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HYPNOSIS AND CRIMINAL BEHAVIOR

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THE CONCEPT OF HYPNOTISM was first popularized by Franz Anton Mesmer, who termed the phenomenon "animal magnetism."¹ In his discussion of the influence of the planets on humans, written as a medical thesis in 1765, Mesmer hypothesized that men have poles, as magnets do, and thus, are affected by the magnetic forces of the universe. He posited further, that disease could be explained as an imbalance of the "fluids" within the human body. Health would be restored, he felt, by effecting a proper balance to the "fluids," *i.e.*, by gathering them about the poles as a magnet gathers filings. When his theory was rejected in Vienna, Mesmer travelled to Paris where his views were likewise dismissed by a scientific commission.²

Almost a century later, hypnotism got its modern name and had its respectability restored, largely through the efforts of an English physician, Dr. James Braid. He noted that hypnotism deepened the suggestibility of patients, but considered it a form of sleep. Although medical centers were slow in granting recognition to the procedure, individual doctors performed many operations utilizing hypnotism as an analgesia, and daily newspapers frequently reported its use in the delivery of babies.

As this new field of medicine progressed, divergent views were expressed by practitioners and scholars, particularly in France, about 1880. Doctors Charcot and Janet, in Paris, considered hypnotism an abnormal procedure, although proper for the treatment of hysterical patients. Conversely, Doctors Liebeault and Bernheim, in Nancy, believed it a normal process. Sigmund Freud, who studied under both Charcot and Bernheim, altered the approach to hypnotism from static to dynamic, showing it to be a procedure by which unconscious and suppressed material could be revealed.

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¹ BORING, A HISTORY OF EXPERIMENTAL PSYCHOLOGY 116-31 (2d ed. 1950).

² ZILBOORG & HENRY, A HISTORY OF MEDICAL PSYCHOLOGY (1941).

More recently, in the United States, the research of Clark Hull has given impetus to further experimental examination in this field. Work such as his has clarified our understanding of the effects and limitations of hypnosis, so that today its depths and degrees can be measured by scales. Hilgard and Weitzenhoffer have published the latest hypnosis scales based on a study of students at Stanford University;³ Shor has extended these scales for use in group administration.⁴

The general interest in and acceptance of hypnosis as a medical procedure can be seen from the following facts: (1) research on this topic is regularly reported in two journals, *The American Journal of Clinical Hypnosis* and the *International Journal of Clinical and Experimental Hypnosis*; and (2) the American Society of Clinical Hypnosis has a membership of 2,500, composed of physicians, dentists, psychiatrists and psychologists.

The years of extensive research, inspired and supported by professional and popular acceptance of hypnosis, have led to the consideration of certain basic questions. One of them will be considered here: Can the hypnotized individual be induced to commit immoral acts?

Hypnosis and Volition

Public exposure to the process of hypnosis has come about largely through the entertainment media, *i.e.*, within the context of a fictional plot, or as an "act" equivalent in stature to the mind-reading segment of a variety show. This burlesque

of medical hypnosis has caused the general belief among laymen that hypnotism renders the subject little more than an automaton. Although the superficial appearances of the subject do suggest this, in fact, the free will of the hypnotized person is not subjugated. He is not passive, nor helpless, nor defenceless. He remains in active control of his actions and can refuse suggestions given to him.⁵ A psychologist who had used hypnosis in the treatment of alcoholics was quoted in a newspaper interview as stating, "Under hypnosis, a person will do what he wants to do, and it is not feasible to try to make him do otherwise."

Scientific measurement of brain waves indicates that the subject under hypnosis is awake, and not in a trance or an unconscious state. It is probable that the subject cannot do anything under hypnosis which he would be normally incapable of doing, although hypnotism may facilitate certain phenomena which would be otherwise unrevealed. Since post-hypnotic suggestions may be considered as a continuation of hypnosis, these statements may be equally applicable to that procedure, although it has not been as extensively researched as hypnotism generally.⁶

Although the hypnotist cannot be said then, to have "absolute" control over the subject, it must be admitted that he exercises a degree of persuasive suggestion that can influence the hypnotized person. Suggestion and suggestibility, however, are not uncommon in everyday life. One person yawns, and others follow suit; one removes his coat because it is warm, and others then begin to notice their own discomfort.

