

Forensic psychiatry

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Forensic psychiatry is a sub-speciality of psychiatry and is related to criminology.^[1] It encompasses the interface between law and psychiatry. A forensic psychiatrist provides services – such as determination of competency to stand trial – to a court of law to facilitate the adjudicative process and provide treatment like medications and psychotherapy to criminals.

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Court work

Forensic psychiatrists work with courts in evaluating an individual's competency to stand trial, defences based on mental disorders (i.e. the insanity defence), and sentencing recommendations. There are two major areas of criminal evaluations in forensic psychiatry. These are Competency to Stand trial (CST) and Mental State at the Time of the Offence (MSO).

Competency to stand trial (CST)

This is the competency evaluation to determine that a defendant has the mental capacity to understand the charges and assist his attorney. In the United States, this is seated in the Fifth Amendment to the US Constitution, which ensures the right to be present at one's trial, to face one's accusers, and to have help from an attorney.

In English and Welsh law a similar concept is that of "fitness to plead".

As an expert witness

Forensic psychiatrists are often called to be expert witnesses in both criminal and civil proceedings. Expert witnesses give their opinion about a specific issue. Often the psychiatrist will have prepared a detailed report before testifying. The primary duty of the expert witness is to provide an independent opinion to the court. An expert is allowed to testify in court with respect to matters of opinion only when the matters in question are not ordinarily understandable to the finders of fact be they judge or jury. As such, prominent leaders in the field of

forensic psychiatry, from Thomas Gutheil^[2] to Robert Simon and Liza Gold^[3] and others^[4] have identified teaching as a critical dimension in the role of expert witness. The expert will be asked to form an opinion and to testify about that opinion, but in so doing will explain the basis for that opinion which will include important concepts, approaches and methods used in psychiatry.

Mental state opinion

This gives the Court an opinion, and only an opinion, as to whether a defendant was able to understand what he/she was doing at the time of the crime. This is worded differently in many states, and has been rejected altogether in some, but in every setting, the intent to do a criminal act and the understanding of the criminal nature of the act bear on the final disposition of the case. Much of forensic psychiatry is guided by significant Court rulings or laws that bear on this area which include the following three standards:^[5]

- M'Naghten rules: Excuses a defendant who, by virtue of a defect of reason or disease of the mind, does not know the nature and quality of the act, or, if he does, does not know that the act is wrong.^[6]
- Durham rule: Excuses a defendant whose conduct is the product of mental disorder.^[7]
- ALI test: Excuses a defendant who, because of a mental disease or defect, lacks substantial capacity to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of law.^[8]

"Not guilty by reason of insanity" (NGRI) is one potential outcome in this type of trial. It is important to note that insanity is a legal and not a medical term. Often there will be a psychiatrist(s) testifying for both the defense and the prosecution.

Forensic psychiatrists are also involved in the care of prisoners, both those in jails and those in prisons, and in the care of the mentally ill who have committed criminal acts (such as those who have been found not guilty by reason of insanity).

Risk management

Many past offenders against other people, and suspected or potential future offenders with mental health problems or an intellectual or developmental disability, are supervised in the community by forensic psychiatric teams made up of a variety of professionals, including psychiatrists, psychologists, nurses and care workers. These teams have dual responsibilities, to promote both the welfare of their clients and the safety of the public. The aim is not so much to predict as to prevent violence, by means of risk management.

Risk assessment and management is a growth area in the forensic field, with much Canadian academic work being done in Ontario and British Columbia. This began with the attempt to predict the likelihood of a particular kind of offence being repeated, by combining "static" indicators from personal history and offence details in actuarial instruments such as the RRASOR and Static-99, which were shown to be more accurate than unaided professional judgment. More recently, use is being made also of "dynamic" risk factors, such as attitudes, impulsivity, mental state, family and social circumstances, substance use, availability and acceptance of support, to make a "structured professional judgment." The aim of this is to move away from prediction to prevention, by identifying and then managing risk factors. This may entail monitoring, treatment, rehabilitation, supervision and victim safety planning and depends on the availability of funding and legal powers. These schemes may be based on published assessments such as the HCR-20 (which incorporates 10 Historical, 5 Clinical and 5 Risk Management factors) and the RSVP (Risk of Sexual Violence Protocol) from Simon Fraser University, BC.

