

his scientific papers. This is understandable. The models required for experimental work and clinical practice are quite different. But that is quite another issue.'—ED.]

THE GANSER SYNDROME

DEAR SIR,

I note that Dr. Tsoi (*Journal*, 1973, 123, 567–72) places the Ganser syndrome 'on the hysteria-malingering dimension rather than as a psychosis' and then suggests that the syndrome by itself should not constitute unsoundness of mind for criminal purposes. What does this mean to the forensic psychiatrist?

I suggest that there are three points in the criminal law process when the mental state of the accused and/or convicted man is properly in issue: (i) regarding fitness to plead; (ii) regarding the various mental state defences; and (iii) in relation to culpability for the purposes of sentencing. In my opinion the *Ganser syndrome*, as opposed to a diagnosis of *malingering*, is relevant to the issue of fitness to plead (1). If, at the time of arraignment (or at a time before the opening of the case for the defence) the accused suffered from the Ganser syndrome as described by Dr. Tsoi then I maintain that there would be a proper issue of unfitness to plead to put before a jury. This is because fitness to plead is essentially a matter of communication rather than a question of insanity or unsoundness of mind (2), as is apparent from the cases concerned with the deaf and dumb (3).

When one turns to consider the mental state defences it has to be remembered that the only concern is the mental state of the accused at the time of the commission of the alleged offence. I cannot recall any mental state defence being raised on the basis of a Ganser syndrome, but I can recollect a successful defence ('automatism') to a murder charge based upon the diagnosis of an hysterical dissociative state (*R v. Ede*) (4) and a successful defence to a charge of attempted murder on the same psychiatric diagnosis which led to a verdict of not guilty on the ground of insanity (*R v. Davies*) (5). However, I do not think it at all likely that the notion of a Ganser syndrome, as opposed to an hysterical dissociative state, will have any relevance to a mental state defence.

The major problem presented by the mental state of an individual involved in the criminal law process is found at the post-conviction-pre-sentence stage. Here one may well see variations on the Ganser syndrome theme when offenders, in many cases,

have little more to seek than judicial sympathy. It is at this stage that the presence of a Ganser syndrome is relevant in that the court should be informed of the presence of the syndrome and what it may mean in itself and in terms of the personality of the offender.

There are some other more exotic matters regarding mental state and the correctional (criminal law) process, for example unsoundness of mind and capital punishment (6), but these will not be considered here. What is not appropriate is simply to state that the Ganser syndrome, however defined, is not unsoundness of the mind for the criminal law. It is suggested that if the diagnosis is 'malingering' such a proposition should be baldly stated and supported and the diagnosis not dressed up and called a Ganser syndrome, 'the simulation . . . (being) at the conscious . . . level'.

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REFERENCES

1. *Criminal Procedure (Insanity) Act*, 1964 s.4; for Victoria see *R v. Presser* 1958 V.R. 45.
2. See *Crimes Act*, 1958 s.393 for Victoria.
3. In *Podola's case* (1959) 43 C.A.R. 220 at 238 one reads "shall be insane . . ." contained in section 2 of the Act of 1800 have in many cases since 1800 been construed as including persons who are not insane within the McNaughton Rules, but who, by reason of some *physical* or mental condition cannot follow the proceedings at the trial and so cannot make a proper defence in those proceedings' (my italics).
4. Not reported but briefly commented upon in BARTHOLOMEW, A. A. (1962) Time for revision of M'Naughten Rules. *Med. J. Aust.*, i, 382.
5. Not reported.
6. See *Re Tait*, 1963 V.R. 532; *Tait v. R*, 1963 V.R. 547.

Publication of the Journal during National Power Shortage

Because of national restrictions on working hours, the *British Journal of Psychiatry* contains fewer pages than usual. We regret this situation and hope to receive the indulgence of our readers.

The *Journal* will return to its normal size as soon as conditions permit.