

“J’ACCUSE”

Psychiatry and the Diminished American Capacity for Justice

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There is no question but that a travesty of justice occurred in the trial of Dan White. How could the killer of San Francisco Mayor George Moscone and Supervisor Harvey Milk — who fired nine bullets into his victims and shot each one twice in the back of the head, execution-style — not be found guilty of murder?

The answer is: Easily.

Anything is possible in human affairs if one has the power to redefine basic concepts — to say that day is night, that two plus two make five — and get away with it. In the trial of Dan White, the defense, aided and abetted by the prosecution, had the power to hand the case over to the psychiatrists; and the psychiatrists had the power to redefine a political crime as an ordinary crime, and an ordinary crime as a psychiatric problem. How did psychiatry gain such power? By having seized it, long ago; and by society not resisting — indeed welcoming — that seizure of power.

To understand the White affair, we must understand some things about the recent history of American psychiatry. During the Second World War American psychiatry became extremely useful to the military authorities by offering an ostensibly medical mechanism for disposing of useless or unwanted military personnel. That mechanism was the so-called NP (for neuropsychiatric) discharge. Approximately one-half of those separated by “medical” discharges from the military services received NP discharges. At the time, this was considered to be a great medical-humanitarian achievement. It is still so considered. The psychiatrist most responsible for it, William Menninger, was hailed as a great physician and a benefactor of the nation. Why? Because he, and the countless psychiatrists who participated in that gigantic con-game, offered to obscure, and thus to de-ethicize and depoliticize, one of the most obvious and painful moral problems that then faced the nation — namely, the obligation to serve in the armed forces with the grave risks to life and limb attendant on that obligation. That wartime psychiatrization

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of fear, self-protection, cowardice, pacificism, wisdom — call it what you may — laid the foundation on which American psychiatrists and the other enemies of freedom and dignity have been building their castles ever since.

At the end of the war, American psychiatry lost no time demonstrating its usefulness to the country at peace. Ezra Pound, one of the greatest poets of his time, was indicted for treason — a charge he vehemently denied. Whether he was innocent or guilty of that crime, psychiatry spared the nation the necessity of confronting the political soul-searching that his trial would have generated. Prosecution and “defense” conspired to declare Pound mentally unfit to stand trial — condemning him instead, without trial, to serve a 13-year sentence in St. Elizabeth’s Hospital, the nation’s model psychiatric dungeon in Washington, D.C. Pound’s jailer was hailed as a great psychiatrist, the benefactor of Pound as well as the nation.

Neither the mass stigmatization of American servicemen as mad, nor the psychiatric diversion of the Pound case from the criminal to the mental-health system, was considered to be an abuse of psychiatry. The American public has been led to believe that only in Russia do psychiatrists abuse psychiatry; that in the West, psychiatrists use psychiatry only to do good. But what is the nature of that good? Postwar psychiatry proudly declared its lofty aims. “The belated objectives of practically all effective psychotherapy,” declared Brock Chisholm in 1946, “are the reinterpretation and eventual eradication of the concept of right and wrong. If the race is to be freed from its crippling burden of good and evil, it must be psychiatrists who take the original responsibility” (p. 3). The physician who uttered this much-neglected self-revelation of the moral and political mandate of psychiatry was the former director general of medical services in the Canadian army, the head of the World Federation of Mental Health, and the director of the World Health Organization. Thirty-three years later, the men and women who sat on the jury in San Francisco in the case of Dan White proved themselves to be apt pupils of the psychiatric perverters of our system of justice.

In the postwar years, psychiatrists continued their crusade against homosexuals, whom they called, among other things, “inverts” and “perverts,” and whose incarceration as “sex offenders” they enthusiastically supported. “If it is considered the will of the majority,” declared one of the then leading American psychiatrists, “that large numbers of sex offenders . . . be indefinitely deprived of their liberty and supported at the expense of the state, I readily yield to that judgment.” That opinion was uttered by Manfred Guttmacher (1951, p. 132), in whose honor the American Psychiatric Association offers an annual award “for outstanding contribution to the literature of forensic psychiatry” — in other words, for the most valuable contribution to the psychiatric subversion of the rule of law.

