

## INSANITY – A MEDICAL-LEGAL ENIGMA?

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There is no mental disease called insanity. Insanity is a legal term used to designate the condition of certain people who exhibit particular symptoms of mental disease<sup>5</sup>. A patient may be psychotic, but the law acts upon the assumption that he is not insane until there is a judicial determination that he is.

Where insanity as a defense in criminal cases is concerned, many medical men believe that the question before the court is whether or not the accused is insane, i.e., psychotic, either at the present moment or at the time of the crime. If he is insane at the time of the trial, many doctors say that he is not fit to stand trial, and if he were insane at the time of committing the crime, they would say that he is not guilty because of insanity. Such is not the case.

The law is not concerned primarily with the question of existing psychosis. The law's concern is with responsibility<sup>3</sup> - does the accused suffer from mental disease which is so severe that he ought not to be held responsible for his act? It has been the aim of the law to determine not if the patient was mentally ill at the time of the offense, but rather if his mental illness was of such severity that he was not responsible for his act. What rules does the law apply to the determination of this responsibility and hence sanity or insanity?

In 1843 England adopted the M'Naghten Rules. In order to establish defense on the grounds of insanity, it must be clearly proved "that at the time of committing the act the accused was labouring under such a defect of reason from diseases of the mind as not to know the nature and quality of the act he was doing; or if he knew what he was doing, that he did not know that it was wrong".

The Criminal Code which became Canada's law on the first day of July, 1893, con-

tained a rewording of the English test for responsibility. It stated that the accused shall be excused from responsibility if he "was labouring under such a defect of reason from diseases of the mind to such an extent that he was incapable of appreciating the nature and quality of the act"<sup>7</sup>.

Under the Canadian statute law, a disease of the mind that renders the accused person incapable of an appreciation of the nature and quality of the act must necessarily involve more than mere knowledge that the act is being committed; there must be an appreciation of the factors involved in the act and the mental capacity to measure and foresee the consequences of the violent conduct<sup>7</sup>.

The principal medical criticisms levelled against these rules are founded upon two points; the first, that the rules make no provision for the effect upon conduct, of pathological disturbances of emotion, as opposed to disturbances of reason or knowledge; the second, that the diagnosis of any kind of insanity is a complex task and cannot be finally entrusted to a panel of laymen, the jury.

In support of the first objection, there is the glaring inadequacy of the rules to take account of the nature of depression, one of the commonest forms of serious mental illness. A depressed patient may be driven by his illness to attempt to commit suicide; but if he has a dependent relative, for example, an aged mother, he may kill her first in his mood of utter despair and subsequently be apprehended before he can take his own life. In such a case it is clearly difficult for the honest expert medical witness to maintain either that the man did not appreciate or know what he was doing, or that he did not know that it was wrong. But the balance of the patient's mind is no less overthrown, and his sanity therefore no less impaired, because the disturbance is primarily emotional rather than rational.

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The measure of public support for the law is based upon a salutarily jealous concern for the ultimate powers of the jury, reinforced by its apparent logic and common sense. But doctors are entitled to point out that this latter appearance is to some extent deceptive since the law is derived from an over-simplified and now obsolete concept of human mental processes<sup>8</sup>.

However, not all medical objections to the law are themselves free from confusion. Doctors have to remember that the law does not presume to define insanity. What the law considers are the conditions which have to be satisfied in order that a person may be excused from criminal responsibility. Moreover, the determination of such responsibility, like that of every other question of fact or opinion in the course of trial by jury, must finally be made by the jury themselves. The object of the law is to provide a clear, concise direction for the guidance of judges in advising juries as to the law with regard to criminal responsibility in particular circumstances. The law has never pretended to define insanity from a medical point of view.<sup>9</sup>

Law is all logic and reason, or at least it sets out to be so. But for a legal system to function, it must be more than merely logical and reasonable. It must be definite. It must be based on precedent. It must rely on rules. And so in the course of time all functioning legal systems become legalistic, and in the process some of the logic and reason gets left behind.

Should the medical man accept that insanity is a legal question or should the courts accept the physician's testimony of mental capacity as conclusive? Should the legal definitions of insanity be replaced by those of the psychiatrist? Would the latter be more effective and just, as far as society is concerned?

Medicine is concerned with man and his actions, which have their sources both in the conscious, which may be governed by reason, and in the unconscious which is not governed by reason, by the intellect or logic, and which in fact is by definition unreasonable. The search for any sharp black versus white dividing line between a medical sanity or insanity is vain and we must be content with a reasonably flexible standard. Inasmuch as a mental disorder may exhibit various degrees of severity and as deviations may exist without it

being possible to say that they constitute a mental disorder or disease, how far along the scale of aberrances must one go before one can say that a criminal act committed at that point is the product of a mental disease? The point here is whether or not the medical idea of insanity is sufficiently simple to be understood by, and judged upon, by the cornerstone of our legal system, the jury.

