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Review Article

Criminal Responsibility of Offenders with Psychiatric Disorders: Recent Trends in Japanese Court Decisions

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Abstract

The Lay Judge System was introduced to Japanese courts in 2009, in which laypersons selected from the general population participate in trials. Since then, the courts have requested psychiatric experts to provide clear, concise testimony regarding the mental status of defendants, with focus on the influence of psychiatric symptoms on the commitment of offences. This author aimed to determine the manner in which this principle of inviting psychiatric experts affects current court decisions, using four recent cases as examples. The courts at the first trial of the defendants, recognized that they all had confirmed psychiatric disorders, namely delusional disorder, schizophrenia and substance-induced psychosis. Nonetheless, they ruled that the defendants were fully responsible for their offences and condemned them to death. The main reasons for dismissing the insanity defense were as follows. Although auditory hallucinations and persecutory delusions were evident at the time of the offences, direct influences of these psychotic symptoms on commitment of the offences were not demonstrated, and the court considered that the offences were executed by the operation of free will that was assumed to be intact. This author is very concerned about the possibility that

the exculpation of psychiatrically disordered offenders is becoming increasingly narrowed under the present judicial policy.

Keywords: criminal responsibility, criminal psychiatric evaluation , agnosticism, lay judge system

Introduction.

In recent years, the number of criminal psychiatric evaluations has been increasing rapidly in Japan. According to media reports, [28] the number of detentions (detentions of suspects and defendants in hospitals, etc., for psychiatric evaluation) has increased from around 200 cases a year to 580 cases in 2016 and 633 cases in 2017 after the start of the lay judge system in 2009. As a result, many psychiatrists have been requested by the prosecutors' offices and courts to provide expert opinions.

Criminal responsibility (hereinafter referred to as "responsibility") is an issue that overlaps the heterogeneous fields of law and psychiatry, and its evaluation reflects the views of both law and psychiatry. In addition, since the implementation of the lay judge system, the views of the general public, the lay judges, have been added to this issue. The author has found a characteristic direction in the judgments of four recent serious cases in which the defendant's responsibility was the central issue. The author will report the outline of the cases based on the judgments, analyze the structure of the judgments, and critically examine the new trends on the issue of responsibility with reference to the relevant literature in psychiatry and law.

I. Mechanism of influence and eight-step model

The current focus in the field of psychiatric evaluation is on the "eight-step" model of judging responsibility and the concept of "mechanism" in the model. First, I would like to explain the background to the model. As is well known, the Japanese Penal Code stipulates in Article 39 that "insane offenders shall not be punished, and that offenders with a diminished responsibility shall be given a mitigation of punishment." In 1931, the Grand Chamber of the Japanese Supreme Court gave the following definition to the abstract concepts of insanity and diminished responsibility. [1]

The former refers to a state in which a person is incapable of discriminating

between right and wrong, or of acting in accordance with such discrimination, due to mental disorder, while the latter refers to a state in which such capacity is significantly reduced.

Thus, responsibility consists of two levels: "mental disorder" and "the ability to discriminate between right and wrong (capacity for discernment) and the ability to act in accordance with that discrimination (capacity for control). There are three ways of defining responsibility: biological, which focuses on the mental disorder that led to the loss of capacity; psychological, which focuses on the mental capacity itself; and mixed, which combines the two. In Japan, the mixed method is used, in which responsibility is composed of biological (mental disorder) and psychological (discernment and control) elements (the terms biological and psychological are not appropriate in modern psychiatry, but they are traditionally used).

Insanity and diminished responsibility are legal concepts, not medical concepts, but they cannot be evaluated without expert knowledge in psychiatry. Consequently, there has been a long debate on how far expert witnesses could express their opinions. The 1983 Supreme Court decision stated, "Whether a defendant's mental state constitutes insanity or diminished responsibility as defined in Article 39 of the Penal Code is a matter of law and should be left exclusively to the court. In addition, the biological and psychological factors that form the premise of insanity should ultimately be left to the evaluation of the court in relation to the legal judgment.[20] The Court's view was further clarified with the implementation of the lay judge system as follows: In order not to mislead non-expert judges, expert witnesses should "avoid as much as possible expressing opinions on the existence and degree of discernment and control capacity in a way that directly relates to the conclusion of responsibility, or at least avoid expressing legal judgments using terms such as insanity. " It is generally sufficient for an expert witness to report "medical findings such as the presence or absence and degree of the defendant's mental disorder at the time of the crime" and "facts that can be inferred from the perspective of psychiatry as to whether or not and to what degree the mental disorder affected the crime." [24]

