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Forensic Psychiatry in Switzerland

Anton Harder*

WHILE IN GENERAL PSYCHIATRY, thanks to a lively scientific exchange in numerous journals and conventions, the borders of nations have mostly disintegrated, this cannot be said of Forensic Psychiatry, at least not to that degree. Every nation has its own methods and traditions which it zealously guards. The fact is that Forensic Psychiatry is not only a scientific matter, but it is just as much a part of the ethical and legal culture of a nation. Forensic Psychiatry, like political, legal, esthetic, and oftentimes, religious practices, is part of the self-realization of a nation. In this way, different countries arrived at different and varying solutions to social problems.

Although Switzerland is a small state (5.27 million people per 41,300 square kilometers) in the heart of Europe, she, nevertheless has succeeded in going her own way in Forensic Psychiatry. The actual position of Forensic Psychiatry in Switzerland cannot be understood if one does not consider that Switzerland is an explicitly federal nation: the twenty-two "cantons" which make up Switzerland do not only represent provinces and administrative areas, but basically, they are, in many respects, independent units, legally as well as culturally. For example, each canton is entirely autonomous as regards the school system. There are no Federal schools (except one—an institute of technology in Zurich); there are also no Federal institutions, hospitals, or Federal penitentiaries; all these institutions function on the basis of community, county, or private organization. Until 1942, every one of the twenty-two cantons even had its own criminal law! The advantage of this anti-centralistic position is that one can mostly escape the killing hand of a bureaucratic administration, while a disadvantage is that finances and personnel are difficult to obtain. We must state, however, that in Switzerland, especially in the small cantons, we have orderly and progressive conditions, and this applies

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also to Forensic Psychiatry. The smaller and easier to oversee a community is, the more likely is also the individual to be able to identify himself with it and defend its interests as his own.

The natural instinct of self-preservation and attention-getting will cause almost every nation to be convinced that she is the most progressive and has found the best solutions which all others can take for an example. In view of the fact that each situation is unique, the specific nation, or group, may be quite correct in this opinion. The fact is, anyway, that we Swiss people imagine that Forensic Psychiatry in Switzerland has reached the highest level of development. Perhaps this belief actually contains some truth.

Human, that is, ethical, concerns, have found enthusiastic defenders for many decades in Switzerland. The profound words of the world renowned educator, Heinrich Pestalozzi (1746-1827), "True humanity is more precious than all the beauty of the world," are not just a brilliant statement, but an expression of something essential of our sentiment in Switzerland. While other peoples may excel because of their artistic works, as for instance in painting, music, and poetry, or in religious, philosophical, scientific or technical achievements, it may be that the Swiss people have, perhaps, more in their blood as regards the ethical, the moral, and the legal, than many other peoples. These particular properties constitute the psychological basis for Forensic Psychiatry. After all, the latter is concerned with the recognition of, and the dealing with mental conditions as far as these are of legal significance.

The federal system renders each one of the citizens a pillar of the nation, even the psychiatrist himself (while in the centralistic system, he feels often enough like the object of exploitation by the state). Therefore, it is certainly not an accident that in Switzerland all psychiatrists have to concern themselves often with forensic psychiatric matters; and they even enjoy doing that. Almost any Swiss psychiatrist must do a considerable number of evaluations of legal-psychiatric cases during his training in public institutions; and in contrast to the United States, in Switzerland, most of the psychiatric activity occurs in public institutions, and only a smaller part in private institutions and private practice. Numerous superintendents and assistant superintendents continue to deal intensively with this aspect of psychiatric activity. On the other hand, in all of Switzerland there are very few psychiatrists who deal primarily with Foren-

sic Psychiatry; and, to my knowledge, there is no one who deals with it exclusively.

