


7-1-1963

# Symposium: Introduction

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# SYRACUSE LAW REVIEW

VOL. 14, NO. 4 PUBLISHED QUARTERLY SUMMER, 1963

## INTRODUCTION

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Within the year, the president of the United States delivered to Congress a message dealing with mental health, the first that has ever been delivered by an American president. It is but the latest indication of the present pervasiveness of concern about the problems of the human mind. Doctrinal law has, on the whole, been slow to accommodate itself to many of the findings of the sciences. In the area of criminal responsibility, the problem of the lack of communication between law and psychiatry has already been the subject of extensive commentary. Some areas remain as yet less incumbered with analysis.

Whatever may be true of other law schools, many of which Professor Smith suggests neglect the mechanics of behavioral courses in family and criminal law in favor of courses dealing with the "vested order," the Syracuse College of Law cannot be accused on that ground. The family law course has been structured to provide the students with a broad range of considerations from the behavioral sciences as a vehicle for the discussion of the legal problems. A seminar in criminal law will have the same effect for some problems in that field. A further outgrowth of this concern is the present symposium.

Professor Smith's introductory article reminds the reader of many of the difficulties which have been faced in attempting to incorporate knowledge obtained by science into the fabric of law. He reminds not only of past failures but of present ones and suggests the increasing need for team work in the medical-legal area. Between law and science, the whole fabric of society may be spun anew, he states.

Before any spinning can be begun, however, one must face some rather meaningful questions with respect to societal responsibility. These in turn lead to an examination of the medical and legal ingredients of mental abnormality.

We name mental abnormality "mental illness." If this characterization results in acts comparable to the freeing of victims from chains, the label is salutary. One may question its utility, however, if mental "illness" is taken literally as implying that the victim is involved in an involuntary condition for the results of which he is at best only indirectly responsible.

The problems arising from the application of such sweeping concepts to criminal responsibility have been discussed elsewhere at length.[1] In part, this symposium examines the somewhat broader underpinnings of the theory. How analogous is the diagnosis of "mental illness" to the diagnosis of other illness and to what extent is "treatment" in this area a problem of a similarly medical nature as the treatment of other illness? Euphemisms, if indeed "mental illness" is in part a euphemism, have been known to have unfortunate results in the past.

The symposium examines the medico-legal role of the psychiatrist from two standpoints. The first role examined is the diagnostic role in which a psychiatrist identifies mental condition for legal purposes. A psychiatrist may, for example, make a medico-legal determination of the mental competence of a person: to contract, to devise property, to manage property, to walk the streets freely, or, analogously, to commit a crime, stand trial for its commission and even be executed for it.

Courts allow psychiatric testimony on such issues and others not mentioned, because the legal standard applicable to people suffering mental derangement differs from one applicable to others.[2] If mental illness is capable of scientific determination, law would be presumptuous in accepting a non-medical answer as sufficient. If, on the other hand, the answer is partially normative, other results may follow. Furthermore, if the diagnosis is accomplished by methodology which requires less expertise than, for example, x-ray interpretation, and leads to more dubious results, may a trend toward greater psychiatric determination be judicial abdication of responsibility? Dr. Leifer's article sheds light on this difficult question from the standpoint of a psychiatrist.

The other role examined is the role of the psychiatrist in the treatment of mental disorder. If a person is ill he should, normally, be treated by a physician. Even such an apparent truism may fail, however, to explain the desiratum in the mental area. One can hardly doubt that the law legitimately leaves the problem of treating contagious diseases to physicians. Can the same be said of leaving deviant behavior to psychiatric treatment? Does it matter whether psychiatry is capable of "treating" in the same sense? Is it possible that where deviant behavior raises societal problems, these must be shared by both the legal and medical professions and that any firm line between the responsibility for "correction" in the normative sense and "treatment" in the medical sense is artificial? Dr. Thomas' article deals with this problem, from the dual viewpoint of a psychiatrist and a law teacher.

Adoption of scientific knowledge into law does not depend as much on the status of the experts in the field as on the knowledge accumulated.

1. One of the latest symposia is the excellent one in 57 Nw. U.L. Rev. 1 (1962).
2. For specific references see Tables, prepared by staff under K. V. Alexander, in Lindman & McIntyre, The Mentally Disabled and the Law (1961).

Quite aside from the question of the role of the psychiatrist in the determination of questions is the role of knowledge of human behavior on the principles of law. Few areas of law fail to make assumptions about human behavior; many of them are questionable in terms of the accepted scientific thought. Perhaps, to accomplish the reweaving of the societal fabric, it will be necessary to view and review large areas of legal doctrines in terms of acquired information. One area considered ripe for such reexamination is the area of compensation for psychic injury. Courts have, from the initial position of *Mitchell v. Rochester Ry.*[3] come a long way in finding cause to allow compensation for psychic injury.[4] In part, this change has been the result of the increased manageability of the information once thought so speculative as to be beyond control by courts.[5] Professor Smith analyzes the important problem of this type of injury from the focal point of evidentiary problems.

The issue is, however, not entirely theoretical. The practitioner will find in it many useful suggestions applicable to his practice. Professor Smith gives helpful suggestions with respect to trial of psychic injury cases, going so far as to suggest arguments to the jury in some cases. Dr. Leifer's article will probably be of help to those practitioners who find themselves in the uncomfortable position of being forced to cross-examine an unfavorable psychiatric witness and explain his testimony to the jury. Dr. Thomas' article will, undoubtedly, also be helpful. Furthermore, the authors suggest several significant innovations. Professor Smith suggests the possibility of a medico-legal audit as a means of avoiding the battle of experts in medical injury cases. Dr. Thomas suggests a campus clinic as a means of dealing with the dangerous offender. These suggestions, as well as the theory which underlies them, commend themselves to the careful scrutiny of the bar and the teaching profession.

As is true with any symposium with a broad base and comparatively small space, the articles in this issue only hint at broad areas that remain to be analyzed. If the problems have been forcefully posed the issue has fulfilled its purpose.

3. 151 N.Y. 107, 45 N.E. 354 (1896).

4. Halio v. Lurie, 15 App. Div. 2d 62, 222 N.Y.S.2d 759 (2d Dep't 1961); Battalla v. State, 10 N.Y.2d 237, 176 N.E.2d 729, 219 N.Y.S.2d 34 (1961); Ferrara v. Galluchio, 5 N.Y.2d 16, 152 N.E.2d 249, 176 N.Y.S.2d 996 (1958); cf. Gonsenhauser v. New York Cent. R.R., 8 App. Div. 2d 483, 188 N.Y.S.2d 901 (4th Dep't 1959) (extending doctrine to cows).

5. Mitchell v. Rochester Ry., 151 N.Y. 107, 45 N.E. 354 (1896).