In response to the court's new guidelines, Okada[17] from the psychiatric side proposed an "eight-step model" for determining responsibility, which is intended to clarify the roles of lawyers and expert witnesses, and consists of the following. (1) Gathering information on mental functions and symptoms, (2) Recognition of mental functions and symptoms, (3) Diagnosis of illness, (4)

Description of the relationship between mental symptoms and pathology and the incident, (5) Focus on discrimination of right and wrong and control of behavior, (6) Identification of specific elements that should be considered as the capacity for discernment and control in the legal context, (7) Evaluation of the degree of capacity for discernment and control, and (8) Legal conclusion. Of these, up to (4) is a specialized area of psychiatry, and from (5) onward is work from a legal perspective. The core of the expert opinion is step (4), which describes the influence of the mental disorder on the crime. In this case, the phrase "existence and degree of influence" is likely to be taken to mean legal evaluation, so the "manner (mechanism) of influence" is described. In other words, "the relationship between the symptom, pathology, condition, and healthy part of the mind and the incident" should be described in detail. On the other hand, from the legal side, Hieda[3] says that the existence and degree of the psychological component of responsibility (capacity for discernment and control) is a legal judgment, but it is based on the psychological facts of how the symptoms affected the crime, and that psychiatric evaluation based on professional knowledge and experience is respected in the recognition of these facts. In short, the mechanism seems to be the psychiatric findings directly referred to by the court in determining the existence and extent of the capacity for discernment and control.

According to lawyer Taoka,[27]Okada's model quickly spread to courts around the country after it was announced, and prosecutors and lawyers were required to request expert testimony in accordance with it. Hieda, former judge, also stated that responsibility is currently decided based on influences of each symptom on the crime, instead of diagnosis. The reason why the eight-step model was welcomed was that they met the expectations of judges.

II. Cases

The above is a description of the new direction of judgments of responsibility, and four recent judgments will be examined to help understand the perceptions of the courts. Case A was sentenced to death in the first trial and life imprisonment in the second trial; Case B was sentenced to death in the first and second trials and the appeal was dismissed by the Supreme Court; Case C and Case D were sentenced to death in the first trial at the time of writing of this paper. All cases were subject to a lay judge trial. Here, we focus on the first trial judgment, and refer to the results of psychiatric evaluation to the extent that they are cited in the judgment. The case jour-

nals and databases in which each decision was published are listed in the references. Anonymization has been applied to the descriptions. Quotations from the judgments are placed in quotation marks, and important passages are underlined.

1. Case A[19)]

Male, in his 30s at the time of the crime. He served his sentence due to violation of the Methamphetamine Control Act, and had been released from prison 17 days prior to the incident. While in prison, he continued to have auditory hallucinations. He returned to his hometown in X Prefecture, but could not find a job and was dissatisfied with the treatment at the drug addiction facility where he was admitted, so he left on the morning of two days before the incident. At that point, he stopped taking psychotropic medication. With the help of a former fellow prisoner, he went to Y city on the morning before the incident. While invited to a fishy job, he was unwilling to do so. That night, while eating and drinking with his friends, he began to hear auditory hallucinations such as "What are you going to do?" After midnight, the auditory hallucinations of "stab, stab, stab" continued intermittently. He was unable to sleep at all throughout the night. At noon he went to an ATM and withdrew his savings, thinking he would go back to X Prefecture and live on welfare. Then, the desire to commit suicide became so strong that he bought a kitchen knife. Avoiding the public eye, he pointed the knife at his stomach, but was unable to stab himself. When he started to walk again, he began to hear "stab, stab, stab" in an increasingly intense and continuous manner. He suddenly stabbed two passersby on the street multiple times, causing them to die of hemorrhagic shock. Although he recognized police officers, he continued to stick a kitchen knife on the victims and agreed to be arrested after being shouted at. When questioned, he replied, "I did a terrible thing" and "I tried to kill myself, but I couldn't die." After his arrest, the auditory hallucination changed to "I've done it," and disappeared.

An investigative expert opinion and a court-appointed expert opinion were conducted. In the former, he was diagnosed as having "prolonged and persistent residual state of methamphetamine intoxication," and in the latter as having "methamphetamine psychosis and methamphetamine dependence." The former said that "the defendant's behavior was strongly influenced by auditory hallucinations, and his aggression was easily increased by his long-time use of methamphetamine." The latter said that the auditory hallucinations "only encouraged or reinforced the

defendant's own decision to act" and did not have enough influence to control his thoughts and make him commit the crime uncritically. The judge admitted the latter opinion, and ruled that there was no doubt that the defendant was fully responsible for the crime for the following reasons.