The fact that in Switzerland Forensic Psychiatry constitutes a respected and important task of many institutional and private psychiatrists, and not just a somewhat sneered at and unimportant undertaking, as is the case in many countries, may perhaps be related to the fact that we have many psychiatrists who do evaluation of court cases, but only few psychiatrists who do Forensic Psychiatry exclusively. Since Forensic Psychiatry, in our country, is no independent specialty, it escapes, therefore, the great danger of unfruitful separation and remains in live integration with General Psychiatry which, of course has progressed greatly the last few decades. In Switzerland, many investigators, often professors and directors of university psychiatric hospitals, have dealt with Forensic Psychiatry themes. A specific factor seems to speak for the great practical and scientific interest that Forensic Psychiatry has found in Switzerland, namely, that in close collaboration two important textbooks were edited. These are the "Textbook of Forensic Psychiatry" by Herbert Binswanger, and "Legal Psychiatry" by Jacob Wyrsh, which were written for the specific needs of Switzerland. However, they have found wide acclaim beyond our borders. Even the classic Swiss textbook of General Psychiatry, by E. Bleuler, contains an important chapter dealing with Forensic Psychiatry. There is no specific journal for Forensic Psychiatry. On the other hand, medical and psychiatric journals, especially the official journal of the Swiss Society for Psychiatry, namely the "Schweizer Archiv für Neurologie und Psychiatrie," contain numerous scientific papers concerning our theme, so that even here lively contact with medicine and general psychiatry is well-preserved. The lack of specialists involves, of course, the danger of dilettantism, which, it must be admitted, cannot always be avoided, since in the area of Forensic Psychiatry an objective judgment is not possible without certain experience. In any case, Forensic Psychiatry appears to constitute an empirical science, and in a certain sense, even an art.

On the other hand, one has to admit that this close collaboration between General and Forensic Psychiatry did not only help form the public institutions in Switzerland, but perhaps has hampered them. When criminals are present, even temporarily, in institutions for the purpose of psychiatric evaluation and even more, for safe keeping, there is great danger that the entire institution has to gear itself to these criminal elements

and that it may attain some of the character of a prison, or retain this character longer than would be necessary for other patients. Furthermore, the work of the psychiatrist is endangered, in the sense that his efforts and interests are focused too much on these often therapeutically unrewarding criminals, and that his activity ends with evaluations and disciplinary guidance. The result is that the original medical purpose, therapy, will sometimes remain in the background, and the character of a psychiatric hospital which the average institution should represent is sometimes lost. Of course, one has one basic job to do while not neglecting the other: after all, the public interest is served even less well when a public psychiatric institution is developed simply in the style of an exclusively active-therapy-oriented American private hospital. This results then necessarily in the fact that the legal offenders who are also in need of psychiatrists are either treated the same as noncriminal psychotics, which would be nonsense, or that they are abandoned to unsuitable jails and institutions for mere custody. This would constitute an injustice towards the legal offender, but even in the interest of the public it would not be worthwhile. There are probably many factors why criminality in Switzerland in comparison to other countries is low; however, one of these reasons is, certainly, that here even the criminal element is strongly drawn into the circle of medical efforts which presuppose that Forensic Psychiatry is not a stepchild but part of the central task of the average psychiatrist and psychiatric institution.

Although the psychiatrist has manifold and extensive opportunities for practical work in Forensic Psychiatry, the possibility for theoretical training in this field in Switzerland is not very developed. Only the University of Basel carries an assistant professorship for Forensic Psychiatry, while attendance at lectures is voluntary for the medical student. Other universities have no special lectures on the subject; however, Forensic Psychiatric problems are discussed in the framework of General Psychiatry. On the other hand, for the law student attendance at lectures concerning Forensic Psychiatry is compulsory. In general, there is a relatively lively relation between law and psychiatry. For instance, the annual convention of the Swiss Psychiatric Association in the summer of 1958 was held together with that of the Association of Criminology. Besides, there are, from time to time, conferences between criminologists and psychiatrists active in Forensic Psychiatry.

According to present criminal law, the cooperation of psychiatrists in legal proceedings is necessary in all those cases where there are doubts about the competence of an offender. Besides, the psychiatrist has to determine if special penal procedures should be instituted instead of a mere sentence. These would be, for instance, custodial care, or treatment in an institution and in what kind of institution, whether a closed psychiatric institution, workhouse, alcoholics or other custodial institution. Besides, the psychiatrist has to present to the appropriate authorities detailed requests when such procedures are no longer necessary. In former years the psychiatrist would even be presented with a defendant who would not admit his guilt, to determine if the particular accusation would be in keeping with the defendant's personality or if the defendant might be assumed to have committed the particular crime or not. Such questions, however, have been asked of the psychiatrist more rarely in recent times because the psychiatrists themselves justifiably limit their area of competence to a greater degree. Other rare requests concern the evaluation of the credibility of witnesses, especially when they are children. Incidentally, the judgment of the psychiatrist is often also considered in matters of civil rights, especially often in the question of the need for guardianship of fitness for marriage, and of divorce in chronic mental illness, or finally, where judgment and competency are in question in regard to any legal matter.

