus. There are also a number of specific disorders that cause mental handicap, such as the following:

Tuberous sclerosis (epiloia)
Tumours develop in the brain and other parts of the body. Epilepsy is usually present in early childhood and may persist throughout life. The degree of mental handicap is often very severe.

Microcephaly
In this condition the skull has a much smaller circumference than normal. The victim is often severely mentally handicapped because the brain tissue is compressed, or is unable to develop inside the small skull. Epilepsy is common and the facial features tend to be birdlike, with the nose assuming undue prominence as a result of the size and shape of the head. This condition may be inherited or produced by irradiation of the foetus.

Phenylketonuria
The result of a biochemical disturbance in which the body is unable to break down certain proteins consumed as food, producing a poison which retards the development of brain and other body tissue. The sufferer is usually small, with fair hair and blue eyes. This condition can be prevented provided that a diagnosis is made early in the child's life and a special diet is prescribed. The condition can be diagnosed with a simple urine test.

Cretinism
This condition is due to a deficiency of the thyroid hormone and can be effectively treated by giving thyroid extract as soon as possible after birth.

Down's Syndrome
Down's Syndrome used to be called mongolism, since sufferers have a superficial facial resemblance to Mongolians. In addition they often suffer from congenital abnormalities: umbilical hernias, shortened little fingers, fissured tongues and gruff voices. Mental handicap is always present, though the degree can vary considerably; some sufferers have only mild impairment. The condition is caused by a gross chromosomal abnormality and is related to the age of the mother and/or father: older parents are the most likely to produce children with Down's Syndrome.

Help for the mentally handicapped
Mental handicap itself does not require treatment in a medical sense, nor should it receive it. Many handicapped children can be educated in normal schools provided they are given some extra assistance. Some people argue that all mentally handicapped children should be educated in normal schools, but that is not the case at present. Special education in special schools is available and there are training centres and occupational centres for older mentally handicapped people. The severely mentally handicapped may require a considerable amount of care, and there may be medical problems since severe mental handicap is often accompanied by gross physical abnormalities.

The roles of medicine and psychiatry in providing help for the mentally handicapped lie in assessing and diagnosing the conditions that may respond to treatment, and, in the case of psychiatry, in providing help for any associated emotional problems that may occur.

Mental illness: the psychoses

Mental illnesses can be categorized in varous ways; the usual method is to describe three or four main groups. These are

the psychoses, the neuroses, personality disorders and organic brain disease. The term organic brain disease covers all those mental conditions caused by actual physical changes in or damage to the brain. Personality disorder is a classification which covers a multitude of behavioural problems, and will be discussed in detail in chapter 3. The neuroses and the psychoses are the two major groups of mental illness. In the past it was thought that a mentally ill person who was obviously abnormal but unaware of it was most likely to be suffering from a psychosis, while someone who was conscious of suffering from an emotional disorder was likely to be suffering from a neurosis. 'Insight' appeared to be the crucial differentiating factor, but in fact this is not so: individuals who are suffering from one of the psychoses often realize there is something wrong, while many victims of neurosis do not believe their problems are emotional and may strongly deny such a suggestion. One way of discussing the psychoses is to describe the individual conditions and so avoid arguments about definition. On the whole the psychoses are the more serious types of mental illness and reveal themselves in behaviour that is obviously extraordinary to any objective observer.

The psychoses consist of schizophrenia (or rather the schizophrenias), severe or endogenous depression, mania and hypomania. There is also puerperal psychosis, which afflicts women around the period of childbirth, but this is not a true category since it is made up of a variety of different illnesses, as will be explained later.

Schizophrenia

Schizophrenia is the major psychosis in that it accounts for the greatest number of young and middle-aged people in mental hospitals. There is considerable debate about the nature and origins of schizophrenia. Some consider that it is simply an individual's reaction to an intolerable life situation, while others, taking the opposite extreme, believe that it is an illness produced by abnormal chemical changes in the brain. Again, there is evidence that a tendency to schizophrenia can be inherited, but a tendency only; studies of identical twins have shown that one twin can develop schizophrenia without

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