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Marginalization and Criminalization of People with Mental Illness

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Abstract

It is worth noting that people with a mental illness or disorder have a stigma around them that dictates how others treat them. With this stigma comes discrimination stemming from an already established opinion and experience with a person who has a mental illness. People who have a mental illness that affects their life are marginalized within our society, which means they get treated differently than the majority. This essay will serve as a discussion of the treatment history of mental disorders, forced institutionalization of the people, the impact deinstitutionalization had, and how this led to today's problem of criminalization. Once criminalization took hold of those with a mental illness, they spend a long time in jail and do not get the treatment that they need and deserve. There are many possible solutions to help this issue, such as community centers for treatment, detailed first responder training, and a reform program.

Keywords: criminalization, mental illness, marginalized peoples

Marginalization and Criminalization of People with Mental Illness

A major characteristic of human nature is how we view ourselves and those around us. One major fault in humanity is that any person who looks or acts or says anything outside of societal norms is generally seen as less than most people and are treated very differently than someone who is "normal." The act of treating someone differently in this way is marginalization. With marginalized groups, they are generally outcasted by many communities and discriminated against based on appearance and perceived behavior. One of these marginalized groups, which are being viewed as less than human, is those with an "invisible" illness (those whom illness is not physically debilitating) and, more specifically, those with a mental illness. The most common ones include attention deficit hyperactivity disorder (ADHD), anxiety disorders, autism, bipolar disorder, borderline personality disorder (BPD), depression, dissociative disorders, psychosis, eating disorders, obsessive-compulsive disorder (OCD), posttraumatic stress disorder (PTSD), and schizophrenia (National Alliance on Mental Health, n.d., para. 4). Only up until recent decades have we recognized the way these disorders work and finding effective ways to treat those experiencing a mental illness. It is imperative to go through the treatment history of mental illnesses and then discuss treatment changes within society up until modern times in order to have a better understanding of the problem. Today, there are people with a mental illness that are being criminalized in the United States, and there need to be community centers for treatment, detailed first responder training, and reform programs put in place to work towards solving the problem.

Mental Illness Treatment History

Treatment for people with mental illnesses has come a long way from how it was in the past. One of the earlier methods includes bloodletting and purging, which was also used to treat

diseases like diabetes, asthma, cancer, and smallpox (Hussung, 2016, para. 5). This tactic gained prominence in the western world in the 1600s, and an English physician Thomas Willis used writings by Claudius Galen as a basis for using bloodletting/purging to treat patients with mental illness (Hussung, 2016, para. 5). According to Everyday Health, Willis argued that "an internal biochemical relationship was behind mental disorders. Bleeding, purging, and even vomiting were thought to help correct imbalances and heal physical and mental illness" (Hussung, 2016, para. 5). In the 21st century, we now know that this does not work, nor makes sense biologically, but back in the 1600s, it was thought to help cure mental illness and diseases. Also, during the 1600s, insane asylums became widespread as isolation was the primary treatment for those with mental illness (Hussung, 2016, para. 6). At this point, the medical community still treated mental illness with physical methods, and that is why brutal tactics like ice water baths and restraints were often used (Hussung, 2016, para. 6).

Another treatment called insulin coma therapy was introduced in 1927 and used until the 1960s; patients were given an insulin injection that caused their blood sugar to fall and the brain to lose consciousness (Hussung, 2016, para. 7). A low blood sugar coma coupled with large fluctuations in insulin levels was believed to alter the function of the brain but, risks included a prolonged coma and a mortality rate varying between 1 and 10 percent (Hussung, 2016, para. 7). Metrazol therapy was dangerous and ineffective treatment where physicians induced seizures by using a stimulant and was administered several times a week (Hussung, 2016, para. 8). The Metrazol therapy was withdrawn from use by the FDA in 1982, and electroconvulsive therapy was introduced as a safer alternative to both insulin coma therapy and Metrazol therapy (Hussung, 2016, para. 7-8).

Lobotomies were popular during the 1940s and 1950s and won the Nobel Prize in Physiology and Medicine in 1949 (Hussung, 2016, para. 9). A lobotomy consisted of surgically cutting or removing the connections between the prefrontal cortex and frontal lobes in the brain; the procedure was always controversial and only prescribed in severe psychiatric cases, and, luckily, it was discontinued after the mid-1950s after the introduction of the first psychiatric medications (Hussung, 2016, para. 9). It was very recently, based on the years these extreme treatments were used on people with mental illness, that we started recognizing and learning more about the causes and pathology of mental illnesses (Hussung, 2016, para. 10). That new knowledge helped the mental health community develop effective and safe treatments in place of dangerous and outdated practices (Hussung, 2016, para. 10). Even though we now have safe and effective treatments for those with mental illness, the stigma and societal attitude towards mental disorders are still present.