To Practical Forensic Psychiatry belongs, furthermore, the treatment and care of mentally abnormal criminals in closed and open psychiatric institutions and in psychiatric clinics, and also treatment by private psychiatrists, and, even more so, psychiatric service in jails, workhouses, etc. Very often the offender is released on probation, but only on the condition that he undergo outpatient treatment and control in a psychiatric clinic or by a private psychiatrist, while the responsible authority is concerned, in addition, with sufficient supervision. So far, there are in Switzerland no full-time prison psychiatrists. Psychiatric service in the prisons of Switzerland is handled in many different ways. As a result of the independence of the counties and the small size of many of the penal institutions, the psychiatrist comes only once a week and works for a half a day, or he comes only upon special invitation. Quite uniquely, the penal institution of the canton of Zurich in Regensdorf has had, for a number of years, a female psychiatrist especially for psycho-

analytical therapy and group psychotherapy. Admittedly, this type of psychiatric care in the penal system is meager; this lack can be explained, in part, as resulting from the lack of prisoners, which is at least a relative lack, in that even the largest domestic penal institution, with about 350 prisoners, is many times smaller than foreign penal institutions with their thousands of prisoners, quite apart from numerous smaller ones with only 30 to 100 prisoners. Our small figures are, incidentally, also caused by the basically low criminality, which has even further decreased in the last few years, and also because of the generally very short sentences.

But much more widespread and important than this therapeutic forensic psychiatric activity, is the activity concerned with evaluations, which now shall be dealt with specifically. The examining or pre-trial judge, and also the court itself and the authorities concerned with the execution of sentences, can request a psychiatrist, formally, to render a psychiatric evaluation (as was explained above, usually in reference to competence, or for an opinion as to the introduction or withdrawal of penal procedures, etc.). Of course the defendant himself or the defense attorney could request such a psychiatric evaluation. But except for a few private psychiatrists, most of the others, especially the institutional psychiatrists, refuse to accept such a so-called "party" or "private" evaluation. In the case when reasonably important reasons exist, the examining judge or the court will always admit the request of the defendant or his defense attorney and will himself order an evaluation of a "superior evaluation." This almost rigid refusal of non-official evaluations most certainly has contributed to the general prestige of psychiatric evaluations in Switzerland, which, sometimes, may be even exaggerated, in that the evaluating psychiatrist is seen in the role of infallibility, which he does not even want. It is clear, of course that the evaluating psychiatrist has much more difficulty remaining objective with a request from a private party. The expert has to, in each case of a psychiatric evaluation, be notified that according to the law if he does not give his expert opinion according to his best knowledge and beliefs he may be punished with a prison sentence. However, we do not know of any case in which a psychiatrist gave an arbitrarily false expert opinion.

How often and for what reasons are there evaluations of criminals? There are no statistics to answer this question for the entire country. There are cantons in which the examining judge

and the courts request many, perhaps too many, psychiatric evaluations, and others where this does not occur often enough. And, by the way, we find even here that the economic principle of supply and demand plays an equalizing role: where there are no psychiatrists available, or when there is an exaggerated demand for psychiatric evaluations and a long waiting period which may even extend the time until sentence is pronounced, there will be fewer requests for psychiatric evaluations in comparison with those locations where such requests for psychiatric evaluation can be met without delay. In the canton of Zurich, which is the most populated canton (nearly one million of a total of 5.3 million in the entire country of Switzerland) and which contains by far, the largest city of Switzerland, namely, Zurich, with approximately 500,000 population, the forensic psychiatric evaluations are done by the Psychiatric University Hospital of Burghoelzli (approximately 500 patients), as well as by our institution (approximately 1,200 patients), and by two adult and one child psychiatric clinic. Further forensic psychiatric evaluations are done by part-time "district physicians" in the country districts who are general practitioners, and in the city of Zurich, by four private psychiatrists (so-called District Physician Adjuncts), all of whom spend approximately 20-50% of their working time with these evaluations. Finally, there are also the physicians of private psychiatric institutions who contribute some of the forensic psychiatric evaluations. The total number of forensic psychiatric evaluations in the canton of Zurich per year amounts to roughly 300, while the total number of sentences (excluding numerous lesser cases) amounts to approximately 1,000; consequently, approximately one-third of the criminal offenders (not counting the lesser offenders) are evaluated psychiatrically. In any case, all major criminal cases are evaluated, not only for the determination of competence, and disposition, but also for criminologic-prophylactic reasons in order to gain an increased understanding of the psychological genesis of these personalities, and therefore, in the etiology and the pathogenesis of major crime.