"Although the defendant was suffering from this mental disorder (residual state of methamphetamine intoxication) at the time of the crime, the crime was committed under the circumstances where the influence of the auditory hallucinations caused by the mental disorder was not significant, and the defendant chose himself among the three options of committing suicide, returning to X Prefecture, and stabbing someone in accordance with the auditory hallucinations. It should be clear that the defendant's ability to discriminate between right and wrong or to control his own behavior at the time of the crime was not significantly impaired, although it is possible that the defendant's ability was slightly impaired due to the auditory hallucination, interruption of medication, insomnia and anxiety before the crime.

2. Case B[31)]

Male, in his 60s at the time of the crime. He was unmarried and had been living with his parents for 17 years prior to the crime. His mother died 11 years before the incident, and his father 9 years before. At that time, he began to have delusions of being gossiped about, provoked, and harassed by the villagers. He put up signs to accuse them of such acts, and to catch the harassers and make them confess. He also suspected that someone put poison in curry in his house. Between 6:30 p.m. on a certain day and 6:00 a.m. the next day, he killed five people in the neighborhood by beating them one after another, and set fire to two of the buildings where the victims lived, burning them down. In the judgment, based on the results of a court-appointed psychiatrist's evaluation, the court determined that the defendant was liable as follows.

The accused thought of retaliation against each victim and one other person based on this delusion, and each crime was committed in accordance with such thoughts. But the "sense of harm" caused by the delusion was different from the "sense of imminent danger to his own life," and he was fully capable of recognizing that his actions were criminal and did not conform to the rules of society. In addition, the defense attorney's argument that the feelings of anger caused by the delusion had built up and had become so energetic that they overwhelmed the brakes based on normal psychology was refuted as follows. The expert witness stated,

"Although the amount of emotional energy generated by this delusion may have contributed to the defendant's violent behavior, it is difficult to imagine that it would have been a structure that would have narrowed his options for action. The choice of action and manner to carry out it was decided in accordance with his own values." Therefore, it can be said that the delusion "influenced the process of forming the motive for committing the crime of retaliation against each of the victims in question," but "whether to retaliate and, if so, in what manner, is a choice made by the defendant based on his original personality."

3. Case C[10)]

A man in his 30s at the time of the crime. He suffered from drug-induced psychosis due to long-term and massive use of methylphenidate, and his symptoms included somatic hallucinations, delusional thoughts, and delusional perceptions. As he researched the causes of his experiences on the Internet and in books, he came to the conclusion that the Japanese government and its sympathetic agents were working together to attack individuals with electromagnetic and psycho-engineering weapons, in other words, that they were engaged in 'psycho-engineering warfare.' Based on this belief, "he came to have the delusion that he and his family were victims of the psycho-engineering war, and that his neighbors, the E family and the F family, were agents who were attacking them." Therefore, he decided to kill the victims and their families in order to "retaliate against them and to reveal the existence of the psycho-engineering war, which is being covered up by the entire nation, in court." Early in the morning of a certain day, he stabbed E and his wife to death in E's home, and about three hours later, he stabbed F, his wife, and his mother to death in F's home.

The judge ruled that the drug-induced psychosis was obvious, and that the motive for the crimes was "based on delusions, which were influenced by the drug-induced psychosis," but that the defendant was fully responsible for the crimes for the following reasons.He was not in imminent fear at the time of each crime. He had no hallucinations, delusions, or other symptoms that would directly prompt him to kill. He was aware that his actions would be criminalized as murder and that he would be arrested. His behavior was rational, consistent, and planned to some extent. "The symptoms of the disease did not have a significant impact on the defendant's decision-making and behavioral process in deciding and carrying out the murders of the victims." The reason why the accused chose to

kill the victims was because he thought that he was a great person who confronted the psycho-engineering war, and he thought that the killing of the agents was justified. "Although it was based on a false sense of justice, it was not greatly influenced by the symptoms of the disease, but was nothing but a decision based on the normal psychology. Thus, in the thought process that led to the decision to kill the victim, the defendant's own normal psychology, such as a sense of grandiosity based on his worldview, a sense of justice, and ill feelings toward the victim's family, was at work, and the influence of the illness was small."

