A British Psychiatrist Objects to the Dangerous and Severe Personality Disorder Proposals

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Since I returned to England last year, I have been totally fascinated by the recent, almost perverse, obsession with offenders who suffer personality disorders. First, this group was the focus of a major public inquiry into a hospital unit that housed patients with personality disorders. It was alleged that the staff had lost control of security and also had lost sight of their therapeutic objectives.[1]

Public anxiety was also increased by media reports that a man with a personality disorder had sought help from psychiatrists and had been refused on the grounds that he was "untreatable."[2] He was subsequently convicted of the murder of a mother and daughter and the attempted murder of the surviving child. The Home Secretary was openly critical of psychiatry's rejection of this man. His criticism started a war of words on radio and television and in the print media, including the professional literature. Suddenly, the guilty party in all this was not the killer, but the psychiatrists who did not want to manage this type of difficult patient.

In another development, the government proposed not only a review of current mental health legislation, but also suggested new powers to manage a particular group of risky people: those with a dangerous and severe personality disorder (DSPD).[3] The result of this review and consultation was a White Paper[4] (the first step to becoming a statute in Britain) that will be developed in the course of the government's second term. It may become law in the next two to three years.

Like many psychiatrists on both sides of the Atlantic, I wonder about the nature of personality disorders and about the role of psychiatry in caring for people who have these disorders. I wish to suggest that both this concept of DSPD and the new legislation to manage dangerous people with severe personality disorders are conceptually problematic.

Background

Current English mental health law[5] contains a legal category titled Psychopathic Disorder, which describes abnormal behavior that would justify involuntary detention (a persistent disorder or disability of mind, including or not the significant impairment of intelligence, that results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned). Note that this is not a medical diagnosis, based on traditional personality disorder categories. Patients detained under this category could have a mental illness or no disorder at all.

A patient categorized as having Psychopathic Disorder cannot be detained in the hospital unless it can be certified by at least two doctors (one of them a psychiatrist), that the individual has a condition that is treatable or that treatment will at least prevent a deterioration in the patient's condition. This has led to the development of notions of both treatability

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and, more important, untreatability. Being untreatable can be highly significant: If the individual is untreatable, then he or she must be released from the hospital detention, no matter how potentially dangerous he or she may be to others.

There have been several legal cases addressing this issue. Recent case law supports the notion that if a disorder is not treatable, it should not be grounds for continued detention (*Reid v. Secretary of State for Scotland*).[6] Reid's case is of particular interest, because Scottish law does not contain the category of Psychopathic Disorder. Perhaps the key point is that British psychiatry currently has the option of rejecting people with personality disorder from services through use of the treatability criterion. The government seeks to close off that option in its White Paper recommendations. The Royal College of Psychiatrists responded[7] angrily and clearly to the proposed White Paper and stated that they were not going to participate in implementing the DSPD proposals because of a number of objections.

The Royal College argued first that there was a brief consultative period of only three months. In addition, the DSPD proposals contained an option for unlimited preventive detention on the grounds of risk. There was also some suggestion, in both the DSPD proposals and the Mental Health Act Review Committee's conclusions, that it should be possible to detain an individual involuntarily, by using mental health legislation for treatment of the person's risky behavior, even if the person is competent to consent to treatment and even if the individual has not yet committed any offense.

The government's recommendations were rather simple: incarcerate without any time limit. In fact, indefinite detention is available under the current legislative provisions as a sentencing tool for repeat offenders who have committed serious offenses,[8] and by the use of Sections 37 and 41 of the Mental Health Act of 1983, which can be imposed by the criminal courts in cases of mentally ill offenders on conviction or finding of unfitness to plead (legal equivalent of incompetent to stand trial). This measure is only available to the criminal courts after conviction. There is as yet no statute in British law authorizing preventive detention in the absence of any conviction. This is perhaps why new powers were thought to be needed by Her Majesty's Government.

The new proposals were so draconian that I seriously thought they would go away with time. I wondered, however, what was behind these proposals. Was it the public? Or was it the politicians who may have a political agenda—a need to respond to public opinion, regardless of how uninformed it may be? Tidying up the streets by removing dangerous persons will always be a vote winner. Unfortunately, the incorporation of the European Convention on Human Rights into British law has made it imperative that there be a health aspect to any plan for indefinite preventive detention, because this is the only justification possible under Article 5. The Home Office needs the psychiatrists on board to make this scheme work and still be compliant with the Human Rights Act.[9]

Preventive detention in any setting is wrong and contrary to the spirit of freedom and liberty. Expediency and lack of foresight perhaps prevented the government from anticipating the massive disquiet that these proposals would engender in the very professional group it sought to have implement them. Just because the Royal College of Psychiatrists do not want to cooperate does not mean, however, that the government is going to back away from implementing the White Paper.

