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Review of The Reign of Error: Psychiatry, Authority, and Law

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PSYCHIATRY AND THE LAW

THE REIGN OF ERROR: PSYCHIATRY, AUTHORITY, AND LAW. By Lee Coleman, M.D. Boston, Beacon Press 1984. 300 Pp., \$18.95.

Reviewed by Linda C. Fentiman *

The Reign of Error is psychiatrist Lee Coleman's indictment of the abuses of psychiatry, both ancient and modern. Coleman canvasses a variety of topics in the area of psychiatry and the law, including the insanity defense, diminished capacity, competency to stand trial, involuntary civil commitment and treatment of the mentally ill, indeterminate sentencing of criminals, and the juvenile justice system. Coleman's book, published in 1984, is a highly readable but seriously flawed effort to address the misuses of psychiatry and its employment by the state as an instrument of social control.

The Reign of Error suffers from two major defects. First, and most significantly, the book is written ten years too late, and describes a mental health system that, to a large extent, no longer exists. In an innovative twist on the "I've got some good news and some bad news" routine, Coleman merely gives us old news: the widely accepted view that psychiatry has sometimes been used as an agency of state power¹ to remove deviant people from the community, and that many serious violations of liberty and personal integrity have been accomplished in the guise of "benevolent" medical treatment of the mentally ill.² From a legal standpoint, the book is particularly deficient, in that Coleman's apparently limited awareness of significant judicial decisions subsequent to the mid-1970's leaves the reader with an erroneous view of present law, which has in some respects significantly improved the treatment of the mentally ill in America.

The book's second major weakness is that it is highly anecdotal and impressionistic, with little hard data to back up its emphatic conclusions. For example, in support of his argument that psychiatrists

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1. See P. STARR, *THE SOCIAL TRANSFORMATION OF AMERICAN MEDICINE* 15 (1982) "The search for legitimation by other agencies in society often promotes dependence upon the cultural authority of medicine. In this regard, medical authority is a resource for social order as well as for the profession and its clients."

2. See A. BROOKS, *LAW, PSYCHIATRY AND THE MENTAL HEALTH SYSTEM* (1974); N. KITTRIE, *THE RIGHT TO BE DIFFERENT* (1971); H. MORRIS, *ON GUILT AND INNOCENCE* 38-39 (1976); A. STONE, *MENTAL HEALTH AND LAW: A SYSTEM IN TRANSITION* (1976); T. SZASZ, *PSYCHIATRIC SLAVERY* (1977).

often make serious diagnostic and treatment errors, Coleman presents a chronicle of abuses which encompasses in its litany of horrors the eighteenth century practice of bleeding by Benjamin Rush, "the father of American psychiatry," the widespread performance of lobotomies in United States mental hospitals during the 1940's and 1950's, and the participation of noted psychiatrists in CIA-funded experiments with mind-altering drugs during the 1950's and 1960's. While these atrocity stories make good copy, they are hardly reflective of the state of American psychiatry today. Further, Coleman's emphasis on past wrongs has limited his ability to offer constructive solutions to the new generation of psychiatric problems presented in the 1980's.

These weaknesses permeate *The Reign of Error*. While it is not possible to present all of Coleman's errors here, a detailed discussion of one of the book's sections—that addressing the treatment and mistreatment of the institutionalized mentally ill—will serve as a paradigm for the failure of Coleman's analysis throughout the book, and will exemplify the limited and outdated case law and data on which he relies.

In addressing the issue of involuntary commitment and treatment of the mentally ill, Coleman makes several valid points: that psychiatrists often "overdiagnose" mental illness; that they sometimes institutionalize people not because such commitment is necessary for the patient's physical safety or the safety of others, but because it is convenient for their family or neighbors;³ and that such unwarranted institutionalization is effectively a form of preventive detention, a systematic deprivation of liberty which is visited upon no other group in America today.⁴ Coleman also notes the substantial body of research literature which indicates that psychiatrists are simply unable to predict, with any kind of accuracy, whether the individuals they examine will be "dangerous" to themselves or others in the future, and he therefore argues that they should not be allowed to make such predictions in a court of law. This, indeed, was the position of the American Psychiatric Association in an *amicus curiae* brief submitted to the Supreme Court in *Barefoot v. Estelle*,⁵ a case in which the Supreme Court upheld the use of psychiatric testimony concerning the likelihood that a convicted murderer would commit acts of violence in the future, as bearing on the question of whether the

3. This "convenience function" of the mental health system has been described by Brooks, Stone, and others. See sources cited *supra* note 2.

4. Dershowitz, *Psychiatry in the Legal Process: A Knife That Cuts Both Ways*, in A. SUTHERLAND, *THE PATH OF THE LAW FROM 1967*, at 71-83 (1968).

5. 103 S. Ct. 3383, 3408-09 (1983).

death penalty ought to be imposed. However, in discussing the dangerousness issue, Coleman fails to mention recent research which, while supporting the general proposition that psychiatrists are inaccurate predictors of future dangerousness, also suggests that in certain narrowly circumscribed clinical settings, a psychiatrist can predict the likelihood of future violent actions.⁶ It is this sort of one-sided presentation of the evidence which permeates the book and undercuts the persuasiveness of its analysis.

