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Competency To Stand Trial: An International Challenge

IBPP Editor
bloomr@erau.edu

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Author: Editor

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Abstract. This article describes some of the difficulties in developing an international standard for competency to stand trial.

From June 15 to July 17 representatives from international governmental organizations, national governments, and nongovernmental organizations are meeting in Rome, Italy to possibly foster the establishment of a permanent international criminal court. The court probably would have the authority to try cases involving severe human rights violations perpetrated by individuals--viz., genocide, crimes against humanity, and war crimes. The court would obviate the need for ad hoc tribunals set up to handle violations by Germans and Japanese after World War II and by some participants in the recent Balkan wars and conflicts within Rwanda. The court also would fill a need not satisfied by the International Court of Justice--the latter only handling legal disputes submitted by duly constituted states and legal questions referred by international organs and agencies.

Besides the myriad of questions concerning what allegations will constitute the purview of the court, what and how authority will initiate a case, and how political biases will be systemically lessened, a forensic psychological issue is the development of an international standard for competency to stand trial. Just as alleged perpetrators of terrorism already pose special dilemmas for establishing competence (IBPP, 1(1)), so will defendants coming before the court--if established--from anywhere in the world.

Dilemmas in establishing competence for defendants before an international criminal court probably will revolve around three generic competency criteria. (1) Is the defendant able to manifest factual understanding--viz., the nature of the allegations? (2) Is the defendant rational--viz., able to understand the social facts of the relevant criminal justice system--including the workings of the court system and the relationship of the court's workings to consequences affecting the defendant? (3) Is the defendant able to cooperate in defending against the allegations--viz., to assist legal counsel and other de facto supporters?

As to the first dilemma, how will a defendant's recitation and elaboration of facts be interpreted as factual understanding given potentially huge differences in psychological, social, cultural, and political phenomena between the defendant and criminal justice system participants? The complexity of this interpretation should be foreshadowed by academic work positing the socially constructive nature of fact within, between, and among cultures as well as the place of fact in a world of value. Differing phenomenologies of narrative--structure, function, process--among the defendant and various representatives of the court system may impede establishing of adequate factual understanding.

As to the second dilemma, can rationality be established in a manner divorced from some consensual agreement among so-called "normal" peers? How will an appropriate group of peers, an appropriate standard of normality, and the appropriate type and degree of consensus be established without risking an infinitely iterative process? As with delusional defendants, how will logic necessarily be divorced from rationality when the logic contravenes the Aristotelian hypothetico-deductive variety?

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As to the third dilemma, establishing the presence or absence of emotional and mental disorders and of various cognitive capabilities will face difficulties even more severe than those faced by minority ethnic groups. The latter at least have experienced a developmental psychology that has occurred within the same majority group context as that affecting their respective local, regional, and national criminal courts. The difficulties will include degree of experience with procedures, stimulus items, languages and dialects, and the very conceptual notions and conceptual variants of lawyer-client confidentiality, informed consent, secular-sacred distinctions, and time, place, and mind.

Political and forensic psychologists have much to offer as deliberations concerning the international criminal court continue. (See Chaleby, K.S. (1996). Issues in forensic psychiatry in Islamic jurisprudence. *Bulletin of the American Academy of Psychiatry and the Law*, 24, 117-124; Ciccone, J.R., & Ferracuti, S. (1995). Comparative forensic psychiatry II: The perizia and the role of the forensic psychiatrist in the Italian legal system. *Bulletin of the American Academy of Psychiatry and the Law*, 23, 453-466; Mackay, R. (1995). Insanity and fitness to stand trial in Canada and England: A comparative study of recent developments. *Journal of Forensic Psychiatry*, 6, 121-138; Terrorism and legal competence. (November 1, 1996). *International Bulletin of Political Psychology*, 1(1); The Court: History. (June 1998). Amnesty International, <http://icc.amnesty.it/en/icc/history.html>; Warren, J.I., Rosenfeld, B., Fitch, W.L., & Hawk, G. (1997). Forensic mental health clinical evaluation: An analysis of interstate and intersystemic differences. *Law and Human Behavior*, 21,, 377-390.) (Keywords: Competence, Forensic Psychology.)