

Historical Reflections on American Legal Psychiatry*

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Here in Williamsburg, the British colonies' first (and only) public hospital designed for the treatment of the insane opened on 12 October 1773. When the Association of Medical Superintendents of American Institutions for the Insane, now the American Psychiatric Association, was formed in 1844, one of the founders was John Minson Galt, Superintendent of the Eastern Lunatic Asylum, as this hospital was then known.¹ It is fitting that a discussion in Williamsburg of the future of the American Academy of Psychiatry and the Law should be introduced with some brief reflections on American legal psychiatry's past.

Our history begins with that ubiquitous Pennsylvanian, Benjamin Rush, who in 1810 delivered a lecture "On the study of medical jurisprudence."² He began with a list of the subjects comprising the field. The first was "All those different diseases of the mind which incapacitate persons from exercising certain civil rights, such as disposing of property, bearing witness in courts, and which exempt them from punishment for the commission of crimes."³ The remainder of that lecture concerned legal psychiatry and is still worth reading for its thought-provoking quality.

Rush spoke of general and partial insanity. By partial insanity he meant what was later called "monomania," still later "paranoia," and today is referred to as "an encapsulated delusional system." He divided insanity into the generally recognized "intellectual derangement" and the then still relatively new concept of "moral derangement." By this last, Rush meant "that state of mind in which the passions act involuntarily through the instrumentality of the will, without any disease in the understanding."⁴ This is the condition that Philippe Pinel called "*manie sans délire*," that John Cowles Prichard would describe as "moral insanity," that the late nineteenth and early twentieth century neuropsychiatrists were to call "moral idiocy" (the emotional counterpart of arrested intellectual development), and which, today, we include in our definitions of neuroses and character disorders.

In the closing paragraph of his lecture, Rush observed that knowledgeable medical testimony might ensure capital punishment for some, and that this could be considered a valid objection to medical participation in criminal trials. He suggested that this objection should be met by reform and abolition of capital punishment. He did not advocate washing our hands of the courtroom, in Pontius Pilate fashion.

Two years later, Rush said that chronic alcoholism was a disease and that alcoholics should be committed to a special hospital, rather than being sent to jail. (American psychiatry and law argued this question for most of the nineteenth century.⁵) With a characteristic concern for personal liberty and civil rights, Rush said, "To prevent injustice or oppression, no person should be sent to the contemplated hospital . . . without being examined by a court, consisting of a physician, and two or three magistrates, or commissioners appointed for that purpose."⁶

* Delivered at the 1974 annual meeting of the Academy, Williamsburg, Virginia, October 27, 1974.

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In that same year, Theodric Romeyn Beck received his medical degree and published his doctoral dissertation "On insanity." Six years later, he abandoned the practice of medicine, permanently, for his numerous other interests, including teaching. In 1823, Beck published his two-volume *Elements of Medical Jurisprudence*,⁷ which included a chapter on "Mental alienation." In this chapter, Beck replied to the publications of the French writers Fodéré and Marc as well as John Haslam⁸ and Benjamin Rush. He also extracted from his personal correspondence with Dr. George Parkman. Parenthetically, about thirty years later, Parkman was the murder victim in the case leading to the famous trial of Harvard Professor John W. Webster.⁹

Beck's chapter on mental alienation can be characterized as an unquestioning acceptance of the adequacy of the law regarding the insane. This work became a standard reference on medical jurisprudence and went through ten editions in Beck's lifetime. Although not a practicing psychiatrist, he reluctantly served a brief period as editor of the *American Journal of Insanity*, as a consequence of his being a member of the Board of Managers of the New York State Lunatic Asylum at Utica, the owners and publishers of the *Journal*.¹⁰

In 1838, Isaac Ray, a thirty-one year old general practitioner in Eastport, Maine, with no formal schooling in law and no significant clinical experience with insanity, published *A Treatise on the Medical Jurisprudence of Insanity*.¹¹ Beginning with this book, Ray may be said to have established legal psychiatry in America as a profession and a discipline with its own body of knowledge, skills, and professional goals. In 1962, Winfred Overholser observed that "We have not even yet fully caught up with the reforms he advocated."¹²

Ray's book was the foundation for the defense of Daniel M'Naghten in that celebrated 1843 British trial.¹³ Unfortunately, it appears that Ray's ideas made little impression on the trial judges, and, three months later, even less on those fourteen judges of the Queen's Bench who formulated the *M'Naghten* rules.¹⁴

The *Treatise* was the first comprehensive and systematic exposition of Western-world medical thinking about insanity published in America. It contained "a succinct description of the different species of insanity and the characters by which they are distinguished from one another, so that the professional student may have some means of recognizing them in practice, and thence deducing in regard to each, such legal consequences as seem warranted by a humane and enlightened consideration of all the facts."¹⁵ Ray offered criticisms of legal decisions and practices, as well as suggesting reforms. He said, "Before being condemned for substituting visionary and speculative fancies, in the place of . . . practices which have come down to us on the authority of our ancestors and been sanctioned by the approval of all succeeding times, [the author] hopes that the ground on which [his] alleged fancies have been built will be carefully, candidly, and dispassionately examined."¹⁶

