

# Commentary: Personality Disorder and Diminished Responsibility—The Significance of Priorities and Objectives

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Professor Landy Sparr's paper systematically examines issues and anomalies of courtroom practice in relation to offenders who are considered to have a personality disorder. The in-depth description of a recent case from the International War Crimes Tribunal for the former Yugoslavia forms the basis of the paper. As an international forum, the Tribunal illustrates clearly the different practices and interpretations in various jurisdictions. Sparr provides much detail about the machinations of the Tribunal, leading to speculation about the principles that underlie the complex legislation as it is applied in different countries. Despite the considerable differences in mental health systems among different countries, there are probably shared themes and trends that influence the practice of forensic psychiatry.

*J Am Acad Psychiatry Law* 37:186–7, 2009

In the United Kingdom, diminished responsibility was introduced in Scotland in 1867 and in England in 1957.<sup>1</sup> The effect is to reduce a charge of murder, which carries a fixed penalty, to the lesser charge of manslaughter or culpable homicide. The penalty for the latter is at the discretion of the sentencing judge. Over the years, personality disorder is one of the conditions that have, in certain circumstances, led to a charge's being reduced. Sparr<sup>2</sup> asks the question of whether the practice in various jurisdictions has been consistent over the years, and if not, why not. Also, when the presence of personality disorder has influenced the sentence of the court, what has been the effect? One may conclude that the effect of personality disorder on sentencing has depended on the other sentencing options that were available.

Until the abolition of the death penalty in the United Kingdom about 40 years ago, those convicted of murder faced the possibility of execution. When the judge on a case felt it was appropriate and there was supporting political will, the sentence could be commuted to one of life imprisonment. In Scotland, an additional option was available to the defense—proving by psychiatric testimony that the offender's

responsibility was diminished. If successful, the offender would most likely be committed indefinitely to a secure psychiatric facility. Although in certain circumstances individuals who have personality disorders would escape execution, there were cases in which the crimes were so heinous or notorious that execution was considered by the court, and by the politicians, to be the only appropriate punishment. This system generally engendered public confidence. Whatever happened, even if the offender was spared execution, he or she would be in custody in either a prison or a hospital for an indefinite period. Release from the latter would not occur until the offender was considered safe.

Following the abolition of the death penalty, however, a sentence of mandatory life imprisonment was introduced for all those convicted of murder. Under this change, the sentence for a successful defense of diminished responsibility resulting in a conviction of manslaughter was still at the discretion of the sentencing judge. The options are different: discretionary sentence of life imprisonment, a determinate sentence, or committal to a psychiatric hospital. There have been cases in which an offender who was charged with murder was found to have diminished responsibility by reason of personality disorder, and received a determinate sentence. This meant that the offender would inevitably be released, even if the

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personality disorder that had led to the reduction in sentence might cause the individual to present a significant and ongoing risk to the public. Judges have varied widely in their use of discretionary life sentences in such cases.

Recently this apparent inconsistency has been reversed in England and Wales, with the introduction of what are equivalent to life sentences for a range of offenses other than murder. Along with the discretionary life sentence and, until April 2005 the automatic life sentence,<sup>3</sup> a new sentence of imprisonment for public protection equivalent to a life sentence became available to the courts. The criteria for imposition are the commission of an offense which attracts a maximum sentence of at least 10 years, and a significant risk of serious harm to the public, but not so serious as to require a life sentence. The latter criterion is to be determined by the court.<sup>3</sup> Release from public-protection sentences is discretionary and is determined, as with other life sentences, by the parole board. The only difference between a sentence for public protection and a life sentence is that, in the future, it may be possible for parole conditions to be determined for the former. In practice, the sentence for public protection is a life sentence in all but name.

In Scotland, there have been additional developments, as well. The report of the Committee on Serious Violent and Sexual Offenders<sup>4</sup> introduced a Risk Management Authority. Serious offenders other than murderers are the subject of a very comprehensive risk assessment undertaken by an accredited risk assessor, usually a psychologist or a psychi-

atrist, during the three months after the offender's conviction. If the risk assessment finds that the offender is dangerous, usually including the presence of a personality disorder, the offender becomes the subject of an order for life-long restriction. Yet another example of a life sentence in all but name.

In conclusion, in the United Kingdom, personality disorder has always been a factor in determining the disposition of serious offenders. The significant change in recent years is that personality disorder does not mitigate against incarceration. Rather, when present and particularly associated with dangerousness, it leads to imposition of a more severe sentence. In one form or another, with various terminologies, these trends appear to be international. Psychiatrists who contribute to this process can be criticized for acting primarily on behalf of society. Although it may be argued that there is nothing intrinsically wrong with acting in society's behalf, it is very important that the profession as a whole and the involved practitioners individually be mindful of what they are being asked to do and whose interests they are serving.

## References

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