If the criteria for insanity is not a black-white contrast but is on a continuing spectrum would a concept of "diminished responsibility" have to be introduced? Here a defense would be provided for types and degrees of mental abnormality which would not be accepted as justifying a verdict of guilty but insane. This would allow many people to have the severity of their sentence reduced because of diminished responsibility. Could criminals such as psychopaths take advantage of this and obtain reduced sentences, returning quickly to society and perpetrating more crimes?

What place would the psychopath hold in a psychiatric definition of insanity? Is the psychopathic personality "a disease of the mind"? It is not difficult to say that the psychopath has no psychosis, neurosis, or organic brain disease, though the latter might be hotly disputed by a number of prominent psychiatrists. Still in all, most modern, conscientious psychiatrists would be forced to agree that the psychopath suffers from a disease of the mind. Does this mean that under a medical definition of insanity a psychopath would be found not guilty?

As Maudsley<sup>4</sup> observes, "An insane person is not exempt from the ordinary evil passions of human nature; he may do an act out of jealousy, avarice, or revenge". To persons practically acquainted with the insane mind, it is well known that in every hospital for the insane are patients capable of distinguishing between right and wrong, knowing well enough how to appreciate the nature and legal consequences of their acts, and never acting from irresistible impulse but deliberately and shrewdly. Should the psychiatrist treat this individual as being mentally ill or should society and the law be able to judge and convict him as a criminal?

These are all interesting questions but this writer feels that once it is appreciated by the medical profession that the question of insanity is a legal question, and when the law

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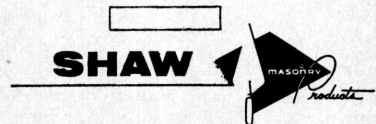
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profession realizes that the medical man may be called not as a last trench defense, to have his knowledge tapped by the lawyers for their own gain, but rather when honest doubt regarding the mental state of the accused exists, the supposed clash between the legal and medical concept of insanity will disappear. The aim will then be the conviction of the criminal and the treatment of the sick.

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### EDEMA OF VARIED ETIOLOGY — CARDIAC FAILURE — HYPERTENSION (used alone or with other antihypertensive drugs)

#### dosage and administration

**Oral route** — single dose or divided doses. Adjust dosage, frequency and duration of administration according to patient's needs. Dosage guide for adults:

#### Various edemas and cardiac failure:

25 to 50 mg daily on alternate days or on 3 consecutive days per week; in rare cases, daily dosage may reach 100 mg. Maintenance doses: 10, 20 or 25 mg daily may be adequate.

**Water retention of a mild degree:** (as in premenstrual syndrome): 10 mg daily or 25 mg three times a week.

**Hepatic cirrhosis:** 25 to 75 mg, occasionally increased to 100 mg daily, for 3 to 4 days. **A potassium supplement should always be given.**

**Hypertension:** in mild or moderately severe cases, Nefrolan often exerts a hypotensive action when used alone: 10 mg daily should be tried initially and the dose increased to 20 mg if the response is inadequate. In some cases, a dose of 10 to 20 mg on alternate days or three times a week may be sufficient. Higher dosage may be used if necessary or other antihypertensive drugs added to the treatment.

#### supportive treatment

a) **Potassium supplement** — Nefrolan may cause potassium depletion. The daily ingestion of fruits rich in potassium is suggested. **A daily potassium supplement of 1 to 3 g is recommended: in hepatic cirrhosis — when a digitalis preparation is being administered — during prolonged corticosteroid therapy.** In patients treated with Nefrolan for periods exceeding 2 to 3 weeks, frequent monitoring of serum potassium, chloride and bicarbonate levels should be performed. Supplements of potassium should be given when indicated.

b) **Spironolactone** may be associated with Nefrolan when the urinary output of sodium chloride is low and there is reason to suspect aldosteronism.

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#### side effects

**The only relatively frequent side effects are nausea (more rarely vomiting) and anorexia (particularly in ambulant patients).**

Symptoms associated with hypotension and low serum potassium may be encountered when anti-hypertensive and/or diuretic drugs are used, and are not specific for Nefrolan. So far, the drug has had no demonstrable adverse action on the liver, kidneys, blood-forming organs or blood-sugar levels. At diuretic doses, a few cases of urticaria have been reported. Nefrolan may give rise to a lowered serum potassium and, in rare instances, to a hypochloremic and hypokaliemic alkalosis proceeding to tetany. The drug may increase blood uric acid and precipitate an attack of gout in predisposed patients. The loss of body fluid may cause thirst, frequency of micturition, constipation and dryness of the lips.

#### contra-indications and precautions

Those of the thiazide diuretics in general: **adrenal insufficiency; renal impairment; severe hepatic disease; in heart disease,** it must be borne in mind that a lowered blood potassium increases the sensitivity of the myocardium to digitalis. If the urinary output is insufficient treatment should be discontinued as accumulation in the body may occur. Nefrolan should be used with caution in patients predisposed to gout. There is no clinical evidence that fetal abnormality has resulted from treatment with Nefrolan during the first trimester of pregnancy; however in the present state of our knowledge, it is recommended that the drug be withheld in early pregnancy. Nefrolan has been very little used in pediatrics; data available is insufficient to recommend its use in children.

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