The Journal of Mind and Behavior
Summer and Autumn 1990, Volume 11, Numbers 3 and 4
Pages 557 [311] - 564 [318]
ISSN 0271-0137
ISBN 0-930195-05-1

Law and Psychiatry: The Problems That Will Not Go Away

Thomas Szasz

State University of New York

The practice of psychiatry rests on two pillars: mental illness and involuntary mental hospitalization. Each of these elements justifies and reinforces the other. Traditionally, psychiatric coercion was unidirectional, consisting of the forcible incarceration of the individual in an insane asylum. Today, it is bidirectional, the forcible eviction of the individual from the mental hospital (which became the home) supplementing his or her prior forcible incarceration in it. So intimate are the connections between psychiatry and coercion that noncoercive psychiatry, like noncoercive slavery, is an oxymoron.

Ever since I first reflected on matters such as madness and madhouses and especially the incarceration of insane persons in insane asylums – long before I went to college, much less medical school – it has seemed to me that the entire edifice of psychiatry rests on two false premises, namely: that persons called "mental patients" have something others do not have – mental illness; and that they lack something others do have – free will and responsibility. In short, psychiatry is a house of cards, held up by nothing more, or less, than mass belief in the truth of its principles and the goodness of its practices. If this is so, then psychiatry is a religion, not a science, a system of social controls, not a system of treating illness.

But if I knew this long ago, why – I am often asked – did I enter psychiatric and psychoanalytic training? I did so for two reasons: because I wanted to practice psychotherapy, and because I wanted to see if I could mount a successful critique of the fundamental principles and practices of psychiatry.

After floating a few cautiously phrased articles in professional journals, in 1961 I published *The Myth of Mental Illness*, and all hell broke loose.

This article is adapted from the Preface to the Syracuse University Press edition of *Law, Liberty, and Psychiatry* (1989). Requests for reprints should be sent to Thomas Szasz, M.D., Department of Psychiatry, State University of New York, Health Science Center, 750 East Adams Street, Syracuse, New York 13210.

Psychiatrists greeted my assertion that there is no mental illness with as much enthusiasm as priests might greet a fellow clergy's assertion that there is no God; not, mind you, because the assertion is clearly false, or because they are sure that it is false, but because the person making it is not supposed to say such a thing – especially if it is true.

The controversy about mental illness still rages, and the nature of the controversy is often still stubbornly misunderstood: mental health professionals and lay persons alike seem to believe that the demonstration of a genetic defect or neurological lesion in some so-called mental patients proves that mental illness exists – "like any other illness." But this is silly: if mental illness is a metabolic or neurological disease, then it is a disease of the body, not of the mind; and if mental illness is behavior, then it is behavior, not disease. A screwdriver may be a tool or a drink; no amount of empirical research on orange juice–and–vodka can establish that it is, in reality, an unrecognized manifestation of a carpenter's tool.

With the simple but uncompromising idea that mental illness is a metaphor I hoped to inflict a fatal blow, philosophically speaking, on the conceptual foundations of psychiatry. Perhaps I succeeded. But then, given what the greatest scientist of the mind who ever lived considered to be a typical instance of mental illness, this may not have been so difficult. In 1937, Freud wrote,

> The moment a man questions the meaning and value of life, he is sick, since objectively neither has any existence; by asking this question one is merely admitting to a store of unsatisfied libido to which something else must have happened, a kind of fermentation leading to sadness and depression. (cited in E. Freud, 1960, p. 36)

Recognizing a metaphor – as well as a dangerous deception and self-deception – when I saw one, I next turned my energies to constructing a critique of psychiatric practices, especially those taking place outside the privacy of the consulting room.

Once again, my basic idea could not have been simpler. In *The Myth of Mental Illness* I tried to clarify why mental illness is not, and cannot be, a bona fide illness – because the mind is not a bodily organ, and because, as everyone knows but few acknowledge, the term "mental illness" is typically affixed to misbehavior, not brain disease. In *Law, Liberty, and Psychiatry* (1963) I set out to document two equally obvious observations: first that mental hospitalization is not, and cannot be, the same as medical hospitalization – because the mental patient is not free to leave the building in which he or she is housed, whereas the medical patient is. Second, that the two paradigmatic practices of psychiatry – involuntary mental hospitalization or civil commitment and the insanity defense or the exculpation of persons guilty of crimes as not guilty by reason of insanity – rests on a philosophically indefensible

and morally odious proposition, namely, that unlike the behavior of the sane person, which is governed by free will, the behavior of the insane person is governed by impulses which the subject finds irresistible and for which he or she is, therefore, not responsible. With the rejection of these fundamental propositions as well, my excommunication from psychiatry became complete and irreversible.

