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Forensic psychiatry (criminal issues)

by

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INTRODUCTION

[50.50] Psychiatry and the law are often inextricably entwined. Mental health legislation, allowing the civil detention of those with a mental illness, means that psychiatrists often make clinical decisions with an awareness of legal parameters. Where the disciplines overlap, the issues raised are fundamental to both. This is especially apparent in criminal matters. Is a person fit to plead and to what extent is a person responsible for their offending if they are mentally unwell? If not responsible, then there is still the complicated matter of disposal. A person may have to be deprived of their liberty for public protection, often to a secure hospital. Here, psychiatrists and the courts must balance the interests of the individual against those of wider society.

The relationship between psychiatry and the law can be an uneasy one. Courts would like clear answers and evidence in order to dispense justice, while psychiatric diagnoses are made along a continuum of presentations, and objective evidence, as opposed to expert opinion, is hard to come by. Definitions can vary; as for example the difference between legal and clinical insanity. The area can also arouse suspicion: that the vagaries of human behaviour are increasingly being excused by attaching medical labels, known as “medicalisation” (Feeney, 2010), or that diagnostic categories designed to allow doctors to communicate with one another are being misused in the search for a defence: Virgo et al (1999).

Efforts are being made to continually improve the ways in which the two areas work together. Training for forensic psychiatrists requires a proper understanding of the legal proceedings faced by patients in the criminal justice system and the development of skills in writing reports for the court to address specific legal questions. “Therapeutic Jurisprudence”, a concept first introduced at the National Institute of Mental Health (USA) in 1987, is an approach to legislation and the practice of law that takes into account the effect of the legal process on a defendant’s mental health and tries to improve long term outcomes: Wexler (1996). Organisations such as the Australian and New Zealand Association of Psychiatry, Psychology and Law (ANZAPPL) play an important role in this respect. ANZAPPL provides a forum for the bringing together of psychiatrists, psychologists and lawyers to share expertise and learn from each other.

This chapter outlines and reviews the potential contribution a forensic psychiatrist may make in criminal issues. It will describe the type of training a forensic psychiatrist who deals with criminal matters has undergone, and examine some key areas in the field. Chapter 51 deals with civil forensic psychiatry.

What is a psychiatrist?

[50.60] Definition

A psychiatrist is a qualified medical practitioner who subsequently specialises in the diagnosis, treatment and prevention of mental illness and emotional disorders. “Because of their extensive medical and psychiatric training, psychiatrists are able to view illness in an integrated way by taking into consideration the related aspects of body and mind”: Royal Australian and New Zealand College of Psychiatrists (no date). Within psychiatry there are a number of sub-specialities, the mainstay of which is general adult psychiatry but which also includes areas such as psychotherapy, child and adolescent psychiatry, addiction psychiatry, psychiatry of old age and forensic psychiatry.

Training and professional qualifications

[50.70] First, a psychiatrist undertakes a minimum of five years medical school training at university to gain a Bachelor’s degree in medicine and surgery. After a period of one year’s
internship in a certified hospital, the individual is then eligible for registration as a medical practitioner. A further year is spent as a Resident Medical Officer before an application can be made to join a Psychiatric Training program. In Australia and New Zealand specialist training for doctors to qualify further as psychiatrists is conducted by the Royal Australian and New Zealand College of Psychiatrists (RANZCP). Training takes a minimum of three years basic training, followed by a minimum of two years advanced training. Throughout this time trainees are assessed by Consultant Psychiatrists who provide clinical supervision, they have to submit written case histories and undertake written examinations and clinical vivas. Basic training requires the trainee to gain experience in a variety of different areas; of particular importance are the fields of adult, child and adolescent, consultation–liaison and addiction psychiatry, as well as the psychiatry of old age and psychotherapy. Advanced training focuses on a particular sub-speciality and leads to a Certificate of Advanced Training in that discipline. If training and examination requirements are satisfactorily completed, fellowship of the RANZCP is granted, and with this qualification the practitioner can achieve recognition as a consultant psychiatrist in Australia and New Zealand.

