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## Szasz: Psychiatric Justice

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PSYCHIATRIC JUSTICE. By *Thomas Szasz, M.D.* Syracuse, New York: Macmillan Co. 1965. Pp. 283. \$6.95.

The dust jacket describes this publication as "the definitive indictment by the celebrated author of 'Law, Liberty and Psychiatry' " of an extraordinary and characteristic abuse of our time—the psychiatric denial of the right to trial. In the introduction, Dr. Szasz indicates that he is addressing himself to the issue of the ability to stand trial, a technical legal issue. Dr. Szasz does not discuss this topic meaningfully from either a legal or a psychiatric viewpoint. Instead, he addresses himself to basic philosophical questions concerning the right of experts to participate in the judicial determina-

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tions. Indeed, he questions the fundamental basis of our legal system, an inquiry which might or might not be necessary. Should one desire such an inquiry, a psychiatric dimension might be of some significance. I doubt, however, that such broad social and legal problems could be handled adequately from a psychiatric standpoint. The fact is that Dr. Szasz raises a very broad question, but answers it within very narrow confines of psychiatric ethics, as he defines them. He considers it unethical for the psychiatrist to participate in any activity which does not coincide with the conscious wishes of the patient. He makes this issue the central theme of this book, as well as of his other writings on law and institutional psychiatry.

Dr. Szasz states: "In the case of adults, I consider that an individual's 'best interests' are whatever he himself says they are."<sup>1</sup> Participation of a doctor in any activity which goes counter to the expressed wishes of the individual is evil and immoral.

The role of the physician employed to examine and pronounce dead the bodies of convicts executed in the gas chamber or electric chair resembles the role of the physician employed in the concentration camp. Such a doctor helps agents of the state—the prison officials—to implement the law. Where there is a death penalty, there must be persons who kill convicts, and physicians who assist such persons in their work. I do not question here the moral legitimacy of the death penalty. While I personally lean toward the view that this penalty ought to be abolished, it cannot be denied that some reasonable arguments can be advanced in its defense. My point is to call attention to the *social role of the physician assisting in executions*: the convict to be put to death is not his 'patient,' whom he helps, but his antagonist, whom he harms.<sup>2</sup>

Dr. Szasz applies the same reasoning to the doctor who functions as an expert witness in any legal proceeding. His "indictment" includes any and all activities in which psychiatric opinion might serve as the basis of an action not approved by the individual whom it affects. Dr. Szasz does not question the actions as such, but merely the psychiatric participation in reaching the decision. He mentions two situations in which he testified in the courtroom concerning the defendant's ability to stand trial. In each instance, Dr. Szasz informed the attorneys that if his findings were contrary to the defendant's wishes, he would withdraw from the case. "We agreed that I would act as Mr. Hoffer's psychiatrist if, after examining him, I considered him mentally fit to stand trial; if I did not consider him fit, I would withdraw from the case."<sup>3</sup> Dr. Szasz does not hesitate to express a categorical opinion that an individual is able to stand

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1. P. 57.

2. P. 58. (Emphasis added.)

3. P. 145.

trial, provided that his testimony is identical with the defendant's goals.

The criteria for competence to stand trial are legally defined; psychiatry enters this problem only secondarily, in response to questions framed in legal terms. In spite of this, Dr. Szasz implies that psychiatrists are infringing upon the right of individuals to stand trial.

The problem facing law and psychiatry has been a failure of communication, with the resulting lack of meaningful cooperation in matters where interaction between law and psychiatry is inevitable. Nevertheless, Dr. Szasz states clearly that it is his intention to make dialogue between psychiatry and law impossible. He questions the fundamental bases of law, yet he displays a remarkable lack of familiarity with basic legal procedures. He assumes that psychiatric opinion holds great controlling influence in the courtroom, and a mere reading of statutes or decisions might well lead to such an assumption. In reality, however, the reverse seems true. Those familiar with the courtroom situation are well aware that psychiatric testimony can be compelling and relevant. Nevertheless, the judge or jury will often disregard this testimony, even if the other side fails to present contrary psychiatric testimony.

Dr. Szasz does not wish to eliminate opinion testimony from the courtroom; however, he does want this testimony to be limited to lay witnesses, eliminating the expert. He says that "the criminal trial is, so to speak, the judge's 'ballgame.'"<sup>4</sup> Since he is the umpire, he certainly ought to know who can and cannot play the game. Competence to stand trial means competence to play the role of a defendant, and, indeed, it is a legal standard which is determinative. Why then cannot the judge determine whether the defendant is competent to stand trial? Dr. Szasz goes on to say that the judge could determine this on his own by "talking to the defendant or proceeding with the trial and observing the defendant's conduct in the courtroom." He claims that:

[T]he judge does neither. Instead he delegates the task of assessing what kind of game-player the defendant is to psychiatrists. But this means that, merely because of a "suspicion" about the defendant's mental status, he is removed from the category of an ordinary human being, with whom judges can converse—and is placed in the category of the insane, who, having been demoted from person to patient, must be examined by psychiatrists.<sup>5</sup>

The facts upon which Dr. Szasz bases his conclusions are inaccurate. The fact is that the judge does speak to the defendant; the

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4. P. 27.

5. P. 28.

judge often is the fact-finder and frequently overrules psychiatric opinion in favor of conclusions based upon his own observation.<sup>6</sup>

No one would disagree that there have been considerable shortcomings in our administration of statutes concerning the ability to stand trial. These shortcomings derive mostly from inadequate medical facilities, poor representation of impoverished defendants, and occasional deliberate abuse. Dr. Szasz quotes from an article by Professor LaPlante discussing an instance in which a psychiatrist was used to trick a defendant into making self-incriminating statements which were used to convict him. Dr. Szasz then reaches the remarkable conclusion that the forensic psychiatrist is "the defendant's covert adversary." He refers to forensic psychiatrists as "persons who have more or less freely chosen to earn a living by depriving some man of the right to be tried." Evidently, Dr. Szasz feels that the existence of an abuse invalidates the basic principle.

Throughout the book, Dr. Szasz indicates that the statutes governing competency to stand trial are a weapon used by prosecutors to deprive citizens of liberty in situations where a conviction could not be obtained. To this end, the prosecutor is assisted by unscrupulous psychiatrists. Furthermore, "the psychiatrist (or any other 'behavioral expert,' such as the psychologist) can play no part in this affair—either as decision-maker or as provider of 'expert opinion.'"<sup>7</sup> In this manner, Dr. Szasz creates his own strawman, which he then proceeds to attack with devastating success.

The main weakness of the book is its scholastic character, which makes it an anachronism in the scientific world of today. The main value of modern psychiatry derives from the empirical approach to which it is committed, but Dr. Szasz is highly non-clinical in his handling of the issues involved. He freely admits, and it is abundantly obvious, that he lacks familiarity with the subject of his polemic. The book and its conclusions suffer from the author's disregard of the experience and research of other workers in the field. He does quote other authors on occasion, but this is done selectively and often out of context.

The title of the book may lead some to believe that it deals with psychiatry, but it offers neither psychiatric theories nor psychiatric insight.

Dr. Szasz sees the role of psychiatry in the administration of justice in Orwellian terms. He even speaks of a "psychiatric state." One can hardly argue with the main thesis of this book; one can merely accept or reject the convictions of Dr. Szasz.

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6. Cf. *People v. Wingart*, 371 Mich. 264 (1963).

7. P. 255.