

***Psychiatry and the Law,*
edited by Warren Brookbanks and Sandy Simpson**

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This is an excellent book that has gathered together contributions from leading experts representing a variety of disciplines¹ to produce an overview of forensic psychiatric practice, especially where it, “bear[s] the heavy imprint of legislation and legal processes”. The editors themselves are respectively a Professor of Law and a Director of Forensic Psychiatric Services.

The book is designed to replace *Psychiatry and the Law: Clinical and Legal Issues*, published in 1996. It focuses on practice in New Zealand but throughout there is discussion of, and comparison with, other countries (particularly Australia and the UK), so that it has a broad relevance.

It is primarily aimed at forensic psychiatrists and those working in forensic mental health but is expected to be of interest to lawyers and judges as well. The foreword, written by a High Court judge, confirms its usefulness to members of the legal profession and adds that it should be read by politicians, those in the media and others who influence public opinion in this area and who need a clear understanding of the issues involved.

The book is divided into 3 main parts: “Legal Principles”; “Clinical Issues in Relation to Mentally Abnormal Offenders” and “Forensic Psychiatry Service Provision”. The structure is such that you can read it through easily, there being a natural progression which leads you through the content. In practice however it is more likely to be dipped into, and most chapters can stand alone allowing you to do this; this does, of necessity, mean that there is a degree of repetition.

The Introduction by the two editors is subtitled, “Responses to risk: legal parameters and service responses”. They reflect that in the 10 years since the publication of their previous version of this text, various adverse public events have raised the profile of forensic psychiatry, at times in a negative light, but they believe psychiatry has emerged stronger and with “a more focused commitment to its service of the public”. In this time there has also been increasing demands on forensic services worldwide, through factors such as an increasing number of prison inmates. Other challenges faced by forensic services include shifting international trends in the law, from a traditional ‘proportionality’ approach to sentencing to one more focused on risk of re-offending (including dispositions such as preventative detention). The forensic psychiatrist asked to help in this, faces difficult ethical dilemmas. Advances made by forensic psychiatry in this time have included a better understanding of the relationship between mental disorders, violence and substance abuse, and improved risk assessment methodologies. They believe less progress has been made in “our understanding about methods for forensic care and risk management”.

The section of the text dealing with Legal Principles comprises the greater part of the book (9 chapters compared with 3 for Clinical Issues and 5 for Service Provision). It begins with a chapter on ethical issues in forensic psychiatry which admirably manages to pin down the key concerns in a complex area and meaningfully discuss them in a succinct and clear manner. Forensic psychiatry involves a greater degree of value judgements than other medical specialities and these judgements (which can affect the patient,

¹ The mix being approximately 50:50 contributions from lawyers and clinicians.

the public or even the clinician) have to be made in a changing social climate which seems to be shifting from concerns based on welfare to concerns based on justice. Throughout the chapter runs the theme of psychiatrists having to balance a duty to act both for the patient and for society – an often conflicting role. Writing a report for a court which is seeking a risk assessment before deciding on an indeterminate sentence, for example, involves the use of clinical skills to elicit potentially damaging information from a person, while having no therapeutic intent. To negotiate these difficulties it is suggested a forensic psychiatrist needs to adopt a transparent, systematic approach to ethical reasoning, and a suitable framework for doing so is discussed.

The Legal Principles section moves on to the definition of mental disorder, looking in detail at the wording used in the New Zealand *Mental Health (Compulsory Assessment and Treatment) Act 1992*. An aspect of the definition highlighted in the chapter is an abnormal state of mind as characterised by a disorder of volition. This can clearly cause difficulties when attempting to distinguish an “irresistible impulse and an impulse not resisted”. This chapter has been written with much of the emphasis on the importance of avoiding “paternalistic medical dominance”. The conclusion is that the *Mental Health (Compulsory Assessment and Treatment) Act 1992* is comparatively enlightened but would be improved by focusing on a lack of capacity as the measure by which to involuntarily treat someone.