Whilst most psychiatrists in these countries are fellows of the RANZCP, overseas qualifications and training experiences are sometimes accepted with respect to a psychiatrist attracting specialist rates of remuneration for services provided. In Australia, from July 2010, eligibility for registration as a specialist is uniform across the country and overseen by the Medical Board of Australia. New Zealand has a Medical Council fulfilling this role.

Training and registration in the UK are along very similar lines, with an additional year required for the advanced training stage. Membership of the Royal College of Psychiatrists is gained after basic training and examination requirements have been met, then completion of advanced training leads to a Certificate of Completion of Training (for example a CCT in forensic psychiatry) which allows the holder to register as a specialist.

Forensic psychiatry as a specialty area

Forensic psychiatry is practiced at the interface between psychiatry and the law. It can be considered to include both criminal and civil law as it relates to mental disorder. Differing legislative, philosophical and community traditions shape the style of its practice from one jurisdiction to another.

In the UK, the emphasis of forensic psychiatry has firmly been on criminal matters as it has evolved from the establishment, in the nineteenth century, of secure psychiatric hospitals (Gunn, 2002) (Broadmoor Hospital was opened in 1863). However, it was a century later when the first consultants in forensic psychiatry were appointed by the National Health Service in 1964 and only in 1997 that the Faculty of Forensic Psychiatry was formed in the Royal College of Psychiatrists. Forensic psychiatry in the UK now offers more specialist services in the form of units for Child and Adolescent or Intellectual Disability Forensic care, or women only services.

In America and Australia forensic psychiatry has broader implications. It has extended into such areas as civil (personal injury and workers compensation) and child and family (marital breakdown, access disputes) forensic psychiatry. Forensic psychiatrists in United States have emphasised their role in providing objective expertise to the courts, especially when a defence
of insanity is raised, which occurs more often than in the UK, Australia or New Zealand: Gelder et al (2000). Acting not as a clinician but as a “forensicist”, their primary role is clearly one of assisting the Court: Appelbaum (1992). The Royal College of Psychiatrists in the UK has specifically rejected this role (Royal College of Psychiatrists (2004)), adopting the position that forensic psychiatrists are first and foremost doctors, working within a framework of medical ethics. This model has forensic psychiatrists primarily treating patients, while also having particular skills and training in providing expert testimony to the courts.

Forensic psychiatry in Australia in the 1980s consisted of a few clinicians working in the private sector with a strong emphasis on civil work. This work consisted of assessments, reports and the giving of expert evidence rather than the treatment and rehabilitation of patients (hence closer to the American than the UK model) and as such the additional expertise required focused on a knowledge of the law and legal proceedings. Secure psychiatric units were usually staffed by general psychiatrists and there was no academic position in the forensic mental health disciplines. By the turn of the century however things had changed. While there remain a significant number of forensic psychiatrists whose work is solely to assess and report to the courts, they “no longer dominate the field”. “The majority of those who identify themselves as specialists in forensic mental health are employed in providing treatment services” (Mullen, Briggs et al, 2000) and will be employed by the public mental health systems with varying degrees of access to a limited right of private practice. There are now University professorships in academic forensic psychiatry.

Australia is made up of eight states and territories which have different mental health legislation and criminal codes and therefore separate public forensic psychiatric services. In general terms these forensic services will be centred around a secure in-patient unit accommodating patients whose admission has been ordered by the court or who have been transferred from prison because of a need for in-patient treatment. Patients’ needs will vary from requiring acute treatment and short stays in hospital to long term rehabilitation over several years and re-introduction to the community. Increasingly, community based forensic mental health services are being developed to provide management of risk and facilitate transition back to the community. In addition, services will provide mental health input into prisons, out-patient follow up and consultation–liaison with general services. A variety of disciplines contribute to the running of such a service including forensic psychologists and specialised nursing, social work and occupational therapy staff.

A trainee psychiatrist aiming to obtain a specialist qualification in forensic psychiatry will serve an apprenticeship in such a unit in order to become proficient in the assessment and management of mentally disordered offenders, including the assessment of risk, the therapeutic use of security, prison psychiatry, writing reports and giving evidence to the court. A detailed curriculum has to be covered which includes both the criminal and civil areas.

The remainder of this chapter will deal with the psychiatrist as an expert witness. Before doing so, however, it is necessary to discuss some matters of general interest so that the content of the remainder of the chapter is more meaningful.