International Journal of Law and Psychiatry 32 (2009) 355–361

Contents lists available at ScienceDirect

International Journal of Law and Psychiatry

Accountability and psychiatric disorders: How do forensic psychiatric professionals think?

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ARTICLE INFO

Keywords:
Mental disorder
Forensic psychiatry
Accountability
Ethics

ABSTRACT

Swedish penal law does not exculpate on the grounds of diminished accountability; persons judged to suffer from severe mental disorder are sentenced to forensic psychiatric care instead of prison. Re-introduction of accountability as a condition for legal responsibility has been advocated, not least by forensic psychiatric professionals. To investigate how professionals in forensic psychiatry would assess degree of accountability based on psychiatric diagnoses and case vignettes, 30 psychiatrists, 30 psychologists, 45 nurses, and 45 ward attendants from five forensic psychiatric clinics were interviewed. They were asked (i) to judge to which degree (on a dimensional scale from 1 to 5) each of 12 psychiatric diagnoses might affect accountability, (ii) to assess accountability from five case vignettes, and (iii) to list further factors they regarded as relevant for their assessment of accountability. All informants accepted to provide a dimensional assessment of accountability on this basis and consistently found most types of mental disorders to reduce accountability, especially psychotic disorders and dementia. Other factors thought to be relevant were substance abuse, social network, personality traits, social stress, and level of education.

1. Introduction

Most penal codes include a requisite of accountability for a person to be considered legally responsible for his or her deeds. Accountability is usually defined in terms of the M'Naghten rules that state that in order to be legally responsible for a criminal act, the perpetrator must have (i) known what he was doing, and (ii) known that what he did was wrong (see e.g., Hart, 1992). The Criminal Code of Canada states that: "No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong" (Section 16 of the Criminal Code of Canada). In some countries, a volitional criterion is added stipulating that in order to be accountable, a person must also be able to control his or her actions. The Penal Code of Finland includes such a volitional criterion: "The offender is not criminally responsible if at the time of the act, due to mental illness, severe mental deficiency or a serious mental disturbance or a serious disturbance of consciousness, he/she is not able to understand the factual nature or unlawfulness of his/her act, or his/her ability to control his/her behaviour is decisively weakened (criminal irresponsibility)". (Section 4 of the Criminal Code of Finland) (authors' translation).

Sweden and a few other regions in the world (Greenland, Idaho, Montana, and Utah) have a system that does not allow acquittal on the grounds of reduced accountability (SOU, 2002:3). The very term "unaccountability" ("otillräknelighet") was long ago omitted from the Swedish legislation. Instead, when an offender is found to suffer from a severe mental disorder (medico-legally defined by the nature and degree of the disorder), involuntary psychiatric treatment replaces prison as sanction.

Numerous arguments speak against the current Swedish system, and the search for an alternative has long been in process. The re-introduction of accountability as a requisite for criminal convictions has been called for by most participants in the debate, including several parliamentary committees. A recent addendum to the current legislation (voted by the Swedish Parliament in May 2008) allows prison sentences regardless of mental disorder if the crime is severe, if the need for treatment is limited, or if the offender himself has brought about the disorder by, for instance, intoxication. Offenders who "lacked the capacity to realise the nature of the deed or adjust their actions according to such knowledge" due to a severe mental disorder will, however, still be sentenced to treatment.

If the concept of accountability were to be reintroduced in the Swedish juridical system, who would be given the task of assessing accountability? In the current Swedish system, forensic psychiatric

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0160-2527/$ – see front matter.
doi:10.1016/j.ijlp.2009.09.004

assessment teams authorized by the National Board of Forensic Medicine provide the courts with written expert opinions on whether the defendant suffers from a severe mental disorder and whether the crime was committed under the influence of such a disorder. Expert opinions are rarely questioned. Forensic psychiatrists have played a prominent role in the preparatory work for a new legislation. Considering their historical role in Swedish legislative and tribunal processes, it is highly likely that their advice will also be sought on accountability in individual cases. Since the way psychiatric experts and other forensic professionals use concepts and ideas will be a decisive factor in the implementation of any suggested legal reforms, their discernment of the issues involved should be considered in detail both before such reforms are introduced and in the process of implementing new laws.

To explore such aspects, we have interviewed representatives of four categories of forensic psychiatric staff (psychiatrists, psychologists, nurses, and ward attendants) to collect data on:

1. how these professionals would assess a person's accountability on the basis of psychiatric diagnoses and case vignettes depicting mental health problem constellations,
2. whether the assessments differ across the professional groups,
3. which other variables, besides mental health problems, the respondents would consider to be relevant for the assessments of accountability, and
4. how the respondents describe the reasoning behind their considerations when assessing accountability.