Why should such ideas cast one out of an ostensibly scientific, professional discipline? Because of their consequence: if mental illness is like any other illness, and if psychiatrists are like any other medical practitioners, then psychiatrists ought to act like physicians. The individual suffering from diabetes or multiple sclerosis is not hospitalized involuntarily, nor is the individual excused from punishment if he or she commits an crime. Why, then, commit the mentally ill person innocent of lawbreaking, and why acquit that person as not guilty by reason of insanity when he or she is, in fact, guilty of a premeditated crime?

After all, it is self-evident that the so-called mentally ill criminal has committed a crime. What psychiatrists contend, and what most people now accept, is not that such a person does not commit crimes, but only that he or she does so from psychotic motives, exemplified by the phrase "I heard God's voice and he told me to kill my child." But "Crimes," asserted Sir Hartley Shawcross (1946) at the Nuremberg trials of the Nazi war criminals, "do not cease to be criminal because they have a political motive" (p. 467). Obviously so. By the same token, I maintain that crimes do not cease to be criminal because they have a psychotic motive.

Thus it was not just liberty that I sought for the mental patient unjustly deprived of it. More important, I sought to impose on the mental patient, if guilty of misbehavior or crime, the same responsibility and punishment we impose on the mentally healthy person. With respect to psychiatry–and–law, my whole argument can thus be condensed into a few paragraphs, exposing two phony psychiatric claims and their consequences. The claims are: "I can't/couldn't help it . . ." and "He/she can't/couldn't help it. . . ."

In the first phrase, "it" may refer to eating too much or too little, drinking, smoking, gambling, having adulterous affairs, killing one's baby or someone else, and so forth. If such a claim about one's non-responsibility is legally and socially accepted, then the claimant is not only excused of his or her immoral or illegal behavior, but may even be accredited as a person with special expertise in diagnosing and treating eating disorders, alcoholism, tobacco dependence, sexual addiction, and countless other (alleged) mental maladies.

In the second phrase – "He/she can't/couldn't help it . . ." – "it" may refer to hearing voices no one else can hear, seeing things no one else can see,

expressing a desire to kill oneself or someone else, or virtually any other socially disturbing or illegal behavior. If such a claim about another person's nonresponsibility is legally and socially accepted, then the person so identified becomes a fit subject for imprisonment without trial (involuntary psychiatric hospitalization) and punishment without having been sentenced (psychiatric treatment). But this is heresy: psychiatrists have correctly perceived that if involuntary psychiatric interventions of all sorts along with the insanity defense were abolished, as I proposed, psychiatry as we know it would cease to exist.

My sustained critique of the conceptual foundations and legal-social uses of psychiatry has proved to be very influential, though not, at least not yet, in the ways I had hoped. My aim was, and still is, to usher in a new way of seeing and treating individuals who are called, or call themselves, mentally ill: accord them the same rights, and impose on them the same responsibilities we accord and impose on other adults in our society. We have abandoned the tradition-sanctioned coercive-paternalistic control of blacks and women; we should similarly abandon the legally and psychiatrically sanctioned coercive-paternalistic control of mental patients.