Coleman's explication of the other problems of the "civilly" mentally ill is also inadequate. The major foci of his discussion are psychiatry's past abuses in treating the mentally ill, the overuse of psychotropic medication in the treatment of mental illness, and the role of fiscal conservatism in achieving the deinstitutionalization of much of the nation's mentally ill population. Here again, Coleman paints a misleading and outdated picture of the legal position of the mentally ill in America today.

Characteristically, Coleman begins his attack with a long history of past psychiatric abuses (lobotomies and electroconvulsive therapy figure prominently here). Having thus set up the reader to be distrustful of psychiatric hegemony, he warns that, "These lessons from the past may be useful should we decide to question the authority of today's psychiatrist to have the final say."⁷

Coleman next discusses the long-recognized fact that psychotropic medication is often prescribed unnecessarily and, even when its use is medically appropriate, in excessive dosages. Here, Coleman does well to point out that these drugs are often used for the convenience of the staff, to make difficult patients easier to control, and that in some institutions, medication is used *in lieu of* psychotherapy, rather than as an adjunct to it. Coleman also describes in great detail the very serious side effects of psychotropic medication. These painful and often permanently disabling side effects, such as tardive dyskinesia, are particularly likely to occur when, as was often the case in the past, the drugs are prescribed in enormous doses for extended periods of time, without careful patient monitoring. Coleman's account of psychotropic drugs reads however, as if they serve *no* useful purpose whatsoever and were, indeed, invented solely as instruments of individual torture and social control. In fact, psychotropic medication is in many cases a necessary predicate to successful psychotherapy, and it is psychotropic medication which has made it possible for a

6. J. Monahan, *Prediction Research and the Emergency Commitment of Dangerous Mentally Ill Persons: A Reconsideration*, 135 Am. J. Psychiatry 198 (1978).

7. L. COLEMAN, *THE REIGN OF ERROR* 111 (1984).

large number of mentally ill individuals to live productively and safely in the community.

Coleman's analysis of the committed mentally ill gives only brief attention to the wave of "right to refuse treatment" suits brought by institutionalized mental patients in the late 1970's,⁸ and fails to discuss the results of this litigation. He omits any analysis of the differing judicial approaches to the right to treatment and to refuse treatment, including the "right to a second psychiatric opinion" remedy of the Third Circuit Court of Appeals in *Rennie v. Klein*,⁹ and the vague and complex "substituted judgment" standards of the Massachusetts Supreme Judicial Court in *Rogers v. Okin*.¹⁰

More importantly, Coleman fails to acknowledge that an increasing number of thoughtful commentators have suggested that the real concern of most institutionalized mentally ill is not the ability to refuse treatment but their inability to get *meaningful* psychiatric treatment in the first place. Since it is only a tiny fraction of all mental patients who are asserting a right to refuse treatment,¹¹ a far more effective remedy for *all* patients would be the court-ordered provision of adequate psychiatric services for all.¹² To declare, as Coleman does, that a mental patient has an absolute right to refuse treatment under all circumstances¹³ may propel the psychiatrist even more clearly into the role of police agent. As explained by Alan Stone, "The refusal of treatment makes the confinement of the dangerous mentally ill nothing but preventive detention. . . . Confinement without treatment makes the hospital into a prison and transforms the psychiatric staff into correctional officers."¹⁴ Surely this result is the antithesis of the individual autonomy which Coleman so fervently seeks.

8. See, e.g., *Rogers v. Okin*, 478 F. Supp. 1342, 1371 (D. Mass. 1979) (patients may refuse nonemergency administration of psychotropic drugs); *Rennie v. Klein*, 462 F. Supp. 1131, 1147 (D. N.J. 1978) (patients have right to second opinion).

9. 653 F.2d 836 (3d Cir. 1981).

10. 390 Mass. 489, 458 N.E.2d 308 (1983).

11. Professor Alexander Brooks has estimated, for example, that in New Jersey, no more than five percent of all state mental patients have ever asserted a right to refuse medication. UNIVERSITY OF MIAMI SCHOOL OF LAW CONFERENCE ON MENTAL HEALTH LAW: DEVELOPMENTS IN THE 1980's (February 24-25, 1984).

12. This, of course, is not without considerable practical and legal difficulties. Lottman, *Enforcement of Judicial Decrees: Now Comes the Hard Part*, 1 MENTAL DISABILITY L. RPTR. 69 (1976); see also *Pennhurst State School & Hosp. v. Halderman*, 104 S. Ct. 900, 921 (1984) (barring federal court jurisdiction over challenges to state action based on state law).

13. "[A]ll mental patients [should] be presumed competent to refuse any treatment. Refusal should never be overturned by a doctor or a court." L. COLEMAN, *THE REIGN OF ERROR* 192 (1984) (emphasis in original).