United Kingdom

In the UK, most forensic psychiatrists work for the National Health Service, in specialist secure units caring for mentally ill offenders (as well as people whose behaviour has made them impossible to manage in other hospitals). These can be either medium secure units (of which there are many throughout the country) or high secure hospitals (also known as Special Hospitals), of which there are three in England and one in Scotland (The State Hospital, Carstairs), the best known of which being Broadmoor Hospital. The other 'specials' are Ashworth hospital in Maghull, Liverpool and Rampton hospital in Nottinghamshire. There are also a number of private sector medium secure units, which sell their beds exclusively to the NHS, as there are not enough secure beds available in the NHS system. (There are no 'private' paying patients in Forensic Psychiatry!)

Forensic psychiatrists often also do prison inreach work, in which they go into prisons and assess and treat people suspected of having mental disorders; much of the day-to-day work of these psychiatrists comprises care of very seriously mentally ill patients, especially those suffering from schizophrenia. Some units also treat people with severe personality disorder or learning disabilities. The areas of assessment for courts are also somewhat different in Britain, because of differing mental health law. Fitness to plead, and mental state at the time of the offence are indeed issues given consideration, but the mental state at the time of trial is also a major issue, and it is this assessment which most commonly leads to the use of mental health legislation to detain people in hospital, as opposed to their getting a prison sentence.

Learning disabled offenders who are a continuing risk to others may be detained in learning disability hospitals (or specialised community-based units with a similar regime, as the hospitals have mostly been closed) as suffering from "Mental Impairment" in England and Wales, and without use of that term in Scotland. This includes those who commit serious crimes of violence, including sexual violence, and fire-setting. They would be cared for by learning disability psychiatrists and registered learning disability nurses (RNLD). Some psychiatrists doing this work have dual training in learning disability and forensic psychiatry or learning disability and adolescent psychiatry. Some nurses would have training in mental health also (RMN and RNLD).

Court work (medico-legal work) is generally undertaken as private work by psychiatrists (most often forensic psychiatrists) as well as forensic and clinical psychologists, who usually also work within the National Health Service (NHS). This work is generally funded by the Legal Services Commission (used to be called Legal Aid).

Canada

Criminal Law Framework

In Canada certain credentialed medical practitioners may, at their discretion, make state-sanctioned investigations into and diagnosis of mental illness. Appropriate use of the DSM-IV-TR is discussed in its section entitled "Use of the DSM-IV-TR in Forensic Settings".

Concerns have been expressed that the Canadian criminal justice system discriminates based on *DSM IV* diagnosis within the context of Part XX.1 of the *Criminal Code*.^[9] This part sets out provisions for, among other things, court ordered attempts at "treatment" before individuals receive a trial as described in section 672.58 of the Criminal Code. Also provided for are court ordered "psychiatric assessments". Critics have also expressed concerns that use of the DSM-IV-TR may conflict with section 2(b) of the *Canadian Charter of Rights and Freedoms*, which guarantees the fundamental freedom of "thought, belief, opinion and expression".

Confidentiality

The position of the Canadian Psychiatric Association holds that "in recent years, serious incursions have been made by governments, powerful commercial interests, law enforcement agencies, and the courts on the rights of persons to their privacy." It goes on to state that "breaches or potential breaches of confidentiality in the context of

therapy seriously jeopardize the quality of the information communicated between patient and psychiatrist and also compromise the mutual trust and confidence necessary for effective therapy to occur."^[10]

An outline of the forensic psychiatric process as it occurs in the province of Ontario is presented in the publication *The Forensic Mental Health System In Ontario: An Information Guide*^[11] published by the Centre for Addiction and Mental Health in Toronto. The Guide states: "Whatever you tell a forensic psychiatrist and the other professionals assessing you is not confidential." The Guide further states: "The forensic psychiatrist will report to the court using any available information, such as: police and hospital records, information given by your friends, family or co-workers, observations of you in the hospital." Also according to the Guide: "You have the right to refuse to take part in some or all of the assessment. Sometimes your friends or family members will be asked for information about you. They have the right to refuse to answer questions too."^[12]