The importance of individual autonomy is the theme running through chapters on the implementation of civil commitment and the application of public law. The efforts to strike a balance between a utilitarian versus a civil libertarian approach to civil commitment, the resulting “new legalism”, and the idea of “therapeutic jurisprudence” (the idea the law can be used to achieve therapeutic ends) are all discussed. A well considered approach to these difficulties is outlined. The authors² point out there is suggestive evidence that compulsory admission can be of benefit, but it is important to adopt a multi-disciplinary approach and involve the patient in the decision-making process as much as possible. This can involve preventative ethics, for example, whereby a person with capacity makes treatment plans in case they become unwell once more. While civil commitment allows a “doing to” approach to clinical practice, every effort must be made to adopt a “doing with” approach. The powers involved in civil commitment are nonetheless highly coercive and the principles of public law ensure its proper exercise and control. Human rights considerations are important and there is a very helpful overview of the human rights principles that are commonly invoked when the forensic system is challenged and an excellent overview of recent international case law. An interesting discussion follows about constitutional division of power – executive, legislative, judicial branches of government, federal and state divisions – and its implications for mental health law. The core principles of public law are then examined by considering their application in a given scenario, which is a helpful approach.

The Legal Principles section continues by looking at the insanity defence, fitness to plead and sentencing. It then finishes by discussing the way psychiatrists interact with the courts as expert witnesses and report writers, including a chapter which is a guide to writing reports.

A good history of the insanity defence is given, including, of course, the M’Naughten rules which are the basis for the defence in many western jurisdictions. It is shown how the defence may encounter problems in the face of human rights legislation, ‘disease of the mind’ and ‘unsound mind’ being very different in some circumstances. The UK courts have adopted a “narrow literal interpretation” of the defence while a more “liberal approach” is taken by the courts in Australia and New Zealand. In New Zealand an *understanding* of the nature and quality of the act and its wrongfulness is important not just a *knowledge*.

2 B McKenna, A Simpson and J Coverdale.

Furthermore, wrongfulness clearly relates to a knowledge of moral wrong not legal wrong and the test of the moral standard is subjective not objective in nature. This approach reflects, in the author's³ view, "sound common sense" and he makes a persuasive argument. The chapter includes a particularly clear exposition of the potentially confusing concept of automatism, especially in its explanation of the distinction between an internal or external cause.

Fitness to plead is examined in detail. The question of whether international human rights standards are met is again raised in relation to the criteria for fitness to plead and the disposal of those found unfit in the UK, Australia and New Zealand. Recent developments in Australia and New Zealand are outlined, and clinical issues follow with a useful section for psychiatrists on the assessment of fitness to plead and writing the subsequent report.

The sentencing and disposition of Mentally Disordered Offenders is often awkward. They can be less blameworthy but more dangerous, bringing public protection and human rights into conflict. The increasing influence of international human rights standards is a theme that runs throughout this chapter, indeed throughout the entire section on Legal Principles. The general principles that should be adhered to when sentencing are identified, such as facilitating treatment while maintaining proportionality, and there is a discussion of a legalism versus a welfarism approach which favours welfarism. Hospital orders in particular are covered, as used in Australia and New Zealand.

Psychiatrists as expert witnesses are described as "mistrusted guests at the legal table", with judges suspecting the medical expert of entrenched bias towards those who call them. The danger in this, according to the author⁴, is that it drives unsatisfactory ad hoc reform. More considered reforms are suggested, revolving around the need for lawyers and psychiatrists to come to a better mutual understanding; the author does justice to this important point.

During my training, I read several chapters in textbooks or articles in journals offering guidance when writing court reports but the chapter in this textbook by G Galpin is by far and away the best. It offers help with the mechanics of writing a report as well as examining potential legal and contextual complexities. It points out that the report should strive to enhance the options available to a court, bringing flexibility and humanity to the law, without dictating the law or excusing offending. It offers sound practical advice throughout and ends with a useful broad template for reports. This should be read by any psychiatric trainee embarking on their first report and would help to refresh and refocus those with more experience.

'Clinical Issues in Relation to Mentally Abnormal Offenders' is the next distinct part of the text. It has chapters on the 'schizophrenic syndrome' and antisocial behaviour, the assessment and management of violence risk, and those with intellectual disabilities. The schizophrenic syndrome is "central" to forensic mental health practice and the discussion that follows is thought provoking and extremely useful to clinicians. With great clarity, the author⁵ argues that the association between the schizophrenic syndrome, violence and antisocial behaviour is inherent to the disorder and its effects on the sufferer's functioning. He warns against an excessive willingness to attribute all problems to drug abuse which often becomes an excuse to offer reduced services to the patient or none at all. Principles for managing those high risk patients with a schizophrenic disorder are identified, offering good, practical, evidence-based advice. Interestingly, the author notes that there is no evidence that the drive to deinstitutionalise the

3 W Brookbanks.

5 P Mullen.

4 I Freckelton.

mentally ill has led to their increased criminalisation; this is at odds with opinions expressed in later chapters.

