August 2015

Book Review: Psychiatric Justice

Alice M. Batchelder

BOOK REVIEW

PSYCHIATRIC JUSTICE: By Thomas S. Szasz, M.D. The Macmillan Company, New York, 1965. Pp. 283.

In an era in which extensive judicial emphasis has been placed on "due process of law" in criminal proceedings, both in the federal courts and in the state courts, Dr. Szasz's book serves as a jarring reminder that in at least one vital area of the concept of due process, much remains to be done. The emerging definition of due process has enunciated the rights guaranteed the individual by the Fourth, Fifth, Sixth, and Fourteenth Amendments[1]; and viewed within that framework, this book, although published in 1965, remains particularly timely, for Szasz, speaking as a psychiatrist,[2] endeavors to demonstrate how the criminal procedure in virtually every jurisdiction in the United States operates to use psychiatry as a weapon against the individual. This injustice is accomplished through the application of two procedures: the involuntary pretrial psychiatric examination of the accused to determine his fitness to stand trial and the coerced plea of "not guilty by reason of insanity" induced when the accused is found fit to stand trial. Either of these procedures, the author maintains, effectively denies the accused his Sixth Amendment right to trial.

Viewing the traditional American trial system as a kind of game, Szasz demonstrates how the laws allowing involuntary pretrial psychiatric examination place the prosecutor, traditionally the adversary of the accused, in the advantageous position of being able to win the game merely by having his opponent declared incompetent to play. The typical statute allows the prosecutor, if he merely suspects that the accused may suffer from some mental aberration, to cause that accused to undergo a psychiatric examination against his will. This may entail up to sixty days' confinement in a mental institution, all without benefit of

---

[1] See, for example, *Mapp v. Ohio,* 367 U.S. 643 (1961); *Gideon v. Wainright,* 372 U.S. 335 (1963); *Malloy v. Hogan,* 387 U.S. 1 (1964); *Massiah v. United States,* 377 U.S. 201 (1964); *Escobedo v. Illinois,* 378 U.S. 478 (1964); *Griffin v. California,* 380 U.S. 609 (1965); *Kent v. United States,* 383 U.S. 541 (1966); *Miranda v. Arizona,* 384 U.S. 436 (1966); *In re Gault,* 387 U.S. 1 (1967); *United States v. Wade,* 388 U.S. 218 (1967).

[2] Dr. Szasz is a professor of psychiatry, a member of the American Pyschoanalytic Association, a fellow of the American Psychiatric Association, and consultant to the Committee on Mental Hygiene of the New York State Bar Association.

trial, and may result in the accused's being found incompetent to stand trial, in which case he will be committed indefinitely to a mental institution, either civil or criminal, still without trial. In this situation the commitment serves as a final disposition of the charges against him.[3] The relationship between the court-appointed psychiatrist who conducts the examination and the accused is not a privileged doctor-patient relationship, and this fact further strengthens the hand of the prosecution. The co-operative defendant finds that his statements to the psychiatrist are used against him; the defendant who invokes his right to be silent finds that he is classified as unresponsive, negativistic, and incompetent.

The case studies and competency hearing transcripts included in the course of the book serve to emphasize the Kafkaesque quality which the trial game assumes because the weapon of psychiatry has been given to the prosecution. In the case of one Luis Perroni, for example, the psychiatrists found Perroni to be "negativistic," a term they defined as meaning "a reaction opposed to a normal reaction expected [by the psychiatrists] in a given situation," [4] because he refused on the advice of his attorney to answer some of the questions concerning his crime. The psychiatrist was unable to remember the specific questions or even the types of questions which Perroni had refused to answer.

Szasz contends that the Sixth Amendment guarantee of the right to trial is not a guarantee contingent upon the accused's proving that he is mentally stable, any more than it is contingent upon his proof that he is physically sound. It is an unconditional or absolute guarantee, which is being denied to the defendant who is forced to submit to a psychiatric examination which then determines if he will be allowed to stand trial at all.

Recognizing that there are indeed persons who are incompetent to stand trial, Szasz suggests that the proper standard by which a person accused of crime should be judged is not whether his mental health is generally sound, but whether he is capable of understanding the charges against him and of contributing to his defense. Those persons most qualified to judge this capability are members of the legal profession, since they are versed in the

---

[3] See chapter 2, pp. 37-55, in which Szasz examines the statutes for three jurisdictions: New York State, the District of Columbia, and the federal courts.

[4] See p. 122.

elements of a criminal defense. If an accused is found incompetent to stand trial, he should be dealt with in much the same manner as one physically unable to stand trial—his trial should be postponed until he is able to be tried.

The author's scheme for judging competence to stand trial and dealing with those persons adjudged incompetent appears to be a practical approach, eliminating the need for, and the dangers incident to, the psychiatric examination. Moreover, it strictly observes the right of an individual to stand trial and to be free from coerced mental examination and treatment by the state.

ALICE M. BATCHELDER