THE LEGAL MEANING OF INSANITY

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A satisfactory legal definition of insanity has not yet been provided, and with our present knowledge, the chances are undeniably against any attempt at providing one being successful.

Even a little knowledge of psychiatry is enough to show how astonishingly difficult it is to decide on the imputability of a person suffering from a psychological disorder. The question whether a demarcation line can possibly be drawn between the sane and the insane no longer deserves consideration. Suffice it to say that it is commonly understood, in medico-psychiatric circles, that no one enjoys complete psychological integrity. Mental illness may rightly be referred to as the caricature of the patient's psychological make-up. On this assumption is based the common belief that between the seemingly normal and the inmates of mental hospitals only a distinction of degree can be granted. In spite of this it is clear that on theoretical grounds, and also for practical reasons, we cannot ignore a vague distinction between the sound and the unsound, as between the sick and the dying, or between poverty and misery. Although quite akin to each other, there is a substantial cleavage, dividing two distinct patterns.

This helps us to understand why psychiatry has so far been unable to give a satisfactory definition of insanity, and more implications are to be found in the issue. In our attempts at a definition, the fundamental classification of mental disorders into psychoses and psychoneuroses, endogenous and exogenous disorders, functional and organic reaction types, is liable to create difficulties.

The difficulty of diagnosis together with the intensity of the illness changing from one case to the other, complicate the issue further. The problem promises even poorer outcome, since in the majority of cases the intrinsic nature of the illness is as yet unknown. It will be apparent, therefore, why the psychiatrist speaks more in terms of syndromes than of proper specific clinical entities, and hence any classification based on present standards of knowledge is bound to be arbitrary. It is only in cases of subnormality, otherwise known as mental deficiency, that one can find clear-cut distinctions, and consequently get a rigid classification. One wonders if psychiatry can ever succeed in giving a definition. Nature has fixed no rules and rigid classifications; it is man who tries to fix them.

Taking up the concept of mental normality again, mention must be made of the fact that it is and has always been conditioned by two factors, namely, era and environment. Thus going back in time, Roman Law decided against the validity *in toto* of the juridical act of a person who, in his last will, had expressed the wish to be buried at sea (L. 27, in Digesta, 28, 7). The nullity of the juridical act was decided on the grounds that the inclusion of such a clause was a clear indication of unsoundness of mind. At the present day such a request is given a more benign interpretation, being accepted as fairly normal. Present-day law therefore would see to the accomplishment of the enactments as the last wish of a sound mind. Modern poetry and ultra modern paintings, which usually suggest schizophrenic autism, would in all probability have furnished proof of unsoundness of mind to people like Mascardus and Menochius. The intellectually brilliant usually shares the same fate, for through his genius he enjoys degrees of insight and foresight by far superior to those of his fellow men. He may eventually be spoken of as indulging a personal obsession. The life of Leonardo da Vinci is a typical case.

How environment and customs constitute another important delimitating factor is easily seen from the following simple example. If a European girl were to apply the facial paintings commonly used by Australian aborigines, one would be justified in considering her as showing the prodromal signs of mental disorder.

As far as we are concerned the two above premises enable us to envisage the difficulty in establishing who is of sound

mind and who is not. Each generation differs from its previous and subsequent ones in many issues, but mostly in its psychological make-up. In racial and national divergencies the psychological setting plays also an important part. In spite of all discrimination, however, there is no reason why men of different era and environment should not be included within the pale of mental normality.

If psychiatry were in a position to furnish us with a definition satisfactory for its own requirements, it would nevertheless fail to comply with legal demands. The queries which the psychiatrist and the jurist raise stand poles apart. The psychiatrist concerns himself exclusively with the clinical aspect of the illness. The study of the etiology, morphology and symptomatology together with the course and prognosis of the mental illness provides for the psychiatrist the main topic of inquiry. Secondly, therapeutic and precautionary measures are equal and important concerns of the medical profession. But the question whether the patient is responsible for his action, falls outside the limits of the medical profession.

The duties of the judge and the jury are precisely and exclusively circumscribed by the following question: whether a determined act, which apparently seems the output of a sound mind should be held as the result of deliberation *(actus humanus)*, or merely an act which took place without deliberation *(actio hominis)* as the result of mental deficiency or was provoked by a mental disorder. In other words, in a determined case of mental deficiency or psychic disorder, what stand should be taken regarding the imputability of the patient for the act or acts with which he is charged? Under the focal light of this premise should be formulated the essence of what we mean by insanity in legal terms. Needless therefore to say an *ex professo* (i.e. a specialist's) knowledge of the different mental disorders is of secondary importance to the jurist.

