

## Commentary

# The concept of judgment in the medico-legal context: A view from Israel

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## Abstract

The assessment of judgment has a central role in court-appointed evaluation, especially when criminal responsibility is in debate. Psychiatry and the law view the concept of judgment differently. The legal system aims for clear determinations of right or wrong, guilty versus not guilty. In psychiatry, judgment is a more complex concept; it involves analytical thinking, socio-ethical behaviors and insight. In clinical practice, these are inter-related and affect each other. The two viewpoints meet in court where they sometimes clash. Judgment is considered preserved when all three components are intact, or when only one is impaired. Impairment of two components inevitably leads to compromise of the third and to judgment impairment as a whole, resulting in criminal non-responsibility.

Clinical vignettes, mainly from acute secured wards, will illustrate the dynamic inter-relation among the different components of judgment and show the influence of judgment evaluation as a whole in criminal law.

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## Keywords

Judgement; insight; psychosis; criminal responsibility; acute secured ward

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## INTRODUCTION

The assessment of judgment in mentally ill patients is an important part of psychiatric assessment and has a central role in court appointed evaluation, especially when criminal responsibility is in debate. In clinical practice, evaluation of judgment influences doctors' decisions; in the medico-legal context, it has a crucial impact on court decisions. This leads to

the need for a deeper understanding of the concept of judgment and its correct evaluation in both clinical and medico-legal milieus.

Judgment is defined as the ability to assess a situation correctly and to act appropriately in the situation (Sadock & Sadock, 2003).

Linguistically, 'judgment' and 'judge' come from the same origin – the Latin words 'judicium' and 'judex' (Lubker, 2005), and this is paralleled in other languages as well: Hebrew, Russian, French and German. This association points to the close connection between the concept of judgment and the legal system.

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Kolb (1973) defined judgment as ‘the ability to compare facts or ideas, to understand their relations, and to draw correct conclusions from them’. He recognized an integration of judgment in all personality functions, and noted the influence of the patient’s general grasp and emotional factors on judgment.

The legal and medical professions have different viewpoints concerning the defining of the concept of judgment and its evaluation. Furthermore, the two professions have different purposes for judgment evaluation, and this may lead to different consequences. The legal system is an adversarial system, aiming for clear-cut conclusions as to right or wrong, good or bad, voluntary versus involuntary acts, guilty versus not guilty (Denno, 2003). This leads to a restricted definition of judgment, and converts judgment evaluation into the investigation of social knowledge.

In psychiatry, judgment is not an either/or issue; it is, rather, a wider and more complex concept. These two viewpoints meet in court and have mutual interaction in psychiatric court appointed evaluation.

The purpose of this article is to discuss, through the use of clinical vignettes, the different visions of the concept of judgment and to create a basis of understanding between the two professions.

Judgment in psychiatry involves three groups of mental functions: analytical thinking, socio-ethical behaviors and insight (Sadock & Sadock, 2000). Each of these areas of mental functioning has a separate definition, yet, in clinical practice they are inter-related and affect each other.

Analytical thinking represents a part of thinking capacity which enables one to discriminate and to weigh different alternatives, in an attempt to conclude rationally and to come to a decision within a framework of intact reality testing. It requires basic intact cognitive functioning, i.e. orientation, memory, concentration, and intelligence. Severe impairment of analytical thinking is seen in psychotic states, in demented, delirious

and intoxicated patients, and in individuals with severe learning disabilities.

Socio-ethical behavior includes knowledge of social norms and rules with subsequent behavior in accordance with them. This section of judgment has a crucial impact on court decisions; psychiatrists are pressed to address this issue in their evaluation in an absolute manner according to jurists’ expectations. In our clinical vision, socio-ethical behavior is only one part of judgment evaluation, and by its isolation the dynamics and inter-relation among the three components of judgment are ignored.

The third aspect of judgment is insight. Insight in psychiatry is defined as ‘the correct attitude to morbid change in oneself and the realization that the illness is mental’ (Lewis, 1934). Lack of insight is related to severity of illness (Sevy et al., 2004) and to more violent behavior in patients with schizophrenia (Buckley et al., 2004).

Judgment is regarded as intact when all three dimensions of mental functioning: analytical thinking, socio-ethical behavior and insight are preserved.

Judgment can be viewed as relatively preserved when one aspect of judgment is impaired, but not to a sufficient degree so as to severely affect the other two.

Judgment can be considered pathological when at least two components are damaged, demonstrating the mutual influence of one aspect of mental functioning on the others, making it impossible for the third aspect to remain undisturbed in the face of the dysfunction of the others.

When analytical thinking and insight are grossly impaired, they usually influence socio-ethical behavior. When both socio-ethical behavior and analytical thinking are severely disturbed, they usually lead to insight impairment. Impairment of social-ethical behavior and insight clearly points to analytical thinking pathology.

Through clinical vignettes, we aim to illustrate the dynamic inter-relationships among the different components of judgment, and the influence of judgment evaluation as a whole on the conclusions reached by psychiatric court-appointed evaluation in criminal law. This could lead to a better understanding between psychiatrists and lawyers concerning the criminal responsibility of mentally ill patients.

