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MENTAL ILLNESS AND THE PROBLEM OF INTENTIONALITY

I cannot help myself at all, for he [the demon] uses my limbs and organs, my neck, my tongue, and my lungs
—The Malleus Maleficarum¹

Although we regard some human actions as obviously intentional and some bodily movements as clearly unintentional, the meaning of the terms *intentional* and *unintentional* is often vague and uncertain, open to different interpretations. This terminological opacity is characteristic of our entire vocabulary for describing and explaining human behavior: It applies also to words such as *deliberate*, *voluntary*, and *conscious*, and their antonyms; and it reflects our pervasive ambivalence about human existence. Is life an opportunity or a burden—a sunlit arena where we exercise choice and shape outcome or a dark dungeon where we must plod as the slaves of superior forces?

INTENTIONALITY: A CLASSIC PSYCHIATRIC CONUNDRUM

The psychiatric enterprise has long been bedeviled by trying to answer the seemingly reasonable question: Did Jones *intend* to do what he did?

This problem was further complicated when the psychoanalysts arrived on the scene and demanded to know: Did Jones *consciously intend* to do what he did?

In this chapter I shall try to show that—except when bodily movements are demonstrably the results of neuromuscular discharges—we use the terms *intentional* and *unintentional* to praise or blame an actor rather than to simply describe or explain his behavior.* Before undertaking a systematic inquiry into the relations between the ideas of insanity and intentionality, I shall sketch four brief vignettes to better illustrate the problem.

Some Typical Cases of Intending and Nonintending

1. Smith is developing a slowly growing malignant tumor in his left motor cortex. After complaining of headaches and visual problems for several weeks, he suffers a grand mal seizure while having dinner with his wife in a restaurant. Subsequent diagnostic studies and a neurosurgical operation confirm the diagnosis. Knowing this, it would be absurd to say that "Smith *decided* to throw a fit." This is an obvious (and uninteresting) sense in which we can say that Smith's seizure was unintended or involuntary.

2. Smith is invited to join an office party celebrating the birthday of a fellow worker. The person in charge of the dinner arrangement at the restaurant asks him whether he wants steak or chicken, but Smith, explaining that he is a strict vegetarian, requests a special meal of plain spaghetti and a salad. Knowing this, it would be absurd to say that "Smith *did not really want* to order a meat-free dinner. This is an obvious (and uninteresting) sense in which we could say that Smith's choice was *intentional*.

Actions or happenings that fall between these two poles are open to interpretation concerning whether or not the actor acted intentionally. Here are two typical examples.

3. Harry is in love with Harriet and marries her. The union proves to be disastrously unhappy for him. He consults a psychoanalyst hoping to understand how or why this *happened* to him. After many weeks (or months or years or decades) of therapy, the analyst writes a scientific paper in which he explains that "When Harry married Harriet, he *unconsciously chose* a woman who reminded him of his mother (who had dominated him and made him unhappy)." The gist of the analyst's

*The analyses of intentionality in this chapter, and of responsibility in the next one, overlap; they are intended to be complementary, each being incomplete without the other.

interpretation is that Harry *did not really intend* to marry a woman who was like his mother but that his *unconscious repetition compulsion* made him do so. This is an essentially theoretical example of choice categorized as unintended happening.

4. Betty feels powerfully attracted to Bill, a handsome athlete much admired by her female friends. She marries Bill, only to discover that he is a bully who enjoys humiliating and beating her. After enduring the role of a battered wife for several years, Betty waits till Bill is soundly asleep one night, pours gasoline on the bed and sets it on fire. Betty comes to trial, pleads *not guilty by reason of insanity*, and is promptly acquitted. This is a supremely practical example of choice categorized as unintended happening.

Caprice and Confusion Concerning Intentionality

The ways in which people, especially members of the legal and psychiatric professions, actually use the yoked-together ideas of intentional/mentally healthy, nonintentional/mentally ill illustrate their conceptual character and practical importance. For example, the trade in illegal drugs, like any trade, involves two parties, buyer and seller. Psychiatrists insist, and lawyers and legislators agree, that one of these parties—the buyer—is sick, because his behavior is not intentional, the result of an illness called *substance abuse disorder*; and that the other party—the seller—is not sick, because his behavior, called *pushing drugs*, is a deliberate, voluntary act. While this distinction makes sense as social strategy (see Chapter 9), it is patently absurd as an ostensibly phenomenological-scientific discrimination between what is and is not intentional behavior. After all, many persons who sell illegal drugs also use them. Do they have two personalities—one, habitually selling drugs, being bad, the other, habitually using drugs, being ill?

Actually, the distinction the law and psychiatry now make between the practice of selling and using illegal drugs is reminiscent of the distinction the law made not so long ago about bootlegging (liquor) and prostitution. The man who sold whiskey and the woman who sold her sexual services were considered to be criminals. The people who bought these goods and services were not.

Although the ideas of sanity and intentionality, insanity and unintentionality are often coupled, this seemingly necessary correlation need not always apply. Actually, several mental illnesses are described by the psychiatric nosologists themselves as consummately intentional behaviors. For example, in DSM-III *elective mutism* is described as the "continuous refusal to speak in almost all social situations. . . . The refusal to speak is not, however, due to a language insufficiency or

another mental disorder";² another disease, called *oppositional disorder*, is described as "a pattern of disobedient, negativistic, and provocative opposition to authority figures The disorder generally causes more distress to those around him or her than to the person himself or herself."³ In short, although these acts are viewed as intentional, they are nevertheless categorized as mental diseases.

A similar relationship exists between intentionality and insanity in connection with certain dramatically violent acts, which typically prompt the response: "Only an insane person would do such a thing." Examples abound in the daily press. In August 1985, person or persons unknown set fire to a New York subway car used by derelicts as a home. Luckily, no one was killed but 117 persons were injured and traffic was disrupted for a day. Mayor Edward Koch promptly declared that "Anyone who would start this intentionally is a deranged person."⁴ Mr. Koch thus offered the conventional definition of an arsonist (a person who deliberately sets a fire) as if it were the definition of a pyromaniac (a person who, strictly speaking, does not set a fire, but where, according to the DSM-III, "fire-setting results from a failure to resist an impulse" [emphasis added]).⁵ But if a person who sets a fire unintentionally is deranged, as psychiatric textbooks tell us, and if a person who sets a fire intentionally is also deranged, as Mr. Koch tells us, then we would have to believe that all fires are set by deranged persons—a conclusion characteristic of the reasoning of our psychiatrically enlightened intellectual elite.

Is there a way out of this psychiatric-semantic morass? Or must we throw up our hands and conclude that the ideas of intentionality and nonintentionality are invoked to serve precisely the purpose Mr. Koch's pseudoeplanation served—namely, to satisfy the hunger for an explanation of disturbing behavior? When a dramatic incident threatens people's sense of security, any explanation—no matter how nonsensical—is felt to be better than none. Scapegoats fulfill this function. In the past, a Jew or a Communist *did it*. Now, a mentally ill person—or even mental illness—*does it*. Although I believe that this scapegoat model often adequately accounts for the meaning-and-function of mental illness explanations, there is a subtlety and strength to the idea of intentional/unintentional and its relation to the idea of sanity/insanity that is worth exploring further. I shall do so by examining the psychiatric perspective on art, the human activity now paradigmatic of our notion of intentionality.

ART AND INSANITY

Because art is much older than psychiatry, artists have had a big jump on insanity. Indeed, artists, especially poets and writers, have always

intentional behavior

shown a good deal of interest in madness. As soon as psychiatry appeared on the scene, psychiatrists returned the compliment by showing a keen interest in art. Before long, it became a truism that there is a close—albeit mysterious—connection between madness and art.⁶

The *mad artist*, like the *mad genius*, may be a creation of the human imagination; nevertheless, the figure of the insane artist, like the idea of insanity itself, now seems very real to most people. Although no one can define madness, most people believe that they can tell a madman, especially a mad artist, when they see one. And while people usually disagree vehemently about who is a mad artist—one person's madness is another person's sanity, and vice versa—virtually everyone believes that some artists are mad and some madmen are artists. One person will thus nominate Vaslav Nijinski as an example, another Vincent Van Gogh, and still another Ezra Pound, while each is likely to proclaim the sanity of the other nominees. Although I do not think this is a very satisfactory state of affairs, most people view the examples I have cited (and others like them) as irrefutable evidence of the reality and validity of the construct called the *mad artist*.

If we peer behind the mystifying and mysterious facade of the mad artist, we quickly discover an interesting connection between art and insanity. This connection pivots around the fundamental idea of intentionality—art being viewed as quintessentially intentional, and insanity as quintessentially nonintentional.

How did this peculiarly polarized view develop? Why is it nonsensical to say that an artist is *not responsible* for the music he composed or performed, or the painter for the portrait he painted, or that the madman is *responsible* for his delusions or compulsions, or for killing himself or his wife? The answers to these questions reveal an essential aspect of what we now—in the twentieth century—mean by the concept of mental illness.

Art and Divine Madness

As anyone familiar with the history of ideas knows, ancient thinkers entertained quite a different view of the relationship between art and insanity. This is largely because the philosophers of antiquity—for example, Plato and Aristotle—use the word *madness* to mean not an illness but an *illumination*: Madness enhances rather than diminishes a person's dignity and stature as a human being. This is why Plato and Aristotle assert (perhaps take for granted would be more accurate) that poets are mad—that they *must* be mad in order to write good poetry. In *Phaedrus*, Plato writes:

There is a third form of possession or madness, of which the Muses are the source. This seizes a tender, virgin soul and stimulates it to rapt passionate expression, especially in lyric poetry . . . But if any man comes to the gates of poetry without the madness of the Muses, persuaded that skill alone will make him a good poet, then shall he and his works of sanity with him be brought to nought by the poetry of madness and, behold, their place is nowhere to be found.⁷

Clearly, Plato would have recoiled at the idea that the poet is ill (in our contemporary sense of the word) and therefore not responsible for the work he creates. Instead, what he meant was similar to what we now mean when we say that an artist must possess genius in order to be creative. This interpretation is supported by Plato's assertion in the *Laws*:

'Tis an old story . . . which we poets are always telling with the universal approval of the rest of the world, that when a poet takes his seat on the Muse's tripod, his judgment takes leave of him.⁸

Aristotle's views were similar. According to Abraham Heschel's interesting study of Old Testament prophets, Aristotle takes for granted that the poet "is afflicted with madness," that he is a *manikos*.⁹ "The Greek word for prophecy (*mantike*)," Heschel adds, "and the word for madness (*manike*) were really the same, and the letter *t* is only a[n] . . . insertion."¹⁰

The same sort of idea was expressed by Roman philosophers: "There is no great genius without a touch of madness," asserts Seneca.¹¹ "No man can be a great poet who is not on fire with passion, and inspired by something like frenzy," declares Cicero.¹² Thus, in Greek and Roman times, the artist, epitomized by the poet, was someone inspired by mysterious powers, a process attributed to and called *frenzy*, *mania*, or *madness*. None of this, to repeat, meant that the artist was not responsible for his behavior. It meant only that the philosophers of antiquity were acutely aware of what is obvious to anyone familiar with creativity—namely, that there is a sense in which the creative person feels or is *passive* vis-à-vis his urge to create. This sense of passivity—variously characterized as helplessness, inspiration, an irresistible vision or urge—is characteristic of the mental state not only of the inspired artist but also of the person heeding (what he considers) a divine calling or the man and woman in love. *etc.*

Modern artists, too, have emphasized their passivity vis-à-vis what seem like alien powers, their having to "give in" to inspiration, much as ancient seers had to give in to prophetic visions. "I have written this little work," remarks Goethe about *The Sorrows of Werther*, "almost unconsciously, like a sleep-walker." He then adds this remarkable comment:

No productiveness of the highest kind, no remarkable discovery, no great thought which bears fruit and has results is in the power of anyone Man must consider them as unexpected gifts from above, as pure children of God The process savours of the daemonic element which irresistibly does with a man what it pleases and to which he surrenders himself unconsciously while believing that he is acting on his own impulses.¹³

Goethe's imagery and idiom bridge the gap between the old idea of *divine madness* and the new ideas of *artistic inspiration* and *unconscious motivation*.

I must add a note of caution here about the ease with which the element of passivity in artistic creativity may be exaggerated. Although the experience of artistic inspiration may be passive and involuntary, translating it into a work of art—into a social product, so to speak—requires action and will. For example, Beethoven or Mozart might have heard beautiful music in their own heads, but they had to play it before others could hear it, and they had to write it down before others could play it. Again, there are important similarities here between artistic inspiration and mental symptom: each is a private (inner) experience over which the subject does not exercise direct, voluntary control.* But action based on or driven by such an experience requires coordinated control of the musculature as well as choice of audience, placing the action squarely within the sphere of voluntary behavior.

ACTION AND INTENTION

As philosophers have always emphasized, what distinguishes us as human beings from other living things is that we *act*. The idea of the person as moral agent thus presupposes and includes the idea of intentionality. But what, exactly, does it mean to assert that we act? It means realizing that our life is inherently, inexorably, social: We act in the double sense that we *behave* and *perform*. "To be isolated," Hannah Arendt emphasizes, "is to be deprived of the capacity to act."¹⁴ Arendt, however, overstates the case. The socially isolated individual—for

*Even here, a caveat is necessary. We become, in part, what we do. Accordingly, although a person may have no direct control over certain experiences, he may have indirect control over them. It is unlikely that Mozart would have heard the divine music that made him famous had he never been exposed as a child to music and to playing a musical instrument, and had he not practiced the craft. People who take up smoking cigarettes train themselves, in a manner of speaking, to crave smoking. *Mutatis mutandis*, I believe that people also train themselves (and/or are trained by others) to have experiences we call *mental symptoms* and *mental illness*.

example, the shipwrecked person or the social outcast—is deprived of his ability to act only in the sense that he has no opportunity to perform before an audience; he is not deprived of his *ability to act* in the sense that he retains his *capacity* to engage in coordinated, goal-directed behavior.

The point is that, in an important sense, everything we do is an act, a performance before others as well as ourselves. To be fully human, a person must thus possess both the *capacity to act* and the *opportunity to perform* before an audience that legitimizes him as capable of acting and worthy of attention. Accordingly, a person can lose or be deprived of his humanity in two basically different, but complementary, ways: by lacking or losing the capacity to act in the sense of *ability*, which is why children, the very old, and the very sick are often not considered to be (fully) human; or by lacking or being deprived of the opportunity to act in the sense of *performing on the stage of life*, which is why the mentally ill are often not considered to be (fully) human. Moreover, this is why the *powerless*—children, unemployed youth, mental patients—are forced either to abandon their performing selves or to resort to dramatic antisocial acts, usually classified as crime or mental illness, to assert them.

Art, Intentionality, and Psychiatry

Viewed as performances by moral agents, both art and madness come down to the words and deeds of persons designated as artists or madmen. How else would we know that a person is an artist, if not for his artistic acts? Or that a person is mad, if not for his mad acts? Clearly, there can be no artist without artistic acts, no madman without mad acts.

From this admittedly circular definition, we can quickly move to examining the words and deeds called *art* and *madness*. Following Susanne Langer, I propose to view art as a nondiscursive or presentational form of self-expression or communication. The term *presentational* is intended to convey the idea that—in contrast to, say, mathematical symbols that represent their referents—presentational forms, such as a photograph or painting, literally present their meaning. As Langer puts it: ". . . visual forms are not discursive. They do not present their constituents successively, but simultaneously, so the relations determining a visual structure are grasped in one act of vision."¹⁵ This is why artistic symbols or works of art—such as music, painting, or sculpture—cannot be translated into language. Their sense or meaning is bound to the forms in which they are expressed. In short, art is not, and cannot be, true or false; instead, it is expressive or inexpressive, and it succeeds or fails in proportion as it is or is not expressive.

Furthermore, by definition, art is the result of *deliberate effort* on the part of an artist. Webster's defines art as "the power of performing certain actions, esp. as acquired by experience, study, or observation"; and it offers "skill" and "dexterity" as synonyms. In short, art is something a person *does*: it is engaging in an activity that yields a product, called a *work of art*. Hence, calling a work of art *intentional art* would be a tautology, whereas the phrase *unintentional art* would be an oxymoron. Michelangelo chipping away at a block of marble, trying to make it look like his vision of the prophet Moses, is the quintessence of a man *intending* to do something. That the result is also very beautiful must not distract us from an important point, namely, that there may be beauty with or without intention, that there may be art with or without beauty, but that there can be no art without intention. We recognize that beauty is only a part, perhaps a relatively small part, of what we judge to be art when we contemplate the countless natural phenomena we consider to be beautiful but would not regard as works of art: for example, a dramatic sunset or an intricately shaped piece of driftwood. Why is such an object not art? Because it lacks the essential element of art, namely, human intentionality.

