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Book Review: The Role of Psychiatry in Law

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BOOK REVIEW

THE ROLE OF PSYCHIATRY IN LAW: By Manfred S. Guttmacher, M.D., Springfield, Illinois: Charles C. Thomas, 1968. Pp. 156.

If you ask the man on the street about his views on the criminal law, typically his response will include a commentary on some notorious crime. What impresses him most about that crime? Commonly his answer will be that he was amazed that the "murderer" was able to escape conviction by invoking the defense of insanity. This view is remarkably prevalent. It is the same view which led Queen Victoria to ask Parliament to formulate the rigid M'Naghten Rule in 1843.¹ This test of insanity survives to the present day, perplexing many members of the legal profession and alienating most members of the psychiatric profession.

One of the earliest critics of the M'Naghten Rule was Sir Isaac Ray. This book is an in-depth treatment of the lectures of Dr. Manfred Guttmacher, an Isaac Ray lecturer on forensic psychiatry. As one would suppose, the main emphasis is on criminal law. Basically, the work deals with those services the psychiatrist may provide the courts and the bar in the administration of criminal justice. Lengthy discussion is devoted to: the tests of legal responsibility; lie detection and narco-investigation; competence to stand trial; testimony of the expert witness; testimonial credibility, and therapeutic penology.

It is gratifying to find an author from another professional discipline with such a firm and comprehensive understanding of criminal trial law. Dr. Guttmacher freely admits his professional prejudices and invites the reader to form his own conclusions. After describing the present trial system as a "sporting event, with leading counsel performing as opposing quarterbacks, relying whenever possible on surprise and trick plays," and chastizing the legal profession for the "narcissistic spirit which is characteristic of the adversary proceeding," and ultimately characterizing the law as a "ritual which tends to give way to form, and form to indurated dogma," Dr. Guttmacher points out that "any attempt to bring a scientific discipline into the ritual has been

¹ Pp. 25-26. The Parliamentary consideration which resulted in the formulation of this rule was occasioned by the decision in *M'Naghten's Case*, 10 Cl. and F. 200, 8 Eng. Rep. 718 (1843).

and will be met with resistance.”² Such critical statements as these are inspired by the author’s vehement opposition to the legal profession’s use of the M’Naghten Rule. Dr. Guttmacher vigorously objects to the lawyer’s apparent need for the “images of certainty” provided by the M’Naghten Rule, and he forcefully advocates the superiority of Justice Bazelon’s Durham Rule, which he contends “most nearly meets the current concepts of psychiatry and is ideally adaptable to future psychiatric progress.”³

The author undertakes an analysis of “episodic dyscontrol” or “catathymic crisis,” better known as temporary insanity. He provides extensive case studies of a Mrs. “H” and of Jack Ruby, who represent clinical examples of this derangement (which Henry Weihofen once defined as a “supposed form of disorder frequently encountered in the courtroom, though not elsewhere . . .”⁴). Dr. Guttmacher had an opportunity to interview and analyze Jack Ruby for the government, and his examination has led him to conclude that Ruby felt compelled to kill Lee Harvey Oswald in order to preserve his sanity:

The ego in distress often thinks in primitive language, in primary-process terms. According to this, the ego would rather kill than be killed, or, what amounts to the same thing, suffer a completely disruptive disintegration. Thus, murder is frequently committed, according to our theory, to preserve sanity.⁵

Dr. Guttmacher gives considerable attention to the related concepts of social responsibility, irresistible impulse, and diminished responsibility. This last concept, though not widely accepted in the United States, is given detailed psychiatric and legal analysis by the author. One reads this section with added interest, realizing that diminished responsibility will probably constitute a major part of the defense in the case of Sirhan Sirhan, the Jordanian accused of assassinating the late Senator Robert F. Kennedy.

The author feels that rigidly structured laws force the psychiatrist, through the use of “insanity” tests, to greatly oversimplify the intricacy and complexity of his science. He says:

² P. 12, quoting with approval from P. Roche, *The Criminal Mind* 66 (1958).

³ P. 154.

⁴ P. 57.

⁵ Pp. 72-73.

Through some type of magical thinking they say that you are not being asked whether he was able to distinguish right from wrong, or whatever is the punch-line of the test of responsibility in the particular jurisdiction. You cannot be asked whether he was responsible; that would be usurping the jury's prerogative. But, since the question uses the current test of responsibility, it is like saying that you should not believe for the moment that one and one makes two.⁶

Dr. Guttmacher proposes that psychiatrists not be forced in essence to determine responsibility, as they are now, but that they be permitted merely to report the facts of the defendant's mental condition, acting as a member of an impartial court service and leaving the judgment on defendant's responsibility to the jury, where it legitimately belongs.

In the area of penology, where nearly everyone acknowledges the need for reform, the book develops the merits of psychologically motivated correction. Patuxent Institution in Maryland and Van der Hoeven Clinic in Denmark are used as examples to show the effectiveness of a motivation-oriented correctional program. The author has praise for such progressive penological concepts as the "tier" system and "motivated freedom."⁷

Too few students and practitioners of the law are aware of the sophistication that the sciences of psychology and psychiatry have achieved, and too few realize the contributions that these sciences can make to the development of the law. The work under review should dispel some of this ignorance and should serve to induce members of the legal profession to be somewhat more receptive to the recommendations of the alienist than they have been heretofore.

LESLIE J. MARTIN

⁶ P. 77.

⁷ "Patients all enter on the first tier. By showing a desire to work at understanding themselves and learning to deal with their problems, they advance until they reach the fourth level tier, which is largely self-governing. Home visits, work-out privileges, and paroles are granted almost exclusively to inmates of the fourth tier. This brings the inmate face to face with his unrealistic and self-defeating way of life. He realizes that he can be kept in the institution for life and that his behavior is his key to freedom. This motivates him toward sustained effort." P. 127.