## DEGREES OF JUDGMENT IMPAIRMENT IN MEDICO – LEGAL EVALUATIONS

### First degree

The impairment of one element of judgment, either analytic thinking, insight or socio-ethical behavior that can be seen in certain cases, is not sufficient to evaluate judgment as impaired and to conclude lack of criminal liability.

#### *Vignette 1*

A man in his thirties, with inflated self-esteem, considered himself to be attractive, talented, a unique spouse, someone very special who deserved special treatment from those around him. When he did not receive the attention he expected, he became aggressive and disregarded social rules and the rights and pain of others. He violated the law through physically aggressive assault, trying to ‘annihilate’ frustrating objects. The man lacked the socio-ethical aspect of judgment but retained the other two aspects. Even though one aspect of judgment was impaired, his general judgment was evaluated as preserved and he was considered completely responsible for his actions.

In psychiatry, one can see impairment of socio-ethical behavior in patients with personality disorders, mainly antisocial and narcissistic.

### Second degree

When two aspects of judgment are impaired, they inevitably influence the third area negatively. This results in impaired judgment, which should be viewed as impaired from the psychiatric point of view, and accord an appropriate verdict: criminal non-culpability.

This stage may sometimes lead to a clash between psychiatrists and lawyers. It is particularly so when the mentally ill patient with impaired analytical thinking and insight violates the law, but remains formally intact in his social knowledge, i.e. he knows theft, physical assault or killing are all forbidden. This highlights the difference in viewpoints between law and medicine and raises the need for the correct approach to the evaluation of judgment.

A compromise of socio-ethical behaviors may result in a split between formal knowledge of social norms and rules which may remain relatively untouched, and social behavior that is negatively influenced by the judgment impairment: a person may know formally that a certain deed is forbidden, yet behave, despite his knowledge, in accordance with his intrapsychic delusional ideas, hallucinations and idiosyncratic interpretations.

To illustrate this clash between remnants of formal social knowledge and the grossly impaired socio-ethical behavior influenced by disturbed analytical thinking and insight, we present Vignette 2.

#### *Vignette 2*

A man in his thirties, married and the father of two, was diagnosed as suffering from chronic paranoid schizophrenia, with the main delusional ideation of being betrayed by his wife with his father and brothers. Auditory hallucinations supported his delusions, and ordered him to commit suicide. He decided, based on his cultural religious background that to be killed is a better choice than to kill himself. In order to be killed, he tried to attack a police officer, anticipating being killed in defense. Fortunately, the patient and the police officer were only slightly wounded. The patient was arrested. He was brought to the acute secured ward for examination. During the investigation, the patient said he knew homicide was wrong and forbidden, but had no alternative, since his wife’s unfaithful behavior caused him a degree of suffering which only death could relieve.

In court, two opposing court-appointed psychiatric evaluations were presented. One

concluded that the patient was not responsible for his action due to his being in an acute psychotic state with grossly impaired judgment leading him to interpret reality wrongly, and act according to his delusions and hallucinations. The second opinion saw him as responsible for his act, since he knew homicide is forbidden. The court accepted the second opinion. This case raises the importance of judgment definition and evaluation, and its weight in medico-legal practice. This case exemplifies the strong relationship between the three main components of judgment; where two are grossly impaired the third one cannot possibly remain untouched, even in the face of residual social understanding that killing is forbidden. In other words, pathological influence of mental disease upon behavior in an acute psychotic state with impaired judgment should be taken into account when criminal responsibility is determined, and when there is a direct connection between delusional content and acts.

### Third degree

When all three components of judgment are impaired we see the most severe form of judgment pathology. This can be seen in florid psychotic states.

The usual expectation that legal professionals have of the psychiatric assessment commissioned by the court is of finding a connection between psychotic content and criminal behavior in order to determine criminal responsibility. We believe that in cases where the degree of psychosis is severe and associated with grossly impaired judgment, the individual lacks criminal responsibility even though there is no clear connection between psychotic production and behavior.

This is illustrated in the next two vignettes of patients suffering from schizophrenia, disorganized type.

#### *Vignette 3*

An adolescent, 18 years old, from an orthodox Jewish religious background, was brought to the acute secured ward of the hospital by the police following sexually aggressive behavior where he undressed his young sister, frightened

her as if he wanted to rape her and afterwards attacked his father with a knife and tried to kill him. All of this happened with no warning, in the presence of other family members.

Upon examination the patient was agitated, restless, ran from one side of the room to the other, screamed, cried and laughed. His affect, ranging from anger to giggling, was grossly inappropriate. His speech was completely incoherent, with word salad. He was completely incomprehensible. He could give no explanation for his behavior nor attribute it to an organized delusional system or hallucinatory experience. He did provide fragments of bizarre thoughts that had no connection with one another or with the aggressive acts that brought him to psychiatric hospitalization. He was, simultaneously, the Messiah, as well as a young boy interested in watching his sister's naked body, who had the feeling of being laughed at and wanting to get rid of his father who 'feeds him shit'. Judgment was severely impaired in all dimensions and the patient was obviously not responsible for his actions.