What is now the actual procedure when a psychiatric evaluation is undertaken? The examining judge or the court will give a written request (which is added to the court's examination files) in which the psychiatrist is asked specific questions; usually, whether the offender is incompetent or of diminished competence and to what degree, and then, whether penal measures

are indicated, for instance, general care, custodial care, treatment, workhouse, treatment of alcoholics, etc. Finally, there is also the question of guardianship.

The more simple cases are evaluated on an ambulant basis, and are, therefore, assigned to a psychiatric clinic, being examined in an interview by the District Physician or the District Physician Adjunct. Those prisoners who are not an escape risk are brought to a psychiatrist, accompanied by a police officer; while those prisoners who constitute an escape risk are examined by the physician in prison. There is never just one interview. It is understood that besides the current material relating to the examination, information relating to previous offenses and information or relatives are utilized. The average evaluation consists of four extensive interviews. Approximately one-half of all evaluations are performed in this ambulant fashion.

The other half—and this is probably the more important half—are evaluated clinically. This method, as far as we can see, is an almost purely Swiss institution and depends much on Swiss mentality, which we have described previously. All complicated cases, and almost all major criminals, are taken for evaluation to the public psychiatric institution of the canton of their jail, in those cases that are imprisoned.

In Swiss institutions there is not, as in other countries, a definite dividing line between actual university hospitals and provincial institutions. In principle (although not actually in fact) all general treatment and custodial institutions are for both the acute and chronically ill, so that the offender comes out of the prison into a medically structured environment which, indeed, means an improvement for those habitual criminals who have spent their lives in the underworld. The “explorand” (this is what the criminal is called in the institution who comes for psychiatric evaluation) now attains the status of a patient of the institution with all those privileges and duties customary for the institution. For safety reasons—the possibility of escape will always have to be considered—the so-called “explorands” are not given work outside, and, of course, by no means, off-grounds privileges. The period of stay in the institution for clinical evaluation lasts, usually, two to five weeks, depending on the ambition and work load of the psychiatrist, and on the degree of complication that the case for evaluation represents. The explorand will of course be taken to a closed, but otherwise quiet ward. Only the specific danger of escape may lead to putting

the explorand, temporarily, into a continuously supervised ward for otherwise quiet patients. When there are numerous explorands in the institution at the same time, care has to be taken that they do not accumulate in the same ward, but that they are distributed to different wards so that they have little possibility to contact each other. It is certain that the presence of imprisoned explorands increases safety measures to the disadvantage of all other institutional patients and that it can contribute to the prison character of an institution. On the other hand, it is often of advantage for the offender to come to the freer and more intimate atmosphere of the institution, from the oppressive atmosphere of the prison. There is, of course, the question of frequency of escapes. In principle, it is not difficult to escape from any psychiatric institution with more-or-less ease, usually with few difficulties. The fact is that we have in our institution, among the approximately 60 explorands per year, two to three escapes. Many criminals do not constitute any escape risk at all. The fact is to be considered that the escapee has little chance to disappear for any length of time in our small country, thanks to the easily observable conditions.

So much about the placement of the explorand. But what is now the process of the actual examination? According to the amount of work and the experience of the physicians, the explorand will now be assigned to an institutional physician, as, for instance, the director, the assistant director or a ward physician. This physician will have numerous interviews with the explorand in the weeks following. At the same time, there is, of course a certain danger of superficial and even more so subjective evaluations, especially with the beginner. This danger is to be taken seriously. However, this danger is decreased somewhat by the fact that after conclusion of the evaluation and observation, a so-called collaborative examination takes place. The psychiatrist who was assigned the task of evaluation presents, to the director of the institution and the other physicians, the results of his examinations and observations in detail, which is followed by a presentation in person of the explorand, and results now actually in a collaborative examination. During this examination the chairman of the conference, usually the director of the institution, will conduct a more or less extensive diagnostic interview with the explorand, which, in many cases, will improve on the examinations of the examining psychiatrist. Only at this point is diagnosis made, by agreement, competency

judged, and necessity of certain measures determined. This collaborative examination will last, usually, one to two hours, including the presentation of the examining psychiatrist; but, in exceptional cases it may last much longer.