These considerations bring us back to madness. By definition, insanity (psychosis) is an illness, or the result of an illness, annulling the so-called patient's capacity to exercise intent. Hence, calling an insane act an *unintentional insane act* would be a tautology, and the phrase *intentional insane act* would be an oxymoron. As against a Michelangelo sculpting a block of marble, a John Hinckley, Jr. shooting President Reagan is (officially, that is) the quintessence of a man *displaying the unintended symptoms of a disease called schizophrenia*. That we judge such an act to be legally nonpunishable is an integral part of this image.

The Social Impact of Art and Insanity

Let us now distinguish between a work of art as an object, say a piece of music or a painting, and its effect on the audience, that is, whether it *pleases* or *displeases*. Then let us do the same with madness, distinguishing between insanity as a *performance* on the stage of life, and its effect on others, that is, whether it *pleases* or *displeases* the patient's family, psychiatrists, society. What do we find? We find that the artist does not claim that his work is beautiful or insist that it should move us in some definite way. For example, Michelangelo did not claim that Moses looked like his statue. I emphasize the artist's fundamental non-coerciveness, his offering us a *vision* instead of attempting to impose one, because I *believe* it is an essential element of art—and in our unhesitating acceptance of it as the product of the artist's will.

The madman presents us with the opposite reality. The so-called psychotic person is considered to be crazy not only because of what he does, as a physical event, but also because of his own interpretation of *why* he does it. For example, the typical madman—who is now a stock figure on the evening TV news and on the front pages of the newspapers—is a person who dramatically kills someone and offers an unacceptable explanation for his deed. Hinckley not only shot President Reagan but also explained that he did it to impress Jody Foster. Note that such an ostensibly mad actor treats himself as a *moral agent*, responsible for his actions: he frames his explanations in terms of motives. However, we so abhor his goal and consider his motive so absurd that we refuse to grant *them* the logical status of a goal or a motive: thus, we invalidate the actor as a *nonagent*, the mere object upon which certain causal forces have impinged.

What, exactly, do we find so abhorrent? Clearly, not the deed itself: We understand murder in the family, if the motive is money; we accept the murder of a prominent person, if the motive is political. What we do not accept is the insane criminal's double offense—his adding the insult of his conceited explanation to the injury of his coercive act. This combination of shocking crime and bizarre explanation makes us feel profoundly violated. Our impulse, therefore, is to get rid not only of the actor but also of his act. Killing the criminal accomplishes only the first goal; his deed remains and its meaning may even be intensified by his martyrdom. This is why modern society has developed a more effective method of protecting itself from such injury, namely, declaring the actor insane and locking him up in a madhouse. Herein, then, lies the value of invalidating the other as insane: We protect ourselves not only from being injured physically (by restraining him), but also from being injured spiritually (by labeling his intentions as nonintentional mental symptoms).

Art is of special interest in the spectrum of human activities because we experience it not only as perfectly intentional but also as *ideally* engaging: Art neither imposes itself upon us, as religion often does, nor does it leave us completely on our own, as pure science typically does. Art affects us, but only with our cooperation and consent. To be sure, since art is *persuasive*, it may be employed in ways of which we disapprove. But we must not confuse persuasion with coercion. The similarity between art and addictive drugs clarifies this point: each can tempt or seduce us, but each is powerless to affect us unless we actively seek and engage it. Madness, on the other hand, is often (or typically) coercive. Indeed, the principal power and threat of madness lies in its coerciveness, hence the countercoercions of psychiatry.

In short, art and insanity are like the positive and negative images of a photograph: what appears dark/intentional in one, appears light/nonintentional in the other. Our image of the artist, *qua* artist, is that of a person brimming over with intentionality: his artistic product is the embodiment of self-disciplined, self-intended self-expression. Hence, we readily equate the artist with his work. For example, we can look at a canvas by Renoir and say, "This is a Renoir," as if the picture were a veritable clone of its master. In contrast, our image of the madman *qua* madman is that of a person crippled by impaired or absent intentionality: his insane act is the very embodiment of undisciplined, unintended non-self-expression. Hence, we insist on severing the connection between the mentally deranged doer and his deed. For example, we speak of a misbehaving mentally ill person as *not himself*, as if his insane self were completely different from, and unrelated to, his real or normal self.

Actually, these contrasting Jekyll and Hyde images of artist and madman have little to do with facts. Instead, they have to do with our desire and need to describe the most important feature of being human—the fact that we *act*—according to degrees of intentionality. However, the person who truly cannot act, because he lacks or has lost intentionality, is not the madman but the man who is unconscious or paralyzed. In other words, our customary distinction between artist and madman does not identify two different kinds of human beings, one of whom acts and the other does not; instead it identifies two different kinds of ascriptions to actors and their acts—ascriptions disguised as explanations of behavior and justifications for social policy.

FREUD'S INTERPRETATION OF ART

To put this subject in wider perspective, let us now briefly review Freud's views on this topic. For better or worse, his ideas have shaped not only much of twentieth-century psychiatry but also much of modern art criticism.

Freud was interested in famous artists because they were famous, not because they were artists. That the artist, like everyone else, was "neurotic" was something Freud took for granted, although he pretended that he had discovered this from the artist's motivation for creating works of art.¹⁶ His condescending attitude and outright hostility toward great artists is evident in all his writings touching on art but is perhaps nowhere more obvious than in his following remarks about Leonardo da Vinci:

... the great Leonardo remained like a child for the whole of his life in more than one way; the slowness which had all along been conspicuous in Leonardo's work is seen to be a symptom of this inhibition It was this too which determined the fate of the Last Supper—a fate that was not undeserved.¹⁷

Actually, Freud acknowledged that he was not interested in art for art's sake, that he was interested in art only as a sign or symptom pointing to something that he considered to be more interesting and important than art itself, that is, the *hidden secret* of the artistic product (as Freud always called art). And this, of course, could only be discovered by means of the psychoanalytic method. Furthermore, Freud justifies his analysis of art by postulating a problem, where, in fact, there is none. For example, in the paper cited above he asserts that while different lovers of art say different things about why they admire the Moses of Michelangelo, "none of them says anything that *solves the problem* for the unpretending admirer" (emphasis added).¹⁸ What problem? Note how Freud first plants a secret on the corpse and then, after an elaborately staged psychoanalytic dissection, triumphantly finds it:

In my opinion, what grips us so powerfully can only be the artist's *intention* But why should the *artist's intention* not be capable of being communicated and comprehended in words, like any other fact of mental life? Perhaps where great works of art are concerned this would never be possible *without the application of psychoanalysis*. The product itself after all must admit of such an analysis To discover [the artist's] intention, I must first find out the meaning and content of what is represented in his work; I must, in other words, be able to interpret it (emphasis added).¹⁹

What Freud here calls analyzing art and interpreting it is, in fact, deforming art into nonart and hence destroying it. I say this because by asserting that the artist's real intention is not embodied in his product but must be revealed by translating its content into the jargon of psychoanalysis, Freud in effect annihilates the legitimacy of presentational forms. Indeed, there is a close similarity between the psychoanalytic invalidation of art *qua* presentational form, and the psychoanalytic invalidation of abnormal behavior *qua* intentional action. As abnormal behavior is not really behavior but an incomplete, symptomatic expression of experience, so art is not really art but an incomplete nonverbal expression of experience: each needs to be completed by psychoanalysis, a method that forces them to give up their secrets.

Freud goes further still: he not only robs art precisely of that quality

that makes it art (namely, its specially executed presentational form of self-expression and communication), but also actively demeans it by treating art as if it were like madness. "Let us consider," Freud writes, "Shakespeare's masterpiece, *Hamlet*, . . . it was not until the material of the tragedy had been traced back by psychoanalysis to the Oedipus theme that the mystery of its effect was at last explained."²⁰ This, it seems to me, says more about Freud than about *Hamlet*.

I must add here that Freud never tired of emphasizing that the analyst-analysand relationship is that of superior authority vis-à-vis inferior subject, a view consistent with the verbal imagery embodied in psychoanalytic terminology: the analyst "interprets," while the patient (who disagrees) "resists." Compare and contrast this with the relationship between artist and lover of art. A lover of art is free to dislike Dali or Pound or Bartok without being branded resistant to the artistic pleasure these masters offer. Considerations such as these point to an exquisite connection between the esthetic form of a work of art and its inherently politically noninvasive, noncoercive frame, from which it cannot be severed. Music is music only if you want to listen to it. If you do not, it is noise, even if it is Beethoven's *Fifth* or Mozart's *Jupiter*. Everyone would agree. But that is not the way we view therapy for mental illness: we consider "it" to be therapy, regardless of whether or not the patient consents to, or participates in, the enterprise.

INTENTIONALITY, CRIME, AND JURISPRUDENCE

The psychoanalytic perspective on human behavior has exerted a profound influence not only on artists and art critics but also, indeed especially, on lawyers and jurists. The result has been a veritable tragedy-comedy, requiring the talents of a Voltaire to do it satirical justice. The story of Judge David Bazelon's absurd experiments with psychiatry in the courtrooms of the District of Columbia has been told by others²¹ and I will pass by it in almost complete silence.* Instead I shall briefly cite and comment on the views of James Marshall, another prominent legal scholar: they exemplify what happens when a gullible lawyer drinks too deeply from the poisoned psychoanalytic chalice.

*In his Louis D. Brandeis Memorial Lecture for 1960, Bazelon declared: "Would it really be the end of the world if all gaols were turned into hospitals or 'Rehabilitation Centers'?" It would, indeed. Sadly, that end had already arrived in Bazelon's own mind, as he was no longer able or willing to distinguish the offender's intention from the intention of his gaoler: "The offender's purposes [sic] in such a Rehabilitation Center would be to change his personality . . ."²²

Psychoanalysis and the Modern Jurist

Marshall devotes an entire book, significantly titled *Intention in Law and Society*, to argue that, in view of the evidence brought to bear on the subject of crime by psychoanalysis, criminals rarely if ever commit crimes intentionally. The book, warmly endorsed by the late Supreme Court Justice William O. Douglas, delivers a remarkable message, as the following quotations illustrate.

"How valid are our legal assumptions about intention and motivation concerning what we know of the unconscious?" asks Marshall.²³ His question is rhetorical. As he sees it, our assumptions are entirely invalid. Not surprisingly, he finds the criminal not responsible for his criminality, and finds society responsible for making the criminal a criminal. Perhaps more than most writers on this subject, Marshall actually seems to believe the nonsense he spouts, especially the view that our "unconscious" is like a gun in our own back: "What a man purposes when in the clutches of his unconscious gives him no more freedom of choice of action than if he were disarmed before another man with a loaded gun."²⁴

Unfortunately for this argument, the unconscious is only an abstraction or metaphor, which Marshall here equates, quite literally, with the power that a holdup man with a gun wields over his victim, in order to invoke the classic legal excuse of duress. Although such coercion properly exempts the coerced person from legal responsibility for his criminal acts carried out at the behest of his coercer, it is worth noting that, existentially, even in this situation the actor has free will and choice: he can choose to submit to the man with a gun and carry out his orders, or defy him and risk being killed. The famous postwar Nazi excuse that "I was only following orders," odious though it may be, must be recognized as belonging to the same genus of excuses.

Marshall acknowledges none of this. "Freedom of choice," he asserts without qualification, "is not present when action is dictated principally by unconscious drives."²⁵ How one knows whether an action is or is not so dictated, he does not tell us. He is satisfied with the conclusion that habitual or repetitive acts are a sure sign that the actor is acting unintentionally. Evidently Marshall has never heard of habits. But he has certainly heard of illness, individual and collective: ". . . the influence of a sick culture can have the psychological effect of depriving the people of choice . . ."²⁶

I have cited Marshall's views on intentionality because they are typical of those of contemporary intellectuals regarded as having a progressive and psychiatrically enlightened attitude toward crime. One of the

results of this attitude is that those who subscribe to it tend to hold the criminal increasingly less responsible for his criminality, and the victims increasingly more responsible for (somehow) coercing the victimizer to become a victim of his own criminal career. Writ large, James Burnham rightly saw in this posture "the suicide of the West."²⁷ Perhaps that fate indeed awaits us. The suicide of the criminal law seems to be upon us already, as the following development suggests.

Negating Intentionality: The Suicide of the Criminal Law

The idea that insanity negates intentionality is now being carried to its absurd, but logical, conclusion by American psychiatrists and lawyers: namely, that we may define any act, even the seemingly most deliberate, as involuntary, simply by defining the actor as insane.

People have always known that a human being, in the process of growing up in a family and society, acquires a conscience—that is, "a sense of consciousness of the moral goodness or blameworthiness of his own conduct, intentions, or character—together with a feeling of obligation to do right or be good" (*Webster's*). Because of the presence of this internal voice in all of us, people have been familiar with the fact, and have never found it very surprising, that the individual who commits a serious crime often feels a compulsion or need to confess it. Some of the greatest works of Western literature deal with this theme.

The entrance of the psychiatric ideologue on the scene of modern history has changed this: he has managed to transform the compulsion to confess into a symptom of mental illness negating intentionality. As a result, should defense counsel claim that the accused was mentally ill when he confessed, the confession may be deemed inadmissible as evidence. I have not made this up: precisely such a scenario was reported recently in *The New York Times*:

The [U.S. Supreme] Court agreed to hear a prosecutor's appeal . . . suppressing the confession of a murder defendant as *involuntary because he was mentally ill* The man had approached a police officer on the street in Denver and said he wanted to confess a homicide. The policeman told him of his rights to remain silent and to have a lawyer present. The man said he understood, and proceeded to confess the killing of a 14-year-old girl and to lead police to the scene and to other evidence (emphasis added).²⁸

It would be difficult to imagine what other evidence one would need to conclude that this man knew what he was doing: after all, it is not as

if he had confessed to a murder and was unable to provide evidence of his guilt except his confession. How, then, did someone get the idea that this man was mad rather than a murderer? Obviously, the killer did not want to talk to a psychiatrist: had he wanted to, he could have sought one out, just as he had sought out a policeman. No doubt, as it is now customary in murder cases in the United States, the authorities arranged for him to "be seen" by a psychiatrist. Sure enough, the killer told the psychiatrists exactly what they expected to hear in such a case: "God's voice had told him to confess." How psychiatrists, lawyers, and judges know that the defendant used the phrase *God's voice* literally, rather than as a metaphor for his conscience, the report in the *Times* does not say.* So much for Raskolnikov. While it may be sad that Dostoevski has been rendered irrelevant by the march of psychiatric science, it is reassuring to realize that Raskolnikov was innocent after all.

THE REDISCOVERY OF INTENTIONALITY

Actually, in this century, two different armies have tried, in the name of science, to destroy the same enemy—namely, the supposedly superstitious belief in free will. One, associated mainly with Sigmund Freud's name, is psychiatry and psychoanalysis. The other, associated mainly with B.F. Skinner's name, is behavioral psychology. Both of these deterministic systems have come under attack by certain psychologists and psychiatrists who, for the lack of a better term, may be grouped together under the name of *will psychologists*. Who are they? The best-known ones are Carl Jung, Ludwig Binswanger, (the later) Otto Rank, Erich Fromm, Abraham Maslow, Rollo May, and Ronald Laing. Marching under banners variously called *Humanistic Psychology*, *Third Force*, or *Existential Psychiatry/Psychology*, these reactionaries against behavioral scientism agree on one thing only: namely, that intentionality is an essential feature of the human condition, even of the condition of individuals said to be insane.[†]

*Ironically, the same edition of *The New York Times* featured a lengthy report on animal behavior, in which the reader is informed that scientists now recognize "a wide spectrum of devious behaviors in animals. . . . [Certain birds] for example, are using the same signal in two different ways, one honest, one not."²⁹ Deviousness implies, of course, intention, a term the *Times* finds no difficulty in attaching to the behavior of monkeys: "In nature, the strongest evidence of intentional, self-aware deception comes from chimpanzees . . ." (emphasis added).³⁰ In short, we are asked to believe that chimpanzees possess intentionality, but that adult men and women who mention God's voice do not.