4. Case D[22)]

A foreign man in his 30s at the time of the crime. After arriving in Japan 10 years before the incident, he had moved from one Job to another. Two days before the incident, he was absent from work and disappeared from his dormitory. And then, he called his co-workers and said, "They know what I said, a Japanese came to kill me, and I'm quitting my job." In the morning of the day before the incident, he called his co-workers and said, "I want my salary to be paid to bank account as soon as possible," and told his acquaintances, "Japanese people in suits are watching and following about me. At around 1:00 p.m. on the same day, he approached a resident of a private house and the fire department was called. He said, "There are bad people on the train," "I don't have any money," and "I hear voices I've never heard before." When he was taken to a police station, he called his own sister, and heard the child's noise from the phone and said, "Have they arrived yet? " Suddenly, he started running and fled, leaving his money and other belongings behind. (In the pre-prosecution evaluation, he explained that he thought the police officers were in on it, and that he ran away because many things seemed to be connected and united.) In the afternoon of the following day, over a period of three days, he broke into three private homes, stabbed a total of six residents to death with kitchen knives, and hid the bodies in bathtubs, etc. In the first assault, he took a car, car keys, cash, smart phones, and kitchen knives; in the second assault, he took kitchen knives; and in the third assault, he took car keys. When he was discovered by police officers, he said, "Police, yakuza," cut his own arm with a kitchen knife, and fell out of a window, suffering severe head trauma and other injuries.

The expert opinion at the trial stage was that "each of the crimes was committed in a series of actions such as escaping and rushing to the relatives in a

state of persecutory delusion and mental unrest as a symptom of schizophrenia, in which he felt that his own life and the lives of his relatives were being threatened," and that "it is highly probable that such persecutory delusion and mental unrest had an impact on the overall behavior of the housebreaking and murder." With regard to the influence on the behavior, the expert witness explained that "we don't know what kind of mind the defendant had in committing each crime" with the reservation that "there is a limitation that we have not obtained the defendant's statement about the situation at that time. " On the other hand, the court ruled that, " in terms of the specific motive for each crime, it is possible to explain each crime as a realistic one based on the functioning of normal mental functions, and can be fully understood, regardless of pathological experiences due to mental disorder, while it is possible to see that the delusions that the defendant had as mental symptoms influenced the formation of his criminal intent." In addition, the "delusions about demons, cats, and terrorists" described in the expert interview did not exist at the time of the crime because of the inconsistent content, and the defendant did not have "mental symptoms that controlled his behavior, such as commanding auditory hallucinations at the time of the crime." The defendant did not commit the crimes under the overwhelming influence of his mental disorder." He was judged to have full responsibility for his crimes on the grounds that "he was aware that he was committing a crime, but he dared to commit each crime even though he had other options available to him based on his own judgment and remaining normal mental functions." The defense attorney cited as examples of abnormal behavior the illegible blood letters left at the scene, stabbing the knife into the wall, and putting the cell phone in a sock and tying it. However, the court ruled that these behaviors are possible without assuming a pathological experience, and that such "peripheral circumstances" do not immediately lead to the magnitude of the effects of mental disorders.

III. Common Features of Judgments

The judgments in the four cases admitted that the defendants had mental disorders based on the results of expert testimony. Case A is the residual state of methamphetamine poisoning, Case B is delusional disorder, Case C is drug-induced psychosis, and Case D is schizophrenia. In all of the cases, while admitting the existence of hallucinations and delusions at the time of the crimes, the defense's argument that the

defendant was insane or having diminished responsibility was rejected, and the defendant was judged to have had full responsibility.

A certain direction can be found in the core of the judgment. In Case A, the court admitted that the defendant had a commanding auditory hallucination. that inspired him to commit the crime, but he "chose himself among three options": to commit suicide, to return to his hometown, or to stab someone according to the auditory hallucination." In Case B, although the delusion "may have influenced the process of forming the motive for the crime, the defendant chose whether to retaliate and, if so, in what manner, based on his original personality. In Case C, the perception of being attacked by the victims is a delusion, but "in the thought process that led to the decision to kill, the defendant's own normal psychology, including a sense of grandiosity and justice based on the defendant's worldview and ill feelings toward the victims and their family, was at work, and the influence of the illness was small." In Case D, the defendant "did not commit each crime under the overwhelming influence of his mental disorder," and in the scene of the decision and execution of each crime, the defendant is considered to have committed each crime "as his own judgment based on his remaining normal mental functions."