The next chapter gives a brief history of risk assessment in mental health systems, culminating in the current use of Structured Professional Judgement (SPJ) instruments, which take into account static and dynamic risk factors. It then describes the two most relevant SPJ instruments, the HCR-20 and START⁶, and points out their strengths and limitations. The chapter also describes a model of integrating risk assessment and management that is currently being put into place across all mental health services in New Zealand. It makes very interesting reading for clinicians working elsewhere, who might be involved in service development. The chapter finishes by emphasising the importance of a good therapeutic relationship and sound clinical practice in risk assessment.

A wide-ranging discussion about intellectual disabilities and the law finishes the section on Clinical Issues. Epidemiological studies are cited that suggest an over-representation of ID offenders in the criminal justice system, but it is pointed out that the association does not necessarily mean the historically assumed causal relationship is true. The intellectually disabled require special consideration at every stage of the criminal justice system from police questioning to disposal, and these issues are examined, together with a detailed look at New Zealand law which appears to have some good specific legislation for those with an intellectual disability. Further space is given to specific problems that can be problematic in forensic work with the intellectually disabled: sexual and violent offending and arson. The chapter finishes with a call for more work to be done in this under-researched area.

The final part of the book, Forensic Psychiatric Service Provision, initially identifies some important broad issues in this area. In 1987, a major investigation into services in New Zealand was prompted by a spate of homicides and suicides. This led to the establishment of some guiding principles for services: Mentally Disordered Offenders should have the same access to treatment as non-offenders; are the primary responsibility of the health rather than correctional system; mental illness should be able to be picked up at any stage in the criminal justice system; cultural understanding and family input are essential, and security and therapy must be integrated. An account of the development of services in New Zealand and their future direction then follows.

People of minority ethnicity are over-represented in forensic mental health facilities, be it in the UK, USA or New Zealand. The New Zealand experience in providing treatment and rehabilitation for Maori is given detailed consideration. Attempts made to address the problem that Maori do not seem to do as well in the current service framework, are obviously specific to New Zealand, but the chapter still makes worthwhile reading for the general lessons it has for health professionals trying to improve services for those of a minority ethnicity.

Chapters on psychiatric services to prisons and liaison with courts, reveals the problems associated with effective service delivery. Although advances have been made in New Zealand since the publication of the book's earlier edition, difficulties remain; especially the identification of mentally ill prisoners and the waiting lists for transfer to hospital due to the slow movement of patients through the system. Liaison services and court diversion schemes are compared and contrasted and although the subject is dealt with well, it is also recognised that the various different models of provision, the array of performance indicators and the lack of research into the area, make it difficult to give clear advice on the best way to develop or improve services.

6 *Historical Clinical Risk management-20 and the Short-Term Assessment for Risk and Treatability.*

The book finishes with a careful examination of rehabilitation in forensic psychiatry. Differing pathways for patients through services are discussed, together with different strategies for rehabilitation. Specific aspects of rehabilitation (risk assessment, pharmacotherapy and psychoeducation, through to work skills training or substance abuse work) are considered separately in a way that is useful and aids overall understanding.

The editors have been very successful in their aim of providing an overview of forensic psychiatric practice. Their obviously careful choice of subject areas and authors has paid off. Almost without exception the contributions are well-written, informative and interesting, especially to a clinician. I imagine the book would have less direct relevance to lawyers but it is a good aid for those seeking a greater general understanding of the area. I would have liked more detail in several of the chapters but this is bound to be a difficulty when the book's scope is broad and, in fairness, the editors say their remit was to provide a useful primary source of information, fully expecting that a wider inquiry might be needed. It might be difficult to use this book to find the answer to a very specific question but as a resource to quickly become informed on a given area in forensic psychiatry it is invaluable. The book's focus is on New Zealand but it deserves to be read by a whole range of professionals in a variety of countries.

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