†This generalization must be qualified, however. To my knowledge, not a single will psychologist or existential psychiatrist has criticized the cognitive-ethical absurdities of

Free Will and the New Psychology

Obviously, one need not be a researcher or scientist to discover that people have free will. However, once the proposition that there is no free will becomes officially accepted as the correct, scientific view, legitimized by the research of accredited experts, the counteropinion of lay people ceases to carry much weight; henceforth the opinion-makers of society pay attention only to other, equally reputable scientists, who, preferably on the basis of their own so-called research, come to conflicting conclusions. Hence the ever-changing fashions in psychiatric theories and therapies, somberly supported by self-seeking charlatans contradicting and superseding one another. Otto Rank's career exemplifies this process: for most of his life, Rank was a devout Freudian preaching the gospel of psychic determinism; then he discovered free will and, for the last decade or so of his life, became the high priest of intentionality.³¹ In *New Pathways in Psychology*, Colin Wilson popularizes this fallacy, citing contemporary psychiatrists, psychologists, and other experts to support the revolutionary discovery that human beings can exercise choice.³²

The triviality of the will psychologists' doctrine is perhaps best illustrated by the following dichotomy: The determinists, as we have seen, yoke together the absence of intentionality with the idea of insanity and build their systems on that fiction; whereas the will psychologists—embracing common sense, it must be said in their favor—yoke together the self-evident presence of intentionality in the behavior of a moral agent with the idea of sanity and build their system on that fatuity. While the determinists thus emphasize the powerlessness of will and dwell on the importance of mental illness, exemplified by stereotype—the will psychologists emphasize the power of will and dwell on the importance of mental health, exemplified by creativity. What the representatives of neither group can or are willing to do is let go of the ideas of mental illness and mental health and the jungle-growth of slogans they have generated. "All the existential psychologists," writes Wilson, "have one thing in common: an attempt to approach the problem of mental illness in a practical rather than a theoretical way . . ."³³ Exactly! Wilson completely misses the point that what these psychologists have in common with those with whom they ostensibly disagree is that they all believe in mental illness: All of them talk about mental illness, mental health, schizophrenia, and treatment; and all of them accept the legitimacy of

the insanity defense or has urged its abolition, raising doubts about the sincerity or seriousness of their belief that persons conventionally regarded as insane possess free will and are therefore responsible for their behavior.

the two paradigmatic psychiatric interventions—involuntary mental hospitalization and the insanity defense. The results are pathetic.

For example, Wilson approvingly cites Maslow's having "been struck by the thought that modern psychology is based on the study of sick people. But since there are more healthy people around than sick people, how can this psychology give a fair idea of the workings of the human mind?"³⁴ Nonsense. In the first place, according to the faithful Freudians—and Maslow always counted himself as one—virtually everyone is mentally ill; if so, the assertion that there are more mentally healthy than mentally sick people is false. Secondly, if the ideas and interventions of the psychopathologists are questionable or wrong, why accept—as the will psychologists do—the psychopathologists' criteria of mental health and mental illness? The answer is: Because the deterministic and antideterministic psychologists are like two ladies of the night working different sides of the same street. Indeed, several well-known psychotherapists have themselves worked both sides of it. Otto Rank, as I mentioned already, went from devout Freudian disciple to determined anti-Freudian psychologist; Wilhelm Reich, from inspired individual psychotherapist to mindless pseudobiological charlatan; Ronald Laing from antipsychiatrist to anti-antipsychiatrist. In the 1960s Laing celebrated the superior intentionality of the schizophrenic; now he celebrates "my methods of treating schizophrenics . . ." For good measure, he adds: "To say that a locked ward functions as a prison for noncriminal transgressors is not to say it should not be so . . . This is not the fault of the psychiatrists, nor necessarily the fault of anyone."³⁵ Laing's opportunistic self-reversal has become so blatant that even sympathetic reviewers have begun to notice it: "Laing became an anti-Laingian . . . nervously separating from leftwing politics, drugs, mysticism, attacks on the family, even anti-psychiatry."³⁶ As I have tried to show, Laing is merely the most recent of a long series of psychiatrists advancing diametrically contradictory claims consistently sensationalized as new discoveries.

Finally, although Wilson makes passing references to intentionality and choice, he casts his own views in the traditional vocabulary of psychiatry. "Schizophrenia," he writes, "is a disorder in which the robot takes over from the 'I' . . ."³⁷ So much for a critique of mental illness. "The healthy mind," Wilson then explains, "needs 'newness,' 'otherness' . . ."³⁸ Note that Wilson places *newness* and *otherness*, not *healthy* or *mind* between quotation marks. So much for distinguishing between literal and metaphorical diseases.

Revealingly, Wilson—like many of the experts he admires—speaks approvingly of psychiatric coercions and closed institutions: he refers

to "the remarkable Synanon experiment . . .";³⁹ says that "The Synanon visit led Maslow to express again his feeling that modern society is sick";⁴⁰ and explains that "The reason that insulin or electric shock treatment often works . . . is that it forces the 'I' to make a painful effort and starts the flow of vital energy."⁴¹ Wilson concludes with what he calls a sketch "of my own general phenomenology of mental health."⁴² Clearly, there are no significant differences between the positions of the psychiatric-psychological theorists who support the reality of free will and intentionality and of those who oppose it.

Intentionality and Theology

Educated people today are convinced that the dichotomous view of intentionality I have just reviewed, and which forms so important a part of our contemporary notions of sanity and insanity, rests on, and reflects, the recent discoveries of researchers into the mysteries of human behavior. Of course, psychiatrists and lawyers encourage this delusion. But it happens that, once again, we do not have far to look for the prescientific origin of this belief. Before the Enlightenment, when people were comfortable with the idea of an essentially personal deity, they thought of Him as their Maker who exercised perfect control over all His creations. Not a sparrow could fall from a rooftop without God having intended it, was a favorite maxim of the theologians. These experts, who devoted their lives to the study of God, developed the same dichotomous images of intentionality that we now attribute to artist and madman respectively: In the religious version of this theory, those who understood and obeyed God's will the most perfectly—the saints—were viewed as possessing virtually perfect intentionality, acting completely on their own free will; whereas those who succumbed to the devil and fell under his power—persons possessed by demons—were viewed as completely lacking in intentionality, behaving like automatons without any will of their own. This explains why people went to such desperate measures in an effort to exorcise the victims of that terrible affliction. *Plus ça change . . .*

INTENTIONALITY AND THE IDEA OF BEING HUMAN

I have tried to demonstrate the similarities between our modern ideas concerning art and insanity by showing that they represent the two poles or boundaries of our concept of what it means to be human. We view the artist as so rich in intentionality as to be superhuman, and the

madman as so poor in intentionality as to be subhuman.* Our crediting the artist with an overabundance of intentionality, and hence humanity, needs no further comment or illustration here; nor does our crediting the madman with an absence of intentionality, and our consequent discrediting of him as a human being.

There is, of course, nothing new about denying the humanity of the other; much of history is but a footnote to it.[†] Nor is there anything new about affirming and reaffirming the essential humanity of the other, even when doing so requires our painfully empathetic identification with him. Terence (ca. 195–159 B.C.) is credited with having articulated one of the earliest and most succinct formulations of this view: "*Homo sum; humani nil a me alienum puto*" ("I am a man and reckon nothing human alien to me"). This declaration became the credo of the European Enlightenment.

The credo of modern psychiatry is thus an inversion of Terence's: "Nothing human is alien to me" became "Nothing alien is human to me." The alienated person was thus both seen and defined as a person lacking in intentionality, an image that, in turn, gave rise to the birth of the alienist or mad-doctor (later called psychiatrist), who was both seen and defined as an expert on alienation and the keeper of alienated persons. The earliest British cases involving the defense of insanity center on this very issue. For example, in 1812, in the trial of John Bellingham for the murder of Spencer Perceval, first Lord of the Treasury and Chancellor of the Exchequer, James Mansfield, Lord Chief Justice of the Commons Pleas, instructed the jury as follows:

In another part of the Prisoner's defence . . . it was attempted to be proved that, at the time of the commission of the crime, he was insane. With respect to this the law was extremely clear. If a man were deprived of all power of reasoning, so as not to be able to distinguish whether it was right or wrong to commit the most wicked transaction, he could certainly not do an act against the law. Such a man, so destitute of all power of judgment, *could have no intention at all* (emphasis added).⁴⁴

Clearly, this cannot be so. A person capable of committing a crime must be able to have *some* intention—for example, to load his weapon,

*Insofar as the issue of intentionality is concerned, this is, of course, quite absurd. The fact is that, *qua* moral agent, the artist is like anyone else: He is perfectly able to resist anything, except temptation—a quip first made by Oscar Wilde. *No argument.*

†Like the clergymen they displaced, people in the guru business—where psychiatrists now compete with other cult leaders—are fond of finding their foes subhuman. After being expelled from the United States for violating immigration laws, Bhagwan Shree Rajneesh told a news conference in New Delhi: "I don't consider them [Americans] human, they are subhuman."⁴⁵

aim it, wait to fire it until the moment he thinks is right, and so forth. My point can be made more simply, though less elegantly. Among our most basic intentional acts are urinating and defecating. A person who does not wet and soil himself—that is, who demonstrates sufficient control to urinate and defecate in appropriate places—demonstrates, by so acting, that he can and does have intention (at least for delaying or initiating these bodily evacuations). Obviously a person *totally* lacking the capacity to form intention could not do these things. Clearly, however, a *physically* disabled person lacking the capacity to control certain bodily functions by no means necessarily lacks the intention to control them. Considerations such as these suggest, of course, that the lack of intentionality of the insane, like insanity itself, is a legal fiction (see Chapter 11).

In any case, the fiction—or fact, depending on the observer's opinion—of a person incapable of intending is a threat to society, much as a grain of sand is to an oyster: to protect itself, the oyster surrounds the sand with a substance we call a *pearl*; similarly, to protect itself, society surrounds the idea of lack of intentionality with the idea we call *insanity*. As a pearl is not sand, so an insane person is not a person. Johann Christian Heinroth (1773–1843), one of the founders of modern psychiatry, put it this way: "Individuals in this condition [mentally diseased] exist no longer in the human domain, which is the domain of freedom. . . . Rather than resembling animals, which are led by a whole-some instinct, they resemble machines . . ." ⁴⁵

But if some persons are viewed as subhuman, others, perforce, will be seen as superhuman: they are the artists who are so rich in intentionality that their mental makeup, according to Freud, defies psychiatric analysis. Finally, still others will be viewed as possessing a combination of these conflicting characteristics: they are the *mad artists*, whose *pathological genius* forms a subject especially dear to the hearts of psychiatrists.

While this perspective has helped the psychiatrist to stand with one foot planted in medicine and another in the humanities, it has, in my opinion, harmed both medicine and the humanities. Oil and water do not mix; they are better used separately than combined in an unstable homogenized mixture. Claiming to decipher and dignify insanity, psychiatrists have instead deformed it. If they have failed to deform art as well it has not been for lack of trying, but rather because they have been unable to gain the same kind of legal and rhetorical control over art as they long ago gained, and still exercise, over insanity.

8

MENTAL ILLNESS AND THE PROBLEM OF RESPONSIBILITY

Insanity is certainly on the increase in the world, and crime is dying out. . . . Formerly, if you killed a man, it was possible that you were insane—but now, if you . . . kill a man, it is evidence that you are a lunatic.

—Mark Twain¹

So far I have emphasized two crucial distinctions between illness and mental illness, between being a patient and being a mental patient—namely, that bodily diseases are identifiable in terms of pathoanatomical and pathophysiological lesions, whereas mental diseases are not; and that typically a person assumes the role of medical patient voluntarily, whereas the role of mental patient is ascribed to him involuntarily. There is yet another, equally important, difference between these two classes of diseases and roles to which we must now attend, namely, that mental illness, especially if it is deemed to be severe, renders the person suffering from it not (fully) responsible for his actions. This claim is virtually never advanced for bodily illness. To understand mental illness, it is thus necessary to keep in mind its dual reference—to disease, as a condition of the patient as an organic being, and to

nonresponsibility, as a moral attribute or legal status of the patient as a person. My criticism of psychiatric ideas and interventions is similarly two-pronged: I object both to categorizing certain behaviors as literal diseases and certain persons as not moral agents.

When we say that an individual acts responsibly we usually mean that he acts with care. Thus a person is considered to be responsible if he takes good care of himself and of those who depend on him. If he endangers himself or others—for example, by drinking too much alcohol or spending too much money—he may be called an *irresponsible father*, a phrase which does not, however, exonerate him from being a bad parent. In such a case, we usually follow the principle that a person is responsible for his being irresponsible. That may sound like a contradiction, but it isn't: the term *irresponsible* functions here merely as a way of expressing our disapproval of a particular behavior.

We also use the term *not responsible* to conceal our strategy toward the person so designated, exemplified in the courtroom scenario where a defendant is acquitted as *not responsible/not guilty* because of insanity. Here the term *not responsible* functions as a vehicle for our judgment that the defendant should be handled differently from persons deemed to be responsible.

THE WAR ON RESPONSIBILITY

Although the idea that insanity may be an excuse for crime is ancient, the insanity defense, as we now know it, is relatively modern: it developed during the nineteenth century, mainly in England and the United States.² While the original impetus behind this practice was the desire to soften the harsh impact of capital punishments inflicted mainly on the poorest and most unfortunate members of society, the psychiatric disposition of persons charged with or convicted of crimes quickly became an important mechanism of social control in its own right. The justification for this mechanism lay in the convenient assumption that the criminally insane were irrational and nonresponsible. For example, commenting on the mental state of "lunatic criminals," the great Philippe Pinel declared: "Finally the nervous affection gains over the brain, and then the lunatic is dominated by an irresistible desire for violence . . ."³ In the same vein, a psychiatrist testifying at a mid-nineteenth-century English murder trial asserted that the defendant suffered from a "lesion of the will."⁴ The judge not only failed to question the metaphoric nature of that claim, but went on to instruct the jury that "If some controlling disease was, in truth, the acting power within him which he could not resist, then he

will not be responsible The question is, whether the prisoner was labouring under that species of insanity"⁵

In the twentieth century, psychiatrists added a new wrinkle to the nineteenth-century dogma of the nonresponsibility of the insane; namely, the idea of *diminished capacity* to form intent and hence commit certain crimes.⁶ As the idea of total insanity annulling criminal responsibility was tailor-made for exculpating those guilty of capital offenses, thus sparing their lives, so the idea of partial insanity diminishing criminal responsibility was tailor-made for mitigating the punishment of those guilty of certain felonies, typically by reducing the offense from first-degree murder to manslaughter.

Today, psychiatrists are constantly called on to determine whether a person is responsible for his illegal actions. Indeed, the phenomenon of psychiatrists examining persons to determine whether or not they are responsible is as common a feature of our social landscape as is the phenomenon of physicians examining persons to determine whether or not they are ill. How and why the idea that mental patients are not responsible for some or all of their behavior arose and developed is a long and complicated story. Here it must suffice for us to look back briefly on the two most important sources of this idea—namely, psychiatry and psychoanalysis.

Psychiatry against Responsibility

There have always been individuals who have injured or otherwise disturbed members of their families or other persons. Many such actions or conditions—for example, talking too much or too little, unemployment, vagrancy, self-neglect—were not against the law or, if they were, their control by means of criminal sanctions was impractical or impossible. It has always been necessary, nevertheless, to control persons displaying such disturbing behaviors. Thus, from the seventeenth century onward, confinement in the madhouse became the method modern societies throughout the Western world chose for the purpose of controlling and containing certain troublesome and troubled persons. Of course, the asylum movement, as it became known, had to be rationalized and justified. This was accomplished by the idea of insanity. It was an idea whose time had come: it offered a view of the behavior of certain men and women that was ostensibly both humane and scientific. The crux of the idea can be stated briefly: As diseases of the heart impair its ability to pump blood, so diseases of the mind impair its ability to reason rationally, as a result of which the person—suffering from the disease called *insanity* or *mental illness*—loses his ability to act responsibly. "The insane action or idea," declared the editor of the *British Medical*

Journal in 1875, "as surely springs from a morbid derangement in brain structure, as a bilious attack springs from a morbid condition of the liver. There is no mystery about it; it is a mental manifestation arising from a physical cause" How did the medical profession reach this remarkable conclusion? Mainly through the work of Henry Maudsley (1835-1918), one of the most celebrated psychiatrists of all times and the acknowledged father of modern British psychiatry.