2. Methods

The study includes five Swedish forensic psychiatric clinics chosen to represent both court-ordered investigative work and high-security long-term treatment. All psychiatrists ($n=30$) and psychologists ($n=30$) on duty on the day the institutions were visited were asked to participate, while nurses ($n=45$) and ward staff ($n=45$) were randomly chosen from staff lists. All gave informed consent to participate in the study. The current Swedish legislation requires these professional categories to be represented in forensic psychiatric assessment teams for court-ordered investigations. Another professional category participating in such teams, the forensic social workers, were not included in the present study as they perform social rather than psychiatric assessments. The study was approved by the Ethics Committee at Lund University (Dnr. 54-01).

All informants were given a brief, verbal background introduction to the study. They were also informed about the confidentiality of their answers. In order to ease understanding of the questions, every informant was given a written copy of the questions during the interview.[1] Interviews took from 45 min to 2 h to complete. The interviewer (PH) took notes and ended each interview by going through all answers, including specific words and exact quotes, with the informant to make sure that the notes were correct.

Before the interview, accountability was defined as comprising (i) knowledge of the nature of one's actions, (ii) knowledge of the moral value of one's actions, and (iii) the ability to control one's actions. This definition was chosen from classical theories of retribution and the extended M'Naghten rules, as presented above (Nordenfelt, 1992; Moore, 1980). All interviews started with an introductory question (omitted from the written questionnaires) about whether the respondent thought that it was possible to assess how specific psychiatric diagnoses influence accountability. All informants agreed that it could be done.

[1] One of the authors (PH) tested the questionnaire on subjects working in different areas in forensic psychiatry prior to the study and did not encounter any specific problem concerning the comprehensibility of the questions involved.

Respondents were first asked to rate the degree to which they thought that 12 specific psychiatric diagnoses, and the psychiatric disorders described in five case vignettes would influence accountability on a scale ranging from 1 to 5, where 1 was defined as "not at all impaired" or "fully accountable" and 5 as "maximally impaired" or "not at all accountable". The vignettes were extracted from true cases, three randomly chosen from preliminary forensic psychiatric investigations by psychiatrists and two from nursing evaluations. The purpose was to use real cases as described in the written psychiatric evaluations/investigations. The vignettes differ both in length and content and are included in Appendix A.

We chose to let the respondents assess accountability as a dimensional phenomenon. The meaningfulness of a graded concept has been questioned, and it is problematic for lawyers to accommodate notions of being "almost accountable" or "nearly accountable" (Wennberg, 2002). In psychology and psychiatry, however, it is reasonable to think that a person can have a more or less accurate view of the nature of her actions or a diminished, but not totally absent, action control. The term "diminished accountability" has been proposed to be in the Swedish code (SOU, 2002:3. Official Government Reports Series, 2002:3), and internationally there are a number of current legislations that make use of this notion. Given these considerations, we set out to test the hypothesis that psychiatric staff would consider it possible to assess accountability dimensionally.

In a second step, respondents were asked to describe which other factors, beside psychiatric variables, they would consider relevant for assessments of accountability.

Finally, the respondents answered an open question about how they had formed their opinions about accountability.

2.1. Analyses of results

The graded assessments of accountability in psychiatric diagnoses and cases were treated as ordinal data and analyzed statistically by the Statistical Package for the Social Sciences (SPSS) version 15.0 (Pallant, 2006). Beside descriptive statistics, the ratings across the different professional groups of each diagnosis and each case vignette were compared by non-parametric Kruskal–Wallis analysis of variance in order to detect systematic differences across the professional groups. The questions about which factors the informants considered to be relevant for the assessments are presented by quantitative renderings of the frequencies of different words and expressions. Finally, in a semi-qualitative step, quotes on how the assessments were made were analyzed for possible themes by a close re-reading of the raw data. By nature, a thematic analysis such as this depends on the interpreters and will never be free from a considerable element of subjectivity. To provide as objective data as possible, we have included both quotations and prevalences of individual words or short expressions in the material.

3. Results

3.1. General descriptions of answers and statistical comparisons between professional groups

From the detailed account of answer patterns provided in Table 1, it may be deduced that assessments were quite consistent, especially when psychosis was at hand, and that forensic psychiatric professionals generally held the opinion that accountability is diminished to a very considerable degree (ratings of 4 or 5 on the dimensional scale were used, where 5 stands for "not at all accountable") by a wide range of psychiatric disorders.

Diagnostic denominations such as psychosis, dementia, and mental retardation thus seem to indicate to professionals that people assigned these diagnoses generally have severely diminished accountability. Grades 4 or 5 were invariably rated for the diagnosis of schizophrenia