

Early American Jurisprudence of Sleep Violence

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KEYWORDS

• Jurisprudence • Insanity • Parasomnia • Somnambulism

Parasomnias can be considered both mysterious and paradoxical. Actions during sleep can range from simple to complex, raising a fundamental question as to the nature of consciousness, often believed to be a mystery. In addition, these behaviors seem paradoxical, because they seem directed and purposeful and yet occur during a state of relative unconsciousness. One must ask, “What physical actions are possible during a sleeping state?” before judging whether free will was compromised or even absent. Whether those behaviors can be considered purposeful, voluntary, or culpable is a matter for evolving jurisprudence.

Historically, the culpability of actions during sleep followed the Latin aphorism *In somno voluntas non erat libera* (A sleeping person has no free will).¹ Responsibility could not be attached to actions performed during sleep. In ancient times, sleep was considered on the continuum from life to death. Even now, euphemisms and metaphors such as “to be put to sleep” and “the big sleep” refer directly to death. In addition, ancient science considered sleep to be a passive state and failed to distinguish it from other forms of quiescence, such as stupor, intoxication, hypnosis, coma, and hibernation.² The Bible refers to sleep as a state of reduced consciousness imposed by God.³ However, despite this historical perspective on culpability during sleep, to say a criminal defendant was asleep and therefore not criminally responsible sounds naive to the modern ear.

In the nineteenth century sleep was still considered an “intermediate state between wakefulness and death; wakefulness being regarded as the active state of all the animal and intellectual functions, and death as that of their total repression.”⁴ The jurisprudence of sleep violence was largely reliant on the forensic skills of the attorneys and the folk psychology of the times. The subject was reviewed by Bonkalo⁵ in 1974, starting with a Silesian man who in 1791 killed his wife with an ax. The accused argued that he committed the heinous act during a state of sleep-drunkenness (*Schlafrunkenheit*); he therefore claimed he had no will because he was not fully awake. Noting that the French also acknowledged sleep-drunkenness (*l'ivresse du sommeil*), Bonkalo identified 20 European cases in which a partially awake person was deemed not criminally responsible.

The midtwentieth century marked the modern era of sleep physiology; the advent of polysomnography allowed the detailed descriptions of sleep stages and their behavioral correlates.^{6,7} This article reviews how cases of alleged sleep violence were handled by medical experts and jurists in America in the nineteenth century. Our focus is on the formulations of psychiatrist Isaac Ray and the legal scholar Francis Wharton in mid-nineteenth century, followed by an account of a famous 1846 murder trial in Boston. We then examine how closely the older, clinically based formulations conform to our modern views.

The authors have nothing to disclose.

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ISAAC RAY'S MEDICAL JURISPRUDENCE

Ray, considered the founder of American forensic psychiatry, enjoyed a brief and unsuccessful career as a family physician in Maine before turning his attention to psychiatry (asylum medicine) (Fig. 1).⁸ While in remote Eastport, Maine, he published in 1838 the first American textbook on forensic psychiatry, *A Treatise on the Medical Jurisprudence of Insanity*.⁹ The work, borrowing heavily from the European tradition and case law, became a standard forensic psychiatric text and underwent 4 revisions. Our focus is on the fifth and final edition, published in 1871, which was Ray's final word on sleep disorders and their legal implications.¹⁰

In his treatise, Ray devoted 4 articles to sleep disorders: "Somnambulism," "Legal Consequences of Somnambulism," "Simulated Somnambulism," and "Somnolentia." With respect to jurisprudence, he is not mysterious in his point of view: "The sleeping state gives rise, in one way or another, to a mental condition in which all moral liberty is destroyed."^{10(p521)} The outcome of a nineteenth-century criminal case was based simply on proof that the defendant was asleep at the time in question. Although Ray was a scientist, it did not seem to concern him that there were no scientific tests to distinguish wakefulness from sleep: "What the

essential condition of the brain is in sleep, as distinguished from that of the waking state, is one of the problems of physiology that remains to be solved. The few facts which meet our observation throw but little light on this point, though they serve to indicate the general features of the differences between the two states."^{10(p521)} Scientific knowledge of sleep in the nineteenth century, albeit modest at best, required cases be adjudicated. A closer examination of Ray's understanding of sleep states illuminates how criminal cases were viewed.

Somnambulism

Ray questioned whether the sleeping mind represented a continuance of "natural faculties" coupled with the "cooperation" of voluntary muscles. Based on the case presentations provided, along with his interpretation, he notes that sleepwalkers can perform various complex acts. These acts, at times, may look as if the subject is awake, because these movements are performed with such accuracy and precision. In addition, because of the performance of these complex movements, whether the individual is able to see has also been questioned. This factor varies on a case-by-case basis. If a habit is overlearned, Ray implies, it is performed in sleep without the aid of sight. Some individuals defy the understanding of what is humanly possible. The famous somnambulist Jane Rider could reportedly read and write in her sleep. Because Rider could converse in her sleep Ray analogized sleepwalking to dreaming, because dreamers can respond to others within the subject matter of a dream while remaining oblivious to other sounds. In a variant form, cataleptic somnambulism or ecstasis, there is little motor activity, but "the patient converses with fluency and spirit," although usually amnesic for the episode.

Various forms of somnambulism were believed to be a morbid condition, lending itself to the prevailing psychopathologic formulation. Ray hints that ordinary sleepwalking is "a slight modification of dreaming" that is influenced by bodily states. However, ecstasis is closer to epilepsy and hysteria and is therefore associated with insanity. Cataleptic somnambulism can be precipitated by "uterine functions" in women, excessive use of alcohol, or plethora of the blood vessels of the head. Sleepwalking has also been seen in families, and some forms were believed to be heritable, Ray notes.

Ray likens somnambulism to a psychiatric disorder, hinting at a formulation that could have traction in the forensic setting: "In the somnambulist, either the perceptive organs are inordinately



Fig. 1. Isaac Ray. (Courtesy of Library of Congress, Brady-Handy Collection, 1865–80.)

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