Deinstitutionalization

When the medical community started to understand more about mental disorders and developed psychiatric medications in the mid-1950s, it was a step in the right direction. It was around this time, too, that many people were involuntarily hospitalized because their behavior was viewed as insane by people in their lives. Ridson Slate, who is a criminology professor with a PH.D., wrote a piece for a Law Journal that discusses the topic of deinstitutionalization at length with statistics and cases related to the movement. Slate reports that involuntary hospitalization means that people with or perceived to have a mental illness were institutionalized, and it is this institutionalization that lead to approximately 559,000 residents in state hospitals at its height in 1955 (2017, p.341). The civil rights movement was in full swing starting in the 1960s, and one of the civil rights that was fought for was the rights of those with a

mental illness. Advocates pushed to restrict involuntary hospitalization unless needed and tried to implement more humane conditions by demanding that patients have a Constitutional right to treatment (Slate, 2017, p.342). Those advocating for these changes were also in support of increased rights for those who are disabled. As a result of legislation passing at this time, the Americans with Disabilities Act was implemented too.

Advocacy leads to a deinstitutionalization movement where between 1965 and 1975, the number of patients in state hospitals dropped down to 200,000, and by 1980, there were fewer than 100,000 state hospital patients in the U.S. (Slate, 2017, p.341). In 1967, California passed the Lanterman-Petris-Short Act that made it more challenging to hospitalize people with a mental illness involuntarily, and California was the pioneer for other states to modify their civil commitment statutes in a similar way (Slate, 2017, p.342). There are many examples of court cases during this time that establishes critical precedents, and Judge David Bazelon was a prominent figure in establishing these precedents. In the case of *Rouse v. Cameron* (1966), Rouse pled not guilty because of insanity of a weapon carrying misdemeanor charge (Slate, 2017, p.343). If he were charged guilty, he would have faced a one-year sentence, but instead, he was institutionalized for four years because of his plea (Slate, 2017, p.343). The case was appealed, and Judge Bazelon established vital precedents including that patients with a mental illness have a right to treatment, that involuntary hospitalization should be for treatment, not punishment, and that without treatment, the hospital becomes a prison (Slate, 2017, p.343). Bazelon also established that assessments of patients with mental illnesses should take place upon initial and periodically throughout treatment to ensure the design of treatment is tailored to individual needs, that psychiatrists should rely on current knowledge to ensure a legitimate effort

is made for recovery, and that treatment should be carried out in the least restrictive setting possible (Slate, 2017, p.343).

Judge Bazelon used this standard established through *Rouse v. Cameron* in another civil commitment case of *Lake v. Cameron* (1966), in which Ms. Lake, a sixty-year-old woman with dementia, was found wandering the streets and was involuntarily hospitalized afterward (Slate, 2017, p.343). Bazelon's ruling was that with the availability of family members/nursing personnel, that Ms. Lake could be cared for in a lesser restrictive environment than a hospital; also, the "least restrictive environment" concept was later incorporated into federal law through the Americans with Disabilities Act (Slate, 2017, p.344). The doctrine that governed involuntary hospitalizations was called "parens patriae" which referred to the state's responsibility to intervene and protect those who cannot protect themselves, and that includes children and persons with mental illnesses in crises (Slate, 2017, p.344). In 1975 parens patriae was considered for the first-time due process requirements by the U.S. Supreme Court in the case of *O'Connor v. Donaldson* (Slate, 2017, p.345). The case was about Donaldson, who went to visit his parents in Florida, where he told his father that he believed one of his neighbors back in Philadelphia was trying to poison him (Slate, 2017, p.345). His father thought his son was delusional and petitioned the court to consider civil commitment, wherein Donaldson was not represented by counsel and ended up committed for over fourteen years in Florida's mental health system (Slate, 2017, p.345). Donaldson's treatment ward held one thousand patients that were only monitored by one doctor, an obstetrician, and one nurse; several more suitable alternatives for housing and treatment were offered for Donaldson over the years, but the Florida authorities ignored them (Slate, 2017, p.346). Once the case reached the Supreme Court, they issued a ruling stating that "a state cannot constitutionally confine, without more, a non-

dangerous individual who is capable of surviving safely in freedom by himself or with the help of willing responsible family members or friends" (Slate, 2017, p.346). Both of these cases helped retain the rights that those with a mental illness deserve, and recognized that it is not necessary to hold someone involuntarily in a hospital if they are not a danger to themselves or others and are capable of being cared for by family or friends. These precedents change a lot; those who would usually just be placed in a hospital against their will and be subjected to awful conditions will now be able to live unconfined.