In spite of this collaborative examination, there still remains danger, to a certain degree, of subjectivism, with this method. If it is considered, on the one hand, that any psychiatrist can collect the necessary experience only in the course of many years; and that on the other hand, the offender can behave in many medical interviews in a very eloquent and exceptionally suggestive fashion, while the really damaged can communicate only through written material or be altogether non-responsive, than it has to be admitted that under certain circumstances it may be very difficult to arrive at an objective and inclusive picture. Furthermore, a fruitful exploration can be performed only when the explorand does not see the physician only as a representative of the state (in other words, of the opposition, as might be the case with a full time forensic psychiatrist). On the contrary, the explorand should establish a certain relation of trust with the examining psychiatrist. This will occur only when the explorand senses a friendly, medical orientation, rather than one of police character. Again, the danger of subjectivism is to be noted specifically. On the other hand, this type of relation is remotely related to the positive transference during a psychoanalysis. This may result in a cathartic action of a thorough exploration with psychotherapeutic effect. This, of course, is not the main goal of a psychiatric evaluation, but may be of considerable prophylactic importance. Besides that, this may provide for gratification and interest in his work on the part of the examining psychiatrist. It might be quite advantageous for many offenders to see that one is not only interested in the speediest and heaviest kind of punishment but that he is taken seriously in spite of his wrong-doing, and that an attempt is made to understand him as well as his deed. While he himself communicates many hundreds, perhaps even thousands, of details from his external and especially his internal personality development, he may become more aware of these connections and face himself for once, which often is a therapeutic procedure. Many of the offenders have consciously and with determination avoided this process.

The work of the psychiatrist involves the fact that initially he will obtain a picture of the family in which the explorand

grew up, in order to judge on the one hand the participation of inherited factors in the present situation of the offender, and on the other hand to obtain the picture of the family environment which plays a dominant role in the development of the personality. In this case it is necessary as a rule to question the relatives of the explorand. One can do this by letter or telephone. However, as a rule it is much more fruitful and more worthwhile to conduct a direct interview, be it in the institution or in the house of the relative. This means that a visit, for instance to the home of the parents, may contribute valuable insights and sometimes may clarify the picture in a decisive manner. On the other hand one will try, in the evaluation, to make very careful and conservative statements regarding relatives, without being entirely vague.

By the way, it is a fact that court records regarding relatives may be utilized, but not medical records, because of the confidentiality of such records. It is, for instance, not permissible to utilize the medical history of a schizophrenic mother even if she had been in the same institution where the explorand is placed, except when there is a written release or written permission for release of information either by the mother, or her guardian, or in case that she is deceased the husband, or in the case that he is deceased too, the presently living siblings. That is a complicated procedure, but it has to be employed on occasion, while earlier court records concerning the explorand may be utilized without difficulties. It is not permissible to obtain medical information, be it oral, by telephone, or writing, or in the form of reports and medical records of hospitals and institutions, without the explicit written agreement of the explorand. The appropriate form is presented to the explorand for his signature when he enters the institution. If he refuses to sign in spite of all intensive efforts, we refuse the evaluation and return the offender to the penal institution. This occurs in actuality only once during several hundred evaluations. Occasionally in the case of refusal the agreement of the explorand can be ignored if he has never been in medical treatment of the kind that would be of importance for the evaluation, or if earlier medical experiences are already known from earlier reports and evaluations to the authorities whose records are available to us. This means that we may not ignore the permission in the case of requests for evaluations by the authority dealing with guardianship. In numerous medical interviews we

now establish an extensive specifically-aimed personal anamnesis, concentrating on that which is of interest for the thorough answering of the questions of the evaluation. Here it naturally is often, but not always, necessary to have a detailed description of the subject's training, places of work with notations concerning the dates of beginning and end of employment, salary, and position, in addition to school and work references, information from employers, etc. Besides that, all other available records should be employed. Sometimes it may then happen that information and records have to be obtained from ten to twenty places and that the thus obtained records weigh up to one hundred kilogram or even more. More important than the knowledge of the external circumstances of the course of life may be an anamnesis oriented along the lines of depth psychology, which, however, requires much training and experience on the part of the psychiatrist when properly done. It is not customary in this case that the explorand lies on the couch. Many of the explorands have to be guided and controlled in their stream of talk; others on the other hand require careful efforts in order to talk. The psychological motivation for the crime and the psychological situation in regard to timing of the crime will be discussed with him with special emphasis. Also discussed will be the immediate and more remote future—for instance, the question of withdrawal of civil rights, vocational rehabilitation, and even marriage.

After the anamnesis is done, an attempt is made to arrive at a picture of the present condition. The behavior during admission to the institution, in the ward, and during medical interviews is being described. In some cases one can have an attendant or a nurse write a detailed description of the observations in the ward. For example: how he behaves towards other patients, attendants, visitors, etc., how he works, with whom, and with what he spends his spare time in the ward, and what kind of literature he is interested in.