What made Maudsley such an influential physician and famous psychiatrist? He discovered no new diseases, no new methods for identifying obscure conditions suspected to be diseases, no new treatments for diseases. He did something more important: he legitimized the alienist as a bona fide physician. One of Maudsley's most influential books is revealingly titled *Responsibility in Mental Disease*. In this work, Maudsley argues, in effect, that the insane are not responsible and that only psychiatrists can diagnose insanity. The view that psychiatrists are indispensable for the proper functionings of modern society follows inexorably from these premises. I shall cite some of Maudsley's views to illustrate how the new science of psychiatry went about destroying the old principle of moral agency and personal responsibility.

It will be a hard matter for those who have not lived among the insane and so become familiar with their ways and feelings to be persuaded, if, without such experience, they ever can, that a man may be mad and yet be free from delusion and exhibit no marked derangement of intelligence. Nevertheless it is a fact that in a certain mental disease a morbid impulse may take such despotic possession of the patient as to drive him, in spite of reason and against his will, to a desperate act of suicide or homicide; like the demoniac of old into whom the unclean spirit entered, he is possessed by a power which forces him to a deed of which he has the utmost dread and horror; and his appeal sometimes to the physician whom he consults with his sore agony, when overwhelmed with a despair of continuing to wrestle successfully with his horrible temptation, is beyond measure sad and pathetic.⁸

This passage presents us with nearly all the moral, medical, linguistic, and legal mystifications that have marked the origin of psychiatry as a modern discipline. Note that Maudsley's example of an insane person is a seemingly perfectly healthy individual who is *tempted* to commit suicide or homicide. Maudsley himself uses the word *temptation* in the last sentence of this passage. In other words, Maudsley is describing a moral conflict: a person is torn between committing suicide or homicide and not committing these acts. He simply identifies the option he approves as sane and the other as insane, and then introduces the idea of *irresistible impulse*, which he claims represents the scientifically correct understanding of the old theological concept of diabolical possession.

That the *evil temptation* and *diabolical possession* of the theologians has simply been renamed the *morbid impulse* of the psychiatrist finds support in the fact that each of these terms is applied only to morally disapproved options or acts. Priests never talked about temptation to do good: sinners were tempted to be sinful, but saints were not tempted to be saintly. Similarly, Maudsley and other psychiatrists never talk about irresistible impulses to do good: the insane are driven by irresistible impulses to commit mayhem and murder, but the sane are not driven by such impulses to love and honor their fellowman.

Moreover, there is an important practical difference between an evil temptation and an irresistible impulse which we must not overlook. Anyone—theologian or layman—could tell whether or not a temptation was evil and was resisted. However, although anyone can tell whether or not an impulse is resisted, if it is not resisted only a psychiatrist can ascertain whether this is because it is irresistible or because the subject chooses not to resist it. Of course, Maudsley had no criteria for distinguishing between irresistible and nonresisted impulses. But the absence of criteria for irresistible impulses impaired his credibility no more than the absence of criteria for mental illness impairs the credibility of the contemporary psychiatrist. Instead of standards and procedures, the psychiatrist can always fall back on dramatic cases exemplifying that which he cannot define: "When a woman after her confinement kills her child, whom she loves tenderly, because she cannot help it, there is no serious disinclination on the part of those who take the legal stand-point to admit that it is not a voluntary act for which she is responsible."⁹ By claiming that such a person does not *intend* to do what she in fact does, Maudsley here tries to unseat the time-honored adage that actions speak louder than words. But why not assume that a woman who kills her newborn infant practices the ancient art of infanticide, a practice with which Maudsley must have been thoroughly familiar?

We should note, also, that when Maudsley says that only those "familiar with the ways" of the insane can appreciate the validity of his, Maudsley's explanation, he is telling us that only those who have actively participated in certain grievous moral offenses against innocent persons can arrive at the conclusion he considers a truism. I say this because the persons he calls "familiar with the insane" are the persons responsible for imprisoning them in insane asylums. Among those who alone can understand the true facts of insanity are thus the relatives of the madman who petition and profit from his psychiatric incarceration, the legislators and judges who socially legitimize psychiatric incarceration as a form of protection and treatment, and the psychiatrists

who serve as the patient's wardens. In short, Maudsley's reference to familiarity with the insane amounts to his telling us that only those guilty of coercively controlling the mental patient—and who therefore have an intense need to exonerate themselves—will be able to see the innocent victim as the deranged madman he really is; all others, not so implicated, might see the patient as another human being or perhaps even a victim. The phrase *irresistible impulse* thus emerges as a purely strategic, semantic instrument for the use of the institutional psychiatrist and those who want use of the services.

Revealingly, Maudsley argues not only that *irresistible impulses* exist and are real but also that believing in them is compassionate and morally uplifting:

To hold an insane person responsible for not controlling an insane impulse of the nature of which he is conscious is in some cases just as false in doctrine and as cruel in practice as it would be to hold a man who is convulsed by strychnia responsible for not stopping the convulsions, because he is all the while quite conscious of them.¹⁰

We have heard all this before: Maudsley compares conscious conduct with chemically induced convulsion and then insists that the metaphor is the literal thing. It is important to remember in this connection that the medical claim that personal conduct is *not volitional* was first staked out in relation to acts that were socially disturbing and could conventionally be called *crazy*. Only after that beachhead was secured by psychiatrists in the nineteenth century was the claim extended, by psychoanalysts in the twentieth century, to encompass all behavior. The result is that, today, psychiatrists, psychoanalysts, and lawyers stand together, shoulder to shoulder, in their struggle against personal responsibility. The situation of those who now protest against the corruption of the principle of personal responsibility by Science thus resembles the situation of those who, at the time of the Reformation, protested against its corruption by Religion (see Chapter 10). Then, thoughtful persons began to realize that instead of teaching truth and practicing tolerance, the leaders of the Church taught falsehood and practiced intolerance. Now thoughtful persons are beginning to realize that instead of informing us about illness and protecting our health, leaders of the medical and legal professions are lying to us and are destroying the social and political conditions that are the very prerequisites for our health. The following incident exemplifies this pathogenic therapeutism.

In 1984, Michael Charney, a medical psychoanalyst in Boston, together with a law professor, founded the Tobacco Products Liability

Project "to actively promote product liability lawsuits against tobacco companies." In an interview, Charney explained that he hoped lawsuits "will place the responsibility for smoking-related illnesses squarely on the tobacco industry."¹¹ In the past, when patients talked like this, they were diagnosed as engaging in *projection*: that is, blaming others for the consequences of their own behavior. Today, when psychiatrists and psychoanalysts talk like this, they are praised for being public-spirited; while they themselves proudly promote the brazen displacement of blame as a method for protecting the public health. I submit that activism such as Charney's—aided and abetted by the APA's legitimizing, with the diagnosis of Tobacco Dependence, the proposition that smoking is an illness—incriminates the American psychiatric profession as guilty, beyond a reasonable doubt, of complicity in the war on responsibility.

Psychoanalysis against Responsibility

As we saw, the idea that an insane person is not responsible for his behavior was firmly established long before Sigmund Freud came on the scene. However, psychiatrists limited their interest to the insane and were willing to concede free will and responsibility to the sane. Freud went further: Intoxicated with the idea of a science of mental life, he insisted that everyone is mentally ill, that every human action is "fully determined," and that no one has free will. He maintained this view with all the ferocity of a religious fanatic, as the following passages illustrate. In *The Psychopathology of Everyday Life* (1901), he writes:

Many people, as is well known, contest the assumption of complete psychological determinism by appealing to a special feeling of conviction that there is free will. This feeling of conviction exists; and it does not give way before a belief of determinism. Like every normal feeling it must have something to warrant it. But so far as I can observe, it does not manifest itself in the great and important decisions of the will: on these occasions the feeling that we have is rather one of psychological compulsion, and we are glad to invoke it on our behalf. ('Here I stand: I can do no other.') . . . According to our analyses, it is not necessary to dispute the right to the feeling of conviction of having a free will. If the distinction between a conscious and unconscious motivation is taken into account, our feeling of conviction informs us that conscious motivation does not extend to all our motor decisions. . . . what is thus left free by one side receives its motivation from the other side, from the unconscious; and in this way determination in the psychological sphere is still carried out without any gap.¹²

By introducing the idea of *unconscious* psychic determinism—the Rosetta stone of psychoanalytic psychobabble—Freud lays the ground here for viewing mental health on the model of mental illness. Freud's interpretation of Luther's famous exclamation is, of course, both malicious and stupid; his purpose is clear, however—namely, to empty it of all moral content and significance. Instead of making a difficult but terribly important choice, Luther, Freud tells us, is helpless in the face of a *psychical compulsion*.

So fond was Freud of the idea of psychic determinism, and so convinced was he of its importance that, in 1907, he added a new footnote to the foregoing passage, asserting: "These conceptions of the strict determination of apparently arbitrary psychical acts have already borne rich fruit in psychology, and perhaps also in the juridical field."¹³ But what is a *psychical act*? A metaphor? Psychobabble? Blurring the distinction between thought and action may be useful for religious or political demagoguery, but is hardly an asset for a psychological theory. Freud returns to the theme of psychic determinism with undiminished enthusiasm in his *Introductory Lectures on Psychoanalysis* (1916–1917). Addressing an unseen audience, he writes:

If anyone makes a breach of this kind in the determinism of natural events at a single point, it means that he has thrown overboard the whole Weltanschauung of science. Even the Weltanschauung of religion, we may remind him, behaves much more consistently, since it gives an explicit assurance that no sparrow falls from the roof without God's special will You nourish the illusion of there being such a thing as psychical freedom, and you will not give it up. I am sorry to say I disagree with you categorically over this. . . . Once before I ventured to tell you that you nourish a deeply rooted faith in undetermined psychical events and in free will, but that this is quite unscientific and must yield to the demand of a determinism whose rule extends over mental life. . . . But I am not opposing one faith with another.¹⁴

Freud's reference to divine determinism is at once incorrect and ironic. In the first place, God's will was not generally used by Christians as a ground for denying personal choice and hence individual responsibility; secondly, Freud seems unaware that his idea of complete psychic determinism—presumably mediated by material processes in the brain—is, itself, simply a scientific recasting of his caricature of divine determinism. His remark that "I am not opposing one faith with another" is naively self-serving and wholly false, as has been shown often enough. David E. Trueblood, a philosopher, articulates this error as follows:

Science was his [Freud's] religion, and determinism was a cardinal tenet in the creed What seems so strange to us now is the fact that Freud did not see clearly the logical consequence of his basic assumption. It is easy for us to see now that, whether psychological determinism is true or false, if it is true, the entire basis of human responsibility is undermined . . . the doctrine, if taken seriously and in full consistency, undercuts itself. Planning is indeed possible, if the planner is free, while the subjects of the planning are necessitated, but there is no reason whatever to make this exception. *What the planner undertakes has itself been necessitated*. Therefore, on the basis of determinism, genuine planning is impossible. Each does what he must and that is the end of the matter. . . . What is highly important to say is that, insofar as the popular reaction has been one of irresponsibility, it is the result of a sound logical deduction, and in no sense a perversion (emphasis in the original).¹⁵

Although an entire volume of the *Standard Edition* of Freud's collected works is devoted to an index, there is no entry for *responsibility* in it. True to the faith of the master, his acolytes must have felt that responsibility was so unscientific a concept that it was not worth indexing.*

Although differing in certain ways, old-fashioned asylum psychiatry, psychoanalysis, and modern biological psychiatry thus all agree on the all-important point, that the behavior of the mentally ill person is strictly *determined*: such a person has no free will and is therefore not responsible for his actions. That this psychiatric-psychoanalytic view on responsibility encourages lay people to be irresponsible and physicians to be paternalistic is obvious and requires no further comment. Perhaps because it is less obvious, people often do not realize that relieving a person of his responsibility is tantamount to relieving him, partly or entirely, of his humanity as well. The person who claims that he, not his brother, is responsible for his brother's welfare and happiness, stabs at the very heart of his brother as a person. The philosopher W.G. MacLagan puts it this way:

Any regard that we may show for the happiness of others must also be governed by the recognition that as persons they, like ourselves, have not only a natural interest in their own happiness but a moral interest in values, and thus in the dignity of life: and further, that this latter interest, precisely because values are values and it is a moral interest, must by them as by us be accorded a general priority. How, after all, could we more grossly insult our

*Actually, like many another ideology or religious system, psychoanalysis preaches a self-contradictory sermon on responsibility. According to the Freudian doctrine, a person is not responsible for his ordinary, everyday actions because they are determined by unconscious forces, but is responsible for accidents and mental symptoms. I have discussed this basic inconsistency in psychoanalytic theory elsewhere.¹⁶

fellows than by implying, in our treatment of them, that while *we* indeed have such an interest *they* do not?¹⁷

In short, the psychiatric and psychoanalytic perspectives on human behavior encourage the tactic of treating persons—especially if their behavior is disturbing—as if they were not moral agents. Moreover, this policy is promoted as if it were beneficial both for the persons so treated and the society of which they are a part, and as if it did not, and could not possibly, have any deleterious consequences. In fact, nothing could be further from the truth. The combined psychiatric-psychoanalytic war on responsibility has cost us heavily indeed. Exemplified by the current national crisis in liability insurance—with payments to plaintiffs often premised on psychiatrically supported claims of emotional injury and mental suffering—the disastrous consequences of this war stare us in the face; but we steadfastly refuse to recognize their cause. As an old rabbinic saying has it, no one is so blind as the man who does not want to see.

This is why we never ask: What existential cost do we inflict on the person whose moral agency we withdraw? What existential price do we, as a society, pay for empowering a group of professionals to deprive persons of their status as moral agents and for treating certain psychiatrically identified persons as if they were not moral agents? These questions—and with them the very possibility of debating the potential conflicts between moral agency, medical care, the safety of society, and other values—are now deeply buried under the rhetoric of mental illness and psychiatric paternalism.

NONRESPONSIBILITY AND THE CRIMINAL LAW

Since responsibility and nonresponsibility are ideas whose consequences are primarily moral and legal, it would be foolish to regard them as belonging to another domain or discourse, such as medicine or science. "What," asks Michael S. Moore, a professor of law at the University of Southern California and a frequent commentator on forensic psychiatry, "have people meant by mental illness such that, both on and off juries, they have for centuries excused the otherwise wrongful acts of mentally ill persons?" This is a good question to ask. Moore, who strongly supports the medical pretensions and political powers of psychiatry, answers it as follows: "To be mentally ill is to be seriously irrational . . . why does severely diminished rationality preclude responsibility? . . . [Because] one is a moral agent only if one is a rational agent."¹⁸

Unfortunately, this is not reasoning but merely substituting one phrase for another. The assertions "Jones is irrational" and "Jones is mentally ill" may seem like two different statements, but are not: actually, they are the same statement couched in two different forms. Since this is often not recognized, a speaker or writer connecting insanity, irrationality, and irresponsibility can easily appear to be introducing an empirical standard into the determination of mental illness, when, in fact, he is doing nothing of the sort.

If the issue of the definition of mental illness is a moral one [writes Moore] . . . then the legal definition of the phrase should embody those principles that underlie the intuitive judgment that mentally ill human beings are not responsible. . . . It is easy to understand the long-standing historical tendency of the criminal law to analogize the mentally ill to infants and animals. . . . Only when an infant develops sufficiently that his actions are regularly explicable by rationalizing practical syllogism do we begin to see him as a moral agent who can justly be held responsible. The same is true of the mentally ill. . . . [juries] have perceived that madness itself precludes responsibility.¹⁹

Moore's foregoing argument founders on a combination of circularity and parochialism. Since people "intuitively" infer insanity from irresponsibility and vice versa, reiterating the connection between these two items—indeed, their virtual equivalence in practice—does not help us to go beyond our conventional understanding of these terms. Nor is it helpful or reassuring, in trying to clarify so important a question as who is and who is not a moral agent, to be referred back to "intuitive understanding." Do we need reminding that not long ago the intuitive understanding of vast numbers of people was that women were childlike creatures who could not shoulder the responsibility of the franchise? Or that blacks were childlike people who, for their own good, had to be treated as slaves? Moore's entire reasoning rests on paternalism (although he avoids the term)—that is, on the superior power of the observing and judging person over the person being observed and judged. In politics might makes right, but in moral philosophy, surely, more than might should be required to make rationality. The history of religious warfare should make us realize that the adage "one man's meat is another man's poison" applies to the idea of rationality no less than it does to the idea of the one and only true faith.

