



Editorial

Correlación diagnóstica entre la valoración clínica y la pericial en inimputables por enfermedad mental

Diagnostic Correlation between Clinical and Expert Assessments in Non-imputable Individuals due to Mental Illness

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The intersection of criminal law and forensic psychiatry constitutes one of the most complex challenges facing the contemporary judicial system.⁽¹⁾ The concept of the person not liable

due to mental disorder raises fundamental questions about criminal responsibility, mental health, and the capacity of legal systems to administer justice equitably. According to the principle of culpability, only those who act with discernment, will, and awareness of the wrongfulness of their conduct are criminally responsible.⁽²⁾ However, when a person presents a serious mental disorder at the time of committing a crime, this principle may be compromised. The evaluation of this condition is the responsibility of a forensic psychiatric expert, in conjunction with the clinical diagnosis issued by mental health professionals.⁽³⁾

However, the lack of consistency between these approaches can generate legal uncertainty and has significant consequences for the criminal process and the protection of the defendant's rights. This essay analyzes the clinical, legal and ethical elements involved in determining non-imputability, highlighting the need for a rigorous, multidisciplinary and bias-free evaluation, particularly in contexts such as Ecuador, where the judicial and forensic infrastructure have notable limitations.⁽⁴⁾

Clinical Diagnosis vs. Expert Diagnosis

In cases of non-imputability, clinical diagnosis and expert diagnosis serve different but complementary functions. The former is issued by mental health professionals in a healthcare setting, with the goal of understanding the patient's condition and establishing a therapeutic plan. It is based on direct observations, clinical interviews, and, in many cases, longitudinal follow-up. In contrast, expert diagnosis is made by forensic psychiatrists or psychologists commissioned by a judicial authority. Its purpose is not therapeutic, but evaluative, to determine whether, at the time of the crime, the accused had the capacity to understand the wrongfulness of his act and to act in accordance with that understanding. This difference in approach inevitably generates tensions, since while clinical diagnosis prioritizes the patient's well-being, expert diagnosis is oriented toward a legal decision.^(5,6,7)

Factors Affecting Diagnostic Concordance

Concordance between both diagnoses is not always high and can be affected by several factors. First, the temporal focus: the clinician assesses the patient's current condition, while the forensic expert must reconstruct the mental state during the commission of the crime.⁽⁸⁾ Second, the purpose and context of the diagnosis: the clinical setting may be more flexible or empathetic, while forensic expertise tends to be more rigorous and adhere to legal criteria.⁽⁹⁾ Furthermore, the clinical variability of some mental disorders, such as acute psychotic episodes or certain personality disorders, can generate fluctuating or contradictory symptoms.⁽¹⁰⁾ Finally, the availability of information plays a significant role: forensic experts often have limited access to clinical follow-up, and clinicians may be unaware of the details of the crime.⁽¹¹⁾

Mental Disorders and Criminal Profiles

From a clinical-forensic perspective, mental disorders are not uniformly associated with criminal behavior. In the case of psychotic disorders, such as schizophrenia, there may be a disconnection from reality that, if manifested during the criminal act, justifies non-imputability.⁽¹²⁾ On the other hand, personality disorders are highly heterogeneous. Some, such as obsessive-compulsive or histrionic personality disorders, tend to avoid transgression out of fear or need for control; others, such as dependent or avoidant personality disorders, may favor passive participation in crimes, without a clear awareness of their scope. The most concerning from a criminal perspective are antisocial personality disorder and paranoid personality disorder, which are associated with increased dangerousness, recidivism, and treatment resistance. Furthermore, schizoid personality disorder has occasionally been linked to serious crimes in contexts of extreme isolation and emotional detachment.^(13,14)

The Problem of Malingering

Malingering represents one of the main difficulties in forensic evaluation. It refers to the intentional and false representation of symptoms with the aim of obtaining judicial benefits or avoiding criminal sanctions. This behavior requires a meticulous evaluation by the expert using validated psychometric tools, structured interviews, and discourse analysis. Malingering can critically interfere with the determination of criminal responsibility or dangerousness, and highlights the need for specialized and ongoing training for forensic evaluators.^(15,16,17)

Realities of Forensic Expertise in Ecuador

In the Ecuadorian context, the practice of psychiatric and psychological forensic expertise faces significant limitations. According to various studies, there are deficiencies in the training of experts, a lack of professional certification, and limited technical resources.⁽¹⁸⁾ Furthermore, the lack of experience in detecting malingering, the influence of conflicts of interest, and the structural corruption of the judicial system can seriously compromise the objectivity of expert reports. Added to this is the lack of knowledge among many judges about the functioning of psychopathologies, which negatively influences the assessment of reports and the issuance of sentences.^(19,20)

Conclusions and Recommendations



Non-imputability due to mental disorder is an essential legal concept for safeguarding the principles of justice, equity, and human dignity in modern criminal justice systems. Its proper application requires rigorous, impartial, and scientifically grounded clinical and forensic analysis.^(21,22) As explained, clinical diagnosis and forensic diagnosis fulfill distinct but interdependent functions. While the former is oriented toward the treatment and understanding of psychological suffering, the latter seeks to establish whether the mental disorder justifies exemption from criminal liability.⁽²³⁾

The lack of agreement between the two diagnoses can generate scenarios of legal uncertainty, especially when one of them considers the defendant to be non-imputable and the other not.⁽²⁴⁾ Factors such as the temporal variability of symptoms, differences in approach, lack of access to complete information, and the presence of personal or institutional biases can negatively influence the assessment. In contexts such as Ecuador, these difficulties are aggravated by structural limitations, such as the lack of specialized training of experts, the presence of unqualified actors, and the low awareness of the judicial system regarding psychopathological phenomena.^(25,26)

Therefore, it is recommended to strengthen collaboration between clinical and forensic teams, promoting spaces for dialogue and joint training. Likewise, the use of standardized diagnostic criteria (such as those contained in the DSM-5 or ICD-11),^(27,28,29) structured interviews, validated psychometric tests, and a rigorous, documented, and transparent forensic methodology should be encouraged. It is equally necessary for judges and judicial officials to have basic training in psychopathology and forensic mental health to adequately interpret forensic reports.

Finally, it must be recognized that mental health is a dynamic phenomenon, and that any assessment of non-imputability must consider not only criminal conduct but also the personal, family, and social context of the accused. Only through a multidisciplinary and ethical assessment will it be possible to guarantee fair judicial decisions, protect the rights of people with mental disorders, and promote therapeutic or safety measures proportional to their actual clinical situation.

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