

Psychoanalysis, Psychiatry and Law. JAY KATZ, JOSEPH GOLDSTEIN, ALAN M. DERSHOWITZ. The Free Press, New York; 1967. Pp. xxiii, 822. \$15.00.

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Psychoanalysis, Psychiatry and Law is the product of extensive experience in teaching psychiatry and psychoanalytic principles to law students. Like Katz and Goldstein's *The Family and the Law*, the book is a collection of coursework materials, combining technical, non-legal papers with illustrative legal cases. This approach follows the philosophy of teaching propounded by Jay Katz in 1959 when he wrote that psychoanalytic thinking would be best imparted to law students through the teaching of case abstracts of those legal decisions where psychiatric testimony may or may not have been pertinent.¹

The text is broken into two long chapters which, according to the authors, are in effect two books in one cover. The first is entitled "Psychoanalysis and Law," and is designed to encourage lawyers "to view law generally as an ordering process, and to pose questions about its assumptions, procedures, and participants."² It is designed to be taught by an interdisciplinary team of a lawyer and a psychoanalyst.

The authors do not apologize for presenting a one-sided strongly orthodox Freudian orientation in this section. They state that they are more familiar with that approach and feel that it alone endeavors to formulate a systematic theory of human behavior: "All other theories rest on assumptions derived from it or on challenges to it."³ The book does not contain clinical descriptions of mental illnesses or syndromes; nor are there references to treatment techniques. It is in its first chapter a magnificent synthesis and selection of pertinent papers showing the evolution of Freudian analytic theory from Freud's early clinical studies on hysteria through the evolution of topographic and structural theories, with comments from such recent analytical theoreticians as Waelder, Rappaport, and Eric Erickson. This analytic material is illustrated by and serves to illustrate theoretical and practical legal problems.

The second chapter, for which chapter one is not a prerequisite, is called "Law and Psychiatry." It returns the lawyer to his more famil-

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¹ See Katz, *The Law and Behavioral Sciences Program at Yale: A Psychiatrist's First Impressions*, 12 J. LEGAL ED. 99 (1959).

² P. vii.

³ P. 3.

iar role as participant in a particular legal process, "the process of invocation, administration, and appraisal of mental health laws."⁴ The authors feel that this chapter may be taught either by a lawyer or an interdisciplinary group of a psychoanalyst and a lawyer.

The material in this chapter has a more pragmatic legal basis, dealing with those questions in which psychiatric problems and legal issues are most intertwined. In the words of the authors, it deals with action in psychiatry and forms of action in law. In this chapter problems of dangerousness, treatability, commitment, and supervision of institutions are reviewed and discussed.

In their introduction, the authors state that they intend this book to be a model for others to use, and it is certainly a needed model. The eminence of the authors and the Yale Law School, where they developed the basic theory for teaching psychiatry, is such that the present volume may be expected to encourage other institutions to formulate such interdisciplinary law and psychiatry courses. It is in the light of this great potential influence that one must ask whether this volume meets the needs it so effectively underscores.

The book fits much better with models of legal texts than it does with the kinds of books with which the medical profession is familiar. For this reason, at least, there is a certain presumption involved in a psychiatrist's undertaking to review the book. It has been noted, however, that the course is designed to be taught by a psychiatrist as well as a lawyer. Indeed, it is from the point of view of someone approaching this kind of teaching for the first time that the book's shortcomings are most apparent. These consist primarily of a failure to clarify objectives. Thus, for example, the authors do not explain for whom the coursework material is intended, nor whether it is designed to be taught in addition to other courses in psychiatry or as the law student's only exposure to these problems. The subtleties of the interdisciplinary approach are also unexplained. It remains unclear whether this book conveys to a psychiatrist the very different quality of teaching in a law school and the different approach of the law student to these issues, and whether it conveys to the lawyer unfamiliar with psychiatric teaching those insights into interpersonal behavior which psychiatry may have to offer. In short, there is scant indication of the influence which the exposure to this learning might, or is intended to, have on the future career of the student.

The most disturbing omission, however, is the authors' failure to share directly the benefits of their long experience with such a course. The book therefore suffers from a certain lack of direction. While

⁴ P. vii.

the authors introduce each subsection with elegant and provocative questions, they refrain from any comment of their own. The lack of such comment is obviously planned, but the reasons for its absence are somewhat puzzling to the reviewer. The authors do not tie together the different cases with explanatory or illustrative notes. The question arises whether such a pioneering work from a pioneering institution should remain purely a collection of coursework material or whether it must be made more challenging and constructive.