While the psychiatrist would be satisfied if he reaches a diagnosis, this would be merely a starting point for further inquiry in law. The precise psychiatric diagnosis may have very limited bearing upon the juridical question of imputability. "Often the psychiatrist learns too late that the existence of psychosis as such at the time of the offence does not automatically exempt the offender from punishment" (Cavanagh J. R. and McGoldrick J. B., 1963). Psychoneurosis may well be responsible for reducing or even abolishing the imputability of the patient, as much as psychosis does. Psychosis, however, does not necessarily imply absence of imputability. Strange as it may seem, the Sacred Roman Rota declared null and void a marriage contract one of the parties to which suffered from psychoneurosis at the time of the wedding (S.R.R. Decis.), while in cases of psychosis it was declared otherwise (S.R.R. Decis.). Indeed the fact appears quite awkward even to the psychiatrist, since psychosis forms a more serious illness than psychoneurosis. The clinical picture, therefore, does not of its own appeal to the jurist, as much as it does to the medical doctor, except for secondary reasons. Mental disorder, whether it be psychosis or psychoneurosis, does not by its own nature deprive the patient of his *consensus*, although in cases of psychosis the possibilities of its doing so are greater. It is commonly understood, moreover, that the same type of illness differs from one case to another in intensity; it may even intensify gradually, and only after many years may reach such a degree as to make the patient lose control of his mental faculties. It was for this reason that the Roman Rota Decision *coram Florczak* states: "Inability to reason cannot be simply deduced from the mere diagnosis of the illness — however perfect this diagnosis may be (S.R.R. Decis.). Having thus established the diagnosis, the examination of the patient, which will decide on his responsibility for his actions, lies in the hands of the jury.

Recognising the duties of the judge one can also envisage the basic legal meaning of insanity. The absence of the consensus should constitute the essence of the juridical concept of insanity. Roman law furnishes us with a well known axiom: *"Furiosi nulla voluntas est"* (L. 40, in

Digesta, 50, 17; 1.47, 29, 2), which was later accepted by the Church in its pastoral and juridical proceedings. The famous reply by Pope Innocent III (1198-1216) to the Bishop and Chapter of Targilensis testifies to this. A certain priest joined the monastic life while he was out of his senses and had lost all hope of recovery. It was proposed to the Pontiff that the said priest was not bound to the monastic Rule after he had recovered from his illness. It appeared however contradictory to the Pope that a person who is out of his senses, can despair of the present life. The reply of the Pope maintains that a person is responsible for his acts if he exercises the power of deliberation (C. *Sicut tenor*, 15, X, III, 31). Ancient literature, both civil and ecclesiastical, has not failed to adhere to this teaching. One may eventually encounter similar phrases, such as: "The presence of *furor* involves a gradual regression of intellectual capacity" (Ab Assisio Josephus Ludovicus). "A man affected by *furor* is deprived of intellectual power — of thinking, judging and reasoning, and the free exercise of his will" (Socinus Bartholomaeus, 1571); "When *furor* is acute and the whole individual is wholly excited then mental blindness takes possession of him" (Menochius, 1636); "*Furor* affects the mind of man to such an extent that he cannot discern the true nature of things" (Colerius Matthia, 1612)..

A full understanding of insanity from the legal point of view presupposes a basic knowledge of psychology and psychiatry. It is not simply the absence of the deliberative faculty that makes a person juridically insane. For a person to be considered insane there must be a definite identifiable abnormality. Canon law presumes (which is a *praesumptio iuris et de iure)* a normal six-year-old child to be lacking in the deliberative faculty. This, however, should not mean that the child is insane. It is understandable, therefore, that the study of psychology and psychiatry should be important for establishing the correct meaning of insanity.

Assuming the Freudian doctrine that free will is but an illusion to be correct, modern psychiatry has shown a marked tendency to limit seriously or even to deny freedom of action in man. It is on this assumption that present-day psychiatry recognizes crime as a disease. Such an assertion would have serious repercussions on society at large, and for this reason the law has eyed the infiltration of Freudian doctrine warily as disastrous to social order. In spite of many opinions cherished by the followers of Freud, no one can fail to recognize the existence of human freedom and its importance in all spheres of human activity.

