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2. Szasz on Psychiatric Justice

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It would be absurd to suggest that mental health legislation is never abused, that individuals are never detained unnecessarily on inappropriate psychiatric grounds, or that political expediency does not sometimes exert an influence on decision making in this regard. Dr Szasz, however, takes an extreme view in rejecting the moral or legal right of psychiatrists to participate in the compulsory hospital admission of offenders. He rightly points out that if psychiatric involvement is wrong in principle, then "periodic outbursts of indignation against 'abuses'" are "both naive and foolish". Nevertheless, he sees fit to support his arguments with examples of what he deems abuses.

Dr Szasz begins with cases which he identifies as politically motivated action under cover of spurious psychiatric diagnosis. He cites first the prolonged incarceration of Chionya Gusyeva following her attempt to assassinate Rasputin. His next example, of greater interest to British readers, is that of Daniel McNaughton, whose commitment to hospital in Bethlem led to a demand for clarification of the law on criminal responsibility and the formulation of the famous McNaughton rules. In these instances, as in many other cases of politically sensitive crimes (from the nocturnal intrusion into the bedroom of our own Queen to the shooting of President Reagan), the supposed abnormalities of the offenders may seem suspiciously convenient. Attributing the offending behaviour to mental derangement, especially if this avoids a contested trial, effectively forestalls public debate of circumstances or motives that might be embarrassing to the authorities.

In the McNaughton case, although Dr Szasz does not go into detail, there are grounds, which have been reviewed by Moran (1981), for suspecting that the crime (presumably directed at Peel and involving the private secretary only by mistake) could have had political rather than delusional motives. It appears that McNaughton was a political activist, a supporter of the Chartist movement, and an opponent of the Corn Laws, and therefore probably subject to harrassment by Peel's police. His complaints of persecution may have had some real basis. When he was arrested McNaughton, who was thought to be a poor working man, was found to have recently banked a very large sum, the source of which was never revealed. It is conceivable that he was a paid assassin. There are parallels with the murder of John F. Kennedy. Lee Harvey Oswald, a psychiatrically disturbed man, was declared responsible, but suspicions linger that he was put up or set up by others to take the blame – a theory reinforced by witnesses claiming that his shots were not the ones that killed the President.

Interesting though such speculations may be, they do not concern the accuracy of psychiatric opinions. Dr Szasz produces no evidence to show that in either the Gusyeva or the McNaughton case, the doctors were wrong. The fact that there may have been some solid political reasons for the killings is not incompatible with the killers having acted on morbid ideation. Psychotic pre-occupation with delusional signs of spouse infidelity is not incompatible with some infidelity having actually occurred. Likewise, delusional ideation around such topics as harassment by witches or political enemies may reflect popular beliefs current at the time.

Psychiatric assessments in particular cases may indeed have been fallible, but it does not follow that assessments are necessarily improper. Szasz argues that a diagnosis of insanity that dispenses with a trial of the facts of the case is unfair, because the opportunity to defend against a false accusation is lost. The McNaughton case is not a good example in this respect, since the killing was in public before witnesses. In the absence of psychiatric evidence, McNaughton would have hanged. Szasz argues that his indefinite detention may have been a fate worse than death, and that he should have had a choice. This ignores the fact that mental illness can deprive a person of the capacity to make an informed choice, in which case being dealt with "like a helpless child" may be no bad thing.

Where there is any room for doubt that the accused committed the crime, being found unfit to stand trial may be a disadvantage. The Butler Committee (Committee on Mentally Abnormal Offenders, 1975, p. 148) commented unfavourably on the fact that: "Once it has been determined that the offender is under disability there is no provision for the facts to be investigated in court." They proposed that there should always be a trial of the facts to the fullest possible extent, and an opportunity given to the jury to return a verdict of not guilty, should the evidence be found inadequate.

Regardless of the merits of their case, offenders who have not had a full trial may continue to protest to others, and in some instances deceive themselves that they have committed no crime. An additional reason why this reform would be helpful is that an account of the offending behaviour which has been tested and substantiated may assist those who at a later date have to assume responsibility for determining when the offender patient can be safely returned to the community.

Contrary to American practice, the procedure for finding a defendant unfit for trial is applied only rarely in England. For the great majority of mentally disordered offenders, decisions as to disposal are taken at the sentencing stage, so that many of the criticisms made by Dr Szasz do not apply. The argument that persons sentenced to imprisonment for homicide are likely to be detained for shorter periods than those committed to hospitals is not necessarily true for England. The implementation of the provisions of the Mental Health Act 1983, and the increase in the powers of mental health tribunals to discharge 'restricted' patients, have strengthened the procedures for periodic reviews and release as soon as mental state permits. Moreover, in making such comparisons with imprisonment, Dr Szasz takes no account of the benefits of a hospital environment for the mentally ill offender.

Dr Szasz (1961) has written in the past of what he calls *The Myth of Mental Illness*. His arguments stem from a profound scepticism of the concept of psychiatric disturbance and of the justification for regarding some offenders as not fully in control of their actions, and therefore deserving of care and treatment rather than punishment. Admittedly, the borderline is hard to define and some offenders deemed abnormal may be reacting to adverse social pressures rather than expressing individual pathology, but it would be cruel and uncivilised not to recognise that some offences are committed almost entirely as a result of illness. Sensitivity to the possibility of unnecessary detention due to overcaution, or to the dangers of overenthusiasm for forced treatment of individuals who are capable of deciding for themselves whether they want it, is entirely admirable. On the other hand, to dismiss altogether the possibility of compulsory hospital admission for individuals who are a danger to themselves or others as a consequence of illness, as Szasz recommends, would be to throw out the baby with the bathwater. It would also be an affront to the sense of justice which Szasz himself supports.

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