IV. Gnosticism and Agnosticism

In each case, the court found that the hallucinations and delusions that existed at the time of the crime had only an indirect or minor effect on the crime. Thus, the question of how the symptoms affected the act is related to the issue of gnosticism (theory of knowability) and agnosticism, and these terms are often used in the forensic psychiatry literature. For example, Okada[16] considers as agnosticism the idea that "we cannot know exactly how an illness affects an individual's thoughts and actions, so that once a person is diagnosed with schizophrenia, for example, we must assume that he or she is irresponsible for his or her actions." Okada says that "the gnostic view is definitely the mainstream view nowadays." Igarashi[6] states that, due to the progress of psychiatric treatment, changes in the view of the disabled, and the spread of operational diagnostic criteria that are not based on etiology, "today's psychiatrists, whether they like it or not, need to make judgments of responsibility from the standpoint of gnosticism. From the legal side, Hieda[3] says that in criminal trials, "the capacity for discernment and control must be judged from the standpoint of gnosticism, rather than from the standpoint of agnosticism, which is to say that the judgment should be

made according to the convention of judging the responsibility from the name of the diagnosis." This issue requires in-depth study, so I will discuss it below.

Agnosticism is a word composed of the words "without" and "knowledge. In general, agnosticism is "a position that rejects all questions beyond our experience by asserting that we cannot perceive the true nature of things or the true nature of existence. [9] It dates back to the philosophy and theology of ancient Greece and India, which held that human knowledge could not explain the existence or non-existence of God. Huxley, T. H., a British physiologist active in the late 19th century, an era of scientific universalism, was the first to use this term, saying, a man shall not say he knows that which he has no scientific grounds for professing to know.[5]

After World War II, a debate over agnosticism and gnosticism developed in Germany in the fields of criminal law and psychiatry, a debate that, according to Janzarik, W.[8], originated in a 1948 lecture by Schneider, K.[23] and was named the Agnostizismusstreife by Haddenbrock, S. Since then, those who support Schneider's theory have been called agnostic, and those who criticize it have been called gnostic; Schneider himself does not use the term agnostic, and it would be inaccurate to call him a "proponent of agnosticism." This occurred in the context of the debate over the rule of responsibility in the amendment of the Criminal Code in Germany, and has long since become a thing of the past even in Germany, where it is the home of the theory, as described in Witter, H.'s 1987 book[30] as "now historic."

I would like to summarize Schneider's theory from his book "Judgment of Responsibility" written in 1953. Article 51 of the former German Penal Code, a controversial provision at the time, states that "there is no punishable act if the actor, at the time of the act, because of an impairment of consciousness, because of a morbidity of mental activity, or because of mental weakness, is unable to perceive the impermissibility of the act or to act in accordance with this insight" [insight(Einsicht) is synonymous with the Japanese word benshiki〕. In order to be considered irresponsible, the clinical and psychopathological requirements of impaired consciousness, pathological disturbance of mental activity, and mental weakness must be present, and they must be of such a nature as to impair the capacity for insight and the ability to act in accordance with this insight. The expert witness can answer for the clinical requirements, but not for the insight and the ability to act on

the insight. Therefore, they only implicitly (stillschweigend) admit that they did not have these abilities, if the clinical requirements of the law exist. In court, for example, "A certain person, according to our argument, was suffering from schizophrenia at the time of the act. Therefore, as a result, there was a pathological disorder of mental activity to which Article 51(1) (irresponsibility) should be applied." The reason why expert witnesses do not mention the above ability directly is that no one can answer it, because practically few people think about whether their actions are right or wrong, permissible or forbidden, and make a decision to act based on that. Those who do so are like compulsive people. The reason for suggesting a lack of competence, even implicitly, is that the "coherent semantic continuity of mental life development" is broken in cyclothymia (manic-depressive illness) and schizophrenia. This is an axiom of the Heidelberg School, led by Schneider, and it can be disputed in many ways. However, Schneider's view, which points out the limits of psychiatry's cognition, is in line with agnosticism in the original sense of the word, dating back to Huxley, and is still worthy of reference.

On the other hand, what is called gnosticism seems to be a general term of different views against Schneider's theory, rather than a definite idea. According to Janzarik,[8]the gnostic theorists mainly advocated a pragmatic approach that would fit the practice of expert testimony. What is required of the expert witness is not a statement of attitude on the fundamental question of how much freedom of judgment and decision-making is possible for human beings, but rather a demonstration to a judge without expertise of the specific conditions that might have impaired the capacity for insight and control at the time of the act. These conditions are known to a large extent from empirical science. In fact, the impact of the agnostic controversy on the practice of trial and psychiatric evaluation has been minimal. According to Nakasone, [12] the official position of the German Neuropsychiatric Association was that the majority of psychiatrists did not agree with the Schneider theory. The reason for this is that it is not uncommon for psychopathological analysis to reveal the degree of insight impairment and to answer the question of psychological factors. Nakasone added his personal opinion that although the gnostic theory won at least in legislative and judicial decisions, "it does not mean that the gnostic theory has been proven to be valid." The author does not know enough about the divergence between academic theories and practice, but it seems that the agnosticism

debate, inspired by Schneider's clear argument, was more of a "theoretical debate" that was difficult to distinguish between black and white.