In addition, and often as an added procedure, psychological tests may be performed. If observation does not provide a clear picture, the explorand will have formal intelligence testing and special tests to ascertain the presence of brain damage. Besides these intellectual tests (to which also belongs the calculation test of "Kraepelin") character tests are frequently employed—namely the association test of "Jung," the "Rorschach" test, and rarely other tests such as the "Luescher"—color test, the "Szondi" test,

the "Wartburg" drawing test and others. Most of the forensic psychiatrists are justifiably of the opinion that nothing and certainly no test is superior to a detailed anamnesis, which affirms the belief that man is primarily an historical being.

Finally there is the physical examination of the explorand, with routine laboratory testing including a Wassermann test. Special attention is paid to physical features of infantilism, of alcoholism, of vegetative dystonia, etc., and, also to beginning arteriosclerosis of the brain. An EEG is considered necessary only in exceptional cases.

From the voluminous examination and observation material, those conclusions which are of interest to the people who requested the evaluation have to be drawn. Although the picture of the personality does not as a rule appear as a specific question of the requesting person, it is often just this character and personality evaluation of the offender which is of interest to the judge. From mere records there is often obtained not only a very incomplete, but perhaps even an entirely distorted picture of a personality, and besides the judge has no chance to contact the offender personally prior to the court session, which is usually brief. This personality assessment of the explorand culminates in a medical-psychiatric diagnosis. There are, however, recent tendencies to lay less stress on the diagnosis, especially on the part of one-sided, psychoanalytically oriented psychiatrists who ascribe to the diagnosis only the value of a meaningless label. But these psychiatrists no longer see the forests for the trees, as the saying goes.

After a picture has been obtained of the personality of the explorand, and in terms of a longitudinal and a cross section, and also a picture of the actual situation immediately prior to and during the deed, the psychology of the deed itself can now be grasped, and one can obtain some insight into the often very complexed psychological mechanisms evolving during the time span of the criminal deed.

Only after such extensive preparation can one arrive at a judgment regarding the competence of the offender. There are in Swiss criminal law, besides full competence taken as the norm, also categories of incompetence and diminished competence, which are differentiated into degrees of mild, moderate, and severe. In the code of criminal law the medical-psychiatric criteria for absence of responsibility are mental illness, idiocy, and marked disturbance of consciousness. Relative decrease in

competence is found where there is interference with mental health or consciousness or a retardation in mental development. The psychological criteria for absence or reduction, respectively, of competence, are based on the inability or difficulty with the ability to have insight into the wrongdoing or the inability to act according to one's judgment of the wrongdoing. It is the task of the psychiatrist to determine whether, and if so, which of the conditions mentioned in the book of law are present. Although the question and the answer sounds simple, namely that the explorand is fully competent, competent to a diminished degree, or incompetent for a certain crime, the previously mentioned enormous preparation is still necessary in order to answer that question with absolute certainty. Both the length of the sentence and often the kind of sentence are dependent upon the determination of competence.

This, of course, is not the end of the psychiatrist's task. Now follows the no less important prophylactic or therapeutic one. He still has to make recommendations whether the offender simply be turned over to the usual penal procedure or whether special measures are indicated. If the offender continues to be dangerous the psychiatrist would have to recommend custody for an undetermined period of time for the safety of society (that is until the offender is no longer considered dangerous). According to the present law he can do this only in the case of those offenders whose competence is diminished or who are incompetent, except when a "revision" (a type of re-hearing or review) is being prepared, where he may give a recommendation also for the competent offender. He also will have to give his opinion whether custody should be taken over by a non-medical institution (a general penal institution, etc.) or by a medically conducted institution, namely one of the public and psychiatric institutions. From this there arises a fact which those not familiar with the conditions of Switzerland may find difficult to understand. That is, that we have a number of patients ordered by the court into custody in our psychiatric institutions. Of course this has far reaching consequences for the institutions themselves, and often the result is undesirable, as custody of too many of these people is detrimental to the character of a psychiatric hospital. The effects on the offenders in custody themselves, however, are usually favorable if their selection is performed with the strictest criteria. Such selection is not always easy, as the explorand himself often pleads very strongly for custody in