Actually, in contemporary psychiatry, especially in its legal applications, the notions insanity, irrationality, incompetence, and irresponsibility are often used interchangeably, as if one were caused by, or could

be equated with, another.* Let us therefore now examine the connections between mental illness and nonresponsibility via the concept of mental incompetence.

NONRESPONSIBILITY AS MENTAL INCOMPETENCE

In common usage, *competence* means the ability to perform a particular task well or to act ably in a certain situation. We speak of a person playing tennis or the piano competently, or of being a competent teacher or doctor.

When psychiatrists use the term *competence*, or say that a person is *mentally incompetent*, they imply that only mentally healthy persons are competent. Psychiatric use of the term *competence* thus implies a connection between mental illness and incompetence, the former presumably causing the latter. This is illustrated by the standard forensic-psychiatric practice of psychiatrists testifying in court that a person is mentally ill and is, *therefore*, incompetent. The assertion about incompetence may be articulated separately, as I have just stated it, or may be left as an unarticulated inference anyone familiar with the concept of mental competence would draw from the assertion of mental illness. In short, to say that a person is mentally ill and hence incompetent is a tautology masquerading as a logical inference drawn from a medical determination.

In addition, there is an obvious but seldom noticed difficulty with the idea of nonresponsibility due to psychiatric unfitness—namely, that the class of persons so categorized actually comprises two completely different kinds of human beings. One group is composed of inadequate, unskilled, lazy, or stupid persons—in short, of individuals *de facto* incompetent and unfit, however relative the meaning might be. The other group is composed of protesters, revolutionaries, persons on strike against their relatives, society, or their own lives—in short, of individuals, often with superior capabilities, unwilling rather than unable to perform competently in life. Because psychiatrists—and people generally—do not differentiate between these two groups, they often attribute unfitness to unwillingness, and unwillingness to unfitness. But how can we tell one from the other? As a practical matter, not very easily. But we can tell when

*It must be remembered, moreover, that in tort litigation, where intention is not a necessary ingredient for ascribing responsibility, persons considered to be mentally ill are usually treated the same way as those considered to be mentally healthy.²⁰ Mental illness is a legal fiction that plays totally different roles in criminal and in civil law (see Chapter 11).

nature or evil men perform their own experiments, creating dire circumstances, like catastrophic conflagrations or concentration camps: then the unfit perish, while most of those who are unwilling rise to the occasion and demonstrate unexpected competence in their struggle for survival. Because the circumstances I allude to involve extreme hardship for people, no civilized society can allow them to be deliberately created for the alleged benefit of certain persons. (In this connection see Chapter 6 for a discussion of malingering.)

Like many key psychiatric words, the terms *competent* and *incompetent* conceal a dispositional strategy behind a descriptive label. Descriptively, the term *incompetent* refers to the designated person's inability to perform certain acts (or all acts) properly or responsibly, and covers much the same idea as do the terms *not responsible* or *irrational*. On the other hand, dispositively, the term *incompetent* refers to social strategies we employ vis-à-vis such persons in order to prevent them from performing certain acts, such as (1) standing trial; (2) committing a crime; (3) managing one's funds; (4) executing a valid will; and (5) being a parent. As a rule, the prohibited acts are narrowly delimited, the incompetent individual being considered competent in other areas: for example, a person declared incompetent to be a parent loses legal custody of his child but continues to be regarded as psychiatrically competent to manage his funds, stand trial, vote, and so forth.

Incompetence as Justification

Why is the idea of mental incompetence now so popular and so readily accepted as a justification for certain social policies? The answer is: Because it is useful for justifying certain social policies. Indeed much of what I have written in this volume about mental illness as a strategic and justificatory concept applies to incompetence as well (see Chapters 8 and 9).

Whenever a person claims *his own incompetence* (for a past action), and when his claim is accepted as valid by the authorities, we are confronted with a clear case of collusion, exemplified by the Canon Law's recognition of "psychic consensual incapacity" as a justification for dissolving the hasty and unhappy union of a young couple.²¹ As Catholic consensual incapacity annuls *holy* matrimony, so *scientific* psychiatric incapacity annuls *criminal* responsibility.

On the other hand, whenever one person, A, claims that another person, B, is incompetent, we are confronted with a situation from which we can draw two quite different inferences, one more probable than the other. The less probable inference is that A's assertion is true:

in other words, that B is indeed incompetent. The more probable inference is that A's assertion is untrue: in other words, that A wants to paternistically control or coerce B.

Paternalism is, of course, a fundamental feature of many human situations. The presently fashionable practice of depriving people of their right to decide whether or not they should be tried for a crime or treated for a mental illness—because they are mentally incompetent—is but the contemporary version of a practice that can be applied, and has been applied, to many other activities. In the past, it was universally applied to religion. In a theological society, who is considered to be mentally competent to choose his own religion (and repudiate the religion of his ancestors) or no religion at all? "A stock argument for the state teaching of religion," Herbert Spencer cogently noted, "has been that the masses cannot distinguish false religion from true. . . . This alleged *incompetency* on the part of the people has been the reason assigned for all state-interferences whatever" (emphasis added).²² It is not a coincidence that state interference with religion in the United States today—slight as it is—is based almost entirely on psychiatric arguments. Directed against the new, unconventional religions, pejoratively called *cults*, interference is regularly justified by the contention that so-called cult members are mentally incompetent to decide what the religion of their choice ought to be. Why are they incompetent in this way and how do we know that they are? Because only a mentally ill person joins a cult and because, once a person has joined, he is quickly brainwashed, further impairing his mental capacities.

Of course, in a modern democracy, arguments and policies based on paternalism suffer from a fatal inconsistency, namely: If so many individuals are now deemed to be mentally incompetent to judge certain matters or participate in certain activities—such as which cult to join, which drug to take, which crime to be responsible for, and so on—how can the same persons be competent to judge the politicians who determine official policy concerning these very affairs and to participate in the electoral process on which our whole society rests? Since hardly anyone today advocates completely disenfranchising mentally ill persons, the selective invocation of mental incompetence—as a justification for legal and political action—stands clearly revealed as part and parcel of the modern psychiatric apparatus of rhetorical justification and social control.

In sum, much like the idea of mental illness, the idea of mental incompetence comprises certain conceptual-cognitive characteristics (of the agent diagnosed), and certain dispositional-justificatory decisions (of the agents making the diagnosis), the latter element generally greatly outweighing the former. As a cognitive category, the idea of mental

incompetence derives its force from the fact that certain diseases of the body, especially of the brain, render the patient grossly unable to care for himself. Foremost among such conditions are acute injuries and intoxications that render the person unconscious. Obviously, such a person is incompetent to decide whether he should or should not have medical care—his inability being apparent even to untrained observers. The next class of conditions, of great importance both practically and theoretically, comprises the so-called deliria and dementias: these are acute and chronic disturbances of brain function, typically caused by injury, intoxication, infection, or loss of brain cells due to as yet undetermined causes, resulting in impaired behavior without loss of consciousness. Delirium and dementia are manifestations of brain diseases that can be objectively demonstrated and diagnosed, by means of clinical tests while the patient is alive or by autopsy after he dies. The delirious or demented person, too, is likely to be unable to care for himself and may properly be treated as incompetent. It is now customary to view the person deemed incompetent because of mental illness as similar to the unconscious or demented patient. This is an extension of the analogy between mental illness and bodily illness and exhibits all of the strengths and weaknesses of that analogy. What, in fact, are the similarities and differences between these two groups of individuals?

The similarities are few and unimportant: like the demented patient, the mentally incompetent person may behave oddly and upset others. In other ways, however, the two differ: the mentally incompetent person suffers from no demonstrable disease and is usually able, indeed eager, to chart his own course in life, however harmful that may be to himself or others. Moreover, he often finds others—including lawyers and doctors—to vouch for his competence in court. I have chronicled the fate of several persons, some quite famous, who have been declared mentally incompetent to stand trial despite their protestations and despite the fact that lawyers and psychiatrists agreed that they were competent.²³ The tragic consequences of such a policy of so-called substituted judgment for the incompetent patient—a policy ostensibly aimed to help, not harm, him—are due to the fact that the person declared mentally unfit to stand trial is denied the right to trial, guaranteed by the Sixth Amendment to the Constitution, and is instead incarcerated, potentially indefinitely, in a psychiatric institution.*

*Prior to 1971, when, in *Jackson v. Indiana*, the Supreme Court recognized the grave abuses which this policy had spawned and placed certain limits on its applications, defendants declared mentally incompetent to stand trial often ended up spending the rest of their lives imprisoned, without trial, in hospitals for the criminally insane.²⁴

NONRESPONSIBILITY AS IRRATIONALITY

A typical bodily illness, like cancer of the colon, is inferred from, and is equated with, a somatic lesion—that is, cancerous cells in the colon and perhaps elsewhere in the body. In contrast, a typical mental illness, like schizophrenia, is inferred from, and is equated with, irresponsible behavior—that is, lack of moral responsibility in the conduct of some, or most, aspects of life. Responsibility and nonresponsibility are, of course, ethical and legal concepts. In our society, not all persons are considered to be responsible; for example, the very young, the very old (senile), the mentally retarded, and certain brain-damaged persons are regarded as more or less nonresponsible. If we ask why some persons are regarded as responsible and others not, the conventional answer, given by psychiatrists as well as others, is that we can treat only rational persons as responsible and must treat those who are irrational as not responsible. Moore takes this to be self-evident. "The responsibility of the mentally ill," he asserts, "thus turns on their lack of rationality. . . . an agent's serious irrationality by itself reduces or eliminates his responsibility."²⁵ This is why everyone—psychiatrist, lawyer, lay person—is so quick to label others as *irrational*, intuitively realizing that this is the easiest way to deprive a person of his humanity: An individual considered to be lacking the capacity to be responsible is usually also considered—in proportion to his lack of responsibility—to be lacking the capacity to be at liberty as well.

Irrationality, the Brain, and the Person

Some persons never develop the normal use of some of their body parts and functions: for example, the congenitally blind person cannot see, and the congenitally deaf person cannot hear. Others lose the use of certain bodily functions: for example, the person suffering from muscular dystrophy has failing muscles, and the person suffering from Alzheimer's disease has a failing brain.

Although irrationality due to senile dementia is just as real as immobility due to disabling arthritis, there is an important difference between them: judgments about the mobility or immobility of a person's joint rest on a biological standard, whereas judgments about the rationality or irrationality of a person's reasoning or thinking rest on a personal or societal standard. We ascertain whether a person is rational—or correctly oriented—by determining whether he knows who he is, where he is, who the President is, and so forth. There is nothing wrong with such a standard. What is wrong is that psychiatry conflates

and confuses the irrationality of dementia with the irrationality of psychosis. The former is a symptom of a malfunctioning brain, whereas the latter, as I shall presently show, is not.

Wherein lies the essential difference between the irrationality of a demented person and of a psychotic one? The demented person *displays a defect*—typically of his memory (he cannot remember the date or even who he is), and of his ability to reason (he cannot do simple arithmetical tasks that he formerly could easily do). The psychotic person, on the other hand, *asserts a false claim*—typically of his identity (he is Jesus or God), and of his reasons for engaging in acts injurious to himself or others (he is commanded by God or demons or is protecting himself from nonexistent persecutors).

If psychosis is not the symptom of a hidden—as yet undiagnosed or undiagnosable—brain disease, then what is it? The answer, I am afraid, is too simple: it is a form of behavior. Specifically, psychosis is behavior judged to be bad—injurious to the self or others. It is also a form of behavior closely connected with dishonesty: a person who is honest with himself—"true to himself," as Socrates put it—cannot, in my opinion, *be or become* psychotic, although he may, of course, be *called* psychotic by others.

How, then, do psychiatrists ascertain whether a particular person who has committed a violent act was or was not psychotic? The answer is: They don't. That is the wrong question to ask. The right question is: Under what circumstances do psychiatrists (and others) *ascribe* psychosis to the perpetrator of a certain act? Before answering these questions, let us briefly consider some typical instances of the assumption and ascription of responsibility and nonresponsibility.

Claiming and Disclaiming Responsibility

It is important to keep in mind that responsibility is *something* we both claim and disclaim for ourselves and attribute or refuse to attribute to others. For example, a five-year-old child is not held criminally responsible by the legal system for killing people in a house fire which he starts by playing with matches; but he is held responsible by his parents for controlling his bladder and bowels and for washing his hands before meals.

Here is an example more pertinent to our present concerns. Certain persons—called *terrorists* by those who disapprove of them, and *patriots* by those who approve of them—often claim responsibility for bombings and killings committed by unknown assailants. The terrorist killer and the insane killer both kill: the difference between them is that the former

typically claims responsibility for his action, whereas the latter often disclaims responsibility for it. A similar symmetrical relationship obtains between authorities who incriminate innocent persons as guilty, and those who exculpate guilty persons as innocent: for example, French military officers claimed that Albert Dreyfus was responsible for crimes he did not commit, whereas American forensic psychiatrists claimed that John Hinckley, Jr. was not responsible for crimes he did commit. (Hinckley, it should be remembered, acknowledged his guilt.²⁶)

I might seem to be dwelling unduly on responsibility as a crucial parameter of psychosis. But the plain facts about this alleged illness, as against the rhetoric in which it is couched and the theories by which it is ostensibly explained, fully justify this emphasis. What are these facts? They are that a person is considered to be insane if two conditions obtain: (1) that, by conventional standards, he behaves very badly—typically, threatening to kill himself or others; (2) that he justifies his misbehavior in a conventionally unjustifiable way—typically by claiming that what he has done is good, not bad. Examples abound in the daily press.

In December 1976, Roxanne Gay killed her husband, Blenda, a defensive end on the Philadelphia Eagles professional football team, by plunging a knife into his throat while he was asleep. Witnesses at her trial testified that she "suffered from hallucinations that her husband, her family, and the police were plotting to kill her." Mrs. Gay was acquitted as not guilty by reason of insanity and was committed to the Marlboro State Psychiatric Hospital in New Jersey. On July 21, 1980, Camden (N.J.) County Judge I.V. DiMartino ordered that Mrs. Gay be released because she "has achieved that degree of mental stability where she is no longer a danger to herself, her family, or society."²⁷

Actually, Mrs. Gay had advanced two claims: namely, that she was insane, and that she killed her husband because she was a "battered wife." No one nowadays is troubled by the inconsistency inherent in this combination: being a battered wife supplies a motive or reason for killing one's husband, but a motive or reason for such a deed is precisely what an insane woman is not supposed to have. According to testimony at the trial, there was no evidence that Mrs. Gay was abused by her husband. Characteristically, *The New York Times* referred to her false claims as *hallucinations*. The implication—so strong today that doubting it is to invite derision—is that a woman who hallucinates that her husband is abusing her is not responsible for killing him.

The view that mental illness renders its victim irrational and hence not responsible was stated with special clarity and force by Moore:

Since mental illness negates our assumption of rationality, we do not hold the mentally ill responsible. It is not so much that we excuse them from a

prima facie case of responsibility; rather, by being unable to regard them as fully rational beings, we cannot affirm the essential condition to viewing them as moral agents to begin with. In this the mentally ill join (to a decreasing degree) infants, wild beasts, plants, and stones—none of which are responsible because of the absence of any assumption of rationality.²⁸

The interpretation offered by John Hinckley Jr.'s parents for why their son shot President Reagan and three other men illustrates the same point:

"How could anybody do such a horrible thing?" The answer is schizophrenia, an overpowering mental illness that robbed John of his ability to control his thoughts and actions. . . . John . . . is *desperately* ill. . . . [T]he disease is the culprit, not the person (emphasis in the original).²⁹

Life indeed imitates art. Almost 400 years ago Shakespeare used similar language to suggest the same idea, albeit only to underscore the absurdity of exculpating the doer from responsibility for his deed:

Hamlet. . . . What I have done . . .
I here proclaim was madness.
Was't Hamlet wronged Laertes? Never Hamlet.
If Hamlet from himself be ta'en away,
And when he's not himself does wrong Laertes,
Then Hamlet does it not . . .
Who does it then? His madness.³⁰

But were Hamlet not responsible for avenging his father's murder, *Hamlet* would not be a tragedy. "The horrible act John committed," John's parents keep insisting, "he committed through no fault of his own. It was an act of illness. . . . [John] is a person who morally is one of the finest people you could ever meet."³¹

Cui bono? Who profits from this explanation? John Hinckley, Jr. is incarcerated in St. Elizabeth's Hospital where, I suspect, he will remain until he dies. Whereas John Hinckley, Sr. and Jo Ann Hinckley have fashioned a new career—perhaps *calling* would be more accurate—out of their son's historic deed: warning the American public about the Devil—whom they call Mental Illness.