14. Stone, *The Right to Refuse Treatment: Why Psychiatrists Should and Can Make it Work*, 38 ARCH. GEN. PSYCHIATRY 358, 361 (1981).

Perhaps most significantly, Coleman fails to address the problems of today's mentally ill. Although there are no longer huge numbers of mentally ill individuals languishing in the back wards of giant state institutions,¹⁵ there are still a significant number of persons in state and local mental health facilities, some of whom are not receiving adequate psychiatric treatment, which is the only legitimate justification for their involuntary presence there.¹⁶ In addition, there are a great number of homeless mentally ill individuals, victims of the deinstitutionalization movement of the 1960's and 1970's, seemingly forgotten by Coleman, who are arguably in need of psychiatric treatment but who do not meet the more stringent civil commitment criteria enacted within the past decade. This phenomenon of deinstitutionalization was caused by the convergence of a number of factors. In part, it was the result of a series of landmark legal victories securing for mental patients significantly increased procedural due process protection,¹⁷ narrower criteria for commitment,¹⁸ and, in many jurisdictions, a right to receive such psychiatric treatment as gives the patients a meaningful opportunity to be cured or to improve their mental condition.¹⁹ None of these fundamental changes in the treatment accorded the mentally ill are mentioned by Coleman, perhaps because they do not fit within his paradigm of psychiatry as an instrument of state oppression. But without reference to the revolutionary change in both the substantive and procedural aspects

15. Between 1955 and 1983, the nationwide population of patients at state mental hospitals dropped from 559,000 to 132,000. AMERICAN PSYCHIATRIC ASSOCIATION, TASK FORCE REPORT ON THE HOMELESS MENTALLY ILL 62 (H.R. Lamb ed. 1984).

16. *Rouse v. Cameron*, 373 F.2d 451, 455 (D.C. Cir. 1966); *Wyatt v. Stickney*, 344 F. Supp. 373, 377 (M.D. Ala. 1972). The significance of these favorable lower court decisions has been somewhat undercut by the Supreme Court's decision in *O'Connor v. Donaldson*, 422 U.S. 563 (1975). There the Supreme Court specifically refused to decide the question of whether a person civilly committed as mentally ill had a constitutional right to treatment. *Id.* at 573. Instead, the Court held only that the continued confinement, and thus deprivation of liberty, of a person who is not dangerous and who could survive in society with the help of others was a violation of the right to liberty guaranteed by the fourteenth amendment. *Id.* at 576. For an intriguing analysis of the Court's decision-making process in the *Donaldson* case, see B. WOODWARD & S. ARMSTRONG, *THE BRETHERN: INSIDE THE SUPREME COURT*, at 369-89 (1979).

17. See *Lessard v. Schmidt*, 349 F. Supp. 1078 *passim* (E.D. Wis. 1972) (holding civil commitment procedures constitutionally defective).

18. See MASS. GEN. LAWS ANN. ch. 123 §§ 1, 7-8; N.Y. MENTAL HYG. LAW §§ 91.37, 91.39 (McKinney 1985).

19. The deinstitutionalization movement also gained momentum due to the financial incentives offered state governments by changes in federal funding for the mentally ill and other disabled individuals. However, to argue, as Coleman does, that deinstitutionalization was supported solely for financial reasons is both inaccurate and disingenuous.

of civil commitment of the mentally ill over the last two decades, the reader is left with a misleading picture of the current status of the institutionalized and noninstitutionalized mentally ill. For example, Coleman announces that "in a civil commitment trial, proof of accusations [regarding the necessity of commitment] need only be shown by a 'preponderance of evidence.'" ²⁰ Since the Supreme Court's 1979 decision in *Addington v. Texas*,²¹ however, the standard of proof for civil commitment has been the more rigorous "clear and convincing evidence" standard. Coleman's failure to mention this significant ruling, as well as the decisions of a number of state courts which have insisted upon proof beyond a reasonable doubt as a prerequisite for civil commitment,²² suggest at the very least a selective marshalling of the facts, and at most a willful disregard for the truth.

In sum, *The Reign of Error* is simplistic, polemical, and based on inadequate and outmoded data. The subtitle on the book's dust jacket makes clear both the thrust of Coleman's argument and also its ultimate weakness. The subtitle proclaims the book to be "A startling expose of psychiatry's misrule in the courts, mental hospitals, and prisons." "Startling" and "expose" seem to be the guiding principles of Coleman's endeavor. What is missing in his "National Enquirer" approach to the relationship between psychiatry and state power is an analysis which recognizes the complexity of the problems that confront our society in dealing with the mentally ill today. Coleman speaks in moral absolutes, using black and white labels, when what is demanded is a thoughtful and reasoned exploration of the difficult issues raised when psychiatric expertise is brought to bear on the question of individual freedom and responsibility in the criminal and civil law.

20. L. COLEMAN, *THE REIGN OF ERROR* 108 (1984).

21. 441 U.S. 418 (1979).

22. See *Superintendent of Worcester State Hosp. v. Hagberg*, 374 Mass. 271, 275-76, 372 N.E.2d 242, 245 (1978).