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Book Review of Psychoanalysis, Psychiatry, and the Law

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strict conditions precedent that must be satisfied before a court-martial convened by a commander of one force, such as the Army, can try a member of a different force, such as the Navy.¹⁹

Civilians Under Military Justice is a most worthy addition to the literature on military law. I enjoyed reading it and, except for one thing, would unhesitatingly recommend it as a worthwhile addition to the reader's library. The thing that makes me stop short of the latter is the price. I know the cost of printing is astronomical; and I don't pretend to know how to price a work of art, but \$11.50 impresses me as being just too much. If the excellent color photograph of Thomas Gainsborough's portrait of Sir Charles Gould, which appears as the frontispiece, contributed to the cost, it would, in my view, have been immeasurably better to have left it out. The present price is bound to turn away many potential readers; I urge them to borrow the book from the Library.

ROBERT E. QUINN*

PSYCHOANALYSIS, PSYCHIATRY AND THE LAW. BY JAY KATZ, JOSEPH GOLDSTEIN, AND ALAN M. DERSHOWITZ. New York: Free Press, 1967. Pp. 785.

This book, an imposing work of some eight hundred rather large pages, is broken down into two major sections (referred to by the authors as chapters). Chapter One, entitled *Psychoanalysis and Law—Theories of Man*, attempts to explore the relationships between traditional psychoanalytic theory and certain fundamental legal issues. The second chapter, *Law and Psychiatry*, undertakes a fairly comprehensive survey of laws involving mental disorder, with reference to such crucial issues as involuntary commitment, definitions of insanity and incompetence, and relationships between the courts and psychiatric practitioners. The format of Chapter One consists mainly of selections taken from standard psychoanalytic sources followed by notes of illustrative legal case material and comments by judicial and psychiatric authorities. Chapter Two is built around a number of selected legal cases, each covered rather thoroughly, followed by related court decisions and comments. In most instances, the authors allow their material to speak

19. *United States v. Houston*, 17 USCMA 280, 38 CMR 78 (1967); *United States v. Hooper*, 5 USCMA 391, 18 CMR 15 (1955).

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for itself, and inferences must be drawn by the reader. This is often effective, but on occasion becomes difficult, particularly in Chapter One where the relationships between psychoanalytic concepts and illustrative legal material are sometimes obscure.

Any critical analysis of this book must deal with each chapter separately, which is consistent with the statement made by the authors that the volume is really two books in one. The major difficulty in Chapter One involves the clarity of the selected material itself as well as the occasional uncertainty as to what inferences should be drawn from it. Freud himself is not especially easy to understand, particularly when discussing the basic topographic and structural theories of psychoanalysis. It becomes doubly difficult, then, particularly for the psychoanalytic layman, to attempt to relate these constructs based on the models of nineteenth century physical science to modern problems of psychiatry and law. It is probably significant in some way that just when the law is beginning to lean rather heavily on psychoanalysis and its assumptions about the nature of man, the rest of the world is rapidly revising or entirely abandoning the Freudian position. One rarely sees these days, for example, a case of conversion hysteria such as was commonly seen in Freud's day. Instead of puzzling physical symptoms, today's psychiatric patients are more likely to present vague complaints of unhappiness, indecision, and lack of self-esteem, with emphasis on interpersonal rather than intra-personal conflict. It is also noteworthy that insanity (i.e., psychosis), the main legal-psychiatric issue dealt with in this book, is something about which traditional psychoanalysis has had relatively little to say; relative, that is, to the psychoneuroses such as hysteria, phobic reactions, obsessions and compulsions.

Nevertheless, it must be admitted that Freudian theory, for better or for worse, has, more than any other force, helped to structure modern psychiatric thinking and ultimately, the way we deal with those among us whose behavior deviates from accepted normative standards. This is particularly true in relation to the basic deterministic philosophy inherent in psychoanalysis, especially as it deals with the dynamics of the unconscious and the apparently relentless rear guard action man must constantly wage against his genetically based erotic and destructive tendencies.

The second portion of this volume becomes more directly and deeply involved in the extremely important matter of contemporary legal decisions related to instances of behavioral disorder. Here one can see

more clearly the assumptions at work in the courtroom, and, although extremely interesting to the legal layman, the net result is a bit unsettling as well. One gradually develops the uncomfortable feeling that there is something terribly oppressive about the modern partnership of forensic psychiatrist, judge, and attorney. Repeatedly throughout the book, one sees individuals deprived of their freedom, their civil liberties, and their right to be heard in court, because, it is alleged, they need "treatment" for their mental condition and are unable to understand the true nature of their circumstances. Such "treatment," it seems, often consists of being locked up in an overcrowded and understaffed institution (euphemistically referred to as a "hospital") and little else. All this is done, of course, under enlightened and humane conditions, very modern and medically sound, "for the good of the patient." This happens in spite of the fact that there is practically no general agreement as to what constitutes insanity or "mental illness," or in fact, what "treatment" really is or ought to be. Thus, rather than being found guilty of a criminal act, the individual becomes a patient instead of a criminal, but nevertheless is "convicted" of having a "mental illness."