On the other hand, the following statement by Gruhle, H. W. [2], a contemporary of Schneider, should also be considered in relation to agnosticism. In the case of "manic-depressive illness, dementia, schizophrenia, progressive paralysis, and cerebral syphilis with mental symptoms," general irresponsibility is recognized. In these disorders, "if the diagnosis is confirmed by an expert witness, the presumption of Article 51(1) is immediately present. It is not necessary to prove that a particular act arose from a particular abnormal motive, much less that the meaning of motive for the act is related to the content of the mental disorder." Even in cases of marked remission, liability is questionable as long as the symptoms are still evident. Nakata, who introduced Gruhle into Japan, summarized the general framework of the determination of responsibility in Germany in his 1976 article[13] as follows. The position of the experts has become very firm in the 30 years since 1920. The overwhelming majority of psychiatrists consider that all patients with "truly great" psychoses are irresponsible for all acts, and that it is not necessary to specify the connection between a particular act and an individual as long as such organic psychosis is proved.

Gruhle's theory can be summarized in the following scheme: serious brain disease (including schizophrenia) → serious impairment of the whole personality → general denial of responsibility. It is also called general exculpation (generelle Exlulpation).[1] Schneider also notes that there are sufficient grounds to apply Article 51(1) (irresponsibility) to circulatory disease (manic-depressive illness) and schizophrenia due to the unseen invasion of human nature, even in minor cases. However, Schneider's theory focuses on the limits of cognition, and general exculpation should be considered as an extension of this theory, or a concept that is inextricably linked to it.

Huber, G. [4] argued that general exculpation based on a fatalistic view of illness has become obsolete with the advent of pharmacotherapy and open-door treatment since the 1960s, and that the prognosis for schizophrenia is not as pessimistic as had been thought, as shown by long-term follow-up studies. And responsibility is judged differently according to the course and symptomatology of the illness, with an "unconditional exculpation" for "acute exacerbations and characteristic residuals with schizophrenia-specific experiences and manifestations." This basic

line has been continued in the recent forensic psychiatry book by Nedopil, N.[15] The existence of requirements of irresponsibility is unquestionable for the "acute stage with full-fledged psychotic symptoms." On the other hand, in patients with mild residuals or in complete remission, the determination of responsibility is based on an individual analysis of motive and character. In short, although "general" exculpation has been rejected in recent years, the agnostic perspective on severe psychosis has been maintained.

In the English-speaking world, the MacNaughton Rule (1843) was traditionally used as a criterion for determining responsibility. It was a narrow standard as to whether the accused was laboring under such a defect of reason as not to know the nature and quality of his or her act, and did not include the aspect of will. In the United States after World War II, under the influence of dynamic psychiatry, which focused on the personality of the offender, there was a movement to expand the scope of insanity (equivalent to *shinshinsoushitsu* in Japan) to include not only cognitive but also volitional impairments. The range of insanity has fluctuated according to the degree of society's tolerance of crimes committed by the mentally ill. This is similar to the German agnosticism debate in the sense that the way of judging responsibility changes depending on the extent to which psychiatry can explain criminal behavior. However, as far as the author knows, the terms gnosticism and agnosticism are not used in the context of responsibility in Britain and the United States.

V. Questions about the Supreme Court Decision

What about in Japan? A judicial decision that is often cited in the context of gnosticism and agnosticism is the 1984 decision of the Third Petty Bench of the Supreme Court.[26] After a total of five psychiatric evaluations were conducted on the schizophrenic defendant, the Supreme Court upheld the judgment of the original trial court, which found that the defendant was not insane, but had diminished responsibility. The summary of the decision is as follows.

The fact that the defendant was suffering from schizophrenia at the time of the crime does not immediately mean that the defendant was in a state of insanity. The existence and degree of the defendant's responsibility should be judged by taking into consideration the defendant's medical condition at the time of the crime, his living condition before the crime, and the motive and manner of the crime.

The author has some doubts about this decision. The original decision of

the trial court rejected the claim of insanity by the expert witness on the grounds that "it was based on the psychiatric theory that schizophrenics are, in principle, irresponsible, which is not necessarily an approved idea in court practice." On the other hand, the expert opinion cited in the judgment was as follows. [21)]

Although he was in a state of remission from his catatonia, the motive for this crime was unintelligible and formed on the basis of delusion, the crime was committed impulsively, and during the course of the crime, it is presumed that he experienced mental inactivity and psychomotor excitement, and it is believed that he was in a state of emotionlessness after the crime. The fact that there were meaningless changes in the statements made during the interrogation after the arrest, it should be recognized that there was a strong influence of schizophrenia in this crime, and therefore, it is recognized that it was completely impossible for him to recognize the illegality of the act and to control his intentions according to this recognition.

