CJM
CRIMINAL JUSTICE MATTERS

PSYCHIATRY AND THE LAW

What is meant by 'Mental Disorder' and all those other terms?

Christopher Cordess

The terminologies and, where they exist, the definitions for the various types of mental disorder far from being precise are frequently diverse; they change over time and are variously interpreted. Particular difficulties are encountered in relation to the criminal justice system where the different terms used may be confusing to the layman and are not infrequently disputed by the professionals - be they lawyer, psychiatrist, probation officer, social worker, nurse or those working in other related capacities. Questions which are the main or ultimate concern of the law, and information conveyed by clinical diagnostic labels and descriptions fit together only imprecisely. This can produce frank polarisation and impasse, illustrated by the caricature of the psychiatrist in court protesting that an offender suffers from 'no formal or functional mental illness' in the face of the concerted views of others that his behaviour is 'crazy' or bespeaks 'madness'.

In part, this scenario may result from an admirable concern by the psychiatrist towards clinical precision and nosological (categorising) rigour: we all need to be vigilant to the dangers of the 'psychiatrisation' of all eccentric or offensive behaviour. Such a trend appears to be on the increase. Bowden (1995), for example, describes how psychiatric services in Britain, as a consequence of recent political manoeuvring, have been forced into the position of being seen to be 'responsible' for the prevention of much of the increasing violence committed by the psychologically unstable, alienated or distressed: psychiatrists are in danger of being held responsible "for all the vagaries of human behaviour".

In part, however, many of the disputes about the mental state of violent and anti-social offender reflect genuine conceptual difficulties. For example, well known and well rehearsed dispute hinges around the term 'Personality Disorder', which is ever a contentious term. Some psychiatrists will even use the term in opposition to treatable mental illness, in order to exclude an unwanted client or patient from psychiatric involvement. ["this man does not suffer from any mental illness, but has a personality disorder, I have therefore discharged him from my clinic"]. However, forensic psychiatrists - albeit holding a range of opinion amongst themselves - cannot avoid the conceptual, clinical and management difficulties posed by the antisocial personality disordered patient, or those with so-called borderline or severe narcissistic personality disorder, who frequently clash with society and the law.

Psychiatrists are in danger of being held responsible "for all the vagaries of human behaviour"

These matters are complex and wide ranging: the purpose of this article is to provide some outline clarification of some of the different terminologies used where psychiatry and legal matters overlap, not infrequently tussle, and at others come to a mutual compromise. It attempts in no way to be comprehensive: for example, I have not included any elaboration of the changing terminology used for mental handicap, mental impairment, or learning disability which are largely synonymous but reflect political correctness and linguistic fashion. These may provide the subject for a future article.

A glossary of terms

- **'Mental Disorder'** is the comprehensive term used in the Mental Health Acts of 1959 and 1983, under which four sub-categories are described: 1. Mental illness, 2. Arrested or incomplete development of mind (mental impairment or severe mental impairment), 3. Psychopathic disorder, 4. Any other disorder or disability of mind.
- **Mental Illness** is not defined within the Mental Health Act (1983), but according to Butler (Home Office and Department of Health and DHSS, 1975) denotes 'a disorder which has not always existed in the patient but has developed as a condition overlying the sufferer's usual personality'. Generally it encompasses schizophrenia, manic-depressive disorder, and other psychoses, and is (relatively speaking) not usually the focus of dispute.
- **'Psychopathic disorder'** means 'a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned'. Psychopathic disorder as defined clinically is different to this legal definition: it overlaps with what used to be called socio-pathic disorder in the United States and with antisocial personality disorder as described in the International Classification of Diseases (ICD-10) and the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV).
- **'Abnormality of Mind'** is the legal term used in the Homicide Act (1957). It is not defined and is open to wide interpretation (Cordess, 1985): it is finally for the jury to decide upon having heard expert opinion. It is not necessarily to be confined to the narrower usage of 'mental disorder' or 'mental illness', the terms used in the Mental Health Act (1983) of which it is quite independent.
- **'Disease of the mind'** is also a legal term and not a psychiatric one, used in the Criminal Procedure (Insanity) Act (1964, Section 1) otherwise known as 'The Insanity Defence' the 'special verdict' or the McNaughton Rules. A disease which produces a malfunctioning of the mind may, in law, constitute a disease of the mind.
- **'Under Disability'** is a term confined to the Criminal Procedure (Insanity) Act (1964, Section 4) and is synonymous with 'Unfitness to Plead'. Whereas this usually had the consequence of detention without limit of time, most often in a special hospital, judges now have discretion with regard to placement and duration under the Criminal Procedure (Insanity and Unfitness to Plead) Act (1991).
- **'Mental Condition'** is the term used in relation to probation orders with a requirement that the offender submit to psychiatric treatment. The court, under Section 2 of the Powers of Criminal Courts Act (1973), needs to be satisfied, on the evidence of an approved doctor,

PSYCHIATRY AND THE LAW

that 'the mental condition is such as requires and may be susceptible to treatment, but is not such as to warrant detention in hospital'. The Criminal Justice Act (1991) did not change this substantially except to allow greater powers of treatment for sexual offenders and those dependent upon drugs and alcohol.