Dr. Thomas S. Szasz, a psychiatrist and practicing psychoanalyst, comments on this matter as follows:

But if I use the word "schizophrenic" outside of my office or in a courtroom it is a terrible thing. It is not the word—it is the context in which you say it that matters. . . . So these diagnostic terms have a tremendous social impact . . . You are finished unless somebody defends you. You can't stand trial, you have no rights, you can't get out of the hospital.¹

More than anyone else, Dr. Szasz has protested the practices of modern forensic psychiatry. Interested readers would do well to examine another of his writings,² in which he so capably points out the intellectually and morally untenable position we have taken in regard to the issues of criminal responsibility and mental disorder.

A major factor to be dealt with here is that forensic psychiatrists have been playing the roles of judges, whether or not they realize it, for their decisions concerning a person's mental condition often short circuit the traditional Anglo-American process of justice. In many cases, it appears, this is done to the detriment of the individual concerned. Psychiatric

1. SZASZ, *PSYCHIATRIC JUSTICE* 578 (1965).

2. SZASZ, *LAW, LIBERTY, AND PSYCHIATRY* (1963).

testimony is accepted as being representative of modern medical and scientific knowledge (similar to the court testimony of a pathologist, toxicologist, or ballistics expert) in spite of the very obvious fact that there are a multitude of viewpoints in the field, many of which are in direct opposition to one another. At best, this state of affairs frequently results in the miscarriage of justice; at worst, it threatens to undermine our legal philosophy (including the adversary system) if not our entire tradition of social order. These matters should be of the gravest concern to those who practice law and psychiatry as well as to the enlightened and concerned citizen. The authors of this book have done a respectable job of collecting material that dramatizes these problems. One can scarcely read through these cases, many of which include rather lengthy transcripts, and not be impressed with the seriousness of the questions that are raised and the confusion that is so often evident. One is also impressed with how meager is the help given to the courts by the so-called expert representatives of modern medical science.

Any book, compiled in this manner, is bound to reflect the biases of the authors, and thus runs the risk of conflicting with those of its readers. This is particularly true in the area of psychiatry and other disciplines dealing with human behavior where biases abound and generally agreed upon facts are few and far between. This reviewer, for example, would have preferred to see the authors draw more heavily on the behavioral sciences in order to provide a broader basis for understanding some of the current thinking about psychopathology.

As have Dr. Szasz and others, one might legitimately attack the entire "illness model" of mental disorder as representing a throwback to demonology; a convenient myth which allows us to explain away the complex problems human beings inevitably encounter as they live with one another. The idea that "mental illness" is, as the phrase goes, "like any other illness" is at face value, clearly absurd. There are almost no similarities whatsoever. It is practically never observed, for example, that physical illness can be legally construed as an excusing condition for anti-social behavior. The medieval notion of demon possession is no more illogical and far more humane than the idea that there is such an entity as "mental illness." At least the afflicted individual could, after successful exorcism, return to his previous status without prejudice. This is certainly not the case with most present day mental patients, who often suffer a lifelong stigma based on the implicit assumption that their disorder represents some type

of brain or nerve disease, suggesting a disgraceful taint which is basically irreversible. In its manner of conceptualizing the problem, the illness model has not only captivated the legal-psychiatric partnership, but has strongly shaped public attitudes, many of which have undergone little change since the days of Kraepelin.³

Some of the recent developments in the area of psychotherapy seem promising enough to have been included, and may, in fact, end up having the revolutionary impact on present day psychiatry that Freud's methods had on the traditional neurology of the nineteenth century. Also, practically untouched was the issue of socio-economic discrimination in relation to the main legal and psychiatric questions raised by the authors. It has been repeatedly demonstrated that both the law and psychiatry operate very selectively at times depending on the social class of the person in question. It would seem that miscarriages of justice via the psychiatric route would be as difficult, if not harder to rectify as those occurring by means of the more traditional legal procedures when persons of low status are involved. One gets the distinct feeling that involuntary commitment often represents a convenient means whereby these people, many of whom are clearly troublesome to society, can be dispatched and forgotten. Perhaps a built-in mechanism exists for handling whatever collective guilt might arise over such a practice, since the assumption is that we are "treating" a sick man (albeit against his will) rather than punishing a wrongdoer.

However, it is probably unfair to criticize a book for the viewpoints it does not represent, particularly in that the biases of the authors are frankly stated, or at least, unhidden. The book as a whole is an admirable effort to deal with an extremely complex but crucial set of problems and should be an excellent sourcebook for lawyers, psychiatrists, clinical psychologists, and others who work with the courts or are in other ways involved with legal-psychiatric problems. In addition to a subject index, there are tables of cases, authors, and sources consulted. These, along with the condensed and analytical tables of contents, should enable one to find his way through the book with relative ease.

It would seem that a book such as this is an especially welcome contribution at a time of revitalized concern over civil liberties and the rights of minorities, since mental patients have long been one of our

3. Emil Kraepelin (1855-1926). German psychiatrist who, more than anyone else, helped establish the notion that mental disorders were physical diseases. A major assumption was that such disorders were based largely on metabolic and hereditary irregularities, and thus were usually incurable.

most oppressed minority groups. Frightening to most and conveniently ignored, their burden might be eased somewhat if we could face more directly some of the destructive and hypocritical things we do to them in the service of decent values such as justice, humanity, and health. Perhaps this volume will in some way contribute to a more honest appraisal of the whole area.

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