



Analysis of concordance between conclusions of forensic psychiatric evaluation and court decisions after 2005 Criminal Code Amendment in a Taiwan psychiatric hospital



Tien-Wei Yang^{a,b,*}, Jeng-Ming Yu^a, Chun-Hung Pan^a

^a Taipei City Psychiatric Center, Taipei City Hospital, SongDe Branch, Taiwan

^b Department of Psychiatry, Taipei Medical University, Taiwan

ARTICLE INFO

Article history:

Received 10 September 2016

Received in revised form 6 May 2017

Accepted 26 June 2017

Available online 22 July 2017

Keywords:

Psychiatric evaluation

Court decision

Insanity

Diminished responsibility

ABSTRACT

The aim of the study is to explore the relationships between results of forensic psychiatric evaluation on “mental status at the time of the offense (MSO)” and the final decision of the courts after the amendment of the Criminal Code in 2005. All criminal cases referred to Taipei City Psychiatric Center for MSO evaluation from July 1, 2006, to December 31, 2015, were reviewed, and only the completed trials were included. Concordance rates in each category of MSO conclusion and the court decision were analyzed and compared. The sample consisted of 366 MSO evaluations. Overall concordance was 95.6% (350/366). The concordance rate in conclusions of “full responsibility”, “diminished responsibility”, and “insanity” were 98.3% (177/180), 97.7% (126/129) and 91.9% (34/37) separately, and these three groups showed no statistical significance after compared with the other. Conclusions of “intentionally or negligently induced insanity or diminished responsibility” reached the lowest concordance at 65.0% (13/20) and compared with the other three groups all showed statistical significance. We found, after the amendment of Criminal Code, the lowest concordance rate in those conclusions of “insanity” before change seemed diminished. But the conclusions of “intentionally or negligently induced insanity or diminished responsibility” became the major origin leading to discordance. Comparing to the previous finding in the same hospital which revealed separate conclusions resulted in statistically significant concordance rates, the effect of the amendment seems likely to improve the consensus among psychiatric experts and trial judges except substance and alcohol related mental condition.

© 2017 Elsevier Ltd. All rights reserved.

1. Background

1.1. Criminal responsibility statutes in Taiwan

The criminal responsibility (or ‘insanity defense’) debate regarding offenders with mental disorders has arguably attracted more attention than any other criminal justice issue. Psychiatrists in Taiwan gained experience in forensic evaluations of criminal responsibility under Japanese colonization. During the colonial era, forensic evaluations were performed by Japanese psychiatrists at Kee-Lung hospital, one of the earliest hospitals to be established under Japanese governance, in northern Taiwan. These forensic reports became the clinical teaching materials for Taiwanese medical students, and psychiatric apprentices after the first school of medicine was established in Taipei. The first case of forensic evaluation concerning criminal responsibility after World War II was performed at Taiwan University Hospital in 1950 (Rin, 1988).

Forensic psychiatry training was introduced in Taiwan in the 1970s (Kuo, 1983), and psychiatric evaluations regarding criminal responsibility at the time of offenses have become a part of regular service in major psychiatric and general hospitals. The forensic psychiatric training program has also been a required part of general psychiatric specialization for over 10 years.

Taiwan followed German-Japanese theories and traditions of forensic psychiatry after World War II (Kuo, 1983; Rin, 1976, 1988), a reasonable consequence given that the Taiwanese statutes on criminal responsibility also followed a German-Japanese model. The statute of Article 39 of Japanese penal law on criminal responsibility (Nakatani, 2000) states that “an incompetent person shall not be punished; a person with diminished competence should be given a mitigation of punishment.” This formed the basis of the original Article 19 of the Taiwanese criminal code, enacted in 1939, which used nearly the same wording: “an incompetent person (SIN-SHEN SAN-SHIN, in traditional Chinese) shall not be punished; a person with diminished competence (CHIN-SHEN HAO-JO, in traditional Chinese) could be accorded mitigation of punishment.” The first part of Article 19 referred to insanity or complete exculpation of responsibility, and the second part referred to diminished responsibility. The only difference between the two statutes was that in Japanese penal law, diminished competence

* Corresponding author at: Taipei City Psychiatric Center, Taipei City Hospital, SongDe Branch, Taiwan.

E-mail address: ytw@tpech.gov.tw (T.-W. Yang).

“shall” be given mitigated punishment instead of the wording “could” in Taiwanese criminal code. In both jurisdictions, the defendant judged legally insane would receive an acquittal. However, in Japan, a defendant deemed to have diminished competence (i.e., in the condition of diminished responsibility) would be sentenced to a mitigated punishment, whereas in Taiwan, such a defendant could receive partial exculpation of responsibility, depending on the court’s decision. For a person judged legally insane, the court would usually commit the defendant to custodial treatment; in most cases, a defendant of diminished responsibility would receive both a mitigated punishment and custodial treatment.

The Japanese and Taiwanese statutes concerning criminal responsibility were similar in that neither offered a precise definition or test for criminal liability. Based on a Supreme Court ruling in 1937, judges in Taiwan adopted a relatively strict definition of insanity (complete exculpation of responsibility) and diminished responsibility. This ruling stated that severity of mental disability distinguishes between incompetence and diminished competence. In incompetence (i.e., SIN-SHEN SAN-SHIN), mental capacity at the time of the action involves not only total deprivation of perception, awareness, and judgment of external events but also the lack of ability to exercise free will. In diminished responsibility (CHIN-SHEN HAO-JO), mental capacity is not entirely compromised, but substantially diminished and below average (Kuo, 1983). This ruling accordingly became an important case for legally defining insanity.

