

Should Forensic Psychiatrists Testify About Evil?

Robert I. Simon, MD

J Am Acad Psychiatry Law 31:413–16, 2003

While nothing is easier than to denounce the evil doer, nothing is more difficult than to understand him.—Fyodor Mikhailovich Dostoevski

Evil is a concept that has fascinated and puzzled humankind for centuries. We confront evil on large scales, such as the Holocaust, on smaller scales, such as serial killers, and in day-to-day interactions that involve discrimination against or exploitation of others. During moments of reflection, we may even acknowledge the capacity for evil within ourselves. We are exposed daily to evil intentions that turn into depraved acts. Forensic psychiatrists have more opportunities than most to contemplate the nature of evil and depravity. We are asked to evaluate individuals accused of committing some of the most horrific acts imaginable.

Forensic psychiatrist Michael M. Welner has designed a “Depravity Scale.”¹ The Depravity Scale contains 26 items describing potential features of depraved intent, behavior, and/or attitudes. It purports to provide a standardized scale that the justice system can use to determine with scientific certainty what constitutes a depraved act.² Dr. Welner presented the Depravity Scale at the 2001 annual meeting of the American Psychiatric Association before a large, interested audience.

He defines depravity as the intent to maximize damage, to traumatize emotionally or to disfigure permanently, to prolong suffering, and to cause unrelenting emotional or physical harm.² Depravity also considers the quality of a victim’s suffering and the degree of physical harm. Indifference or satisfaction in committing the harmful act is another ele-

ment of the definition. The perpetrator projects onto the victim the responsibility for depravity.

The Depravity Scale assesses the evil of the event, not the who or the why.³ The list identifies the failure in empathy as a key characteristic.⁴ However, depravity remains as imprecise and subjective a term as its synonym—evil. The who, why, what, how, and when are vital in the forensic psychiatric assessment of individuals charged with crimes. The event cannot be separated from the perpetrator.

If used in forensic psychiatric testimony, the Depravity Scale must meet a trial court’s scrutiny under *Daubert* criteria for admissibility of scientific evidence.⁵ The criteria include the testability of the underlying theory, peer review, and publication, factors affecting the potential error rate and the general acceptability by the relevant scientific community. Daniel W. Shuman, Professor of Law at Southern Methodist University, states, “As to relevance, no legal standard with which I am familiar turns on depravity—to what is this relevant in the forensic world?” (Ref. 6).

Like pornography, most people recognize evil when they see it. Arriving at a universal definition of evil, however, is impossible. Evil is a complex concept, akin to a thick rope of many intertwining strands in which philosophers and theologians become entangled. The perception of evil is in the eye of the beholder, influenced by moral, social, political, religious, philosophical, psychological, and other factors. For example, combatants frequently brand their enemies as evil, even while each side is certain that God is on their side. The 9/11 terrorists devoutly believed that murdering thousands of innocent people would insure entrance into paradise. Antiabortionists who kill doctors or other abortion clinic personnel insist that they are killing murderers.

Robert I. Simon is Clinical Professor of Psychiatry, Director, Program in Psychiatry and the Law, Georgetown University School of Medicine, Washington, DC, and Chairman, Department of Psychiatry, Suburban Hospital, Bethesda, MD. Address correspondence to: Robert I. Simon, MD, 8008 Horseshoe Lane, Potomac, MD 20854-3831.

Forensic psychiatrists are ethically required to adhere to the principles of honesty and striving for objectivity in providing opinions and testimony.⁷ Evil, however, is a concept too knotted in ambiguity for the application of these principles. The proper *métier* of the forensic psychiatrist is psychological and clinical. Psychiatrists are medically trained in the scientific method, not in the diagnosis and treatment of evil. They observe cause and effect in human behavior. When a concept is beyond scientific investigation, it is the province of the philosopher and theologian. Introducing the concept of evil into forensic psychiatry hopelessly complicates an already difficult task. The determination that a particular behavior is or is not evil is a judgment that is heavily influenced by context and subjectivity. Thus, I will tug only on the psychological strand in the twisted rope of evil.

Evil is interpersonal, the exclusive province of human beings. It is not observed in animals. The recognition that evil involves acts of interpersonal harm allows for the psychological analysis of the interaction between perpetrator and victim. One psychological definition of evil, though admittedly imperfect, is the intentional or gratuitous infliction of harm by individuals committed against other individuals, groups, or an entire society.⁸ Excluded from this definition are unintended, negligent acts that cause harm.