INSANITY AND NONRESPONSIBILITY RECONSIDERED

In the past, philosophers, jurists, and lay people asked why the madman behaves irrationally, and the alienists answered: Because he is

insane. Philosophers, jurists, and lay people still ask the same question, and psychiatrists still offer the same answer, now reframed in terms of mental illness. I reject this pseudoexplanation as self-serving. I believe we should turn the question around and ask: Why do philosophers, jurists, and lay people attribute irrationality and nonresponsibility to certain individuals? My answer, as I indicated earlier, is: In order to remove such persons from the category of moral agents and to justify controlling them by means of the psychiatric sanctions of the modern State. The following incident is typical.

In August 1985, several groups of ex-mental patients held their annual "International Conference for Human Rights and Against Psychiatric Oppression" at the University of Vermont, in Burlington. After demonstrators made an unlawful attempt to speak to some of the psychiatric patients at the Medical Center Hospital, one of them was not only arrested and charged with unlawful trespass, but was also ordered to undergo "psychiatric evaluation for competency and sanity."³² I have never heard or read of a demonstrator against abortion clinics or South African racial policies engaging in similar symbolic violations of the law having been ordered to undergo a psychiatric examination to determine his competency and sanity.

Mens Rea (Guilty Mind) and the Capacity to Commit a Crime

The law recognizes insanity as a mental condition that may be *total*, abolishing the person's responsibility for what would otherwise be a criminal act, or as a condition that may be *partial*, merely diminishing or reducing it. In the former case, the defendant is not punished at all, but is almost certainly incarcerated involuntarily in a mental hospital; in the latter case, the defendant is found guilty of a lower grade of offense, receives a prison sentence commensurate with that crime, and almost certainly receives no psychiatric treatment in prison. Although legal scholars are fond of making pedantic distinctions among terms such as *partial responsibility*, *diminished responsibility*, *diminished capacity*, *limited capacity*, and *partial insanity*, all these phrases come to the same thing, that is, *diminished capacity* or *diminished responsibility* (the terms I shall use).

The theory of diminished capacity, as described above, is more than a century old. As a practical tactic in law and psychiatry, the defense and disposition of diminished capacity became popular in the United States only after the 1950s. In legal phraseology, the operative concept is "that if because of mental disease or defect a defendant cannot form

the specific state of mind required as an essential element of a crime, he may be convicted only of a lower grade of offense not requiring that particular mental element."³³ The modern doctrine of diminished capacity was introduced with, and gained acceptance through, the rationalization that defendants so treated would receive psychiatric therapy in prison. In fact this has not happened, partly because defendants successfully pleading diminished capacity do not consider themselves mentally ill and decline treatment, and partly because no treatment is in fact made available to them. It must be noted, also, that diminished capacity is a limited defense, applicable only against crimes where specific intent is an element of the offense, such as intentional homicide or theft.

The Necessity of Mens Rea for the Criminal Law

After every sensational insanity trial that arouses the public passions and results in the defendant's acquittal as not guilty by reason of insanity—exemplified by the trial of John Hinckley, Jr.—the cry goes up for the reform or abolition of the insanity defense.* Typically mounted by politicians and psychiatrists sensitive to possibilities for self-enhancement, the resulting so-called attack on the insanity plea is an exercise in deception, self-deception, and futility. The fact is that so long as people—especially the supposed critics of the insanity defense themselves—believe in mental illness, there can be no significant change in this defense.

Attempts to abolish the insanity defense invariably founder on the following chain of logic. Anglo-American law is based on the moral principle that there can be no crime without *mens rea*, which literally means a guilty mind and is interpreted, in practice, as intent to commit a crime. Many circumstances or considerations—only one of which is psychiatric in character—may result in the legal and commonsense judgment that a person seemingly causing another person's injury or death is not legally responsible for it. Among these factors are accident, self-defense, duress—and mental illness. Since virtually everyone now believes that mental illness exists and has the effect of diminishing or annulling the subject's capacity for intentionality, an attack on the insanity defense becomes, in effect, an attack on *mens rea*, and hence an attack on the very pillar of our legal system for adjudicating guilt and

*Trials such as that of John Hinckley, Jr. are much more common in the United States than in other countries. So-called aberrations in the uses of the insanity defense are, in fact, a characteristic feature of the American legal system, especially as it is presently constituted.

innocence. To overcome this impasse, it would be necessary for people either to abandon their belief in mental illness, which does not seem imminent, or their belief that mental illness is synonymous with diminished or annulled mental capacity, which would be oxymoronic, since a crazy person is, by definition, viewed as someone who does not know what he is doing. Small wonder that, combining arrogance with resignation, many legal scholars have come to see the union of law and psychiatry as similar to that of a hopelessly mismatched married couple, each partner being unable to live with or without the other. No doubt, a divorce would be expensive and painful, requiring the depsychiatrization of *mens rea* and the abolition of nonpenal punishments; but, in the long run, it might prove beneficial to the man (the law), as well as the children (the body politic)—though not to the wife (psychiatry), whose economic and existential well-being depends on the marriage.

How did the law and psychiatry end up in such a parasitic relationship? To answer this question, we must briefly reconsider the differences between a person being the *de facto* cause of the injury or death of another human being, and that person, as moral agent, being responsible for such an outcome. The difference is obvious and all-important, as the following examples will readily convey. Suppose that Jones is driving down a highway while Smith is planning to commit suicide by throwing himself in front of a vehicle from an overpass. Smith jumps, lands in front of Jones's car, and is instantly killed. Jones is the ultimate human instrument of Smith's death, but is not responsible for, or guilty of, any crime. Self-defense and duress present similar situations. In summary, a person may be considered not responsible for his behavior in general—or for a particular act (crime) at a specific point in time—for three quite different types of reasons:

1. Because the agent is deemed to lack *mens rea* (criminal intent) for what otherwise would be an illegal act. This judgment may be based on circumstances (self-defense), or on the presence of an objectively demonstrable bodily disease (epilepsy) resulting in what is viewed as an accident rather than as an action, or on the alleged presence of an objectively nondemonstrable mental illness (schizophrenia).
2. Because the agent rejects responsibility and his doing so is viewed as the manifestation of a mental illness (schizophrenia).
3. Because, although the agent insists he is responsible, authorities coercively deprive him of responsibility against his will by declaring him to be suffering from mental illness (and therefore unable to stand trial, not guilty by reason of insanity, etc.).

I summarize the most important situations in which responsibility is considered to be diminished or annulled in Tables 8.1 and 8.2.

In the foregoing situations, in each of which one person, Jones, injures or kills another person, Smith, we consider it reasonable to *not* hold Jones responsible for a crime. It is important that we understand why. Assuredly, we do not do so because of what we learn from examining Jones's *mental state*; instead we do so because of what we learn from examining the *context of the problematic action*. That is why, in such cases, we do not examine Jones's mind—to determine whether or not it was capable of forming criminal intent; instead, we examine the situation in which the injury or death occurred—to determine the roles played in it by the various participants. The proper analogy here is not to illness or incapacity but to meaning, literal and metaphorical. Let me explain.

Examining a person's mind to determine whether or not his mental capacity is, or was, diminished is allegedly like examining his body to determine whether or not the capacity of his liver or kidneys is diminished. But since there is no such thing as a mind—since the notion of

TABLE 8.1. Responsibility Absent or Diminished

I. In the Context of Criminal Law	
1.	Subject injures or kills assailant in self-defense: no intent to commit a crime (no <i>mens rea</i>); no criminal responsibility; no mental illness; no punishment; no hospitalization
2.	Subject injures or kills unknown person(s) when he loses control of his car during his first epileptic seizure (injury or death viewed as the result of an accident, not of an act): no intent to commit a crime (no <i>mens rea</i>); no criminal responsibility; no mental illness; no punishment; no hospitalization
3.	Subject injures or kills a person as a result of an altercation during which he strikes his victim a blow, the victim falls, hits his head, dies: no intent to commit murder (<i>mens rea</i> for involuntary manslaughter only); diminished criminal responsibility (guilty of involuntary manslaughter); punishment for lesser offense; no mental illness; no mental hospitalization
4.	Subject stalks and shoots a political figure or other prominent person: (seemingly) has intent to commit a crime; successfully pleads insanity; mental illness (no <i>mens rea</i>); no criminal responsibility; not guilty by reason of insanity; no punishment; hospitalization for criminal insanity
5.	Subject charged with (political) crime for which he wants to stand trial and prove his innocence: declared mentally unfit to stand trial; mental illness (at the time of the trial); <i>mens rea</i> and criminal responsibility for alleged offense moot; hospitalization for criminal insanity

TABLE 8.2. Responsibility Absent or Diminished

II. In the Context of Civil (Mental Health) Law

1. Subject complains to psychiatrist of fears of killing himself or others and asks to be protected from himself: explicit rejection of responsibility for self (self-control); individual invites others to assume responsibility for him; mental illness; voluntary admission to mental hospital
2. Subject abstains from ordinary acts of self-care expected of adults in our society (e.g., does not work, speak, eat, bathe, etc.): implicit (nonverbal) rejection of responsibility for self; individual invites (coerces) others (family, physicians, the police) to assume responsibility for him; mental illness; unprotesting or involuntary admission to mental hospital
3. Subject offers no complaints and wants to be treated as a responsible person but, because of the validated complaints of others against him, is coercively deprived of responsibility; mental illness; subject declared to be mentally unfit (to be a parent, to refuse psychiatric drugs, etc.)

mind is, itself, a fiction—the idea of a *mental capacity* to form criminal intent is also fictitious; if taken literally, it is bound to lead to conclusions prefigured in the premise, as described in detail in this book. (I mean here simply that criminal intent is not something a *mind* forms or has, but something a *person* forms or has.)

In short, if we really wanted to free ourselves from the constraints imposed on us by the idea of a mental capacity to form criminal intent, and of the deceptive procedures it inexorably generates, we would have to proceed in a completely different manner in dealing with so-called crazy criminals who are now deemed to be proper subjects for diversion from the penal to the psychiatric system. How? In the way we now deal with injury or death caused by accident or self-defense, as I have just described. In such cases we do not look to experts or to esoteric procedures to solve our problem; instead we rely on commonsense methods to determine whether or not a person intended to harm another person. We proceed similarly if we want to determine whether a person uses a word literally or metaphorically: That is, we do not examine the speaker's or writer's mind psychiatrically in an effort to discover whether the word has a literal or metaphorical meaning; instead, we examine the context in which the word occurs and form our conclusion accordingly. However, because we regard mental illness as a genuine illness—as a fact or material object—we foreclose the possibility of establishing the connections between the mentally ill person's behavior and his responsibility for it in the same commonsense manner in which we approach the connections among accident, duress, self-defense, and responsibility.

Annulled or Diminished Responsibility

Because of the influence of a positivistic mental science on intellectual as well as popular thought, the law now regards mental patients as persons who possessed responsibility when they were mentally healthy but who, as a result of their mental illness, have lost it, and who, after undergoing appropriate psychiatric therapy, might regain it. This view rests on a tacit analogy between the capacity to be responsible and the capacity of certain bodily organs, especially the sense organs, to perform their functions. For example, a healthy man has sight, which he may temporarily lose because of injury or illness, and which he may regain as a result of successful treatment. Viewing responsibility on the model of eyesight, it is believed that as one type of brain lesion causes loss of vision, another type causes loss of responsibility. However appealing this notion might be, it is false: being endowed with vision is a physiological fact, but being responsible is a moral attribute. This is why we can be absolutely certain that a person is blind, but we cannot be certain that he is not responsible (unless he is unconscious).

Nevertheless, since it is believed that the mental patient is irrational and cannot make responsible decisions, others—family members, psychiatrists, courts—have to treat him as if he were a child and act on his behalf. And since often no one is willing to care for these persons (and they are often unwilling to care for themselves), society welcomes the psychiatrists' eagerness to fill that need. But there is a catch. Most people, especially at the beginning of their careers as mental patients, resist being confined in insane asylums. Hence, it is necessary to incarcerate them. The patients' irrationality and nonresponsibility justify this policy so perfectly that mental illness, irrationality, nonresponsibility, and involuntary psychiatric confinement quickly jell to form a single legal-psychiatric-social compound whose component elements can no longer be separately identified. The unity of this complex combination of psychiatric ideas, justifications, and procedures is illustrated in the following passage from the pen of Charles Mercier, a prominent turn-of-the-century British psychiatrist:

Apart from the fact that it is desirable to cure insanity, and that in many cases a cure can only be attempted within an asylum; apart from the necessity, that often exists, of secluding a perfectly harmless lunatic in order to prevent him from squandering his means and ruining himself and his family; apart from the desirability of restraining him from performing acts which are not dangerous, but which are disgraceful, and which he himself would, on his recovery, be loudest in blaming his friends for not preventing; there remains the most important fact that the distinguishing feature of the insane

is not their dangerous aggressiveness, but their revolting indecency and obscenity. . . . probably a large majority of both men and women are or would be, if freed from restraint, more shameless and filthy in their conduct than so many monkeys. It is not merely that the public must be protected from such conduct as this. They have a right, also, to be prevented from witnessing it; and it is for this reason, more than any other, that the seclusion of the insane in asylums is necessary and right.³⁴

The imagery of disease and the imagery of animality and lack of self-control—and implicitly of irrationality and nonresponsibility—are here skillfully blended into a coherent and seemingly irrefutable justification of prevailing psychiatric practices. Revealingly, except for an initial passing reference to curing the insane, there is no hint here that the insane suffer from a disease, that the problem of insanity is in any meaningful sense medical, or that the confinement of the insane is primarily for their benefit. On the contrary, what the author succeeds so well in conveying is that the insane person often presents us with a spectacle at once distressing and disgusting, justifying his segregation from the rest of society. Of course, that is a moral judgment and a recommendation for political action, with which, depending on our own moral and political values, we can agree or disagree.

Since neither rationality nor responsibility are facts of nature or measurable performances of the human body (like temperature or blood pressure), how do authorities establish whether a person is or is not rational or responsible? By recourse to the judgments of psychiatric experts who claim to be able to correlate rationality and responsibility with sanity and insanity. A nineteenth-century British alienist declared:

No mind can properly be considered to be "unsound" or "insane" which is not the subject of actual disease, the "insanity" or "unsoundness" being invariably the products—the effects or the consequences—of some deviation from the healthy condition of the brain, its vessels or investments, disordering the mental manifestations.³⁵

Another psychiatrist wrote: "A monomaniac with perverted emotions and homicidal tendencies cannot, *says science*, control his conduct, and cannot therefore be held responsible for his acts" (emphasis added).³⁶

Ironically, while people now regard such formulations of the nonresponsibility of the insane as exaggerated and old-fashioned, they view with enthusiasm presently popular formulations of diminished capacity—that is, the proposition that insanity reduces rather than annuls criminal responsibility. Plausible though it might seem, the idea of

diminished responsibility, as ostensibly demonstrated by psychiatrists, is even more absurd than the idea of annulled responsibility, as the following reflections illustrate.