In 1974, the American Psychiatric Association (under pressure from gay liberationists) dropped homosexuality from the official roster of mental diseases, while still maintaining that the conversion of homosexuals to heterosexuals is a bona fide treatment. Thus it would be a serious mistake to believe that these long-standing enemies of homosexuals have really changed their minds about one of their most dearly hated scapegoats. For example, Karl Menninger, the undisputed dean of postwar American psychiatry, has never retracted the following views which he set forth in 1963. After denigrating homosexuals by classifying their "condition" as a species of "Second Order of Dyscontrol and Dysorganization," Menninger asserts: "We do not, like some, condone it [homosexuality]. We regard it as a symptom with all the functions of other symptoms — aggression, indulgence, self-punishment, and the effort to forestall something worse" (1963, p. 168). While Menninger thus stigmatizes and slanders homosexuals, he tries, in every way possible, to relieve real criminals of responsibility. His crowning achievement in this enterprise is epitomized in the title of one of his most celebrated books — *The Crime of Punishment* (1968). According to Menninger, the punishment even of persons guilty of the most heinous crimes, is, quite literally, a crime — whereas their crime is not a crime. Lest anyone think that Menninger is championing liberty for lawbreakers, let me hasten to add that he is not championing liberty for anyone; instead, he seeks to lump the "criminal" together with the rest of humanity — everyone being a fit subject for indefinite psychiatric incarceration at the whim of the psychiatrist. In his magnum opus, *The Vital Balance*, Menninger declares "that all people have mental illness of different degrees at different times, and that sometimes some are much worse, or better" (1963, p. 32).

This brings us, historically as well as logically, to the present psychiatric-legal situation in California: in particular, to the concept of "diminished mental capacity" as a defense in criminal law.

Modern medicine has revealed that the capacities of various organs to perform their functions may be impaired or abolished by disease. The liver, for example, may have a diminished capacity to metabolize certain nutrients and to secrete bile — the result of which may be jaundice and death. Similarly, the kidneys may have a diminished capacity to secrete metabolites and excrete urine — the result of which may be uremia and death. And so on, with the capacities of the lung, the heart, and other organs.

Psychiatry has always been cannibalistic, living off a succession of medical metaphors. Its whole idea of mental illness, as I have shown elsewhere, is one colossal metaphor. In postwar America, psychiatry was hungry for fresh concepts to live off. Thus, the psychiatrists borrowed from medicine the idea of the "diminished capacity" of an organ and applied it, literally, to "criminal responsibility." The authority widely acknowledged to be most responsible for popularizing the doctrine of

“diminished capacity” is Bernard Diamond, a professor of psychiatry and law at the University of California at Berkeley. With this mendacity through metaphor, Diamond helped to lay the ground for decisions such as the jury reached in the White case. Let us keep in mind, however, that Diamond’s opinions are hardly novel — following, as they do, upon decades of psychiatric attacks on criminal responsibility as a moral concept.

— Diamond writes: “[S]cientific evidence proves that there is no such thing as free will . . . Each [criminal] case should be judged on its own clinical merits.” Diamond thus takes it for granted that every defendant is a “patient” whose “case” has “clinical merits.”

— All human behavior — each “act of will” is, moreover, nothing but a physiological process: “Each act of will, each choice, presumably made on a random basis, turns out to be as rigidly determined as any other physiological process of the human body.”

— Diamond writes as if the metaphor of diminished responsibility were an established “fact”: “We thus arrive at a legal spectrum of an infinitely graduated scale of responsibility which corresponds, or could be made to correspond closely, to the psychological reality of human beings as understood by twentieth century medical psychology.”

Of course, no one can see, smell, taste, or measure “criminal responsibility,” normal or diminished. This makes it different from the diminished capacities of the liver, the lungs, the kidneys, and the other organs, all of which are readily measurable. Nor is this a matter of technological sophistication. Criminal responsibility will *never* be measurable — because it just isn’t that sort of thing. That it is not something psychiatrists know perfectly well, which supports the impression that they are not fond of telling the truth. In the very article in which he touts the concept of diminished capacity, in the *Stanford Law Review* of December 1961, Diamond writes:

I concede that this whole business of lack of mental capacity to premeditate, to have malice or to entertain intent, is a kind of sophistry [that is, a kind of lie] which must not be allowed to remain an end in itself. Right now we must utilize these legal technicalities to permit psychiatrists to gain entrance into the trial court . . . (p. 82)

Why didn’t the prosecutor read these lines to the White jury? And why didn’t he read Diamond’s further psychiatric-imperialistic declarations published in the same article?

The next step after *Gorshen* [a 1957 trial at which Diamond testified] is to expand the principle of limited or diminished responsibility of the mentally ill offender to include all definitions of crime . . . The ultimate step will be the extension of the treatment principle to all prisoners — sane, insane, fully responsible, and partially responsible . . . (p. 83)

Here it is, in black and white. Diamond is not in the least interested in justice — and like Menninger he says so. What he is interested in is treatment — that is, in medicalizing law, crime, and punishment.