The suspension or absence of empathy is necessary to harm other people intentionally. It is usually accompanied by the psychological mechanisms of devaluation and projection. Persons intent on committing harm first dehumanize and demonize others, then project on the victims their own disavowed, unacceptable traits and inner conflicts. In the argot of psychiatry, the victims are part objects to be used and discarded as the perpetrator pleases.

Edmund Edward Kemper is a necrophilic serial killer who considered his victims expendable. After imprisonment, he openly stated his intentions: "I'm sorry to sound so cold about this, but what I needed to have was a particular experience with a person, and to possess them in the way I had to, I had to evict them from their bodies" (Ref. 9, p 293).

John Wayne Gacy maintained his innocence despite irrefutable evidence that he sexually molested and killed 33 men. Gacy was active in community projects. He belonged to a number of civic organizations. As director of the Polish Constitution Day

Parade in 1978, he was photographed with First Lady Rosalynn Carter.

At age 5, Gacy developed a form of psychomotor epilepsy. His father openly expressed contempt for his son's illness. He felt his son was malingering and accused his wife of pampering him. The father warned his wife that John was "going to be a queer" (Ref. 9, p 297). He heaped scorn on his son, calling him a "he-she" (Ref. 9, p 298). Years later, Gacy referred to his victims as "worthless, little queers and punks" (Ref. 9, p 298).

Theodore Robert "Ted" Bundy, the handsome, articulate, charming serial sexual killer who savagely killed 35 women was brutally warped. He was genuinely surprised that so much was being made over the murders or that the victims' families would so deeply mourn their deaths. "What's one less person on the face of the earth" (Ref. 9, p 307)? Bundy derisively referred to his many victims as "cargo" and "damaged goods" (Ref. 9, p 307). He felt that his need for a perverted power orgasm justified taking a life. Bundy described the moment of thrilling orgasm this way:

You feel the last bit of breath leaving their body. You're looking into their eyes. A person in this situation is God! You then possess them and they shall be part of you, and the grounds where you kill them or leave them becomes [*sic*] sacred to you, and you will always be drawn back to them" [Ref. 9, p 301].

Serial sexual killers, though rare, illuminate with horrifying clarity the extremes of evil. Unquestionably, Bundy and other serial killers display profound mental abnormality. Bundy's behavior is symptomatic of severe malignant narcissism, or sexual psychopathy, but psychiatric diagnosis fails to encompass the enormous complexity of evil. Psychiatric terms can be used to cover our ignorance about the nature of evil, casting a spell of unwarranted certitude. We know that serial sexual killers enjoy torturing their victims to obtain a maximal orgasm, which they are unable to achieve in any other way. We do not know how or why serial killers develop.

How much can forensic psychiatry inform us about the darker side of mankind? People often assume that serial killers and genocidal leaders are "crazy." If this were true, psychiatrists might have some expertise to offer in the evaluation of such evil. However, such individuals are rarely psychotic. Part of our fascination with these individuals is their appearance of normality. In fact, most serial sexual killers appear quite ordinary and indistinguishable from the rest of humanity. Along with their monstrous,

murderous side, they appear to lead reasonably normal lives. They pay bills, fill their car with gas, work, and pay taxes—much like ourselves and our neighbors.

No bright line separates good from evil. Ted Bundy's mother considered him to be an ideal son. His political friends thought he was on the fast track in the legal profession, perhaps becoming a future governor or senator. His girlfriends found him to be a romantic dream come true—an attentive, tender lover who sent flowers and wrote love poems. John Gacy owned a prosperous construction business. He created Pogo the Clown to cheer sick children. Gacy was voted the local Jaycee's outstanding member for 1967. All the while, Gacy strangled and sexually molested at least 33 men, burying them in the basement of his home where he lived with his second wife. Jeffrey Dahmer, who murdered and cannibalized 17 young men, held a regular job at a chocolate factory. At trial, Dahmer's lawyer described him as an out-of-control "steam-rolling killing machine" (Ref. 9, p 294). Gacy and Dahmer worked and killed at the same time. Neighbors who are interviewed after a killer is captured are invariably surprised to find that they lived next door to a serial killer. They report that he was a quiet person, who took out his trash regularly and never caused any trouble. There was not the slightest hint that a savage predator lived in their midst.

