



Psychiatry: A Branch of the Law

BY THOMAS SZASZ

Medicine and law are independent but intimately interacting social institutions. Medicine guards its autonomy jealously and relates to the legal system as an equal partner. Psychiatry, in contrast, submits slavishly to being dominated by the law and obediently meets its demands. Herewith some examples.

On July 3, 2006, Orin Guidry, M.D., president of the American Society of Anesthesiologists, appealed to his colleagues to refuse to assist the states in carrying out a death sentence by means of lethal injection. “Lethal injection,” Guidry reminded anesthesiologists, “was not anesthesiology’s idea. American society decided to have capital punishment as part of our legal system and to carry it out with lethal injection. The fact that problems are surfacing is not our dilemma. The legal system has painted itself into this corner and it is not our obligation to get it out.”

The American Medical Association’s code of ethics, Guidry continued, declares: “A physician, as a member of a profession dedicated to preserving life when there is hope of doing so, should not be a participant in a legally authorized execution.” Guidry urged the Association’s 37,000 members “not to attend executions of death sentences by lethal injection, even if called to do so by a court. The court cannot modify physicians’ ethical principles to meet its needs” (www.asahq.org/news/asanews063006.htm).

Evidently many, perhaps most, American anesthesiologists reject rescuing the criminal justice system from the consequences of its decision to deprive certain persons of life. Depriving persons of liberty is only one rung down the ladder of harms that the state may legally inflict on certain individuals. Nevertheless, most American psychiatrists feel it is their professional privilege to assist the justice system in depriving certain individuals of liberty; indeed, they insist that loss of liberty under psychiatric auspices constitutes a form of medical

treatment for the imprisoned individuals. In fact, the assertion of this claim—as medical “fact”—was the very first resolution enacted in 1844 by the newly formed American Psychiatric Association (APA; then more descriptively named the Association of Medical Superintendents of American Institutions for the Insane): “Resolved, that it is the unanimous sense of this convention that the attempt to abandon entirely the use of all means of personal restraint is not sanctioned by the true interests of the insane.”

Ever since, psychiatrists have clung to their privilege to imprison innocent persons like drowning men cling to life-preservers.

Indeed, psychiatrists never tire of asserting and reasserting their right to deprive people of liberty. In 2005 Steven S. Sharfstein, president of the APA, reiterated his and his profession’s commitment to coercion: “We must balance individual rights and freedom with policies aimed at caring coercion.” The term “caring coercion” would have fit perfectly into the Nazi lexicon, along with *Arbeit macht frei* (“labor liberates”) and *Gnadetot* (“mercy death”).

Because the ideas about psychiatry I have been presenting in these columns differ radically from what people read in the newspapers or see on television, I always present the evidence for my view. The reader is free to judge the information and come to his own conclusion. In support of my contention that psychiatrists have an unappeasable appetite for assisting the legal system in imprisoning individuals who irritate and upset society, I offer the following evidence.

The history of mental-health laws and of standard psychiatric practices illustrates that psychiatric confinement has nothing to do with psychiatric treatment.

Thomas Szasz (tszasz@aol.com) is professor of psychiatry emeritus at SUNY Upstate Medical University in Syracuse. His forthcoming book is *Coercion as Cure: A Critical History of Psychiatry (Transaction)*.

In 1851 an Illinois statute specified that “married women . . . may be received and detained at the hospital on the request of the husband of the woman . . . without the evidence of insanity or distraction required in other cases.”

Today the desire to psychiatrically incarcerate persons who are not committable by the lawyers’ and psychiatrists’ own criteria looms large in connection with the popular pressure and political need to keep so-called sex offenders confined *after they have served their sentences*. In 1997 the U.S. Supreme Court declared this practice to be constitutional. In *Kansas v. Leroy Hendricks* the Court declared: “States have a right to use psychiatric hospitals to confine certain sex offenders once they have completed their prison terms, even if those offenders do not meet mental illness commitment criteria.”

In November 2005 New York Governor George Pataki made the headlines when he initiated “an administrative program to commit sexual predators to public psychiatric hospitals indefinitely.” Pataki’s order pulls back the curtain. The state’s mental-health system is like an army. The governor is the general. The foot soldiers, the psychiatrists, are expected to follow the orders of their superiors. “As citizens, most of us would be comfortable seeing people properly incarcerated if these are considered crimes,” said Barry Perlman, M.D., president of the New York State Psychiatric Association (NYSPA). “What we are concerned about is using the mental health system to solve a problem that seems to spill over to it because the criminal justice system cannot adequately handle it.”

Perlman acts as if he had just discovered that the mental-health system is an arm of the criminal justice system. But even after discovering it, he does not suggest that psychiatrists, individually or as a group, defy the governor’s orders.

Politicians have no illusions about psychiatry; they know that it is an extension of the state’s law-enforcement apparatus and use it as such. According to one report, “The governor [Pataki] directed the Office of Mental Health and the Department of Correctional Ser-

vices to push the envelope of the state’s existing involuntary commitment law because he couldn’t wait any longer for the Assembly leadership to bring his legislation to the floor for a vote. . . . The state has begun to identify ‘appropriate models for treatment’ and to hire staff to treat these patients. . . . To date, 16 states and the District of Columbia have enacted laws to allow authorities to confine violent sexual offenders in psychiatric hospitals after their prison terms.”

Mental Hospitals as Prisons

It is important to note here that as far back as in 1988 the APA’s Council of Psychiatry and Law explicitly approved the use of mental hospitals as prisons. In a document dated November 11–13, 1988, the Council declared: “*Psychiatric patients who no longer require active psychiatric treatment or who are untreatable can still be best managed in a psychiatric setting. . . . Acquittes who are unable to be discharged to outpatient status should remain under psychiatric care in a hospital environment.*” Note that the psychiatric prisoner longing for freedom is treated as if he has power over his own discharge but is “unable” to exercise it: he is termed “unable to be discharged.” Not surprisingly, psychiatrists resent being considered jailers. Confronted with the reality that the mental hospital is a prison and that the psychiatrist who works there is a jailer, they deceive themselves, no less than they deceive the public, with a rhetoric of “care.”

It is obvious that as long as law, psychiatry, and society define destructive and self-destructive behaviors as mental diseases and assign the duty to control persons who display such behaviors to psychiatrists, who eagerly embrace that responsibility, “seclusion and restraint”—in plain English, psychiatric coercion—will remain a characteristic feature of psychiatric practice.

The definition of psychiatry as a medical specialty concerned with the diagnosis and treatment of mental diseases is a monumental falsehood. Psychiatry is a branch of the law, combining features of criminal, civil, and family law: its primary function is to promote and ensure domestic tranquility. 