One last case necessary for the deinstitutionalization movement involves the case of *Lessard v. Schmidt* (1976), wherein Alberta Lessard was detained after a reported suicide attempt, and a judge civilly committed her for treatment because of her paranoid schizophrenia diagnosis (Slate, 2017, p.346). After initially considering the standard for dangerousness, the court held that "the state must bear the burden of proving that there is an extreme likelihood that if the person is not confined, he will do immediate harm to himself or others" (Slate, 2017, p.346). The court also held that "Wisconsin civil commitment procedures did not provide adequate due process rights to those who were committed and ordered… safeguards be instituted, including adequate notice, the right to counsel, availability of the privilege against self-incrimination, and a speedy hearing" (Slate, 2017, p.346). The results of this case are relevant because it gives more rights to those with a mental illness. However, the events to occur after the deinstitutionalization movement will push the progress back because communities are not prepared with services to help those who need treatment. Slate states that "the final decision in *Lessard v. Schmidt* would further narrow civil commitment standards, changing the view that such decisions should be centered within the medical arena to now being resolved within the police power of the state and quasi-criminal court processes as clients would have procedural

protections extended to them" (2017, p.346). This quote from Slate is crucial because he marks the moment where decisions about people with mental illnesses are switched to the criminal justice system instead of doctors. Even though deinstitutionalization protected persons with mental illness in the sense of right to treatment, restrictions on involuntary hospitalizations, and better treatment in hospitals with more focus on recovery, there are still thousands of people being released from institutionalization with no societal help at all.

Criminalization

Deinstitutionalization resulted in many state hospitals downsizing or closing, which means even more people with mental illnesses having no other choice but to live on the streets where they encountered a society and criminal justice system unable to deal with their needs (Slate, 2017, p.347). Not everyone agrees that deinstitutionalization caused the criminalization of mental illness. However, evidence suggests that it was at least an instrumental factor in the cause, because of the mass encounter of people with mental illnesses leading to arrest or imprisonment even though they were often minor offenses (Slate, 2017, p.347). When people were released from the institutions, they entered a world that was against them. Because of the lack of community resources for those with a mental illness, many were unable to get the treatment they need, and many of them ended up homeless. Homelessness put them at a higher risk for arrest because they were interacting with the public, and many were arrested and thrown in jail rather than receiving treatment. It is disheartening that laws passed to help those with mental illness not get hospitalized involuntarily instead resulted in them being involuntarily put in jail instead.

Prisons and jails are now commonly called "the new asylums" because, Los Angeles County Jail, Chicago's Cook County Jail, and New York's Riker's Island Jail each have more

mentally ill inmates than any remaining psychiatric hospital in the United States today (Treatment Advocacy Center, 2016, para. 1). Overall, in 2014, approximately 20% of inmates in jails and 15% in prisons have a severe mental illness which means based on the total inmate population, about 383,000 individuals with a mental illness were behind bars in the United States or about ten times the number of patients in state hospitals (Treatment Advocacy Center, 2016, para. 1). These numbers are astronomical, and all those inmates are unlikely to be getting the treatment that they need. Additionally, inmates with mental illness spend almost twice as much time behind bars, get more infractions for behavior, and are more likely to commit suicide compared to other inmates despite being a small part of the general prison population (Treatment Advocacy Center, 2016, para. 6-9). Incarcerating people with a mental illness is also costly compared to other inmates because of psychiatric medications and lawsuits related to the treatment of them while they are behind bars (Treatment Advocacy Center, 2016, para. 7). Jan Green experiences schizophrenia, and when she was arrested in 2009, she did not receive treatment. Because of her illness, she was soon put into a bathroom isolation cell to be alone with her thoughts and horrible conditions (Harki, 2018). Even though the jail knew of her illness and that her family was trying to get in contact with them to get her medical treatment, she was ignored and left alone in a cell with no running water, toilet paper, or sanitary products (Harki, 2018). It's hard to imagine that the jail would not notice that she needed help and that they were neglecting her. Unfortunately, this is the reality for many inmates with a mental illness.

Because of deinstitutionalization, many people were released into society after years inside a hospital with no resources to help them get help or treatment and take care of themselves, which is how many of them became homeless. People with mental illness started to be incarcerated more because of a lack of community resources, and even though precedents

have been set in the past, giving more protection to those needing help, many courts bypassed this and put many people in jail instead of giving them their right to treatment. Over time, this is how we now have a considerable number of inmates with a severe mental illness and a super low number of patients getting psychiatric help from the community. As a result of deinstitutionalization, the same amount of people that were in state psychiatric hospitals are now in prisons and jails receiving little to no treatment, which is the criminalization of mental illness. There need to be changes made because people with a mental illness deserve to receive treatment and not be punished in jails.