Isaac Ray approached his subject with a questioning and critical mind. He studied the development of the relevant law. He read the commentaries and the trial records. He questioned the logic of judicial opinions, which were tested against his understanding and his knowledge before being accepted as valid interpretations of the law. Almost everything was rigorously examined for logical coherence and consistency. His correspondence with New Hampshire Judge Charles Doe clearly demonstrates these elements in Ray's thinking.¹⁷ It is in this correspondence that we find Ray's indignant reaction to judicial abuse of power.¹⁸ This correspondence contains the roots of Doe's New Hampshire doctrine¹⁹ and Ray's 1869 article "Confinement of the insane."²⁰ Judge Doe wrote to Ray of this article, "The law, public welfare, and humanity are greatly indebted to you . . ."²¹ More than seventy-five years later, Overholser and Weihofen could find no better way to end their 1946 paper on the same subject, than to quote from this article.²² "In the first place, the law should put no hindrance in the way of the prompt use of those instrumentalities which are regarded as most effectual in promoting the

comfort and restoration of the patient. Secondly, it should spare all unnecessary exposure of private troubles, and all unnecessary conflict with popular prejudices. Thirdly, it should protect individuals from wrongful imprisonment. It would be objection enough to any legal provision, that it failed to secure these objects, in the completest possible manner."²³ It might also be said of Isaac Ray that, for him, "equal justice" meant equally just protection for the insane and for society, rather than partisan justice for one only.

In the second half of the nineteenth century, medical orientation became almost exclusively somatic. John P. Gray was the most prominent spokesman for this view. Superintendent of the New York State Lunatic Asylum at Utica, and editor of the *American Journal of Insanity* from 1855 to 1885, Gray was convinced that all insanity stemmed from demonstrable brain pathology. Nor would he accept the existence of any mental illness that did not involve obvious intellectual impairment. His position was, "I do not believe in emotional insanity." He said, "Kleptomania is a word used to express thieving. . . . 'Dipsomania,' I call drunkenness. . . . Pyromania, incendiarism—crime. All these terms are make-shifts to secure from punishment for crime."²⁴ These attitudes were not unique to Gray. He was joined in these opinions by a significant portion of the American psychiatric profession.

Gray also figured prominently as the psychiatrist designer of the prosecution of President Garfield's assassin, Charles Guiteau, in 1882. Guiteau's defense was based on "moral insanity." Hardly anyone reading a description of Guiteau's behavior at his execution could doubt that the man was insane—medically and legally. Ironically, according to the pathologist-medical historian, Dr. Esmond Long, the autopsy report provided "fairly good evidence for syphilitic involvement of the brain."²⁵ Despite this, one professor of legal medicine has maintained recently that it was "fashionable in psychiatric circles to characterize the *Guiteau* case as a miscarriage of justice."²⁶ It's reassuring to know that at least in psychiatry the truth can be in fashion.

The fifth edition of *Wharton and Stillé's Medical Jurisprudence* was published in 1905. This was the authority on legal psychiatry quoted most often by the legal profession in the first third of the twentieth century. The major medical author was James Hendrie Lloyd, a Philadelphia neuro-psychiatrist, who presented a view of insanity consistent with the laboratory pathology standard. He defined insanity as "an affection of the brain which is characterized by derangement of the mental faculties."²⁷ He was critical of the term "moral insanity" but acknowledged the medical and legal validity of kleptomania, dipsomania, etc.

The magnitude of the change wrought in American psychiatry by Sigmund Freud and Adolf Meyer in the next eighteen years is manifested by William Alanson White's book, *Insanity and the Criminal Law*,²⁸ in 1923. White, a major influence in American psychiatry, was, perhaps, the originator of the position that insanity was a legal term and had no medical meaning. (The name of the *American Journal of Insanity* was changed to the *American Journal of Psychiatry* in 1921, only two years earlier.) White said, "What appears as disease is only the evidence of inefficiency and failure in the capacity of the organism to deal with the problems of adaptation that present. Conduct which is criminal or insane is only the conduct of individuals who cannot effectively deal with the situation in which they find themselves."²⁹ Like Rush, White was opposed to capital punishment. Although generally willing to serve for the prosecution in criminal trials, he would not appear for the prosecution in capital punishment cases. Reflecting on the problems of legal psychiatry in 1938, he said, "The only thing to do . . . is to wipe from the concept of anti-social conduct the whole idea of sin, which is a hang-over from our medieval theologies, and our concept of punishment. . . . and then treat all offenders with the sole point of view of trying to satisfy as far as possible two objectives: the interests of the community and the interests of the individual. Where they cross, the interests of the individual necessarily must give way."³⁰

Time forces me to exclude discussion of the history of correctional psychiatry, of psychiatric efforts at legislative reform, and of efforts at inter-professional cooperation. They are all legitimate, albeit neglected, parts of legal psychiatry.

In the almost 150 years covered by this summary, several phenomena have contemporary relevance. Isaac Ray provided generally accepted, specific, useful descriptions of various forms of insanity, so that they could be identified reproducibly and consistently for his time. He provided a developmental history of the laws pertaining to the insane, an absolute necessity for understanding and interpreting their spirit, their intent, and their limitations. For Ray, expert witnesses were those expert in identifying insanity, and in presenting their findings and their reasoning. Ray tried to improve the law by appealing to reason and experience.

The history of legal psychiatry in America shows, for a large part, the glaring absence of a functionally effective professional forum, within which descriptive and diagnostic terms are defined, by consensus, in language suited for jury trial and court use. We need a forum where legal psychiatrists can debate and agree on educational standards which, if met, would guarantee that trained forensic psychiatrists would be significantly more expert than psychiatrists without this special training, in each of the categories of recognizing, diagnosing, and demonstrating insanity, as well as more expert in coping with adversary maneuvers designed to obscure issues and to distract the attention of the jury. Nor has there been an adequate forum for legal psychiatrists, as a body, to collaboratively prepare legislative proposals, not only for trial process, involuntary confinement, and informed consent, but for psychiatric participation and cooperation with other helping disciplines in what our Anglo-American culture wishfully, if not wistfully, calls the correctional system. We need forums in which we have an opportunity to hear and to criticize each other's opinion and reasoning, to argue, to agree, and to vote.

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