Why do British psychiatrists not want to play ball with their government? We know that individuals with DSPD constitute a group of patients whom psychiatrists do not like.[10] We know that a study of British forensic psychiatrists revealed that a slim majority believed that this group was treatable, but that a far greater proportion of psychiatrists thought that individuals with personality disorders should not be compulsorily treated.[11]

British psychiatry, however, has a history of committing people in the name of treatment, sometimes without limit of time, purely on the basis of abnormal personality, and British psychiatry is once again called on to deal with this "new" group of deviant persons. Why the current apparent reluctance to deal with this group? Traditionally, the British forensic psychiatrist has proudly stuck to the medical model, and an accompanying strong paternalism, that assumes that most psychiatric patients do not know what is good for them. The paternalism is so ingrained in the British psychiatric ethos that the Royal College of Psychiatrists has seen no need for a code of ethics (apart from the age-old Hippocratic oath, which completely ignores autonomy as a principle).[12]

What about the needs of this group? In this DSPD debate, politicians, lawyers, professionals, family

members of both victims and patients, and human rights activists, are all key players. Notable by its absence is the voice of the consumer, or patient. The court is known to listen to caring professionals and to lawyers; the politicians listen to lobbyists and the family/friend caucus; but no one really listens to the individuals with personality disorders. Has anyone asked them what they think, especially at a time when other sections of mental health policy emphasize the involvement of the "consumer" whenever possible?

Despite the lack of an evidence base for the treatment of severe personality disorder, the government is forging ahead. There will be a third force, a third way—away from prisons and hospitals where this "treatment" will take place. Pilot sites assessing and treating individuals with DSPD within the current law have already been established with an outlay of considerable money and much publicity. These sites are located within prisons, and one is within the perimeters of a maximum-security hospital.

Walcott and Beck[13] have recently reviewed the government's DSPD proposals in some detail and raised concerns that go beyond this British problem: Specifically, who is going to work with this group of indefinitely detained people? In the current climate of poor job satisfaction and generally poor morale in psychiatry, it may not be difficult to seduce one group of professionals to do what the others would not do, assuming the price is right. The Fallon Report[1] alluded to this third force and considered the possibility that the role of responsible medical officer (RMO), who has legal and clinical responsibility for the detained patient, could be taken over by someone other than medical practitioners—someone who may not be bound by conventional medical ethics.

There are real concerns about the use of risk assessment as the basis for detention. Psychiatrists as a group have traditionally claimed that risk prediction is not an exact science and have been reluctant to predict risk with medical certainty. Of course, that has not stopped the courts[14] from accepting testimony that predicts future risks. The government has now started identifying other key professionals who will only work on the concept of risk and its management. Risk is now unashamedly the central issue in the proposals for new legislation and will become the main justification behind detention. These professionals, the government hopes, will not mind being the new custodians in the name of therapy. The power of seduction, be it with money or promise of fame, power, and glory is now going to be tested. It seems that the government is determined to push this bill through the Parliament, and this is made clear by the fact that nowhere in the White Paper[4] is there mention of medical expertise. The European Convention requires detention of "persons of unsound mind" to be only on "objective medical expertise." The term "clinical" has been substituted for "medical" throughout the White Paper,[4] and it is not clear whether this substitution will, in the event of a legal challenge, be found to comply with the Human Rights Act.

In its most recent proposals, the government has merged the two issues of dealing with persons with DSPD and Mental Health Act reform. This could be seen as a piece of clever legislative maneuvering. The government wants to make the criterion for detention so broad that separate legislation for dealing with the DSPD group may not be needed after all. The proposed DSPD legislation, despite government optimism (Ref. 3, Annex B, page 30, para. 32–40), may not withstand a challenge under the freshly enacted Human Rights Act of 1998.[9]

I have hopes and dreams for my professional identity—of the sort of doctor I want to be and expect others to be. I would like to think that no democratic government would sacrifice the interests of any minority group, even those with DSPD, to keep the majority happy. But if these proposals do not go away, my dream of ethics-based psychiatry will disappear. Suddenly, I am rudely awakened, sweating, and weighed down by the same intense dysphoria experienced by poor Alex in Anthony Burgess's[15] (and famously in Stanley Kubrick's 1971 film treatment[16]) *A Clockwork Orange*. His dream of cure merged with the reality of the so-called treatment and it was no less abhorrent.

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