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Expert opinion

Medicine and the law

Automatism and Post Traumatic Stress Disorder (D. Brahams [1990] *The Lancet, i,* 1333)

ALEXANDER M. P. KELLAM, Consultant Forensic Psychiatrist, Whitchurch Hospital and University Hospital of Wales, Heath Park, Cardiff CF4 4XW

This comment by Diana Brahams, Barrister at Law, is the latest on automatism in her regular series in *The Lancet* on the Law as it affects medicine. It is a subject to which she has had occasion to return frequently (Brahams, 1983a, 1983b, 1989) as several recent cases have developed the legal concept of automatism to the increasing confusion of many psychiatrists. Automatism has also been thoroughly discussed in a recent monograph in *Psychological Medicine* by Peter Fenwick (1990) which is to be recommended to anyone having to prepare a report dealing with this problem.

The problem is that the term "automatism" has a much wider legal meaning than its very precise one in psychiatry. A similar problem exists with the term "insanity". As Glanville Williams (1983) says, in his invaluable *Textbook of Criminal Law* (p. 662), "As things have developed, Judges have been forced to attach their own meaning to 'insanity', because this expression denotes the distinction between the kind of acquittal called The Special Verdict which consigns the defendant to hospital, and the ordinary acquittal whereby he walks out of Court a free man." And later (p. 663), "The term 'automatism' is used medically only in connection with epilepsy, and in its proper medical sense it is rare even in that disease.... On the lips of lawyers, however, 'automatism' has come to express any abnormal state of consciousness (whether confusion, delusion or dissociation) that is regarded as incompatible with the existence of *mens rea*, while not amounting to insanity."

Psychiatrists may not always remember that the law, as it evolves, is torn between the often conflicting requirements of equity (fairness) and predictability. To draft laws which are simple to understand and apply while at the same time fair under all conceivable circumstances is a task of unattainable perfection.

Non-insane or simple automatism has an obvious appeal to defence lawyers as it entitles their client to be acquitted. To use insane automatism as a basis for a plea of "not guilty by reason of insanity" is most undesirable however, as even the maximum possible sentence for most offences will be preferable to committal to hospital for an indefinite period. In addition the use of the word insane makes this form of acquittal more stigmatising than a finding of guilt. Lawyers are, therefore, always assiduously seeking to persuade Courts, on behalf of their clients, to extend the boundaries of non-insane automatism and restrict those of insane.

Both Diana Brahams and Peter Fenwick review the way the legal concept has developed with regard to epilepsy, which many object to calling "insanity" or a "disease of the mind". Lord Denning is frequently quoted as saying in the case of Bratty (Williams, 1983, p. 667) (who had appealed to the House of Lords following his killing of a young girl in an alleged state of psychomotor epilepsy), "It seems to me that any mental disorder which has manifested itself in violence and is prone to recur, is a disease of the mind. At any rate it is the sort of disease for which a person should be detained in hospital rather than be given an unqualified acquittal".

Sullivan attacked a friend while recovering from an attack of *petit mal* epilepsy. In her review of his first appeal, 'Epilepsy and Insanity at Common Law' Brahams (1983a) reports the court's careful consideration of the development of the term "insanity" from before McNaughton's case as far back as Arnold's in 1772–5. Reviewing Sullivan's further appeal to the House of Lords, on the grounds that his illegal actions committed while recovering from a seizure due to psychomotor epilepsy should not result in a finding of "Not guilty by reason of insanity", 'Epilepsy is Mental Illness', Brahams (1983b), recorded that at the initial trial one eminent neuro-psychiatrist had said that a disorder of brain function had to be prolonged for "more than a day", and another "a minimum of a month" to constitute a "disease of the mind" or "mental illness".

The Lords rejecting the appeal ruled that the purpose of legislation relating to the insanity defence had been, since 1800, to protect society against recurrence of dangerous conduct; therefore neither the duration nor the aetiology of the impairment of mental functioning was relevant to the verdict although it might well be to the course adopted subsequently by the Secretary of State. They added that the label of "insanity" was a technical one which had been on the statutes since 1800 and which parliament could alter if it chose. Lord Diplock further said that the phrase from the McNaughton Rules "did not know the nature and quality of his actions" could be better addressed to jurors in the 1980s as "did not know what he was doing" which was clearly felt to apply in this case; however this formulation has not been adopted subsequently.

In the case currently reported (Brahams, 1990), T. a young French woman charged with robbery and stabbing another woman was, allegedly, at the time in a dissociative state which may well have been due, as she claimed, to her having been raped three days before. A psychiatrist diagnosed "post traumatic stress disorder"; further evidence for this diagnosis is not quoted. The Judge allowed the defence to be put to a jury who could not agree. At a re-trial she was convicted by a majority verdict but received a relatively light sentence. The Judge referred to Quick's case and Brahams summarised his remarks as follows: "If what the defendant had said about the rape were true, the incident could have had an appalling effect on her, however well balanced she usually was. A condition of post traumatic stress involving a normal person in an act of violence was not itself a disease of the mind, even if there were a delay before the dissociation manifested itself. If the medical evidence was correct this case was distinguishable from those where there was only a partial loss of control." This last point referred to Hennessy's case.