It is noteworthy that the emphasis in the Guide is on the right to refuse participation. This may seem unusual given that a result of a verdict of "Not Criminally Responsible by reason of Mental Disorder" is often portrayed as desirable to the defence, similar to the insanity defence in the United States. A verdict of "Not Criminally Responsible" is referred to as a "defence" by the Criminal Code.^[13] However, the issue of the accused's mental state can also be raised by the Crown or by the court itself, rather than solely by the defence counsel, differentiating it from many other legal defences.^[14]

Treatment/Assessment Conflict

In Ontario, a court ordered inpatient forensic assessment for criminal responsibility will typically involve both treatment and assessment being performed with the accused in the custody of a single multi-disciplinary team over a thirty or sixty day period. Concerns have been expressed that an accused may feel compelled on ethical, medical or legal grounds to divulge information, medical or otherwise, to assessors in an attempt to allow for and ensure safe and appropriate treatment during that period of custody .

There are internet references addressing treatment/assessment conflict as it relates to various justice systems, particularly civil litigation in other jurisdictions.^{[15][16]} The American Academy Of Psychiatry and the Law states in its ethics guidelines that "when a treatment relationship exists, such as in correctional settings, the usual physician-patient duties apply", which may be seen as contradiction.^[17]

Training Standards

Some practitioners of forensic psychiatry have taken extra training in that specific area. In the United States, one year fellowships are offered in this field to psychiatrists who have completed their general psychiatry training. Such psychiatrists may then be eligible to sit for a board certification examination in forensic psychiatry. In Britain one is required to complete a three-year sub-speciality training in forensic psychiatry, after completing one's general psychiatry training, before receiving a Certificate of Completion of Training as a forensic psychiatrist. In some countries general psychiatrists can practice forensic psychiatry as well. However, other countries, such as Japan, require a specific certification from the government to do this type of work.

See also

- Forensic psychology
- Daubert v. Merrell Dow Pharmaceuticals which established the Daubert standard delimiting the admissibility of scientific expert witness testimony
- Rennie v. Klein - right to refuse treatment
- Kansas v. Hendricks - involuntary civil commitment for sexual predators

- Settled insanity
- Ultimate issue
- Twinkie defense
- Bruneri-Canella case, an early landmark case which introduced new forensic techniques in juridic debate

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9. *Criminal Code*, RSC 1985, c C-46, Part XX.1. (<http://laws-lois.justice.gc.ca/eng/acts/c-46/page-376.html>)
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13. Criminal Code, RSC 1985, c C-46, s 16, "defence of mental disorder". (<http://laws-lois.justice.gc.ca/eng/acts/C-46/page-6.html#docCont>)
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16. William H. Reid, "Should the Treating Clinician Be an Expert Witness", *ExpertPages*. (http://expertpages.com/news/should_the_treating_clinician_be_an_expert_witness.htm)
17. American Academy of Psychiatry and the Law, "Ethics Guidelines for the Practice of Forensic Psychiatry". Adopted May, 2005. (<http://www.aapl.org/ethics.htm>)

External links

- Studies in Forensic Psychiatry (<http://www.gutenberg.org/etext/19168>), by Bernard Glueck, Sr., 1916, reprinted 1969, from Project Gutenberg
- The Role of a Forensic Psychiatrist in Legal Proceedings (<http://www.forensic-psych.com/articles/artAskexp01.php>), by Harold J. Bursztajn, MD, 1993, from Journal of the Massachusetts Academy of Trial Attorneys with permission of Harold J. Bursztajn, MD.
- Forensic psychiatry (https://www.academia.edu/2041909/Forensic_Psychiatry), by Samuel Lézé, Ph.D, 2014, from Andrew Scull (ed.), *Cultural Sociology of Mental Illness : an A-to-Z Guide*, Sage, pp. 313–14

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