A study of the outcome of insanity pleas referred to Al-Abaseya Forensic Psychiatry unit.

A thesis submitted for partial fulfillment of Masters' degree in Neurology & psychiatry

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List of Abbreviations

ALI: American Law Institute

APA: American Psychological Association

DSM-IV-TR: Diagnostic and Statistical Manual of Mental Disorders (fourth edition, text revision)

GBMI: Guilty But Mentally Ill

ICD-10: International Classification of Diseases-10

NCRMD: Not Criminally Responsible on account of Mental Disorder.

NGRI: Not Guilty by Reason of Insanity

Note: words that carry numbers throughout the text are explained in a lexicon.

"So fearfully and wonderfully are we made, so infinitely subtle is the spiritual part of our being, so difficult is it to trace with accuracy the effect to all who hear me, whether there are any causes more difficult, or which, indeed, so often confound the learning of the judges themselves, as when insanity, or the effects and consequences of insanity, become the subjects of legal consideration and judgment."

Thomas Erskine,
Address to the jury in the Hadfield case

Introduction

In many countries, there continue to be conflicting opinions and mechanisms regarding the appropriateness of treatment and/or punishment for mentally ill individuals who commit crimes. The general population is concerned with public safety and often finds it difficult to accept the possibility that a mentally ill individual who commits a crime can be hospitalized and eventually discharged, sometimes after a relatively short time. In most countries the options of incarceration[6] and hospitalization are available in concert.

In some, incarceration occurs before hospitalization. In others, hospitalization is first, followed by a prison term. An additional option could be "treatment years." The court would determine the number of years of treatment required, according to the crime.

This dilemma has no unequivocal solution. The goal is to reach a balance between the right of the patient to treatment and the responsibility of the courts to ensure public safety. **(Yuval Melamed 2010)**

Rationale of the study

Court referrals of defendants claiming criminal responsibility on the basis of the insanity defense have been on the rise to the extent that many psychiatrists and judges feel that the insanity defense has been misused.

Acquittal[1] of the criminally responsible defendant on the basis of insanity defense is as equally dangerous as incarceration of the criminally inculpable[7] mentally ill persons. The prevalence of successful pleas for criminal irresponsibility due to insanity defense in these referrals is thus important and informative.

Hypothesis

The majority of the insanity defense pleas referrals are unsuccessful, i.e. prevalence of successful insanity defense pleas is significantly lower than the unsuccessful ones.

Aim of the study

- Study the outcome of insanity pleas referred to the forensic unit at Al Abbassia mental health hospital.

- Compare probable factors predicting outcome of referrals, such as socio-demographic factors, type of the crime, motives of the crime, clinical diagnosis, symptomatology, etc…

- Give some suggestions for improvement of the referral and assessment processes of defendants who claim an insanity defense.

History & development of the insanity plea

- ***The ancient period:***

Imhotep (ca. 3000 BC), who was grand vizier and chief architect to the Egyptian Pharaoh Zoser, was 'the first great man combining the sciences of law and medicine; he might, if you wish, be described as the first medico- legal expert' **(Smith 1951)**. In Imhotep, we find the undifferentiated roles of priest/physician/statesman/ architect, although we should be wary about placing too much credence in the accomplishments of a figure who may be entirely a myth.

According to some authorities, ancient Babylonia provides us with evidence of the first murder trial and the first expert witness, in that case a midwife **(Smith 1951; Ackerknecht 1976).** One of the first instances of the consideration of intent in the weighing of personal

responsibility is found in the scriptures of the ancient Hebrews.

Deuteronomy[5] 19:1–13 describes the logic for establishing 'refuge cities' in which someone who had killed through sheer accident would be safe from capture by avenging relatives. The ancient Hebrew law understood the status of an act as determined by the intent of the actor. Thus, the notion of an evil mind entered into Western law **(Platt and Diamond 1966)**.

The importance of intention for judging human action was already evident in the Babylonian legal system as set forth in the Code of Hammurabi, although this system of law was terribly harsh, almost always meting out death for infractions[8] of law.

In other much more primitive laws, no qualification was made for the intention of actors, which was termed by **Kelsen (1946)** as ***'absolute responsibility (liability).'***

The ancient Greeks left the resolution of many conflicts to so called ‘private law,’ meaning that the parties to a dispute would be left to decide it among themselves. There was little need or opportunity for the rendering of expert or forensic opinion other than isolated instances such as a physician substantiating the pre-existence of a defect in a slave who had been sold. When questions of mental competence arose, there is no evidence that physicians were used as experts among the Greeks in any modern sense **(Rosen 1968)(Amundsen and Ferngren 1977).**

The Greek philosopher Plato saw the human soul as divided between the rational and irrational, the rational soul distinguishing human beings from lower or animal nature **(Zilboorg 1967).** Because human beings are free to choose, more severe punishments should be imposed for those ‘harms committed with some degree of calculation’. Plato’s great disciple, Aristotle, recognized the importance of knowledge in the imputation of responsibility: ‘A person is morally responsible if, with knowledge of the circumstances and in the absence of external compulsion, he deliberately chooses to commit a specific act’ **(Platt and Diamond 1966).**

Yet Roman law did recognize that those who committed acts without malicious intent should not be held accountable for those acts. The Twelve Tables, one of the earliest Roman codifications, made provision for a system of guardianship of the insane, usually placing the person and his or her possessions under the care of paternal relatives. The Lex Aquila[10] in the third century provided that: 'A man who, without negligence or malice, but by some accident, causes damage, goes unpunished'. Under the Lex Cornelia[11], children, because of the innocence of their intentions, and the insane, because of the nature of their misfortune, were excused from punishment **(Platt and Diamond 1966)**

On the subject of the insane, Roman law deals primarily with questions of guardianship and is not plagued by the almost single-minded concern with criminality one finds in modern sources. The question of intention, while important in the ancient literature, is overshadowed by issues of custody, protection, and status. This difference in emphasis flows from the approach that the Romans took toward the behavior of those who were deemed deviant or insane. **(Walker 1968).**

The sometime devastating result of their irrational behavior could be remitted by compensation to the victims paid by the guardian of the insane. Payment of money could act as a remedy even in a case of murder if the relatives of the victim (or the owner of the victim, in the case of a slave) would agree to such payment instead of some form of physical retribution. Roman law was not exceptional in this respect, somewhat the same kind of system obtaining in Anglo-Saxon and Danish England **(Walker 1968).**