Against this backdrop we can better reconsider the killing of George Moscone and Harvey Milk and the psychiatric exoneration of the man who killed them. Most of the facts of this case have been well publicized and are familiar, especially to those who have paid attention to this astonishing judicial-psychiatric spectacle. It is a spectacle for which we do not have a proper vocabulary. We have a rich lexicon to describe unjust punishments meted out to innocent victims — judicial lynching by a kangaroo court being a succinct and picturesque way of describing that sort of legal crime. Revealingly, we have no comparable words to describe the inverse aberration of justice, such as occurred in the White affair. “Getting away with murder” is the closest we can come to it. This is not inaccurate, but is inadequate since it neglects to suggest how the judicial crime in question was perpetrated.

Keep in mind that according to the experts, there is no such thing as a political assassination in America. In America, only “mental patients” kill political figures.

— The mayor of one of America’s great cities is killed by five shots, two of them fired into his head at close range after he is gunned down with three previous shots. The mayor is a “liberal” protector of the rights of sexual minorities. The assassin is a “conservative” foe of “social deviants.” The killing is not a political crime, asserts prosecutor Thomas Norman.

— The most prominent self-declared homosexual politician in America is killed by four shots, two of them fired into his head as he lies fatally wounded. The killer is the mayor’s assassin, who reloaded his gun after the first killing. That’s not a political crime either, says Norman.

What else do you expect? In an America poisoned by psychiatry, any political embarrassment or crime can be psychiatrized. James Forrestal, former secretary of the navy and the first U.S. secretary of defense, begins to act erratically and is imprisoned by psychiatrists in a suite on the top floor of the National Naval Medical Center, from which he allegedly jumps to his death. Ezra Pound is, as I have noted, incarcerated in a madhouse for thirteen years. Major General Edwin Walker, implicated in an integration riot, is imprisoned in a federal insane asylum in an effort to deprive him of his right to stand trial.

John Kennedy is assassinated. The explanation? A lone psychotic named Lee Harvey Oswald shot him. Oswald, in turn, was shot by another lone psychotic, called Jack Ruby. If you don’t believe that, you are paranoid.

Robert Kennedy is assassinated. The explanation? Another lone psychotic, this time a Palestinian-American called Sirhan Sirhan, shot

him. Sirhan did it, the psychiatrists claimed, because he fell off a horse when he was a child. If you don't believe that, you are paranoid.

You are paranoid because American psychiatry has established that in our "sick society" what seem to be political assassinations are, in reality, not political acts at all. As Edwin Weinstein, a professor at Mount Sinai Medical School, wrote in 1976 in one of the most prestigious American psychiatric journals:

Assassinations of heads of state of foreign countries have usually been carried out by organized political groups seeking to overthrow the government or change its policies. In the United States, on the other hand, Presidential assassinations have been the work of mentally deranged individuals. (p. 291)

How many more cases or authorities must one cite to prove that not only Russian psychiatry, but American psychiatry also, is a political weapon?

To return to the most recent case of a psychiatrically depoliticized political assassination — that of the assassination of George Moscone and Harvey Milk — consider the following:

— The killer of Moscone and Milk had been informed that his political hopes had been destroyed by Moscone's refusal to reappoint him supervisor, a refusal in which Milk was thought to have had a hand. The next morning the killer came to City Hall with a well-hidden gun and ten extra bullets; gained entrance to the building through a window thus avoiding the metal detectors at the door; shot Moscone five times; reloaded his gun; then shot Milk four times. To the psychiatrists all this proved diminished capacity to premeditate.

— One psychiatrist insisted that the killer was a "good man"; this also proved that he had diminished capacity.

— White sat at home consuming Cokes, Twinkies, and other "junk food" before the killings, said another psychiatrist — additional evidence that he had diminished capacity.

— The defense and the prosecution collaborated in deliberately depoliticizing the assassinations. After the trial, defense attorney Stephen Scherr told the *San Francisco Examiner* that "the defense was wary of having gays serve on the jury. He said the attorneys feared that a gay might believe that the slaying of Milk, San Francisco's first openly homosexual supervisor, was a political assassination committed to block gay power. Scherr said such a belief would be contrary to the facts in the case . . ." This is like excluding black jurors from the trial of the assassin of Martin Luther King (the alleged assassin was, of course, never tried) — on the grounds that they might mistakenly believe the killing had something to do with the fact that King was black.