The conclusion of the expert opinion is based on the manner in which the crime was committed and the state of the defendant, and it does not blindly conclude that the defendant is insane because he was diagnosed as schizophrenic. In addition, there is a question about what the judgment calls "the idea that has been approved in court practice." In the author's chronological analysis of the changes in judgments of responsibility, he found two cases in which judgments were made in the opposite direction in the same year as this decision.[14)] The details are omitted, but insanity was found based on the fact that "the whole personality was under the control of the power of pathological change." This period was a turning point for schizophrenia cases in which the crimes were purposeful and planned, and in which a certain degree of ability to live in society was maintained, to be shifted from "nevertheless responsible" to "therefore responsible." In spite of these questions, it is disconcerting that the Supreme Court's decision is regarded as an unshakable standard, as it "rejected the convention based on agnosticism, in which the classification of diseases determines responsibility in a primary sense."[16)] This decision only denied general exculpation, and did not invalidate agnosticism.

VI. On proving the mechanism of influence

The specific relationship between symptoms and actions is called the mechanism, and according to the gnosticism theory, the mechanism can be clarified psychiatrically, and the pres-

ence or absence and degree of discernment and control can be judged by it. In other words, if there is no visible evidence of a relationship between symptoms and behavior, the conclusion is that there is no relationship. This seems to be a trap. As pointed out by Igarashi,[7] not all cases can be clarified in terms of "mechanism." Okada[16], a defender of gnosticism, also acknowledges the significance of agnosticism to some extent, stating that "what each expert witness does is not polarized between gnosticism and agnosticism," and that in lay judge trials, "it may be necessary to show the profundity of psychopathology by returning to an agnostic view." However, this point is not easily understood by lawyers. Let us assume the following example. A mother of a handicapped child kills her child in a depressive stupor. When asked by the judge in court, "You tried to die with your child because you were pessimistic about his future," she replied, "That may be so, if you ask me. But I don't know why I did it." From the standpoint of gnosticism, the connection between the depressive symptoms and the act does not exist unless it is grasped through language, etc., and the normal psychological explanation of "despair of a mother with a handicapped child" is inserted in the blank.

I would like to focus on Case D. The court judgment citing the testimony of an expert witness, states that "there is a high probability that delusions and other symptoms had a general influence" on the crimes, and concludes that "it is possible to see that each delusion influenced the formation of the criminal intent for each crime," but that the motives for the crimes "can all be explained as realistic and based on the functioning of normal mental functions" and "can be understood without the presence of pathological experiences." Is this logical construction correct? There were two answers to a question, A and B, and B seemed to be the correct answer. But that does not immediately mean that A is not the correct answer, and there is still a possibility that A is also the correct answer. The judgment in Case D cites a number of external evidences and says that the series of crimes were committed with the intention of robbery. However, from the text of the judgment, it is doubtful that all three crimes committed over a period of three days can be regarded as a consistent act of robbery. Only in the first crime did he take anything of value. Is it reasonable that blood on the wall, the words "devil, terrorist", and other signs suggesting pathology be dismissed as "peripheral circumstances"? In the judgments of other cases, I cannot deny the impression that the judges are developing a "normal psychology without psychopathology," an argument in which the core of the mechanism is explained by values (Case

B) or worldview (Case C) while discarding the testimony of expert witnesses.

VII. Will and Responsibility: Beyond Gnostic Theory

In all four cases, it was argued that the symptoms had only an indirect effect on the crime. Then, what was the direct cause of the act, i.e., what pushed the button that triggered the act? In case A, he chose from among the options, in case B, he chose based on his sense of values, in case C, he decided to kill based on his normal psychology, such as a sense of grandiosity, and in case D, he decided to kill based on his own judgment based on his normal mental function. To put it simply, it was the "normal will" that pushed the button that triggered the action.

Let's compare it to our daily activities. Suppose a customer enters a department store and goes to the third sales floor. The customer is given three choices of how to get there: elevator, escalator, or stairs. In some cases, the customer chooses to take the stairs for health reasons, and in other cases, the customer unconsciously goes to the elevator. In any case, these choices are on the same plane. On the other hand, are "commit suicide," "return to my hometown," and "obey the commands of the auditory hallucination" on the same plane? The classical definition of hallucination is "perception without an object. Acting on the basis of a non-existent object is clearly pathological in itself. As we know from clinical experience, when patients no longer maintain a critical distance from the hallucinatory experience, they are, as it were, engulfed by it. The inner world of the mind in this state is impossible to relive. I wonder if the phrase "three choices" in Case A was uttered by the person himself. It is highly doubtful. This is because it is difficult to imagine a situation in which a person suddenly stabs a number of passers-by while in a state in which rational judgment is possible.