Unlike in the Anglo-American judicial system, criminal responsibility in Taiwan is decided not by a jury but by the judge (Kuo, 1983; Rin, 1976). The same is true in many European countries such as Germany (Simon & Ahn-Redding, 2006, p. 74) and France (Simon & Ahn-Redding, 2006, p. 66). Moreover, the term “diminished responsibility” is a concept for general application, which affects liability to conviction and punishment for all crimes alike and not only for murder or capital offenses; likewise, insanity (or complete exculpation of responsibility) can be applied in all charged crimes. In other words, the insanity defense or diminished responsibility defense could be proposed and applied in any criminal trial.

The statute of Article 19 and the case law of the 1937 Supreme Court ruling have received considerable criticism. The main critique concerns the absence of an operational definition or test despite the relatively strict definition of insanity in the 1937 ruling. In addition, over decades of forensic practice, psychiatric experts have evolved a consensus regarding medical opinions on criminal responsibility (Kuo, 1983; Rin, 1976, 1988). They usually adopt a broad view, admitting insanity or complete exculpation if the charged offenders acted while psychotic or in the acute or deficit states of severe mental disorders such as schizophrenia, bipolar mania, delusional disorder, severe depression, or when affected by defects involved in organic mental conditions and significant developmental deficits (e.g., severe mental retardation). Criminal acts committed in the psychotic state with partial or incomplete remission, moderate or mild mental retardation, or unremitted organic conditions, would be considered as involving partial responsibility. However, judges who adhere restrictively to this case law might adopt a narrower view on insanity (Rin, 1988; Kuo, 1983), such that acutely mentally ill people are not exculpated from punishment, become incarcerated, and then cannot receive appropriate disposition and treatment.

1.2. Opinions on the ultimate issue

Another crucial difference between the Taiwanese and Anglo-American judicial systems concerns testimony from expert witnesses on the question of criminal responsibility. In US criminal trials, the Federal Rules of Evidence 704(b), added in 1984 after the acquittal of John Hinckley, prevents psychiatrists and other expert witnesses from testifying as to whether defendants were affected by their mental state or condition constituting an element of either the crime or the defense (Buchanan, 2006). Expert conclusions on the related mental state or

condition of the crime charged or the defense are called “evidence on the ultimate issue.”

In Taiwan, the ultimate issue has never been prohibited in the criminal code, criminal procedure code, related statutes, or actual criminal trials. Similar to forensic psychiatrists or experts in Germany (Simon & Ahn-Redding, 2006, p. 74), Japan (Simon & Ahn-Redding, 2006, p. 74), or France (Simon & Ahn-Redding, 2006, p. 192), Taiwanese experts are free to express their opinions about the ultimate issue according to their expertise. However, judges hold the final decision on the ultimate issue and their decisions may not concord with expert witness opinions. In the context of our jurisdiction, the investigation of concordance between psychiatric evaluation and court decisions are both possible and crucial. How to improve communication and consensus regarding criminal responsibility between judges and forensic witnesses has been a focus for legal and psychiatric studies. In addition, how to improve the original statute and wording of the criminal code on criminal responsibility has become a major task for forensic psychiatrists and criminal justice experts.

1.3. Amendment of penal code on criminal responsibility

Efforts to revise or otherwise improve the statutes on criminal responsibility have originated from both legal and mental health professionals over numerous years. A draft for an amendment on criminal responsibility, including both cognitive and volitional standards, was proposed by the Committee of the Forensic Psychiatry Division of the Taiwanese Society of Psychiatry in 1995 (Rin, 1988). This draft represented the opinions from both psychiatric and legal professionals. Recent amendments on criminal responsibility in the criminal code were finally completed in February 2005 and enacted in the following year.

Article 19 of the criminal code now states:

An offense is not punishable if it is committed by a person who is mentally disordered or defective and, as a result, is unable to judge his act or lacks the ability to act according to his judgment.

The punishment may be reduced for an offense committed for the reasons mentioned in the preceding paragraph or as a result of an apparent reduction in the ability of judgment.

The provisions prescribed in the two preceding paragraphs shall not apply to a person who intentionally or negligently brings about handicaps or defects (Ministry of Justice, official translation, partially modified).

In Section 1, the statute defines the situational constructs of insanity and, in Section 2, that of diminished responsibility. The terms SIN-SHEN SAN-SHIN and CHIN-SHEN HAO-JO are no longer used in law, because both are ambiguous, particularly without legal or descriptive clarification. In Section 3, the status addresses “intentionally or negligently induced insanity or diminished responsibility.”

The reference for the amended legislation of Article 19 states that criminal liability shall be derived from both cognitive and volitional tests (Legislative Yuan of Taiwan, 2005). It also clearly states that the statute follows the principle revealed in Sections 20 and 21 of the criminal code of Germany (StGB), which have been elaborated in English by Müller-Isberner, Freese, Jöckel, and Cabeza (2000). The first paragraph describes the conditions leading to insanity or absence of responsibility due to overwhelmed cognitive or volitional deficit. The second section describes the conditions resulting in diminished responsibility because of significant cognitive or volitional deficit. The newly added third section states the conditions that lead to so-called “intentionally or negligently induced insanity or diminished responsibility.” It addresses cases related to alcohol or psychoactive substances, which produce altered states of mind but are excluded from defense against criminal

Download English Version:

<https://daneshyari.com/en/article/6462974>

Download Persian Version:

<https://daneshyari.com/article/6462974>

[Daneshyari.com](https://daneshyari.com)