a psychiatric institution. When the offender with diminished competence, or the incompetent offender, requires urgent psychiatric treatment (e.g., the schizophrenic, the parietic, the chronic alcoholic and other addicts, or the sexual delinquent who is scheduled for castration) or depth psychological treatment, then the psychiatrist will recommend to the court administrative admission to a psychiatric institution after the sentence has been pronounced. When the offender is physically or psychologically invalid (for instance, he may be suffering from a chronic schizophrenic reaction, arteriosclerosis, or senile dementia) the psychiatrist will recommend institutional care to the court, again usually in a psychiatric institution which also deals with the chronically ill. In the case of those who habitually avoid work, the alcoholics, other addicts, and the habitual criminals (in this case also when they are fully competent) the psychiatrist can recommend to the court admission to an open or closed workhouse, or to a treatment center for alcoholics, or a rest home. Outside of these recommendations for the admission to a special institution, the psychiatrist should in his evaluation also give a prognosis which should be as specific for the case as possible, and he should discuss what kind of work and what places are dangerous for the offender and how one should act with the explorand. Since probably no one else has gained such an extensive knowledge of the personality of the offender as the psychiatrist, it is also his duty to conclude his task not just with the somewhat academic task of judging his competence, but with a keen awareness of the interest of society he should also render concrete recommendations and suggestions for the benefit of the offender. One may object that the psychiatrist here is transgressing the limits of his competence, and that in this way jurisprudence is threatened with a certain psychiatric hypertrophy; but in the first place the psychiatrist only makes suggestion to the authorities, and in the second place he would without hesitation leave the prophylactic task to other authorities as soon as he is certain that these are able to deal with the offender in a sufficiently intensive and individual fashion. Out of the same sense of responsibility towards society the psychiatrist should also give his opinion whether a withdrawal of civil rights from the offender is indicated, even when he has not been specifically asked by the persons who requested the evaluation, and he should indicate according to what legal premises such a recommendation was made. Whenever a withdrawal of civil rights is considered necessary,

the psychiatrist will send a copy of the evaluation to the appropriate authority of guardianship, so that his suggestions may not remain merely a matter of record. Sometimes the continuation of personal medical contact with the explorand beyond the time of evaluation will be extremely valuable for the explorand. Only in that way can the evaluating psychiatrist live up to his place in the fight against crime.

After the conclusion of the psychiatric evaluation and the accumulation of the necessary clinical data, the explorand is released from the institution. If he is under arrest, he will return to jail until his sentence is pronounced. Unfortunately this often takes quite some time. One can almost say that the bigger the canton is, the more voluminous will be the preliminary examination and also the longer it will take. The fear of mistaken sentences and mistaken treatment, and the inclusion of security measures, often act eventually against the defendant, and more so against justice in general, so that sometimes a year may pass between the times of arrest and pronouncement of sentence. (A misuse of such security measures to a grotesque degree led, as is well known in the case of Carol Chessman, to an interval of almost fifteen years between apprehension and completion of the sentence.)

What is the task of the psychiatrist when the defendant does not confess, and is possibly innocent? It is, of course, a temptation for the examining judge to employ a psychiatrist so that he may produce a confession from the defendant, but it can also be quite a temptation for the psychiatrist himself to proceed in this fashion. Off and on, clarification may be arrived at even without special measures. And in other cases? There will be simply uncertainty as to the facts concerning the crime. In the psychiatric evaluation the reasons for the competence procedures will then be specified; in the first place because the indictment may be entirely correct, but also in case the main indictment is dropped and minor indictments are retained. There would actually be the possibility of employing medical means which reduce the will power of the lying defendant, as for instance narco analysis, or perhaps even hypnosis. In former years this was actually performed in some individual cases. Recently, however, narco analysis as an adjunct in the court examination (but of course not as a therapeutic means) is explicitly prohibited in most of the cantons, even if the explorand would explicitly request such a means of examination. While in the past such means of

examination were employed without hesitation (although only when strictly indicated and absolutely voluntarily as far as the defendant was concerned), there has taken place now such a refinement of feeling for justice among the people under the influence of political and historical factors (and this may be sometimes even carried to the point of absurdity) that no psychiatrist in Switzerland would allow himself to use this method.

The defendant who does not confess may, in some cantons, go before a special court (*Schwurgericht*) which may consist exclusively of lay judges; in other cantons on the other hand he may be judged by professional judges. Since the jury in principle does not have access to records but bases its judgment exclusively on personal impression and the interrogations, the jury has no access to the psychiatric evaluation. Finally, the examining psychiatrist will be invited in person before the jury, the defendant, and the public—these sessions are public—and will give a summarized psychiatric evaluation of the defendant, and finally will answer questions of any kind put by the court. In such trials there is often considerable participation by the press; thus the contribution of the psychiatrist to the court by the justice stands out markedly and is of course consequently exposed to the criticism of the public. Almost as a curiosity it may be mentioned that in one canton (*Appenzell-Ausserrhoden*), the director of the psychiatric institution of the canton simultaneously occupies the position of a superior judge, which may simplify much, but of course can not constitute a general solution.