³ WEITZENHOFFER & HILGARD, *STANFORD HYPNOTIC SUSCEPTIBILITY SCALE* (1962).

⁴ Shor & Orne, *Adaptation of the Stanford Hypnotic Susceptibility Scale, Form A*, in *STUDIES IN HYPNOSIS PROJECT* (1962).

⁵ WEITZENHOFFER, *HYPNOTISM* (1953).

⁶ Erickson & Erickson, *Concerning the Nature and Character of Post-Hypnotic Behavior*, 24 *J. GEN. PSYCH.* 95 (1941).

Obviously, some of the phenomena of hypnosis can be effected without hypnosis. Hence, one of the difficulties in measuring the amount of control which the hypnotist exerts over the subject arises from the overlap between common-place suggestibility and suggestion, and *hypnotic suggestion*. It is patent that hypnosis does not occur in a social vacuum—but it is exactly with this crucial issue, namely, the social context in which the hypnosis takes place, with which experimental studies of anti-social behavior have failed to deal. Factors traceable to the situation, the hypnotist, the technique used, and the subject are all important conditions of hypnosis; and their impact must be examined before hypnosis is credited with controlling human behavior.

Hypnosis and Anti-Social Behavior

Between the years 1888 and 1927, authors debated the question under discussion here: can immoral or criminal acts be induced by hypnosis? The Nancy School of Bernheim believed that such acts might be induced; the Salpetriere School of Charcot and Janet disagreed. More recently, in the United States, the view that a subject might be forced to do anything if the technique were adequate was upheld by Wells, Rowland, Schneck, Watkins, Brenman and others. Erickson, Branwell, Hull and Schilder opposed this view.⁷ Estabrooks⁸ and Weitzenhoffer⁹ see many variables in the situation and in the subject which make crime or anti-social acts very unlikely.

It has been shown that the degree of control exercised by the hypnotist is prac-

tically non-measurable. Some experts, however, have argued that the technique employed may have a discernible effect on the hypnotist's power to effectively suggest the commission of an objectionable act. There is some variation in the approach and words used by hypnotists, but essentially, the method of induction of hypnosis includes fixation on an object and sleep suggestions.¹⁰

Studying the effect of command, as opposed to persuasion methods, Lyons tested college students and found that anti-social acts were committed much more readily when subjects were *persuaded* and thus could justify their behavior.¹¹ Erickson believed that the hypnotized individual tries to play the role of a good subject, performing the tasks as he thinks the experimenter desires. To counteract this experimental limitation, Erickson confronted his subjects with "inescapable facts"; he refused to take responsibility for their actions, and obviated their compliance by making it clear that he would not be displeased if they refused a request. As a result, many of Erickson's subjects refused to fulfill requests, even requests with which they would subsequently agree in a waking state. He concluded that

his findings disclose consistently the failure of all experimental measurers to induce hypnotic subjects in response to hypnotizer's suggestions, to perform acts of an objectionable character, even though many of the suggested acts were acceptable to them under circumstances of waking consciousness. Instead of blind, submissive, automatic, unthinking obedience and acquiescence to the hypnotizer and acceptance of carefully given suggestions and commands,

⁷ Orne, *Antisocial Behavior and Hypnosis*, in *STUDIES IN HYPNOSIS PROJECT* (1961).

⁸ ESTABROOKS, *HYPNOTISM* (1957).

⁹ WEITZENHOFFER, *HYPNOTISM* (1953).