When patients do not want to face unpleasant facts, psychiatrists love to tell them that they are practicing "denial" and "repression." That

may be true — although we must remember that patients have a right to deny or repress any fact they please. But witnesses in criminal trials are sworn to tell the truth. Journalists saw the truth — and they saw it withheld, evaded, and obscured by the psychiatrists (and the prosecution). Charles McCabe, the *San Francisco Chronicle* columnist, wrote:

[Quoting free-lance writer Mike Weiss:] “The San Francisco image-mongers — the politicians and the flacks — don’t talk out loud about the seething frustrations and angers aroused by this confrontation [between straights and gays]. But, out in the neighborhoods, everybody knows San Francisco has a sexual integration crisis.” . . . [Dan] White [McCabe continues] had all the old-fashioned prejudices and bigotries. He hated blacks and “queers” and made no secret of it . . . The man [Moscone] who double-crossed him had offended his manhood. Moreover, the mayor was the most powerful friend the homosexuals had in this city . . .

Herb Caen, another *Chronicle* columnist, was equally candid:

“What’s wrong with San Francisco?” was being asked again yesterday . . . one can kill, twice, complete with coup de grace, and get away with it. The grateful defendant was a staunch defender of law and order . . . a religious man who went straight to church after he killed . . . This is a city of undercurrents, not all of them well hidden. Many police made an open secret of their support for Dan White and their dislike (understatement) of homosexuals . . .

If these journalists are telling the truth, what did the psychiatrists tell us and the jury? A “higher” version of the truth — or strategic untruths? Since “psychiatric expert testimony” is, legally speaking, *opinion* — it can never be perjured. This fact points to the role of the single prosecution psychiatrist in the White case. This physician was foolish enough actually to examine Dan White on the day of the killings. He testified that he found White to be sane, competent, and responsible for his actions. The jury, no doubt, concluded that he was an inept doctor, who couldn’t find the “diminished capacity” so easily detected by four other doctors and a clinical psychologist. The very act of examining White was stupid and totally inconsistent with mounting a strong case for the prosecution. The fact that the DA had White examined must have proved to the jury — and rightly so — that there was something a psychiatrist *could* discover by examining him that would be relevant for establishing White’s “capacity” to commit first degree murder. Therein, precisely, lies the utter hoax of “diminished capacity.” In my opinion, the prosecution should have led the jury to infer malice and premeditation from the facts of the case — just as a jury is supposed to infer malpractice when a surgeon leaves a sponge in the patient’s stomach.

White’s defense thus rested on two separate pillars: psychiatry and the plea of “diminished capacity” was one; a subtle but persistent appeal to the jury’s antihomosexual prejudices was another. This latter aspect of the defense strategy has seemingly been overlooked by most previous commentators on the trial.

“Good people — fine people with fine backgrounds — simply don’t kill people in cold blood,” was Schmidt’s premise for interpreting, to jury and press alike, what “really” happened to Dan White. “Seeing Mrs. White,” wrote a reporter for the *San Francisco Chronicle*, “it was impossible for the jury not to believe that White came from a decent, hard-working background that they, the jury-members, shared and admired. Repeatedly, Schmidt used the word ‘background’ . . .”

“Background” was, indeed, the code-word. For what? Primarily for “straight” (as against gay) — and secondarily, for white, Christian, policeman (as against black, Jewish, “deviant”). But if Schmidt’s bigoted premise — which the prosecution never challenged and hence the jury readily accepted — is allowed to stand, then no heterosexual, married, policeman jogger will ever be convicted of first degree murder in America again.

Thus with great skill Schmidt successfully replaced the reality of Dan White, the moral actor on the stage of life, with the abstractions of White’s “diminished capacity” and his “background” — and then instructed the jury to focus on those fictions and ignore the facts.

As soon as the trial was over, one of the defense psychiatrists gave an interview in which he flatly contradicted his own testimony. As a witness for the defense, Martin Blinder, a San Francisco psychiatrist, “told the jury [according to *Newsweek*, June 4] that White’s compulsive diet of candy bars, cupcakes and Cokes was evidence of a deep depression — and a source of excessive sugar that had aggravated a chemical imbalance in his brain.” Two weeks later, Blinder — who says he has been “involved in thousands of cases” — told a *San Francisco Chronicle* reporter: “Judges and juries should determine issues of guilt and innocence, sanity and insanity . . . psychiatrists are often pushed into making that decision for them . . . There is a tendency for psychiatrists to find mental illness in every instance of emotional stress. I personally resist this.”

