

Forensic psychiatry, DSM-V and legal insanity

Kaliski's rhetorical expose titled: "Will forensic psychiatry survive DSM-5?"¹ reminds forensic psychiatrists of the reality of the ever blurring boundary between "badness" and "madness". He discussed quite profoundly, certain fanciful conditions that had been synthesized recently e.g. paedo-hebephilia, paraphilic coercive disorder, etc. and are being proposed for inclusion in DSM-V. His argument is that actual mental disorder versus mere legal excuse for antisocial conduct will be the bone of contention when certain DSM-V diagnoses go to court. Since the two may coincide in the social interpretation of crime, I am quick to answer his justifiable query by saying: I think forensic psychiatry will survive DSM-V for it is not an infallible authority in the eyes of the law.^{2,3} While this view may not necessarily hold for every clime depending on the weight that legal circles in different jurisdictions apportion to expert testimony, the Justices of the Supreme court in Nigeria by a casuistic pronouncement have established a prescient notion that: "it is settled law that whether the accused person was sane or insane in the legal sense at the time when the act was committed is a question of fact to be determined by a jury, (Rex v Wangara 10 W.A.C.A 236; Walton v R. (1978) (66 Cr. App. R. 25) and not by a medical man however eminent (R. v. Riveth 34 Cr. App. R. 87) and is dependent upon the previous and contemporaneous act of the party, Rex. v Ashigufuwo 12 W.A.C.A 389)".⁴ It is therefore implied that psychiatrists, as the exponents of mental disorders, will often bow to the pressures of jurisprudence, the proponent of contemporary renditions of "insanity". My submission is that despite the changing nuances of mental disorders, the rigid standards of legal insanity appear to be fairly stable such that new diagnoses do not automatically transform into new viable defences in the law courts. Hopefully, this should serve as a check against the abuse of these proposed but somewhat controversial diagnostic categories and save forensic psychiatry from a burden that will be too heavy to bear. That certainly should be one of the few times that the law will come to the aid of the "eminent medical man" in settling what constitutes legal insanity even though it approximates mental disorder.

In resolving some of the clinical and probably legal confusion that will be raised by DSM-V categories, Kaliski argues for clinical utility as a pedestal of honesty for forensic utilization of what he termed "the continua of diagnoses". His call for the profession to give dimensional diagnostic constructions a closer look seems to me an unconscious acceptance of the disappointments of DSM-V from which all of us are likely to suffer. The advocates of this most recent revision (and those working on ICD-11) had probably entertained a prophetic impression that in the decades between 1994 and 2014, biological psychiatry should have assisted the profession most remarkably to tease out the "brain" from the

"mind" and thus pontificate on what constitutes a disorder and what does not.⁵ Unfortunately, neuroimaging, molecular biology, genetics and other novel approaches have failed somewhat to deliver the expected answers. It almost appears that Yeats was gazing into the interval between DSM-IV and DSM-V when he said in *The Second Coming* thus: "Turning and turning in the widening gyre, the falcon cannot hear the falconer...; the best lack all conviction, while the worst are full of passionate intensity..." DSM-V seems to be telling us that psychiatry is on an endless search for meaning. The German words *Erklaren* and *Verstehen* as used by Jaspers⁶ which imply "explanation" and "understanding" respectively, remind us of the need for meaning in psychiatry. Dimensionality undoubtedly gives more understanding and probably augments categories⁵ but it offers little impetus for objective clinical action (i.e. disorder or not disorder; to treat or not to treat, etc.) as categorization would provide. If we revert to dimensional constructs as the overarching style in forensic psychiatry, the profession will become disabled. It is important as an expert to be able to state a logical conclusion usually within the ambit of the "preponderance of evidence" or "the balance of probability", the usual standard of proof in insanity cases. My thrust is that categorical distinction still holds us closest to the role of the expert witness and to medicine as a profession otherwise, psychiatrists may become regarded as speculators and more so with forensic psychiatry. However, since the law is driven primarily by a moral consciousness rather than the weight of latest scientific evidence, it should remain a solid threshold for determining the exculpatory quality of recent diagnostic categories as it views them in the light of nebulous conceptual standards such as "defect of reason", "disease of the mind", or "natural mental infirmity" under the rubrics of legal insanity. Hopefully then, the falcons of DSM-V in forensic psychiatry will eventually hear the falconers and the profession will not degenerate into nosological anarchy in the rapidly expanding gyre of an avalanche of diagnoses.

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