I did not expect this to happen overnight, and it did not. Maybe it will never happen. What did happen is that psychiatrists, and many others too, began to feel guilty about the mistreatment of the mentally ill and embarked on yet another cycle of so-called reforms. Mental patients, it became clear, were deprived of their rights. Okay, said the reformers, we will give them some rights. Thus did it come about that since the publication of *Law, Liberty, and Psychiatry* in 1963, mental patients have become the involuntary recipients of rights they never dreamed of – such as the right to a lawyer, to treatment, to refuse treatment, to be incarcerated in the least restrictive setting, and so forth. This time the Potemkin's Village called Psychiatry was spruced up in earnest. Before the 1960s, the abuse of the psychiatric patient was undisguised: the mental hospital was a "snake-pit." Clearly, the snakes had to go. American psychiatry and the society it serves replaced the reptiles with lawyers and therapists:

> The right to refuse antipsychotic medication is now more than a decade old. . . . Refusal is not uncommon, but refusing patients appear almost always to receive treatment in the end. These findings point up the essential illogic of allowing committed persons to refuse treatment that would permit their freedom to be restored. The future evolution of the right [to treatment] . . . will restore the equivalence between the power to commit and the power to treat. (Appelbaum, 1988, p. 413)

Exhilarated by the prospect of possessing not just one but two different powers over his patient, Appelbaum adds "That such a right to refuse treatment might exist was unimaginable before the 1970s" (p. 414). But the practice of rulers giving meaningless rights to their subjects can hardly be called

unimaginable in our century saturated with slogans of phony freedoms. Sadly, but not surprisingly, if the pillars of society go through enough trouble to conceal their dark deeds, they are likely to succeed. That the concealments practiced by legal and psychiatric reformers have, this time around, been more successful than heretofore is suggested by the fact that they now fool even seasoned, critical observers. How else are we to explain the views of Roger Scruton, Professor of Aesthetics at Birkbeck College in London and editor of the *Salisbury Review*? In an editorial note appended to an essay entitled "Do Liberals Love Liberty?", Scruton states:

> It is worth pointing out that the thinking represented by Szasz has been so successful that US law has been revised so as to forbid compulsory hospitalization of the insane. The chaotic and disturbing result of this change can be witnessed in every major American city. (1988, p. 30)

The assertion that "US law has been revised so as to forbid compulsory hospitalization of the insane" is news, indeed. Does Scruton actually believe that John Hinckley, Jr. is staying at St. Elizabeth's Hospital, the nation's premier madhouse, because he likes it there, and because the government likes him so much that it houses and feeds him at taxpayer's expense? I go through the trouble of refuting Scruton's absurd misstatement because it reflects the widespread perception, carefully cultivated by psychiatric propagandists, that involuntary mental hospitalization has become so rare in America as to be irrelevant. This is not so. As I write these lines there comes to my hand the February 1989 issue of *The American Journal of Psychiatry* featuring a "Special Section" containing four articles collectively entitled "Dangerousness and the Civil Commitment Process" (Special Section, 1989). An Editorial introducing these studies states:

> The most recent national data (1980) show that of 1,176,558 inpatient admissions, 26% were involuntary noncriminal commitments. More than 51% of admissions to state and county mental hospitals are, however, involuntary (noncriminal). (Roth, 1989, p. 135)

Moreover, these figures do not even begin to reflect the escalating ugliness of the American psychiatry scene, noted in an essay in *The Sunday Times Magazine* (London):

> Thousands of [New York] homeless are former inmates of mental hospitals which [Mayor] Koch emptied, largely on economic grounds; on the other hand, he has decreed that a "sidewalk dweller" should be carted off to a mental hospital, on the grounds that anyone sleeping rough and pestering passers-by must be mentally disturbed. New Yorkers see no method in what some of them call the mayor's madness. (McCrystal, 1989, p. 32)

In the past, thousands of individuals were forcibly incarcerated in mental hospitals, often for life; that was bad enough, but at least many of these un-

fortunate persons could make the asylum their home. Now the situation is even worse, thousands of persons being not only forcibly incarcerated in mental hospitals, but also forcibly evicted from them as soon as they show any sign of adapting to their new environment. Then the cycle of forcible hospitalization and dehospitalization is repeated over and over again, depriving the "mental patient" of a predictable and stable environment both within and without the insane asylum.