Some perpetrators of the worst atrocities do not have a diagnosable psychiatric disorder. The case of Adolph Eichmann, the Nazi bureaucrat who directed the deportation and extermination of millions of people, exemplifies this point.¹⁰ Eichmann was undoubtedly evil. Nevertheless, he was certified as "normal" by a half dozen psychiatrists (Ref. 9, p 12). The psychiatrists' diagnosis of normality was underscored by a revealing incident that took place at Eichmann's trial. A former concentration camp inmate had been waiting for some time to testify against Eichmann. Yet when he stood before Eichmann, the former inmate passed out. After being revived, the would-be witness explained his fainting at such a crucial moment by saying, "Eichmann looked so normal."

That this man who perpetrated such monstrous, unconscionable crimes could be found "normal" by a number of psychiatrists demonstrates the disjunction between psychiatric knowledge and expertise and our understanding of evil. Diagnosis, by itself, provides

little or no insight when applied to the concept of evil. Psychiatric diagnosis is atheoretical, avoiding etiology and psychodynamic formulations. It is a verity that labeling the evil doer is easy but a deeper understanding is extremely difficult. The forensic psychiatrist is sorely challenged to explain evil behavior.

Kemper, Gacy, Bundy, and Dahmer displayed, in the extreme, the psychological mechanisms common to all those who commit evil acts. They have company in Hitler, Eichmann, Stalin, Milosevic, Pol Pot's Khmer Rouge, and other genocidal killers who butchered millions of people. Stalin said that 1 death is a tragedy, 20 million deaths is a statistic. He understood that the mind cannot grasp the enormity and horror of so many murders, thus providing cover for his genocide.

Robert Jay Lifton, in his book, *The Nazi Doctors*, describes the doctors who inflicted atrocities upon concentration camp inmates in the name of "medical healing" as "banal men performing demonic acts."¹¹ The essence of their psychopathology and other killers like them is a spectacular failure in empathy and equally egregious use of devaluation and projection to rationalize their crimes. These psychological mechanisms are the engines that drive prejudice, scapegoating, genocide, and also the "evils of everyday life."

A rich and extensive body of psychiatric and psychological literature exists regarding empathic dysfunction, projective identification, and pathologic narcissism. Nevertheless, the enigma of evil remains opaque to psychological scrutiny. The connection between empathic failure and evil is hardly straightforward. The failure to regard the lives of others as important as ours is not strictly the province of individuals who commit horrendous crimes. Indeed, we observe failures in empathy—the inability to place oneself in the "shoes" of others—in our patients and in ourselves. Our capacity for empathy is limited. It is not humanly possible or even desirable that we live in somebody else's shoes. Our individuality sustains survival. It is inevitable that our needs and desires clash with those of others.

Although psychiatric disorders often play a role in criminal behavior, the capacity for what society calls evil resides to some degree in every individual. Evil is an inseparable part of the human condition. George Orwell¹² observed, "Saints should always be judged

guilty until they are proven innocent.” There are few saints among us.

When criminals such as serial killers are apprehended, the law wants to know about the individual’s competency to stand trial, the intent to commit a crime and the recommendations for treatment, management, and supervision. The more data we have about the perpetrator, the sounder our forensic opinion. We may still fall far short in our knowledge, even when we have a great deal of information. Jeremiah’s¹³ lament that, “The heart is deceitful above all things, and desperately wicked; who can know it?” rings true. Nevertheless, we do tolerably well, given our current psychiatric knowledge and clinical expertise, in assessing individuals referred by the legal system.

Psychodynamic understanding may help us to better evaluate an individual who harms or kills another. The causes, development and management of criminal behaviors are legitimate areas for forensic study. Although empathic failure is not difficult to identify, its origins often remain obscure, shrouded in the nature-nurture conundrum. A better understanding of the developmental vicissitudes of empathy may provide helpful answers to the questions the law asks of us. It may also suggest interventions that could prevent some types of violent crime or help develop new treatment for such offenders.