This problem relates to the principles of forensic psychiatry as well as modern criminal law. In 1871, the German Penal Code stipulated in Article 51 that, if, at the time of the act, the person is in a state of unconsciousness or morbid disturbance of mental activity and free decision-making (freie Willensbestimmung) is precluded, there is no culpable act.

This rule has to enter into the philosophical aporia of determinism or non-determinism. In the case of determinism, human beings are driven by the laws of nature just like machines, and there is no room for free will. In the German Penal Code of 1933, the aforementioned provision was changed to a less abstract one: "When a person is incapa-

ble of perceiving that an act is impermissible or of acting in accordance with this insight" due to consciousness disorder, etc. Although this idiom has been removed from the text of the law, the principle of free decision-making remains at the core of the law. Japan's 1931 Supreme Court decision, which is said to have been based on the German amendment to the Penal Code, has the same basic structure.

As the criminal law scholar Ono[18] states, the responsibility is "the ability to make free decisions that enable one to bear criminal liability for one's actions." (The so-called new school of criminal law scholars take a different position, but I won't go into it here.) People are condemned and punished because they act of their own free will. In other words, when their free will does not work for some reason, their act is not punishable, even though it is unlawful. This is what is meant by the "preclusion of free decision-making" in the German Penal Code of 1871.

The judgments in the four cases seem to assume that the will or the personality as its subject is not impaired by the disease. The possibility that free decision-making may be precluded is eliminated. No matter how active the hallucinations and delusions are, an intact decision-maker appears from somewhere and presses the button to initiate the action. However, how can an action dominated by hallucinations, which are "perceptions without an object," and delusions, which are "false ideas that cannot be corrected," be the result of "normal will" ?

Gnostic theory requires positive proof of the connection between symptoms and actions. In addition, if the "will" that is not affected by the disease is brought into the case, full responsibility is recognized without exception, even if the command of auditory hallucination is confirmed.

How did the legal circles react to these court judgments? With the exception of Case C, commentaries on the judgments have been published in case journals as follows: In Case A,[19] the court compared two expert opinions based on the framework for judging responsibility, which had been established by past decisions of the Supreme Court. And it regards the judgments as precedents in which a full responsibility was admitted in accordance with the framework. In Case B[31], the judgment clarified the relationship between the "descriptive opinion of the expert witness" and the "legal evaluation by the court." Case D[22] is noteworthy in that the court acknowledged the causal relationship between the delusion and the crime by respecting the results of the psychiatric evaluation, but found the influence of the mental disorder to be limited by looking at the specific behavior. As far as we infer from

these commentaries, it seems that the legal community's attention is focused on the legal framework for judging responsibility and the consistency with past Supreme Court decisions, and there is no sense of discomfort with the content of the judgment.

Conclusion.

Judicial decisions on the issue of responsibility vary widely, and the discussion in this paper, based on a limited number of cases, is only a glimpse. Nevertheless, it is expected that the judgments in these cases will be followed as the leading cases when similar serious cases involving perpetrators suspected of mental disorders occur, and it is worthy of careful consideration. As mentioned at the beginning of this paper, the courts require expert witnesses to give testimony that focuses on the "mechanism of influence of symptoms." On the other hand, Taguchi[25] points out that the emphasis on explaining the mechanism from the symptoms leads to underestimating the importance of disease diagnosis in psychiatry. Nakashima[11] criticizes the exclusion of agnosticism in the trial as leading to a disregard for the seriousness of the condition. The author agrees with these views, but if I may add a personal observation, there is a pitfall that the mechanism is discussed from the standpoint of excluding agnosticism based on a blanket interpretation of "general exculpation" and assuming that only gnosticism is true. There is no choice between gnosticism and agnosticism. Doctors who conduct expert testimony with sufficient clinical knowledge are always partly gnostic and partly agnostic. The perception that "agnosticism used to be dominant in Japanese criminal trials, but now gnosticism prevails" does not fit the facts. Furthermore, there is a trend toward using "normal will" as a last resort for finding full respomsibility in cases where the capacity for discernment and control is questionable even from the standpoint of gnostic theory. The end result of this trend will be the hollowing out of Article 39 (provision of insanity) of the Penal Code.

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