The way the authors handle the issue of responsibility is rather characteristic of the book in general. First of all, they do not have a specific section or chapter devoted to this issue, though it does creep into the second chapter as "forms of action in law: insanity—defense commitment."⁵ Certainly it is true that many lawyers and psychiatrists feel that this is an impossible area, one which has taken up much too much valuable time, and to which nothing else can be added. However, there is no explanation of this kind provided. In the first chapter the authors have inserted an article by Oliver Wendell Holmes⁶ in which the philosophical postulates of the validity of responsibility as an issue are stated. In a different section of the book there is a paper which follows this up in which a psychoanalytical theoretician discusses the issues of determinism, "freedom," and psychotherapy.⁷ These papers might have been illustrated with some unifying comment, which would have been an excellent prelude to the section dealing with forms of action in psychiatry.⁸ In this section the American psychiatric nomenclature is quoted in full without any of the very pertinent comments and criticisms that have been made by authors and authorities. The use of this nomenclature is qualified only in a discussion by Norman Cameron, who gives his own views regarding the classification of mental illness.⁹ However, unless one recognizes that this is only one of many schools of

⁵ P. 593.

⁶ When a man has "a distinct defect of such a nature that all can recognize it as making certain precautions impossible[.] [h]e will not be held answerable for not taking them." This is further developed and qualified into: "There is no doubt that in many cases a man may be insane and yet perfectly capable of taking the precautions and of being influenced by the motives which the circumstances demand." P. 79.

⁷ "Yes, I puzzled quite a bit over the paradox of psychic determinism v. effort [in psychotherapy], and have not yet reconciled it to my satisfaction. One can say that the effort itself is also determined—which seems to be something of a tour de force—or one can concede that, especially in psychotherapy, one expects and mobilizes more effort than the amount which is yet "determined" by previous experience. Such factors as transference (in therapy), inspirational influences, and conceptions of one's self or one's completed work, projected into the future, may be regarded as determining factors, but I still, at this stage of my thinking at least, feel there is something left over." P. 371.

⁸ P. 506.

⁹ P. 514.

criticism, the point is lost. Neither the nomenclature, nor Cameron's views, nor the reprint of a case discussion from a psychiatric hospital serves to bring home the fact that diagnostic criteria as such do not serve to answer the question of sanity or insanity or, for that matter, issues of committability. The lack of comment on the staff discussion in particular seemed regrettable to the reviewer, because all it illustrated was that psychiatrists in discussions very often will talk off the top of their heads while hammering out their own impressions of a problem in the same way that lawyers and judges might talk in the chambers prior to a court session. In view of the proclivity of law students to argue from the particular to the general, or from a precedent to the case in point, it may be asked how fair or illustrative an inclusion this really is.

The authors have obviously and intentionally, one assumes, omitted discussion of the M'Naghten rules, the New Hampshire laws, the more recent attempts in Massachusetts at providing impartial psychiatric testimony in all cases, and the Weintraub proposals. The reasoning behind this particular omission is again unclear.

This, then, is the paradox of this book—that it leaves the reader with too many loose ends. The ambiguities may only accentuate the difficulties already experienced and dissuade many from pursuing this and similar interdisciplinary ventures. There is no doubt, therefore, that another book from the authors—a synthesis of this material and of their teaching experience—would be a most valuable and needed addition. *Psychoanalysis, Psychiatry and Law* serves mainly to whet the appetite for this further project. The book serves as a model for an interdisciplinary group teaching psychoanalytically oriented psychiatry to what would seem to be a select, probably graduate, group of law students. But it is not designed to fulfill the needs of the average lawyer who may want to be exposed to some general principles of psychiatry.

John M. Suarez, on the basis of questionnaires sent to all ABA approved law schools, divided the philosophy of approach in teaching psychiatry to law students into distinct schools.¹⁰ One school he called "that which favored the teaching of techniques, facts, details, and terminology, so as to equip the member of the other profession with down-to-earth, practical information that will have a direct bearing on his daily activities."¹¹ The other group is one that "finds this approach meaningless and potentially dangerous. They encourage the avoidance

¹⁰ Suarez, *Reciprocal Education—A Key to Psychiatric-Legal Dilemma*, 17 J. LEGAL ED. 316 (1965).

¹¹ *Id.* at 320.

of technical and detailed training, in favor of exposure to the philosophy, orientation and thinking of the other's profession."¹² Suarez comments that the former is viewed with greater favor by the student, the latter by the faculty. It is, I think, appropriate to remark that this particular book and the coursework that it illustrates fall into the second category and therefore in some ways do not meet the average law student's perceived needs. It does not of itself fulfill Judge Weihofen's recommendations: "If law training is to include any basic understanding of human behavior as related to the specific problems encountered by lawyers, it must be provided in the law school curriculum."¹³ Certainly, to illustrate some of the issues in teaching psychiatry to law students, extensive use has to be made of clinical presentations and interviewing of patients. It is in this respect that the book does not fulfill the need for a model course because, while the reality of the law student is his law library, the reality of the study and understanding of man is man himself.

¹² *Id.*

¹³ Weihofen, *Comment on McDonald, The Teaching of Psychiatry in Law Schools*, 49 J. CRIM. L.C. & P.S. 310, 315 (1958).