¹⁰ *Ibid.*

¹¹ Lyons, *Justification and Command as Techniques for Hypnotically Induced Antisocial Behavior*, 10 *J. CLIN. PSYCH.* 288-90 (1954).

the subjects demonstrated a full capacity and ability for self protection, ready and complete understanding with critical judgment, avoidance, evasion or complete rejection of commands, resentment and objection to instrumentalization by the hypnotizer, and for aggression, and retaliation, direct and immediate against the hypnotizer for his objectionable suggestions and commands.¹²

As early as Hull's and as late as Orne's work, there is no evidence that hypnosis enables the subject to carry out behavior which exceeds his normal volitional capacities.¹³ It is assumed, especially in legal settings, that the subject in hypnosis has no wish to carry out the behavior requested by the hypnotist, and that the impetus for the act is provided solely by the hypnotic suggestion. Now it is obvious that the individual may be asked to do something quite congenial, *e.g.*, kiss a pretty girl, for which the incentive from the hypnotist is hardly necessary. As happens in college fraternity initiation ceremonies, the subject may perpetrate pranks which, outside a particular social situation, he would be reluctant to perform. In other situations, an individual might be ambivalent toward an action, weighing the arguments on either side, *e.g.*, cheating on an exam. It is conceivable that under such a set of facts, hypnotic suggestion might tip the balance in favor of one mode of action. It is obvious, then, that in any examination of hypnosis, consideration must be given to *the desire and need of the subject for the action requested, independent of the commands of the hypnotist.*

Gindes, in his work as a clinician, has

discovered that the subject's own misconceptions of hypnosis play a part.¹⁴ Some patients believe that in hypnosis the subject releases control to the hypnotist. They enter hypnosis believing that they cannot control themselves, and hence, that the hypnotist will be to blame for whatever happens. Alcohol, which has a similar reputation, may be used in the same way. A man drinks and makes advances to a woman; if she accepts he can proceed; if she refuses he can rationalize that he didn't know what he was doing, and when he comes to his senses (as in hypnosis), he may have a convenient amnesia for what happened, and profess disbelief. It is interesting that Fathers Ford and Kelly use the example of alcohol in the opposite way to discount responsibility in hypnosis: "A person who is hypnotized may talk rationally and afterwards remember nothing. No one would hold him accountable *in actu* for what he says or does while hypnotized."¹⁵ On the contrary, hypnotists *would* hold him accountable. Gindes believes that it is wise at times to apprise the patient of the fact that hypnosis removes neither his will nor his judgment. It does not confer a temporary immunity from the patient's own rules of conduct. Hypnosis does not tamper with his ability to distinguish right from wrong. He is as responsible for himself on the hypnotic levels as he is during his waking life.¹⁶ This statement is a far cry from the "automaton" of the Nancy School of hypnotism, and is similar to Erickson's focusing of hypnosis for his subjects.

¹² Erickson, *An Experimental Investigation of the Possible Anti-Social Use of Hypnosis*, 2 PSYCHIATRY 391-414 (1939).

¹³ Orne, *supra* note 7.

¹⁴ Gindes, *Delusional Production Under Hypnosis*, 11 INT. J. CLIN. & EXPER. HYPNOSIS 1 (1963).

¹⁵ 1 FORD & KELLY, CONTEMPORARY MORAL PROBLEMS 299 (1958)

¹⁶ Gindes, *supra* note 14.

Moreover, in Gindes' experience, these attempts to release oneself from prevailing restraints are invariably of a sexual nature. Schilder agrees with Gindes' observation.¹⁷ Erotic excitement in hypnosis—and the psychoanalytic view is that hypnosis is rooted in sexuality—may be attended by fantasies, distorted to a point that the subject falsely remembers having been sexually misused by the hypnotist. Even without the psychoanalytic interpretation, the relaxation accompanying hypnosis could in itself release erotic excitement. But seduction is not easier under hypnosis—in fact, it is a very ineffective technique. The subject, out of her own desire, or from a misunderstanding of hypnosis, may be accepting sexual advances in entering hypnosis. Patients in psychotherapy may develop sexual feelings toward the therapist *regardless of the technique employed*, that is, *with or without hypnosis*. Subjects in a therapeutic context are less able to distinguish actuality from fantasy. Many alleged instances of rape by means of hypnosis are so judged only days or months after the fact. Though the instances are infrequent, the doctor knowing something of the dynamics of the patient will provide a witness in dangerous situations. Dr. Odenwald lists the fear that a girl could be hypnotized into marriage as one of the popular misconceptions of hypnosis, as is the notion that hypnosis “weakens the will” of the subject.¹⁸

Morality and the Use of Hypnosis

A substantial amount of material on the question of the morality of hypnosis is

¹⁷ SCHILDER, *THE NATURE OF HYPNOSIS* (transl. Corvin 1956).

