Forensic Psychiatry and Criminal Policy

Opinions have changed over time about the contribution that forensic psychiatry can make to penal theory and practice. In the fifties, when psychoanalytic thinking was still influential, faith in the power of therapeutic relationships to change behaviour was popular among social workers and treatment in the place of punishment was thought by many to be a realisable ideal. Disillusionment set in during the seventies. Criminality was conceived of as a product of the social environment and the so-called medical model was derided as inapplicable and leading to measures that were both ineffective in preventing recidivism and contrary to natural justice, the interventions imposed being disproportional to the seriousness of the offending. The protagonists of civil rights were accusing psychiatrists of using meaningless diagnostic labels that gave them power to detain even minor offenders indefinitely and subject them to noxious treatment.

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Opinions have tended to swing back a little since then. Now psychiatrists are criticised for refusing to accept as patients persons embroiled with the courts, thereby causing mentally disturbed offenders to be consigned to prison. Far from claiming to treat everything from compulsive thieving to addictions and sex offending, many psychiatrists now argue that these problems of 'social deviance' are not for them. Although the impulsive, aggressive behaviour and temperament, so often associated with persistent offending is dignified in the American system (DSMIIIR) with the diagnosis anti-social personality disorder, and although there is some evidence for a genetic factor, many psychiatrists now argue that it is untreatable, which makes compulsory hospitalisation illegal in the UK.

As the old prison-like asylums first unlocked their doors and, more recently, in line with government policy, are being closed down and sold off, numerous social inadequates, chronic schizophrenics and mentally impaired individuals are burdening relatives and taxing overstretched community services. The public is starting to connect these developments with increased numbers of homeless, beggars, petty criminals and admissions to prison.

Forensic psychiatrists become involved in a confusing variety of tasks. They are called in as expert witnesses on issues such as diminished responsibility and unfitness to plead which are really matters of legal philosophy rather than medical assessment. Courts cannot commit offenders to hospital except on the say so of psychiatrists who act as gatekeepers for the mental hospitals, including the special hospitals and regional secure units that are intended for those both socially dangerous and mentally disordered. As physicians, psychiatrists have a monopoly on the dispensing of psychotropic drugs to quell psychotic symptoms and subdue mad behaviour, but some of them also undertake individual or group psychotherapy with those patients who are able and willing to discuss their personal problems with a view to changing attitudes and behaviour. They may also participate in schemes and behaviour modification based on psychological learning theory.

Until the scope of psychiatrists' competence and responsibility in regard to disordered offenders is better defined, confusion and buck passing are likely to remain. The therapeutic nihilism which has grown up has played into the hands of those wanting to economise on unnecessary services, so that programmes of treatment for drug problems, sex problems and behaviour problems generally remain woefully under-developed in this country. The sterile controversy that has been going on for generations as to whether such programmes should be set up by the health service or the prison service or probation service, when all three are clearly needed, has further retarded progress. Co-operation between psychiatry and other disciplines is essential in programmes based on counselling and training rather than drugs, but except in child psychiatry it is not as well developed as it should be.

If they are to make good use of such psychiatric facilities as are available in their area, the courts need swift and ready access, but liaison arrangements are very variable and often inadequate. The result is that the chances of a prospective offender patient being admitted to hospital for assessment, or for treatment under a hospital order or while on probation, depends on where he happens to be. The fact that improved systems have been introduced in a few places such as the psychiatric on-call service at Bow Street and Marlborough Street inner London magistrates' courts, shows what can be done. Hospitals without the necessary staff and resources to cope with difficult to manage patients should not be obliged to admit them, but all too often cases plainly in need of treatment outside prison do not receive it because a place cannot be found.

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Ideally there should be a truly national service with guaranteed access for all suitable cases. The present limited resources produce silting up of the system as Regional Secure Units cannot admit patients awaiting transfer from special hospitals because they in turn have patients waiting for admission to local hospitals or community facilities. The police and the crown prosecution service have an equally important need of psychiatric consultations if unnecessary processing of the mentally ill through the criminal justice system is to be avoided.

One legal measure that would be likely to prevent some mentally ill patients coming before the courts would be a provision for compulsory treatment outside of hospital. This would help prevent many of the relapses which occur when psychotic patients are discharged from hospital in a stable condition only to relapse very shortly after because they refuse to continue their medication.

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