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Elephants, Monstrosities, and the Law

An elephant goes berserk at the circus, an elderly pillar of the community is discovered to be a child molester, a man admits to killing many young boys and storing parts of the bodies in the refrigerator, and a disgruntled employee shoots seven co-workers. Each of these news stories will be followed by a series of articles of anguished soul-searching in which the educational system, the perplexity of life, the stress of modern society, or the brutality of zookeepers will play prominent roles. Yet each probably has a common origin: the simple fact that the brain is an organ, and like other organs—the heart, the lungs, the liver—has an internal biochemistry that can break down. Because of the special role of the brain, there are those who want to believe that it can only be affected by the environment; they refuse to face the fact that the brain, like other organs, while functioning correctly in most areas, may have one part go awry and cause major malfunction.

If we treat the brain as another organ, then the fact that an elephant or a human goes berserk is as easy to comprehend and as difficult to unravel as cystic fibrosis, tuberculosis, or AIDS. Sometimes the damage to the organ will be hereditary and sometimes environmental, but it is not mysterious that a large fraction of the organ can behave perfectly correctly while a small section has totally abnormal qualities.

An understanding of the chemistry of the brain should put us on the course of trying to identify biochemical causes of mental disease, a major advance over current views of such afflictions, which too often involve debates regarding the nature of evil and the definition of insanity. In the trial of the Milwaukee killer there is extensive discussion of whether he should be declared not guilty by reason of insanity, a kind of legal monstrosity first used in the last century. It is ludicrous to say that someone who has confessed to serial killings and cannibalism is sane in any normal sense, but in one sense any crime is insane to a normal citizen. There is no simple dividing line between sane crime and insane crime. Yet this sets up a curious standard: the more monstrous the crime, the more likely a criminal is to be declared “not guilty by reason of insanity” and perhaps even be released in a few years on psychiatric testimony that says he is cured.

“Not guilty by reason of insanity” was designed to protect those mentally ill individuals whom society recognized should not be placed in jails, but rather in mental hospitals. That was before the day when self-styled experts could blandly testify at trials that an individual was not guilty by reason of insanity, then later have that individual proclaimed to be cured and ready for safe release into the general population. When psychiatry is sufficiently advanced so that its practitioners can accurately predict future behavior, we may be able to prevent the damage caused by a berserk elephant or a berserk human being. But until such prediction is reliable, the concept that one guilty person should be released from a prison or hospital earlier than another individual on the basis of an expert’s testimony is nonsense. Such circumstances cause revulsion in society against all mentally ill individuals, most of whom are harmless to others. It also causes disdain for experts who appear to favor those who have the money to pay for expert witnesses.

There are a number of steps that we can take. The first is to increase the amount of research into mental illness so that in the future we can separate those who are likely to pose great danger to others from those who only pose dangers to themselves. The astonishing progress in cures or prevention of cancer would never have been achieved if we simply lumped all cancers together instead of recognizing that some are caused by viruses, some by heredity, and some by carcinogens and diet. Yet this lumping is routinely done in mental illness. Distinguishing among types of mental disorder on a scientific basis prevents the illogical procedure of release of an insane person who cannot profit from experience earlier than a sane one whose crime is less bizarre. The first step is to have trial procedures that simply determine whether the individual actually committed the crimes. At that point, the treatment he receives could be decided by a second process determining the type of illness and the appropriate treatment during the years of incarceration. Such a process would not only remove the temptation for phony appeals and dubious science, but would also help provide statistics on which treatment succeeded, leading in the long run to kinder treatment of individuals and prevention of future tragedies.—DANIEL E. KOSHLAND, JR.