Most of the recent cases involve either epilepsy or diabetes but sleepwalking, concussion and involuntary intoxication as well as dissociation (Brahams, 1990) are all other possible causes. Simple "absent mindedness due to stress", for example, has been a sane automatism since Clarke's case in 1972 (Williams, 1983, p. 662). The principle behind current decisions appears to be that insane automatism should encompass those cases that are likely to recur because they are caused by a disease whereas non-insane automatisms are those which are unlikely to recur because they have external causes. It is with diabetes that this distinction, disease as opposed to external factors, produces the most obviously unacceptable results.

Quick, a nurse, assaulted a patient while hypoglycaemic (Williams, 1983, p. 671). It was decided his case was distinguishable from Bratty's in that his hypoglycaemia had been caused by an external agent, self administered insulin. Lord Justice Lawton said, "Common sense is affronted by the prospect of a diabetic being sent to ... hospital when in most cases the disordered mental condition can be rectified by pushing a lump of sugar into the patient's mouth.... A malfunctioning of the mind of transitory effect caused by the application to the body of some external factor such as violence, drugs, including anaesthetics, alcohol and hypnotic influences cannot fairly be said to be due to disease."

The converse of this, that hyperglycaemia which is caused by the disease diabetes must therefore constitute a "disease of the mind" was held by the Court of Appeal in Hennessy's case (Brahams, 1989) (he took a car and drove it while confused). Long Chief Justice Lane said, "If the defendant did not know the nature and quality of his act because of something which did not amount to defective reason from disease of the mind, then he will probably be entitled to be acquitted on the basis that the necessary criminal intent, which the prosecution has to prove, is not proved. But if, on the other hand, his failure to realise the nature and quality of his act was due to a defect of reason from disease of the mind, then in the eyes of the law he is suffering from insanity."

Lord Lane also said, "Stress, anxiety and depression can no doubt be the result of the operation of external factors but they are not ... external factors of the kind capable in law of causing or contributing to a state of automatism. They constitute a state of mind which is prone to recur. They lack the feature of novelty or accident which is the basis of the distinction drawn up by Lord Diplock in R.-v-Sullivan."

He also quoted with approval the reasoning of Mr Justice Devlin in Hill-v-Baxter, "For the purpose of the criminal law there are two categories of mental irresponsibility, one where the disorder is due to disease and the other where it is not. The distinction is not an arbitrary one. If the disease is not the cause, if there is some temporary loss of consciousness arising accidentally, it is reasonable to hope that it will not be repeated and that it is safe to let an acquitted man go entirely free. But if the disease is present the same thing may happen again and, therefore, since 1800 the law has provided for persons acquitted on this ground to be subject to restraint".

We, however, are aware that hypoglycaemia is very much more frequent as an occurrence than hyperglycaemia and that also, hypoglycaemia, is much the more likely to recur despite the best efforts of the doctors and hopefully of the patient. The fact that one may be caused by a disease and the other by an external agent has little bearing upon the probability of recurrence of the abnormal mental state and, therefore, of the illegal or dangerous behaviour.

Clearly what is needed, if the law is to be changed, is a better principle for the division of cases of

automatism (if the lawyers wish to continue using that word) into varieties which are likely to recur and those which are unlikely to recur.

In addition in those conditions which are likely to recur and may be preventable by medical treatment (psychiatric or otherwise), it is in the public interest to ensure that such treatment is accepted and persevered with successfully. In serious cases compulsion may be justified until this has been achieved.

A distinction based on differentiating between the causative factors, disease or external agent, clearly does not produce the most just result. Possibly it would be better not to codify the distinction, but to remove the mandatory committal to hospital. This would also allow advances in medical treatment to be considered as they occur. Having gauged the likelihood of recurrence of the abnormal mental state and been advised of the steps, if any, which can be taken to prevent it, the judge would then have the widest possible freedom to deal with the patient sympathetically while minimising the future risk to society, restraining the patient's freedom if necessary by a hospital order.

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The psychiatry of opera

Richard Wagner (1813–1883)

MARK JONES, Registrar, Department of Psychological Medicine, St Bartholomew's Hospital, London EC3

Mark Jones continues this occasional series by taking a look inside Wagner's tetralogy *The Ring of the Nibelung* which was first performed complete in 1876 at Wagner's own opera house in Bayreuth.

In the years between 1840 and 1890 the operatic world was dominated by two men – Verdi and Wagner. Both communicated in operatic language very much their own, each founded on their respective Italian and German musical traditions. Verdi's operas were to become more complex and musically seamless as his genius blossomed. This is also true of Wagner, but through his writings, which are extensive and for the most part tortuous, we can appreciate that in writing opera his aims were different to Verdi's. Wagner's earliest works, e.g. *Lohengrin* and *The Flying Dutchman*, are stylistic experiments with mid-19th century Italian opera to German librettos. Later, he was to move towards works of great musical length, called music dramas, which gave as much importance to the orchestral sound as to the vocal line. Additionally, Wagner placed great emphasis on the visual aspect of his works and took an interest in every feature of their production.

Any coverage of the psychological elements which underpin opera would be incomplete without at least scraping the surface of Wagner's music dramas. The many books that have appeared over the years are a testament to the complexity of the man and his creations. No book, never mind a short piece like this, could do justice to the multiplicity of levels that Wagner's mind and his operas work on. Yet few if any individuals who have encountered his works can remain indifferent to them, indeed they can be both hated and loved at the same time. It is perhaps this ambivalence to Wagner that many people who love music find most difficult to come to terms with. Controversy continues to surround Wagner, whether it be his unpleasant, egocentric personality, his anti-semitic views (the character of Beckmesser in *The*