#### *Vignette 4*

A 67-year old male, with a lifelong schizophrenic history, was living in a psychiatric hostel where all his needs were taken care of.

The man was brought to the hospital for psychiatric evaluation by a judge after he killed his roommate by igniting his bed while he was sleeping and leaving him to be burned to death. During that time, he went to the lobby to 'smoke a cigarette and drink a cup of coffee'. He ignored the fire alarm, and, although he knew the location of the fire, did not inform the staff.

On psychiatric examination, he was found to be severely psychotic and disorganized. No consistent delusional thoughts against his roommate were found; he only expressed dissatisfaction because the deceased had asked him to turn off the light. His delusions were bizarre; he called himself 'saint murderer' and 'moral and sensitive friend'. He did hear different voices, mainly calling his name and making noises, which he had heard for years and had adapted

to them. Analytical thinking, insight and socio-ethical behavior were all impaired, resulting in globally disturbed judgment. He had no regrets about killing someone, and considered himself as 'the fire angel'.

This man obviously bears no criminal liability.

## DISCUSSION

Judgment assessment is an integral part of medico-legal evaluation. It is not only an academic question, but has practical meaning in clinical and legal decisions.

Criminal liability has been dealt with in Jewish Halachic literature since the third century, exempting the mental patient from legal responsibility (Frenkel et al., 1993). Through the centuries, Halachic commentators explained and applied this statement in a wide variety of theoretical discussions. According to Halachic literature, the liability of the mental patient has been evaluated in relation to mental awareness, free will and judgment. Maimonides (2002) refers to lack of *Daat* (knowledge/awareness), as crucial for ascertaining liability, and lack of it limits responsibility. The exemption of the mentally ill patient from legal responsibility in tort and criminal law was indicated in cases where there was lack of mental awareness, lack of free will and lack of judgment.

The concept of judgment analyzed here can serve as a meeting point between ancient views and present day medico-legal attitudes. We see a continuum between the Halachic thought and contemporary approach to patient evaluation regarding liability and responsibility.

Judgment is viewed differently by lawyers and psychiatrists. The legal community perceives judgment as either intact or impaired, based mainly on the evaluation of knowledge of social rules and norms. Psychiatrists understand judgment as a wider concept that includes three inter-related components: analytic thinking, socio-ethical behavior and insight. We propose that judgment can be considered as preserved when all three components are intact

or when only one is impaired and that not sufficiently to affect the other two. When two components are impaired, it inevitably leads to damage of the third component and to judgment impairment as a whole, precluding criminal responsibility. In cases of severely ill mental patients, where all three components of judgment are impaired, the individual lacks criminal responsibility even when no clear relationship between psychotic content and behavior can be proved.

The ideas presented in this article open the field for further research, and it is suggested that a scale of judgment assessment be established with the three components of judgment as subscales in order to ease the procedure of judgment evaluation, in addition to other scales in use in forensic assessment (Archer et al., 2006).

The review of the concept of judgment and its components, by both psychiatrists and lawyers, will hopefully enable mutual understanding and construct a common basis for a working alliance. This necessitates analysis of the three components of judgment by psychiatrists in the mental state examination and court-appointed evaluations that will be accepted and become the common standard for both medical and legal practitioners.

## References

- Archer, R.P., Buffington-Vollum, J.K., Vauter Stredny, R. and Handel, R.W. (2006) A survey of psychological test use patterns among forensic psychologists. *Journal of Personality Assessment*. 87(1): 84–94.
- Buckley, P.F., Hrouda, D.R., Friedman, L., Noffsinger, S.G., Resnick, P.J. and Camlin-Shingler, K. (2004) Insight and its relationship to violent behavior in patients with schizophrenia. *American Journal of Psychiatry*. 161(9): 1712–1714.
- Denno, D.W. (2003) A mind to blame: New views on involuntary acts. *Behavioral Sciences and the Law*. 21(5): 601–618.
- Frenkel, Y., Durst, R., and Ginath, Y. (1993) The criminal liability of the mental patient in Jewish law (Halacha). *Medicine and Law* 12(3–5): 283–286.
- Kolb, L.C. (1973) *Modern Clinical Psychiatry*. Saunders Co. p 161.
- Lewis, A. (1934) The psychopathology of insight. *British Journal of Medical Psychology*. 14: 332–348.

**Lubker, F.** (2005) *Realexicon des klassischen Alterthums*. Moscow, EKCMO. p 1041.

**Maimonides** (2002) *Yad Hachazaka*. Yeshivath Beth Moshe.

**Sadock B.J. and Sadock, V.A.** (2000) *Comprehensive Textbook of Psychiatry*, 7th edition. Lippincott Williams and Wilkins. p 802.

**Sadock, B.J. and Sadock, V.A.** (2003) *Synopsis of Psychiatry*, 9th edition. Lippincott Williams and Wilkins. p 287.

**Sevy, S., Nathanson, K., Visweswaraiiah, H. and Amador, X.** (2004) The relationship between insight and symptoms in schizophrenia. *Comprehensive Psychiatry*. 45(1): 16–19.