Thus, what Scruton observed "in every major American city" is not the triumph of my ideas as social policy but only a singularly unattractive feature of the American national character (if one can so generalize), otherwise often good and generous. Perhaps precisely because Americans strive so hard to be good and generous, they do not like to be told that they have done wrong. Charles Dickens' observation on just this point is unerring:

> I believe [he wrote in 1842] there is no country, on the face of the earth, where there is less freedom of opinion on any subject in reference to which there is a broad difference of opinion than in this [the United States]. . . . I write the words with reluctance, disappointment, and sorrow; but I believe it from the bottom of my soul. . . . The wonder is that a breathing man can be found with temerity enough to suggest to the Americans the possibility of their having done wrong. (cited in Forster, 1966, vol. 1, p. 194)

Dickens was right. Instead of simply acknowledging their wrongdoing, Americans prefer to deny it with a dramatic gesture of undoing. Indians on reservations, blacks on plantations, epileptics in colonies, the mentally ill in snake pits – all these embarrassing wrongs must be quickly righted and forgotten: the Indians are treated like citizens of fictitious independent nations; the blacks get reverse discrimination; epileptic colonies are written out of medical and psychiatric history; the men and women imprisoned in mental hospitals for decades are suddenly and forcibly evicted.

The result, pretentiously called deinstitutionalization, "proves" not only how very respectful psychiatrists really are of the civil rights of mental patients, but also how very right psychiatrists have been all along in stigmatizing and segregating mental patients as dangerous deviants. The failure of the quick cure then justifies the re-repression of the mad: mental illness exists and the mentally ill are dangerous; ergo, mental patients, lacking free will and responsibility, have a right to be hospitalized against their will, treated against their will, lawyered against their will, even acquitted of crimes against their will; and if they commit mayhem and murder, then, suffering as they do from mental illness, they cannot be held responsible for their actions, need to be hospitalized against their will, treated against their will, and so on.

In short, I interpret Scruton's howler (and its inclusion into the pages of so prestigious a publication) as evidence that psychiatry is a religion and that Voltaire was right: if mental illness did not exist, it would be necessary to invent it. Clearly, people now passionately believe in psychiatric explana-

tions, excuses, and coercions – the educated perhaps even more than the uneducated, the latter stubbornly clinging to Jesus and the televangelists, refusing to embrace Freud and the soul-doctors.

"Analyzing humor," remarked E.B. White, "is like dissecting a frog. Few people are interested and the frog dies of it." The same goes for dissecting a popular delusion, such as psychiatry today: few people are interested and the delusion dies of it – except people do not let it die. Indeed, why should they, if they want it to live? Freedom of belief lies at the heart of individual liberty and dignity. That is why I maintain that the "deluded" patient is as entitled to his or her belief as the "enlightened" psychiatrist is to his or her belief. Like clergy of different faiths, or believers and unbelievers, each should be protected from being coerced by the other. To insure our protection from unwanted saviors – whether clerical or clinical – is a fundamental duty of the American government.

In the United States, the pursuit of happiness is an opportunity and an obligation that belongs to each and every individual. We are supposed to chase and catch that elusive quarry ourselves. We can delegate the task to experts, but no one – no pope, no prince, no politician, not even a psychiatrist – should be able to take it away from us. For – after all is said and done – is justifying the armed hunt for the happiness of the Other not the most dangerous delusion to which we can succumb?

References

Appelbaum, P.S. (1988). The right to refuse treatment with antipsychotic medications: Retrospect and prospect. *American Journal of Psychiatry, 145*, 413–419.

Forster, J. (1966). *The life of Charles Dickens.* London: Dent/Everyman's Library.

Freud, E.L. (Ed.). (1960). *Letters of Sigmund Freud* [T. and J. Stern, Trans.]. New York: Basic Books.

McCrystal, C. (1989). The Big Apple turns sour. *The Sunday Times Magazine* (London). February 12, pp. 24–37.

Roth, L.H. (1989). Editorial: Four studies of mental health commitments. *American Journal of Psychiatry, 146*, 135–137.

Scruton, R. (1988, September). Editorial note. *The Salisbury Review*, p. 30.

Special Section: Dangerousness and the civil commitment process. (1989). *American Journal of Psychiatry, 146*, 170–193.

Shawcross, H. (1946). *Trial of the major war criminals before the International Military Tribunal.* Proceedings 19 July - 29 July, Vol. XIX. July 26. Nuremberg, Germany.

Szasz, T.S. (1961). *The myth of mental illness: Foundations of a theory of personal conduct.* New York: Hoeber-Harper.

Szasz, T.S. (1963). *Law, liberty, and psychiatry: An inquiry into the social uses of mental health practices.* New York: Macmillan.