The term *diminished capacity* implies a roughly quantitative view of responsibility, consistent with our judgment that, like health or strength, a person may have more responsibility at one time than at another, and that one person may, in the same situation, have more responsibility than another. By matching different individuals against a conventional standard, we consider some to be weak or in poor health, and others to be strong and in robust health. If we viewed responsibility similarly, it would follow, as a matter of common sense and logic, that as a person's capacity to be responsible may be diminished at one time, so it may be increased at another time; and that, matched against a conventional standard, some persons may possess less, and others more, capacity for responsibility than some hypothetical mean. Indeed, if we paid more attention to the circumstances of sensational crimes, and less to the expert opinions of psychiatrists, then many such crimes—for example, that of John Hinckley, Jr.—would seem to be the acts of agents possessing increased, rather than diminished, capacity for committing criminal acts. The reason we never view crimes this way is one of the symptoms of our abject abdication of common sense in favor of psychobabble. Actually, hardly a day passes without psychiatrists examining defendants to determine their mental capacity to commit crimes. Although psychiatrists often find that a defendant *suffered from diminished capacity* to commit the crime he had committed, they never find that he *enjoyed an increased capacity* to do so. Psychiatrists seem to have an uncanny ability to find what they are paid to find. In the whole history of psychiatry, never has a psychiatrist examined a person charged with a crime and found him to have an increased mental capacity to commit a crime. This fact alone utterly unmasks the medical pretensions legitimizing psychiatric determinations of diminished responsibility.*

Increased Responsibility

If the idea of diminished responsibility (capacity) can be said to have descriptive content, so must its opposite, namely, increased responsibility. A person's responsibility for a crime is considered diminished if he acts without premeditation, under the impetus of a strong and sudden

*Actually neither law nor psychiatry recognizes the concept of increased mental capacity to commit a crime. Psychiatry does recognize the concept of increased intentionality, however (see Chapter 7).

impulse, for example, the man who injures or kills his wife's lover when he discovers them in the marital bed. Similarly, a person's responsibility for a crime could be considered increased if he carries out a well-rehearsed crime, for example, the man who selects his victim, stalks him, and at the right moment attacks or kills him. Typically, such a person has a clearly articulated reason for his behavior; however, normal persons are likely to regard such a person's reason as irrational or crazy, and psychiatrists are likely to interpret it as the symptoms of paranoid schizophrenia.

In 1978, then a 42-year-old chronic graduate student in mathematics at Stanford University, Theodore Streleski killed one of his teachers, Professor Karel W. deLeeuw. An exceptionally articulate and intelligent person, Streleski had what he considered to be an excellent explanation for why he killed deLeeuw. In a review of the story in *People* magazine following Streleski's sensational release from prison in September 1985, the reporter, Diana Waggoner, writes:

He [Streleski] spent eight years contemplating grievances against Stanford and plotting a murder, systematically drawing up a short list of candidates. . . . "The essential thing was to be able to badmouth Stanford and do it with some impact," he says. "I considered other alternatives . . . I considered going to the media directly." He rejected the last option as simply impractical. "I realized that I had no leverage," he explains. "Television and the media don't cover struggling graduate students. But they do cover murderers." For Professor Karel W. deLeeuw, 48, a former Fulbright scholar and the father of three children, that dispassionate rationale was a death sentence.³⁷

On August 18, 1978, Streleski packed a two-pound sledgehammer into a small flight bag and left his apartment in San Francisco for the Stanford campus. After arriving in Palo Alto, he walked to the mathematics department and waited. After deLeeuw arrived at his office and had time to settle down, Streleski stepped inside.

"He was sitting with his back to the door," Streleski recalls without apparent emotion. "I walked directly behind him. I hit him squarely on the top of the head with the hammer and then administered two or three of what I call 'insurance blows' to the right temple. . . . He rolled back to the storage cabinet. At some point I heard what I presume was a death rattle. I covered him with a clean garbage bag like a shroud to save the feelings of the janitor who would probably find him."³⁸

Streleski's surrender was equally carefully planned. After taking a train back to San Francisco, he thoughtfully called his ex-wife's family

"to warn them that there might be some legal problems." He then returned to Palo Alto, had a beer and a slice of pizza, waited in a bus shelter reading a novel until 3 A.M. the next morning, then walked to a police station, turned himself in, and handed over the bloodied hammer carefully wrapped in a plastic bag.

When Streleski came to trial in 1979, a court-appointed attorney assigned to defend him wanted him to plead not guilty by reason of insanity. Streleski refused. However, he could not prevent psychiatrists from testifying that he, Streleski, was very sick, suffering from paranoid psychosis, and therefore lacked the capacity to commit murder. Perhaps because this testimony was uncontradicted, or perhaps because Streleski's behavior struck people as obviously that of a crazy person, the jury concluded that Streleski suffered from diminished capacity and found him guilty only of second degree murder. Seven years later, to the accompaniment of much media attention, Streleski was released. "My feeling for the jury is mellow," he says, "because they gave me the use of the word 'murderer' at the cheapest possible cost. . . . The publicity has been used as a weapon against Stanford. I think I got out of the murder what I wanted." Comments Waggoner, displaying the proper deference toward our reigning mythology: "That may be so, but others take a *more rational view*" (emphasis added).³⁹

The problem, however, was, and is, not Streleski's rationality, but his morality. Streleski did not lack rationality in 1978, and does not lack it now. Nor does he lack intentionality. On the contrary, his capacity to form intention is arguably superior to that of an average, normal person. What Streleski lacks is modesty, self-restraint, and respect for the lives of certain human beings whom he feels entitled to try, judge, and execute.

Here is another famous example of increased capacity officially portrayed as diminished capacity. On October 21, 1985, Dan White, a former member of the San Francisco Board of Supervisors who, in 1978, shot and killed Mayor George Moscone and Supervisor Harvey Milk, committed suicide. To virtually everyone, this confirmed the judgment that White was a victim of mental illness and thus provided further validation for the legitimacy of his successful diminished capacity defense. Certainly, if one views crime through the lenses of psychiatric excuses, then White's suicide furnishes the ultimate proof of his insanity. Revealingly, even some of Milk's supporters saw White's death in this light. "It comes as no surprise," said Supervisor Harry Britt, the gay politician who succeeded Milk on the board, "that Dan White was a very disturbed man." Added writer and gay advocate George Mendenhall: "[The suicide] points to the fact that Dan White was a mentally disturbed person."⁴⁰ Douglas Schmidt, the lawyer who secured White's

courtroom victory, put it even more strongly: "Now what has happened seems to vindicate our position."⁴¹ Martin Blinder, the San Francisco psychiatrist who achieved instant fame with his infamous "Twinkie defense," also used the suicide to support the interpretation that White had been mentally ill and that his illness caused him to commit homicide and suicide. "White killed out of a depressive despair," opined Blinder. "The suicide is entirely consistent with my diagnosis seven years ago."⁴²

I found these interpretations objectionable at the time of White's trial and find them obscene now.⁴³ Consider the evidence. White was a morally sensitive man: He objected to homosexuality as ethically repugnant. He was a devout Catholic: He gave himself up to a priest after the shooting. If White really had diminished capacity for murder—in plain English, if he had truly *not intended* to kill Milk and Moscone—then he would have regretted the tragedy he had inadvertently caused and would not have needed to feel guilty. But evidently he did feel guilty. People who do horrible things to other people often do. Judas felt guilty and killed himself. Lady Macbeth felt guilty and killed herself. We do not interpret their suicides as evidence of their having been mentally ill, but rather as evidence of their having done evil deeds. It seems only reasonable to view White as no less human and hence no less responsible, and to interpret his suicide as evidence of his guilt for the evil he had done.

Let us reexamine White's famous diminished capacity defense in the light of his suicide. What, exactly, did it consist of? Why was there such an outrage in the San Francisco gay community against it? Thanks to the "Twinkie defense," White was convicted of voluntary manslaughter instead of murder. Who benefited from this? Clearly, White's lawyers and psychiatrists: they made money and gained fame from it. But how did White profit from this great courtroom victory? He received a shorter prison sentence than he would have if he had been convicted of murder. But perhaps a longer, more appropriate prison sentence would have enabled White to atone for his sins and, by saving his soul, might have saved his life. The liberal conscience may abolish the execution of persons who have perpetrated horrible crimes, but the conscience of the perpetrators may still demand that they pay the ultimate penalty. Like anyone not completely duped by psychiatry, White too must have felt that his defense was as phony as a three-dollar bill. He must have known—like any unprejudiced observer could infer—that his crime constituted a carefully orchestrated performance: The way he got into the building where his victims were, the way he selected his victims, the way he killed them, the way he gave himself up—every detail of this

tragedy tells us something we do not, dare not, admit. What? That White's killing of Moscone and Milk showed evidence of increased, rather than diminished, mental capacity to commit a crime. (By which I mean simply that he was more capable of killing than the law's hypothetical average, ordinary person.)

Although in the past psychiatrists and priests have often bitterly disagreed, they now agree—ironically, precisely where psychiatry most decisively betrays religion and where religion betrays itself. Despite having killed himself, Dan White was given a Roman Catholic burial. "The church will not judge Dan White's soul," a spokesman for the San Francisco archdiocese told the *San Francisco Chronicle*:

Traditionally [explained the *Chronicle*], suicide among Roman Catholics was considered a mortal sin against the laws of God, and the victim was denied the last holy rites of the church and the right to be buried in consecrated ground. "Things have changed today," said the archdiocesan spokesman. "Today it is the church's feeling that a person must be crazy to commit suicide. And we place the insane in the hands of God, for his mercy and his judgment."⁴⁴

I cannot accept that the church feels it is its duty to judge the conduct of persons who use condoms to prevent conception, but feels it is not its duty to judge the much more important deeds of cold-blooded murder and self-determined death. Indeed, I find it hard to imagine what would constitute a more blatant evasion of a moral authority's duty to judge the issues of intentionality, moral agency, and personal responsibility than the Catholic Church's stand on suicide, exemplified by the life and death of Dan White—or what could constitute a more dramatic example and symbol of our collective flight from moral responsibility.

WHY INSANITY EQUALS NONRESPONSIBILITY (AND VICE VERSA)

In the primitive or so-called animistic world view, all the calamities that befall man are believed to be caused by human beings or agents conceived in the image of human beings (gods, spirits). It was a momentous advance of the human mind to abandon this view and accept that many undesirable things in life, such as storms or earthquakes, are not the deliberate works of enemies or evil spirits, but the consequences of natural events. By and by, people started to regard bodily diseases too as natural events, for which neither the patient nor anyone else was responsible. For example, we do not blame people for having Hodgkin's

disease. However, our understanding of this sort of nonresponsibility was quickly qualified, as we learned that although a person may not be responsible for having, say, diabetes, he may be responsible for his obesity which precipitates or aggravates it. Accordingly, we now sometimes consider people to be responsible for their lifestyles which might cause them to develop certain diseases.

In general, then, while we do not consider medical patients to be responsible for being ill, we do consider them, despite their illness, to be responsible for what they do with their lives. This is especially so when the illness is chronic, in which case we typically consider the patient responsible for managing his disease. For example, although we do not regard a diabetic as responsible for having diabetes, we view him as responsible for managing his diabetes. Thus, while arteriosclerosis and AIDS, Parkinsonism and pyelitis, leukemia and lung cancer are all diseases, none makes a person so afflicted not responsible for beating his wife, robbing a bank, or killing people. In contrast, mental illness typically confers precisely this sort of total nonresponsibility on its victims. Why should this be so? Why do psychiatrists and the law not treat psychotics like physicians and the law treat diabetics—regarding them as not responsible for their disease, but responsible for their deeds? The fact that they do not reveals what, *inter alia*, the idea of mental illness really means: namely, nonresponsibility—not only for one's condition, but for virtually any aspect of one's conduct as well.*

Largely because of the effect the idea of mental illness has exercised, for more than 200 years, on the Western mind, and especially on the concept of responsibility, many people are now profoundly confused about who is, or ought to be, held responsible for certain actions and consequences. For example, some people who smoke and develop lung cancer claim that not they, but the tobacco companies that manufacture cigarettes, are responsible for their illness. Many lawyers and psychiatrists agree with them.

Similarly, most Americans now believe that people who use illegal drugs do so not because they choose to, but because they have a mysterious propensity to use certain drugs, and when they are exposed to these chemicals, have an irresistible impulse to subject themselves to their effect. This is why drug abuse is now treated as both a disease and a crime.

*In an article published anonymously nearly 30 years ago, a former mental patient contends—rather naively, without realizing that insanity by definition negates responsibility—that the psychotic person is responsible not only for his behavior but for his illness as well: "Simple schizophrenics, hebephrenics, and catatonics 'prove'—by words and actions which are louder than words—that they are not responsible. . . . The real truth is that the schizophrenic is responsibly guilty of some crucial misdeeds."⁴⁵

All this points to a profound disorientation—especially in the United States—concerning the grounds for deciding whether or not a person is responsible for his behavior. One of the symptoms of this disorientation is the liability insurance crisis now plaguing the country; yet this serious socioeconomic problem is never linked (though it should be), much less attributed (as in part it well might be), to psychiatry's unrelenting war on responsibility.⁴⁶

Responsibility Lost and Regained

Critical consideration of the connections between mental illness and responsibility thus points to a relationship of profound negation: As death negates life, insanity negates responsibility. It is not so much, as is commonly believed, that insanity diminishes or annuls the mentally ill person's capacity for responsibility; instead, it is rather that our idea of insanity itself negates our concept of responsibility. Although it appears as if nonresponsibility were a condition separate from insanity but sometimes caused by it (like anemia may sometimes be caused by cancer, each condition, nevertheless, being a distinct and separate phenomenon), in fact nonresponsibility and insanity are essentially synonymous (like poverty and lack of money, two terms for one phenomenon). This identity of meaning is epitomized by the symbolic significance of the insanity defense in modern law—namely, the view that where there is no intention to commit a crime, a crime requiring intention cannot be said to have been committed; and that, because an insane person lacks the ability to form intent, he is, *ipso facto*, innocent of such crimes by reason of insanity. This double presumption leads to a pat and predictable scenario which is typically presented as if it were an astounding revelation. Whenever the perpetrator of a spectacular crime is tried, what is revealed to us, time and again, is that the criminal is a victim rather than a victimizer. The story of Billy Milligan is typical.

In 1977, when he was 22 years old, William Stanley Milligan kidnapped, raped, and robbed a series of women in Columbus, Ohio, and was subsequently acquitted of all his crimes on the ground of insanity. What gave his story special journalistic appeal—he was the subject of scores of articles and of a major book—was that Milligan claimed to have anywhere from 10 to 24 *personalities*, that this claim was not seriously contested in court, and that, as a result, he was the first person in the history of American jurisprudence to have been acquitted on the ground that he suffered from a disease called *multiple personality*. Characteristically, the book on Milligan tells us very little about what

he did to his victims, but tells us a lot about what others allegedly did to him. According to the dust jacket, the author presents:

... [the] moving true story of Billy Milligan—a tortured man who must live with twenty-four separate personalities contained within one body. The astounded reader gets to know them all . . . forcing us to understand and sympathize with a very special human being . . . Above all, it is the frightening and touching revelation of Billy's evolving selves that seizes the imagination and holds the reader spellbound as a victimized boy grows to fractured manhood.⁴⁷

It seems that if something is presented as psychiatric science, the public now believes it no matter how absurd. Perhaps the more absurd, the more believable: *Credo quia absurdum*.

Mens Rea: Guilty Intent or Rational Intent?

Clearly, insofar as people want to dispose of certain troublesome persons in society by means of coercive psychiatric interventions, they will find justifications for such a policy. Accordingly, showing that insane persons who commit crimes possess no less intent—or perhaps even more intent—than do sane persons will not change the minds of the believers in insanity: they will merely fall back to what may, at present, be their strongest position, namely, the argument that the insane person is irrational and hence not a moral agent. Since this claim is a tautology, there is no way to disprove it. The most one can do is to describe it carefully and clearly.

Consider a man, like John Hinckley, Jr., who shoots the President of the United States—and three other men—and then explains that he did it to impress a young actress whom he idolized from afar. If I suggest, as well I might, that Hinckley wanted to shoot President Reagan, the believer in mental illness is likely to respond: "Well, perhaps, but if that isn't an irrational (insane) thing to do, I don't know what is." Since my imaginary interlocutor believes that shooting a bank teller while robbing a bank is rational, but shooting Ronald Reagan to impress Jody Foster is not, there is not much more we can say to each other. Moreover, since my interlocutor equates irrationality with insanity, insanity with lack of intentionality, and lack of intentionality with lack of *mens rea*—presto, John Hinckley, Jr. is not responsible for his criminal act.*

*In 1952, the conventional judgment of the contemporary reasonable person that a crazy deed can only be the deed of a crazy person was given the imprimatur of the United States Supreme Court, which ruled, in *Leland v. Oregon*, that while a legally insane

This is exactly the conclusion Moore reaches when he asserts that "one is a moral agent only if one is a rational agent." Moore even acknowledges the self-referential character of the idea of rationality, for he states: "Only if we can see another being as one who acts to achieve some rational end . . . will we understand him in the same fundamental way that we understand ourselves and our fellow persons in everyday life."⁴⁹ Since most people cannot, or do not want to, put themselves in Hinckley's shoes, by Moore's criteria of rationality, Hinckley is irrational. The fact remains, however, that irrationality has nothing whatever to do with diminished or absent intentionality. On the contrary, irrational persons are likely to be more stubborn—that is, more persistently intentional—than rational persons.