As far as the making of written evaluations is concerned, it is to be added that Switzerland is probably the country with the most extensive forensic psychiatric evaluations. There are, of course, considerable differences between the individual cantons. The average clinical psychiatric evaluation consists of twenty to forty typewritten pages, and in complicated cases there will be oftentimes evaluations of fifty or even one hundred pages. Such evaluations constitute an enormous achievement just in terms of work, especially if one considers that such evaluations are being performed by the evaluating psychiatrist in addition to his numerous other duties in the institution. The format of a forensic-psychiatric evaluation is as follows: Initially there is a repetition of the questions, followed by a detailed enumeration of the sources on which the evaluation is based (i.e., earlier court

records, earlier hospital records, information from relatives, employers, personal observations, etc.). This is followed by a very brief description of the facts pertaining to the crime, which are now to be judged. After this preface, there follows as the first main chapter the detailed description of the past history prior to the evaluation. In the second main chapter the present situation is described, including the behavior of the explorand in the ward as observed by the physician and the numerous observations relating to intelligence, emotional and instinctual life, the results of psychological tests, and the feelings of the explorand towards his present situation and the future. In the past the first two chapters of the evaluation were broken down in a different fashion: namely, in a collection of material on the one hand and a description of personal examinations and observations on the other hand. This type of division may still apply where one wants to know what others have found out, in contrast or, in addition to what one has found out oneself. The listing of the past history (of course, with continuous quotation of sources) and present history (similar to any other kind of hospital record) will present a coherent and impressive picture by which the main purpose of the evaluation is more than likely fulfilled. The third main chapter includes the diagnostic formulation in which the more important elements are summarized, where a diagnosis is offered, where the psychology of the crime is described, where the competence is determined, the prognosis given, and where all the possible measures are discussed. Finally at the conclusion there follows a very brief answering of questions specifically formulated by the court.

It may be of interest to know what an important meaning is ascribed by the court to such a well founded evaluation. In general one may say that the judges as a rule follow the explanation and conclusions of the evaluating psychiatrist, but by no means in all cases. It may be advantageous that the psychiatric evaluation does not assume the status of a dogma, and that the judge applies his own independent judgment. Being a psychiatrist dealing with court evaluations, one has to be aware that one may miss certain important points of view, and that (may the expression be excused) distortions and errors are possible in the relationship between physician and explorand.

In concluding this paper about forensic evaluations, a few statistical results regarding the activity of psychiatric evaluations in our institution will be mentioned for purposes of illustration. Between 1942 and 1958 our institution rendered 860 psychiatric

evaluations of offenders. Ninety per cent of the offenders were men, and only ten per cent were women.

As for types of crime, there were: 13% criminal offense against body and life; 52% theft; 26% a sexual crime; 4% arson; and the remaining 6% a crime involving jurisdiction, the state, honor, etc.

The primary psychiatric diagnosis in those 860 cases was in 6%—schizophrenic reaction (surprisingly few); 10%—mental deficiency; 4%—senile or arteriosclerotic dementia; 1%—epilepsy; 1%—traumatic dementia, general paresis, and post encephalitic conditions; 4%—chronic alcoholism; 1%—addiction to narcotics; 43%—psychopathy, 9%—neurosis, 1%—abnormal reactions, and 20% no mental disturbance.

Of the 860 evaluated offenders, 20% were declared fully competent; 72% competent to a diminished degree (and of these $\frac{1}{3}$ mild; $\frac{1}{2}$ moderate; and $\frac{1}{6}$ severe) and only 8% were declared incompetent. Therefore, it is by no means true, as is stated occasionally, that the psychiatrist will declare a large part of the explorands incompetent. In the case of one-third of the explorands penal procedures (custody, treatment, workhouse, etc.) and in another third withdrawal of civil rights were recommended.

This concludes our brief survey of forensic activity of psychiatrists in Switzerland. Many a custom, and many a practice may be similar to those in other countries. Much, however, appears to us to be a specifically Swiss solution; which however, we do not present by any means as ideal or exemplary. These specific trends have developed on the one hand out of the small size, ease of inspection, and multiformity of federal structure, and on the other hand certainly also out of the alert, civic, human and moral interests of our people.

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