But who is “pushing” Blinder or any other psychiatrist to testify in a criminal trial? No one is! In each and every case, a psychiatrist who testifies in court is a hired gun. He does what he does for money or fame or because he believes in it, or as one might infer from Bernard Diamond’s remarks, to gain eventual control of the entire judicial system. Assuredly, he does not do it because anyone forces him to — just as no one forces him to go to court to commit innocent people to mental hospitals, which hired psychiatric guns also love to do.

After the war, the German people could not claim that they did not realize what the Nazis were planning for the Jews. Hitler had warned them of his intentions clearly enough — in *Mein Kampf* and the voluminous anti-Semitic literature that accompanied the National Socialists’ rise to power. After they awaken from their psychiatric stupor, the American people will not be able to claim that they did not realize what the psychiatrists were planning for all of us. The

psychiatrists had warned them of their intentions clearly enough — in books with such telling titles as *The Crime of Punishment* (1968) and the voluminous antiresponsibility and procommitment literature that accompanied these pseudomedical prevaricators' rise to power.

When psychiatric testimony is used as it has been in the White trial, where are the so-called critics of psychiatry — those who timidly chastise the sensational foreign or marginal domestic abuses of the profession, and thus make headlines for themselves as humanitarians? Do they speak out against gross psychiatric abuses, such as have occurred in the White case and in other cases of political assassination? The fact is they never do.

Mrs. Rosalynn Carter is so tireless a promoter of this fake religion that she seems to be veritably thrice-born: as a human being, as a Baptist, and as a votary of psychiatry. One could reasonably expect that a person so lavish in her praise of the "good" that psychiatry has done would feel duty-bound to speak out when psychiatrists make a mockery of justice. But she has not.

Where were our conservative and neoconservative journalists and thinkers who so lament the decline of the sense of personal responsibility in our permissive society?

Where, when all is said and done, were the ever-ready crusaders for human rights and justice throughout the world? Did they protest the injustice of the White verdict? No, they did not.

In the struggle against the psychiatric perversion of responsibility and justice, I propose that we make Voltaire's famous battle cry — "Ecrasez l' Inflame!" ("Crush the infamous thing!") — our own. The infamous thing that Voltaire sought to crush was the political power of the Roman Catholic Church. The infamous thing that we ought to crush is the political power of the Church of Psychiatry.

Another example from French history of a crusade for justice occurred at the end of the last century when French society was wracked by the trial and conviction of Captain Albert Dreyfus. What the Dreyfus affair was for the French at that time, the Dan White affair ought to become for us now. In the Dreyfus case, the judicial system was used to convict a demonstrably innocent man. In the White case, the judicial system was used to exonerate a demonstrably guilty one.

Dreyfus, the Jew, was the victim. White, the policeman, is the victimizer. Dreyfus became the symbol of what happens to an innocent individual when anti-Semitic hatred in the community, unacknowledged but powerful, is allowed to masquerade as justice. White should become a symbol of what happens to a guilty individual when antihomosexual hatred, unacknowledged but powerful, is allowed to masquerade as justice.

Who allowed — who, indeed, engineered — these carefully orchestrated miscarriages of justice? In the Dreyfus case, it was the French military and the power it then wielded in the French courts. In the White

case, it is American psychiatry and the power it now wields in the American courts. As Emile Zola then accused the French generals of having perverted the legal order in "l'affair Dreyfus," so I accuse organized American psychiatry of perverting the legal order in the White affair.

I maintain that American psychiatry is White's accomplice in crime. While White pulled the trigger of the gun that killed Moscone and Milk, American psychiatry pulled the wool over the eyes of lawmakers and journalists and the public. The result was a courtroom scenario of psychiatrists fabricating fantasies and having their fantasies legitimized by the court as "expert medical testimony."

On Mondays, Wednesdays, and Fridays, the psychiatric prevaricators thus go to court to exonerate the guilty: That is called "psychiatric defense." On Tuesdays, Thursdays, and Saturdays, the same prevaricators go to court to incriminate the innocent: That is called "civil commitment." The lawmakers, the judges, and the attorneys (for both sides) all shamelessly use these fakes — which is why each of them is as reluctant to expose and demolish the psychiatric defense of the guilty as he is to expose and demolish the psychiatric incrimination of the innocent.

Long before Dreyfus' days, the homosexual was already one of psychiatry's favorite scapegoats. American psychiatry's true feeling about homosexuals showed its ugly face once more in the trial of Dan White. Let us hope that the White affair will arouse the sense of justice in the gay community in America and in the hearts of all who sympathize with such victimization; and that the result will be the long-overdue expulsion of the psychiatric liars from the courtroom — whether they come to pervert justice by imprisoning the innocent or by exculpating the guilty.

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