¹⁸ ODENWALD, *HYPNOSIS* 780 (1960).

available. Father William Gormley has reviewed the history of medical hypnosis in the light of papal statements and views expressed by theologians,¹⁹ and Fathers Mangan and Lynch have written excellent articles discussing various aspects of the problem.²⁰ One study quoted the words of Pope Pius XII, who considered hypnosis a scientific tool, morally acceptable when prudently applied for a proper purpose:

The subject which engages us here is hypnosis practiced by the doctor to serve a clinical purpose, while he observes the precautions which science and medical ethics demand equally from the doctor who uses it and from the patient who submits to it.

But we do not wish what we say of hypnosis in the service of medicine to be extended without qualification to hypnosis in general. In fact, hypnosis, insofar as it is an object of scientific research, cannot be studied by any casual individual, but only by a serious scholar, and within the moral limits valid for all scientific activity. It is not a subject for a group of laymen or ecclesiastics to dabble in, as they might in some other interesting topic, merely for experience or even as a simple hobby.²¹

Pius XII thus speaks of hypnosis as an object of scientific research, and not for dabblers or amateurs. Odenwald says that no one should be hypnotized without a medical examination. Nor should one attempt hypnosis without knowledge of psychodynamics and medicine. Although no great dangers are involved in working with normal subjects, as, for example, the col-

¹⁹ GORMLEY, *MEDICAL HYPNOSIS* (1961).

²⁰ Mangan, *Hypnosis: A Medico-Moral Evaluation*, 26 *LINACRE Q.* 39 (1959); Lynch, *Notes on Moral Theology*, 20 *THEO. STUD.* 240 (1959).

²¹ ANESTHESIA: THREE MORAL QUESTIONS 140, 141 (1957).

lege groups, only one who is experienced and trained can detect an incipient psychotic patient, and hypnotism with such a person can be a very dangerous procedure.²² Removal of symptoms by suggestions under hypnosis may go along easily but substitution of another symptom, one which the person cannot handle may be fraught with trouble. By removing the discomfort or pain in a subject, the hypnotist risks passing over symptoms which if properly diagnosed, might lead to early treatment and cure.²³

Conclusion

The issue of immoral actions under hypnosis has been illuminated by the quantity and quality of research that has been completed, but there is need for still more. Because of the ethical restraints on experi-

²² Hilgard, Hilgard & Newman, *Sequelae to Hypnotic Induction*, 133 J. NERV. & MENT. DIS. 461 (1961).

²³ ODENWALD, HYPNOSIS 781 (1960).

mentation on human subjects, it will be difficult to test the necessary questions rigorously. Clinical material and court cases may provide some answers but dredging the essentials from individualized data is laborious. The experimental literature does not support the picture of hypnosis envisaged by fiction writers, and the lay public. Subjects in experiments have performed actions under hypnosis which appear anti-social or immoral, but non-hypnotized subjects would be willing to perform similar acts, and controlled evidence is lacking. The situational variables of hypnotizer, role-playing of subjects, and technique differences need careful study. There is a large (and, as yet, undefined) degree of control of behavior buried in the *social context* of hypnotizing—and there is no evidence that a person under hypnosis can be forced to carry out behavior repugnant to his moral nature.²⁴

²⁴ Orne, *supra* note 7, at 148.

POSTSCRIPTS

(Continued)

which encourages even one physician to render assistance where he normally would not because of fear of legal action cannot be completely without merit.³

It would seem that the potential benefits which motivated the passage of the "Good Samaritan Act" would support the viewpoint that nurses, likewise trained to render aid in emergency, should be protected by similar statutory immunity. Re-

cently, Governor Rockefeller approved legislation exempting nurses from liability resulting from emergency treatment rendered without gross negligence.⁴ Although it is difficult to determine whether fear of legal action substantially discouraged nurses from furnishing emergency medical care in the past, the probability that some injured parties will benefit as a result of this statute is, again, sufficient reason to endorse the extension as appropriate and meritorious.

³ *Id.* at 328.

⁴ N.Y. World-Telegram and Sun, July 21, 1965, p. 5, col. 1.