We all act on the assumption that a person is endowed with the deliberative faculty which permits him to act or not to act. This freedom forms the basic criterion for legal responsibility. Nature has granted human beings the faculty of choosing between different possibilities of action — a power commonly known as psychological freedom. Upon this freedom is based our ability to choose between right and wrong (Zavalloni, 1956). This freedom forms, therefore, the axis on which turn the ethical principles of the individual person and those of society. Good or evil before God and society will be rewarded or otherwise punished in virtue of this natural endowment of man.

The question of psychological freedom presents more implications in cases of insanity. In many instances the patient seems to act according to his wits, and he may appear quite conscious of his actions, but we will later find that we have been cheated by the patient's apparent psychological consciousness. But this is a practical question which should not detain us in our pursuit. Once we have laid down the fundamental principle of human activity, we are likely to learn the meaning of insanity as understood by law.

For further understanding of the legal concept of insanity it seems useful to examine the McNaghten Rules. To escape imputability for a crime it was stated that the individual must prove that, at the time of the crime, he was:

1. suffering from such a defect of reason from mental disease
2. as not to know the nature and quality of his act;

3. or if he did, he did not know that the act was wrong.

If the words "mental disease" were to be taken as they are understood in medicine, the McNaghten formula would offer great difficulties in forensic circles, and would allow slender chances for a plea of not guilty owing to insanity. In very few psychiatric cases could we speak of disease. It is well known in psychiatry that psychosis is not a disease in the sense that it is always characterized by pathological lesions. The dementias may fittingly fall under this heading, but the onset of a great number of psychoneuroses and psychoses cannot be attributed to a specific cause. The terms "mental disorder", "disordered psychology" etc. may well fit the facts.

Another difficulty which follows from the formula concerns the terms "nature and quality of the act". It is not clear enough what the formula means by "quality". Following various court decisions the term "quality" seems to mean "consequences". Whatever meaning it may suggest, the term seems superfluous and helps to render the issue more complicated. Once a person is known to have acquired a true understanding of his action, *a priori* he acknowledges the qualities and the consequences thereof. Both factors form the *elementa constitutiva* of the human act, without which we can only speak of the *actio hominis*. The consequences, which the McNaghten formula refers to, stand for those results which necessarily flow from the essence of the human act. To know the "nature of the act", therefore, means to know its qualities and consequences.

It is in this regard too that the final clause of the formula should be dropped: "or if he did (know the nature and quality of the act), he did not know that the act was wrong". It appears quite contradictory that a person who does not know that the act is wrong, can understand the nature of his act, or viceversa. If he had no knowledge of the wrongfulness of his act, it means that he had not comprehended the nature of his act; one intrinsically includes the other. To know the nature of the act means to know not only the fact as such, which also a beast may comprehend, but also to understand that the act is right or wrong.

In view of what has been said so far, by insanity in the legal sense we mean: a condition of mind caused by underdevelopment of intelligence or by any psychosomatic, or by merely psychic disorder of such a degree as to render the person unable to choose between different possibilities of action.

From this formula two difficulties may arise. The first regards the inclusion of mental deficiency in the legal concept of insanity. Psychiatry stubbornly maintains that the question is closed. Full credit is given to the statement laid down by Esquirol that between mental deficiency and mental illness there is a great difference (Esquirol, 1846). English law has worked out a meaning for mental deficiency which could never satisfy modern standards of psychiatry. It simply confuses the issue and puts the jurist and the psychiatrist in complete disagreement. Although it seems presumptuous to require that mental deficiency be inserted in the formula, there are on the other hand sound reasons why it should. Every profession has its specific pursuit with an aim intrinsically in accord with the nature of the profession: "The attainment of an aim is the main motive of every action" goes the axiom. It is outside the "aim" of the legal profession to diagnose the illness of the person in the dock. If it is desirable for the judge to study psychiatry, the fact still holds true that the establishment of the diagnosis in law is of secondary and preparatory nature in the attainment of the final decision. The primal and exclusive question to be answered in court is whether the person was responsible for his actions. In this respect it is reasonable that the law should consider both the subnormal and the abnormal alike.

The formula, moreover, as laid down by the present writer fails to recognize the question of the "irresistible impulse". This is absolutely true. It has often been seriously doubted whether will power has really been called into action in cases of yielding to a so-called irresistible impulse.

If this were the case, the "irresistible impulse" would hold the full import of the "*actus humanus*". But if it is convincingly shown that the distortion is not only of the will, but of the whole person thus preventing the exercise of reason, the "irresistible impetus" will then fall within the legal meaning of insanity as stated above.

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