The Gordian knot of evil cannot be untied by forensic psychiatry. It is unreasonable to expect forensic psychiatrists to provide credible testimony about evil. The determination that Bundy, Gacy, Stalin, Eichmann, and others like them are evil incarnate requires no professional expertise. Lay people are just as qualified to identify these individuals as evil. Nonetheless, the nature of evil remains a mys-

tery. To understand evil, we have to completely understand ourselves.

Forensic psychiatrists and psychologists have an important, but limited, consulting role when advising the courts about psychological matters. We are not and should not be asked to offer professional opinions about evil. It is the law’s final moral judgment of guilt upon individuals whom society brands as evildoers.

Acknowledgments

I thank Liza H. Gold, MD, for her review and excellent editorial suggestions.

References

1. Welner MM: Defining evil: A Depravity Scale for today’s courts. *The Forensic Echo* 2:4–12, 1998
2. The Depravity Scale. Created by Michael M. Welner, MD. Provided by the Forensic Panel, New York, NY. Available at <http://www.depravitiescale.org>. Accessed June 8, 2003
3. The Forensic Panel. New York, NY. <http://www.forsenicpanel.com>. Accessed June 8, 2003
4. Slovenko R: The way of evil, its measurement, and the role of God. *J Psychiatry Law* 29:377–403, 2000
5. *Daubert v Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579
6. Personal communication, Professor Daniel W. Shuman, June 23, 2003
7. American Academy of Psychiatry and the Law. *Ethics Guidelines for the Practice of Forensic Psychiatry*, Bloomfield, CT, 1995
8. Simon RI: Serial killers, evil and us. *Natl Forum* 80:23–8, 2000
9. Simon RI: *Bad Men Do What Good Men Dream: A Forensic Psychiatrist Illuminates the Darker Side of Human Behavior*. Washington, DC, American Psychiatric Publishing, Inc., 1999, p 293
10. Arendt H: *Eichmann in Jerusalem: A Report of the Banality of Evil*. New York: Viking, 1963
11. Lifton RJ: *The Nazi Doctors: Medical Killing and the Psychology of Genocide*. New York: Basic Books, 1986, p 12
12. Orwell G: *Reflections on Gandhi*. *The Orwell Reader*. New York: Harcourt, Brace & World, Inc., 1956, p 328
13. Jeremiah 17:9. *The Holy Bible, King James Version*. New York: American Bible Society.

knoll - evil in forensic psychiatry.pdf - Free download as PDF File (.pdf), Text File (.txt) or read online for free. Simon3 and Welner4 in this journal have debated whether forensic psychiatrists should define and testify about evil. While Simon cautions about the subjective moral judgment involved, Welner believes that defining evil is only the latest frontier where psychiatry . . . will bring light out of darkness (Ref. 4, p 421). Dr. Knoll is Associate Professor and Director of Forensic Psychiatry, Department of Psychiatry, SUNY Upstate Medical University, Syracuse, NY. Forensic psychiatrists are often called to be expert witnesses in both criminal and civil proceedings. Expert witnesses give their opinions about a specific issue. Often, the psychiatrist will have prepared a detailed report before testifying. The primary duty of the expert witness is to provide an independent opinion to the court. An expert is allowed to testify in court with respect to matters of opinion only when the matters in question are not ordinarily understandable to the finders of fact, be they judge or jury. As such, prominent leaders in the field of forensic psychiatry, from Thomas Gutheil[4] to Robert Simon and Liza Gold[5] and others[6] have identified teaching as a critical dimension in the role of expert witness. Most psychiatrists assiduously avoid the word evil, contending that its use would precipitate a dangerous slide from clinical to moral judgment that could put people on death row unnecessarily and obscure the understanding of violent criminals. Still, many career forensic examiners say their work forces them to reflect on the concept of evil, and some acknowledge they can find no other term for certain individuals they have evaluated. In an effort to standardize what makes a crime particularly heinous, a group at New York University has been developing what it calls a depravity scale, which rates the horror of an act by the sum of its grim details. Both criminal psychologists and forensic psychologists assist law enforcement in investigating and solving crimes. However, playing different but complementary roles. Criminal psychologists focus primarily on determining a motive and creating a pr... Forensic psychologist do not usually attend crime scenes as part of their role, this is for police detectives, SIOs, and crime scene examiners etc (usually from a criminology degree). For example, you must evaluate BOTH parents, equally. You should evaluate the children as well. You cannot give an opinion having only seen one parent. Nope.