Actually, the so-called crazy criminal confronts us with a relatively simple choice between two ways of punishing him: namely, by depriving him of property, liberty, or life (fine, imprisonment, execution), usually called *punishment* or *criminal sanctions*; or by depriving him of his status as a moral agent (psychiatric incarceration, lobotomy, electroshock, drugging), now called *psychiatric diagnosis* and *treatment*. Because of their uncritical endorsement of the psychiatric ideology, most people—that is, leaders in psychiatry and law and their multitudinous following—do not articulate the choice this way: instead, they say it is a choice between *punishing* a person because he is an *offender*, and *not punishing* him because he is a *mental patient*. This linguistic prejudgment, as Sir James Fitzjames Stephen has remarked, precludes changing our present criminal-psychiatric system of social controls. But why, exactly, do I think this system ought to be changed? Because it punishes persons both guilty and innocent of lawbreaking, the latter often more severely than the former; and because it nominally excuses persons guilty of crimes and then punishes them under medical auspices.

Although most experts on psychiatry and the law are satisfied with the conclusion that irrational persons are insane and hence not responsible for their acts, perhaps the reader is not, and I will therefore add a few more remarks on the intentionality of the so-called insane criminal. Typically, an insane criminal is a person who kills his wife or children, allows himself to be captured without trying to elude the police, and explains his act by stating: "God told me to do it." In our day and age, that statement—in conjunction with the act—is accepted as irrefutable proof that the killer is insane. Indeed, such an act together

person may have the intent required for a crime, it is an 'insane intent.'⁴⁸ The legal literature on insanity, diminished capacity, and related matters all bear upon, and illustrate, the contention that, in a crucially important sense, mental illness in all its guises is a legal fiction (see Chapter 11).

with such an explanation is now viewed as similar to a disfiguring tumor that has eaten away a part of a person's face or body: the former person is as obviously suffering from insanity (psychosis) as the latter is from cancer (a malignant neoplasm). If insanity is defined by being so exemplified, then, of course, that is the end of the matter. But it is not the end of the matter of intentionality; on the contrary, it is its beginning, and a very interesting beginning it is.

Suppose that Jones tells Smith "Please close the door," whereupon Smith gets up from his seat, walks to the door, and closes it. Would we say that Smith did not intend to close the door? That he lacked the capacity to form an intent to close the door? Of course not. What we would say, instead, is that Smith decided to close the door and that his decision was based on Jones's request. However, when a person identified as insane offers an explanation of exactly the same type—by asserting, for example, that God told him to kill his wife—we foreclose the possibility of seeing his intentionality in such a commonsensical way. Instead we obscure the obvious by saying either that the insane actor is irrational and hence not responsible; or that his act was not based on choice, decision, or intent (as previously described), but on an irresistible impulse. Actually, long before this question became a pressing legal problem, Hobbes had struggled with it and concluded: "*Fools and madmen manifestly deliberate no less than the wisest men, though they make not so good a choice*" (emphasis in the original).⁵⁰ Does, then, the view that the mentally ill person is incapable of intending, planning, and controlling his antisocial actions—as formulated by psychiatrists and psychoanalysts—represent scientific progress, as it is now generally believed? Or does it represent a stubborn denial of certain obvious but painful facts of life—as I maintain—and hence a profound retrogression to prescientific thinking?

THE UNHOLY MATRIMONY OF PSYCHIATRY AND LAW

It is stating the obvious that if a bitterly unhappy marriage long endures, husband and wife must be both its victims and beneficiaries. The same goes for the unholy matrimony between psychiatry and the law: We—the American people—are both its victims and beneficiaries. By enabling us to divert certain criminals from the penal to the psychiatric system, the fiction of mental illness as destroyer of *mens rea* protects us from guilt for punishing guilty but crazy criminals; by eschewing formally punishing—and, as a result, by capriciously underrestraining and overrestraining—persons guilty of crimes, this fiction endangers

the safety of our persons and property and the integrity of our political system.

The following story exemplifies the way our safety is now endangered by the policy of diverting so-called crazy criminals from the penal to the psychiatric system. A young man is committed, for the eighth time in his life, to a North Carolina State Hospital because of mental illness manifested by "violent behavior that included attacks on family members." On the day the patient is scheduled to be released, his parents meet with the psychiatrist and plead with him not to release the patient, who is still threatening to harm the family. Nevertheless, the patient is released the same day. That night he stabs his sister approximately 20 times.⁵¹

My long-held contention that psychiatric excuses are no less ill-founded than psychiatric incriminations, and that their consequences are perhaps even more disastrous, is illustrated almost daily by reports of crimes committed by criminals allowed to go unpunished because of psychiatrists. The following story is typical:

Fired Bay Worker Kills Ex-Boss, Dies in Gun Battle

(January 7, 1986) A one-time federal auditor ambushed and killed his former boss yesterday in a Sunnyvale office park The attacker had been fired and convicted of extortion for making threats against his bosses in the past. Court records reveal that he had been spared prison after a psychiatrist advised that he was not dangerous. . . . "In my opinion, the threats that he made were a situational response and unlikely to be repeated," psychiatrist Karen Gudiksen of Oakland wrote [in December 1984] Miller was placed on three years probation.⁵²

Unfortunately, there is, literally, no end today to such stories. But one more should suffice. On October 22, 1985, a young woman, named Mary Ventura, recently released from a mental hospital, pushed another young woman, Catherine Costello, under a subway train in New York. When apprehended, Miss Ventura said, "I am sick." "Yes, Miss Ventura is sick," echoed an editorial in *The New York Times*.⁵³ Miss Ventura, we are to understand, is not responsible for her act. Who is? "Society has to accept the responsibility for what Mary Ventura did . . ." declares Matthew Brody, director of mental health for the Brooklyn Academy of Medicine, in a letter to the *Times*.⁵⁴ Psychiatrists insist that because mental patients *have* mental diseases, they are not responsible for their criminal actions. I maintain that because *psychiatrists* believe in mental diseases, they are responsible for causing havoc in our society.

A hundred years ago in Russia, there was not much to celebrate when it came to civil liberties, and today there is still less. We have similarly

gone from bad to worse with respect to legal psychiatry. About a hundred years ago Mark Twain was moved to observe:

Of late years it does not seem possible for a man to so conduct himself, before killing another man, as not to be manifestly insane. If he talks about the stars, he is insane. If he appears nervous and uneasy an hour before the killing, he is insane. If he weeps over a great grief, his friends shake their heads, and fear that he is "not right." If, an hour after the murder, he seems ill at ease, preoccupied, and excited, he is unquestionably insane. Really, what we want now, is not laws against crime, but a law against *insanity*. There is where the true evil lies.⁵⁵

Mark Twain was more celebrated than heeded. Just as he was denouncing forensic psychiatry, Americans began their love affair with it.

Disjoining Rights and Responsibilities

Central to the contemporary argument favoring the general idea that insanity annuls responsibility—and in particular the idea that the insanity defense is morally desirable and practically necessary—is the denial that liberty and responsibility are two sides of the same coin. In fact, it is not possible to increase or diminish one without increasing or diminishing the other. "Liberty," said George Bernard Shaw, "means responsibility. That is why most men dread it."⁵⁶ The truth of this proposition is illustrated by the fact that Shaw's aphorism works just as well if it is turned around: "Responsibility means liberty. That is why most men dread it." This is indeed why not only many so-called mental patients, but many so-called normal persons as well, dread and reject responsibility.

Ignoring the organic connections between individual liberty and personal responsibility, the typical expert on psychiatry and the law—regardless of whether he is psychiatrist or lawyer—now advocates holding insane persons less and less responsible while giving them more and more rights. The result is an overt deprivation of responsibility and a covert deprivation of liberty, the latter masked by a deceptive rhetoric of fictitious rights.

Among these fictitious rights, the involuntary mental patient's right to treatment stands out as a monument to the hypocrisy of our Age of Madness. As I have shown elsewhere, the patient's right to treatment is, in fact, the psychiatrist's right to torture the patient in the name of treatment.⁵⁷

Typical of the enthusiasm for *nominally* disjoining rights and responsibilities—I emphasize *nominally* because they cannot actually be

disjoined any more than, say, competitive games can be disjoined from winning and losing—is Stephen J. Morse's simultaneous advocacy of the insanity defense and of a penumbra of rights for insanity acquittees (that is, persons acquitted of a criminal charge as not guilty by reason of insanity). How is it possible to assume such a self-contradictory posture? One of the things that makes it possible is using a debauched version of the English language (see Chapter 11). Thus, Morse, a professor of law at the University of Southern California, pontificates about "the actor's dangerousness and *need for incarceration*" (emphasis added),⁵⁸ as if the lawbreaker had a need to be incarcerated. But, of course, he does not; if he did, we would not need a system of law enforcement.

Nor is this all. Morse's intellectual repertoire contains such other items as the certain knowledge that "all behavior is caused. Causation is not the issue [in the insanity defense]; nonculpable lack of rationality and compulsion is."⁵⁹ By substituting culpable and nonculpable rationality for willed and caused action, Morse thinks he has offered an irrefutable justification for the insanity defense—and for psychiatrically punishing people so long as we call the punishment *treatment*.

Finally, Morse's compassion for the criminal who *needs* incarceration leads him to conclude that "We should not abolish the insanity defense unless we truly believe that every perpetrator of a criminal act deserves to be punished, no matter how crazy. If we do not believe this, and I do not see how we can, then we must retain the defense."⁶⁰ Morse may not be able to see how we can adopt such a position, but I can. And the reason I can is because if it is our intention, as it is mine, to *not disjoin* rights and responsibilities—regardless of whether a person calls himself crazy or others do so—then we must not only refrain from depriving the innocent person of liberty, but must also hold the guilty person responsible for his criminal acts.

It is important to note here that the penchant for disjoining the insane person's rights and responsibilities is a relatively recent development in psychiatry. Throughout the nineteenth century, and even as relatively recently as when I was young, psychiatrists saw the insane patient as a person similar to the infant and the idiot; accordingly, he had neither rights nor responsibilities. Such a person was then not only excused from crimes, but was also incarcerated in a mental hospital, often for life. At the same time, although such a patient had no responsibilities in the formal, legal sense of that term, he was expected to take care of himself, other patients, and the institution in which he was housed, much as a child is expected to help his parents. In short, the relationship between psychiatrist and patient was then *paternalistic* and *coercive*, but *predictable*.

The contemporary psychiatrist sees the mental patient as neither a full-fledged moral agent, nor as a completely insane person devoid of rights and responsibilities. This is why there is unceasing debate and disagreement—among psychiatrists, mental patients, lawyers, and courts—about the precise range of the patient's rights and responsibilities, which are disjointed and asymmetrical. This disjunction and asymmetry has now reached absurd and bizarre proportions, as the following examples illustrate.

On October 1, 1985, an Arizona Superior Court judge ruled on a suit brought by four former mental hospital patients asking the court to require "the state to provide comprehensive mental health services to its 7800 chronically mentally ill residents," a service estimated to cost more than 55 million dollars a year.⁶¹ One of the plaintiffs in this case was a man, Cliff Dorsett, whose right to sue the State of Arizona was apparently not compromised by his nonresponsibility for two remarkable crimes. In 1966 Dorsett killed ("murdered," according to the newspaper story from which I quote) a woman, was acquitted as not guilty by reason of insanity, and was committed to a state hospital for treatment. The treatment was so successful that a year later he was released. Two months after being released, Dorsett killed (again "murdered," according to the newspaper story) another woman, "leaving her body in south Phoenix and her head in Glendale [a Phoenix suburb]." Eight years later Dorsett was again released. He died of emphysema in 1984, before he could enjoy his courtroom victory over the state of Arizona.⁶² Evidently, when a man like Cliff Dorsett kills and kills again, American law does not regard him as a moral agent at all and does not hold him responsible for his crimes; but when he sues the state for "mental health care," the law regards him as a full-fledged moral agent and accords him the right to use the legal system to coerce the taxpayers of Arizona to provide treatment for his mental illness. Alice would never have dreamt of such a wonderland.

Here is another example of the labyrinthine disjunctions of rights and responsibilities characteristic of the present social situation of mental patients. Federal law now permanently denies former committed mental patients their Second Amendment rights to keep and bear arms. In 1985, a group called "Coalition for the FREE" brought suit on behalf of a

*The participants of the Coalition are: The National Mental Health Association; Mental Patients' Liberation Front, Inc.; Share of Daytona Beach, Florida; The Mental Patients Association of New Jersey; The Mental Patients Association of Philadelphia; and The Mandala Group (of Billings, Montana). So far as I know, none of these groups has addressed the parallel issue of the mental patient's responsibility, namely, that if the mental patient has a right to bear arms, he must also have the duty (right) to be held responsible for any crimes he commits with them.

former mental patient, Anthony Galito, challenging this law.⁶³ After the U.S. District Court for the District of New Jersey ruled in favor of the plaintiff, the case was appealed to the Supreme Court of the United States. The Coalition then filed a brief of *amicus curiae* arguing that the statute should be declared unconstitutional because it "irrationally discriminates" against former mental patients. The Supreme Court has agreed to hear the case. The brief is an eloquent plea for according former mental patients the same rights as are accorded other Americans:

... by assuring that even convicted felons have the possibility of being rehabilitated for purposes of acquiring firearms, while totally denying such rehabilitation to former mental patients, the federal statutes are a classic example of the irrational discriminations that still exist against many former mental patients' fundamental American rights. . . . The issue of equal entitlement to licenses and privileges for former patients is clearly one aspect of this historical discrimination.⁶⁴

Like all briefs on behalf of the rights of mental patients, this document makes no reference at all to holding mental patients, former or present, responsible for their crimes. I find it astonishing that advocates for mental patients continue to remain blind to the absurdity of ceaselessly clamoring for more rights for mental patients, but not for commensurately more responsibilities for them as well. Clearly, the reason for this is that they, too, believe in mental illness: "No one, least of all the *amici*," say the *amici*, "would urge the availability of firearms completely without reference to present mental illness."⁶⁵ In view of the definitions, meanings, and uses of mental illness, the *amici* act here like a sharpshooter who, while extolling his marksmanship, shoots himself in the foot.

Of course, some of the chickens are beginning to come home to roost—and others are sure to follow. If mental health professionals claim to be in the business of controlling their clients' behavior, and if they insist that their science tells them that mental patients are not responsible for their criminal behavior, then we should not be surprised that when a mental patient commits a crime, his therapist may be held liable for the damages. This happened in 1974 in the famous *Tarasoff* case⁶⁶ and again in 1985, in a case in Vermont.

In 1977, a 29-year-old man who had been a patient in a Counseling Center in Vermont burned down his father's barn. The circumstances, briefly, were as follows. The patient was a violent person with a long history of "impulsive assaults." A week before the incident, the patient's father asked him to falsify a Social Security document. An argument ensued in which the father called his son "mentally ill" and told him he

belonged in a mental hospital. The patient told his therapist he was angry at his father and felt like burning down his barn. The therapist asked the patient to promise that he would not do so. The patient promised and then burned down the barn. The father sued and the Vermont Supreme Court found the Counseling Center liable for the damages.⁶⁷ In our secular age, this is as close as I expect to come to seeing divine punishment visited on my colleagues.

As the examples illustrate, persons denominated as *mental patients* now sometimes have more rights than responsibilities, and sometimes less. The result is that the relationship between psychiatrist and patient is today not only *paternalistic* and *coercive* but also *capricious*.

While the progenies of the unholy union of psychiatry and law may have been defective in Mark Twain's day, they are monstrous in ours. Indeed, they are like anencephalic Siamese twins: on the one side, mental patients so lacking in rationality and intentionality that they can never be held responsible for a crime; on the other, psychiatrists so grandiose and greedy that they eagerly assume the mutually incompatible responsibilities of treating the mental patient for his mental illness, and protecting everyone else from his criminal acts. Hovering anxiously over them are the members of the learned professions and the public—all doing their utmost to keep the twins alive in their parasitic embrace, lest the effort to separate them prove fatal, as if there was no fate worse than death.

PART FOUR:

THE PRACTICAL USES OF MENTAL ILLNESS