- **'Whilst the balance of the mind was disturbed'** is the phraseology used within the Infanticide Act (1938) S.1(1). "Where a woman by any wilful act or omission causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for this Act the offence would have amounted to murder, she shall be guilty of [an offence], to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child". This Act has been much criticised since it is based upon the erroneous assumption that mental illness is the main 'cause' of infanticide: it rarely is. The Butler Committee reasoned that the Act was superfluous since the Homicide Act could cover women charged with infanticide, but other learned bodies have disagreed.

The fact that the terminologies at the interface of psychiatry and the law are largely ill-defined, or not defined at all, may be seen as confusing and unnecessarily complicating. They do, however, have the great merit that they give lee-way for interpretation which frequently has its own advantage in the individual case. ■

References

Bowden, P (1995) 'Confidential Inquiry into Homicides and Suicides by Mentally Ill People; A Preliminary Report on Homicide'. Editorial. *Psychiatric Bulletin*, 19, 65-66

Cordess, C (1985) 'The Homicide Act: origins, anomalies and proposals for change'. *Bulletin of the Royal College of Psychiatrists*, 9, 245-246

Home Office and Department of Health and DSS (1975) Report of the Committee on Mentally Abnormal Offenders (Butler Committee). Cmnd 6244, HMSO, London.

Christopher Cordess is Consultant Forensic Psychiatrist, West London Healthcare NHS Trust.

MENTALLY DISORDERED OFFENDERS AND THE NHS

The Butler and the Glancy reports in the mid 70s drew attention to the shortage of beds in the NHS offering treatment in security below the high security available in the special hospitals. These reports led to the creation of a centrally funded development programme to ensure the provision of medium secure beds. After a slow start, the number of purpose built medium secure beds is now increasing rapidly (fig 1). Additionally, health authorities and independent providers are investing their own funds in the development of secure care. As a result the NHS expects by December 1996 to have available to it some 1,600 high security, 2,200 medium security and 2,000 low security beds.

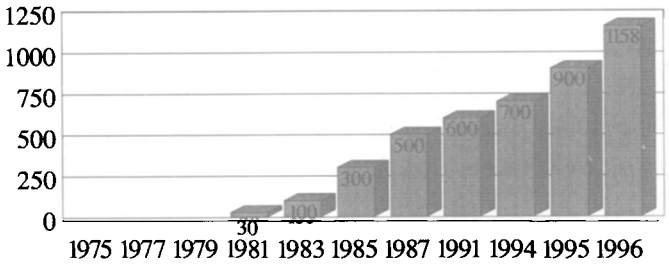
Together with the great expansion of court assessment and diversion schemes of which there are now estimated to be at least 100, this has led to many more mentally disordered offenders receiving hospital care. Admissions under s37 or s37/41 of the Mental Health Act have increased by 28% between 1990 and 1993 and transfers to the NHS from prison under s47 or s48 have doubled over the same period. The number awaiting admission to a secure bed is now falling steadily. (fig 2)

Dr John Reed, Department of Health.

Fig. 1

MEDIUM SECURE PSYCHIATRIC BEDS

in England from central capital programme

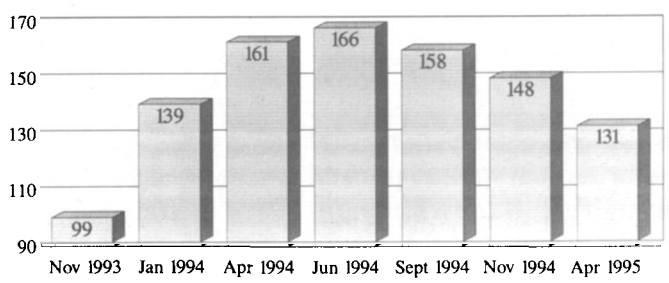


Dept of Health

Fig. 2

PATIENTS AWAITING ADMISSION

to medium secure beds



Source: Royal College of Psychiatrists