Solutions

Community Centers for Treatment

There are many approaches to how the criminalization of mental illness can be solved. The last piece of legislation that President Kennedy signed before he was assassinated was focused around helping with the deinstitutionalization movement, which was the Community Mental Health Centers Act (Slate, 2017, p.342). The general idea of the Act was to help people with minor offenses and a severe mental illness be committed to a community-run facility with the goal of societal reintegration instead of an institution. The hard part is finding the funding for these facilities. Even though having these treatment centers will help decrease the number of people with serious mental illness in jails and prisons, it will be a difficult transition because of the amount of time that has passed since the deinstitutionalization movement.

Nonetheless, it is vital to have some variant of a community center for treatment since the current system is not helping anyone, especially the ones with a mental illness. If centers like this were created all around the country, it could help many people and families. Funding for these centers may be hard to come by, but the amount spent on an inmate with a mental illness could

be reallocated to the treatment centers. That approach is more straightforward said than done, but it would be worth looking at it from a budget standpoint.

First Responders

The first to arrive on the scene is usually police personnel, and their initial assessment of the situation at hand is very important for how the situation is going to resolve. In a study titled "How Police Officers Assess for Mental Illness," the results highlight three critical sources of information officers use to asses if a person with a mental illness is part of their call. The sources include information from police dispatch, collateral information from bystanders, friends, family members, or neighbors, and behavioral assessments (Bohrman, Wilson, Watson, & Draine, 2018, para. 15). Behavioral assessments are an essential factor in determining if someone is experiencing a mental illness crisis and it is challenging for police officers to make assessments because signs of a mental illness can look similar to signs of substance abuse (Bohrman, et al., 2018, para. 3). However, it is crucial to be able to identify signs of mental illness in suspects because a different approach needs to be taken during encounters and impacts the way the situation is resolved (Bohrman, et al., 2018, para. 3). First responders must be able to recognize people with a mental illness if they are first arriving on the scene. There needs to be detailed training for police officers on how to recognize the signs of a mental illness crisis. The training does not have to be specific to each mental disorder. However, it needs to be able to help officers assess situations with crucial signs and behaviors. By starting with police training, it could help reduce initial arrests that can and will eventually lead to many people with mental illness in prison, like the statistics for the past ten years.

Reform Program

Miami-Florida has the highest percentage of people with a mental illness of any urban area in the U.S. that is three times the national average (Bhojani & Tarr, 2018, para. 1). This problem is a result of deinstitutionalization because thousands of people were left to be on their own and have been involved in the criminal justice system as a result of their mental illness and inability to care for themselves (Bhojani & Tarr, 2018, para. 3). Judge Steven Leifman became county court judge in 1995 and reports that "judges tend to see people with more psychiatric illness than psychiatrists do these days" and explains that many are brought to court by police because of quality-of-life offenses or low-level felonies (Bhojani & Tarr, 2018, para. 2-3). Leifman created a reform program that would help people re-integrate into society and helped develop a police training program for the Miami-Dale area (Bhojani & Tarr, 2018, para. 7). The results were a huge success; the number of people with mental illnesses in jail dropped by half in the Miami-Dade area and trained over 4,600 officers on how to identify someone with a mental illness, how to de-escalate situations, and where to take them instead of jail (Bhojani & Tarr, 2018, para. 8). Judge Liefman's program entails sending people with low-level felony offenses to a facility with treatment, restoration, and reintegration into society emphasis instead of a prison or a hospital; Liefman says that this course of action is one-third cheaper, one-third quicker, and has a near-zero recidivism rate (Bhojani & Tarr, 2018, para. 9). Because of the immense success of Judge Leifman's program in Miami, his reform plan is a significant first step that needs to be taken all over the country, starting in the highly populated areas to ensure success. His plan involved police training and treatment centers as a first stop instead of jail for a person with mental illness.

Conclusion

It would be a profound change to attempt reforming the system that already exists, but it is something that needs to happen. The amount of people with a mental illness in prisons and jails is worrying as they are not getting the treatment they deserve. Of course, like in Miami, this would only happen for people with mental illness and misdemeanor or low-level felony charges because one cannot use their mental illness as an excuse for crimes like murder or rape. Reformation needs to occur for people with a mental illness; it will save money and space in prisons for actual criminals instead of people who need help during their crisis.

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