

THE SOCRATES OPTION

BY THOMAS SZASZ

Before he was sentenced to 15 consecutive life terms in prison last February, Jeffrey L. Dahmer told Milwaukee County Circuit Judge Laurence C. Gram Jr. that he had gained insight into his crimes. "I wanted to find out just what it was that caused me to be so bad and evil," he said, groping to explain why he had tortured, murdered, and dismembered 15 boys and young men. "The doctors have told me about my sickness, and now I have some peace."

Dahmer's trial highlights our deep-seated unwillingness to face the basic facts of human nature and our eagerness instead to conceal the moral agency and personal responsibility of evildoers behind an impenetrable screen of legal fictions and literalized medical metaphors. Dahmer pleaded both guilty and insane. This is a contradiction in terms. Since at least the 18th century in English and American legal usage, to label a person "insane" has meant that he lacks *mens rea*, the guilty mind, which is what distinguishes an impersonal event, such as a hurricane, that results in injury or death from a personal act that causes injury or death and that may, therefore, constitute a criminal offense.

Michael Moore, professor of law at the University of Pennsylvania and a recognized authority on mental health and the law, puts it this way: "Since mental illness negates our assumptions of rationality, we do not hold the mentally ill responsible....being unable to regard them as fully rational beings, we cannot affirm the essential condition to viewing them as moral agents to begin with."

This rationale explains why the traditional insanity plea is framed as "not guilty by reason of insanity." In other words, lawyers and psychiatrists view insanity—at least when it suits their purposes—as a condition that annuls personal responsibility. This model of insanity rests on an analogy with the following scenario: Unbeknown to himself

or anyone else, a previously healthy person suffers from a developing brain tumor. He has a seizure while standing at the top of a stairway, collapses, and knocks down an elderly person standing next to him, who rolls down the steps, hits

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his head, and dies. Although the person who suffered the seizure has, as a physical agent, caused the death of another, he is not criminally liable for any offense whatsoever.

The plea of "guilty but insane" is thus a strategic, legal-psychiatric fiction whose aim is to secure the incarceration of the defendant in a building called a "hospital" rather than in one called a "prison." Indeed, Dahmer's attorney emphasized that he did not seek freedom for his client, only storage in a mental hospital where he could be "studied"—as if Dahmer were a material object rather than a moral agent. Most Americans do not seem bothered by the fact that we live in a society in which physicians have state-delegated powers to incarcerate murderers in "hospitals" and to "treat" them, against their will, for non-existent diseases.

Before his sentencing, Dahmer told the judge, "I didn't ever want freedom. Frankly, I wanted death for myself." If ever there was doubt about Dahmer's sanity, this statement should dispel it. Since each of us has but one life, sentencing Dahmer to 15 life sentences is still another legal fiction, one that we seem to prefer to sentencing him to death (Wisconsin has no death penalty) or simply to

life without parole. And we prefer it as well to giving him the option of dying by his own hand.

Many people now indulge in the effortless exercise of enhancing their self-esteem by opposing the death penalty. Because many people now want to impose this sentence on drug dealers rather than on real criminals, I usually avoid debating the issue. But I well remember engaging in one such debate with a young woman who objected to executing criminals because, she said, she could not bring herself to carry out the execution. When I reminded her of Socrates' sentence, she changed the subject.

I submit that the Hemlock Society and "death doctor" Jack Kevorkian are side shows in our shadowboxing with the true contours of our own moral agency, whose ultimate symbol is the right to suicide—not for the terminally ill, not with the assistance of doctors, but in principle. A prisoner has a right to a lawyer, a Bible, and visits by relatives, among other things. If we overcame our phobia about drugs and suicide, we could add to this list the right to a bottle of barbiturates for every prisoner who requests it (or perhaps only for those sentenced to life). Instead, we put prisoners such as Dahmer on "suicide watch" and interpret their own Lady Macbethian self-destruction as evidence of "untreated mental illness."

We have a right to deprive persons convicted of serious offenses of liberty but not of dignity. For convicts, the Socrates Option would restore some of their lost dignity. For the rest of us, it would help dispel some of the psychiatric fog in which we have shrouded our legal system.

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