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SOCIETY AND THE CRIMINAL

That this world of ours is imperfect needs no supporting arguments. And we have reason to believe that although we may hope for a better, we need not look for a perfect world either in the near or distant future. For it is imperfect of necessity. A universe uniform and without variety, static and unchanging, all colours and shapes alike, all creatures, thoughts and feelings in unison, could be no scene or home of life. Existence involves diversity and movement, and thus better and worse, light and darkness, good and evil.

W. MACNEILE DIXON: *The Human Situation*

HOME OFFICE

SOCIETY AND THE CRIMINAL

BY

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large. The ultimate responsibility for our penal methods rests on the whole body of citizens. All Sir Norwood's work shows that he has a high sense of that responsibility. His attitude is well expressed by a sentence in the paper entitled "Milestones of Penology"—"although the criminal fails in his duty to society, we are not thereby relieved of our duty to him."

A. MAXWELL

September, 1948

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I

INTRODUCTION

THESE essays represent some of the stepping stones over which I have travelled towards a better understanding of crime and criminals.

Their purpose will be further served if they promote an attitude of mind and encourage others to investigate the many intricate and important problems involved. I have stated the opinions I have formed as the result of hardly earned experience throughout almost the whole of my professional life. And because medicine has no frontiers I have not hesitated to refer to the writings of others in order to secure a wide approach to the matter in hand. I have looked for truth and have endeavoured to declare it with the aid of unborrowed belief. I have written what seemed necessary to the several occasions, and no passage relevant to the contextual argument has been deleted in order to avoid inevitable overlapping. I trust that I shall not be dispraised in consequence, or accused of attempting "to swell the leaves of Learning by fruitless Repetition".

Various problems are introduced, and attention has been given to the fact that in human affairs the truly laid foundations survive although the superstructure often undergoes alterations as the result of accretions and erosions. Sometimes important changes take place before our eyes.

Further, since we must sometimes study separate parts instead of integrated wholes we often find that synthesis of the former fails to reproduce the original with fidelity. In dealing with criminals we are forced to admit that important matters occasionally elude us. Man is much more than any anatomical, physiological, psychological or psychiatric analysis can establish, and no one who attempts to recast the parts is infallible. It almost seems that research occasionally delays our immediate understanding by encumbering our exertions with a multitude of parts which we are unable to fit together, and I cannot too strongly emphasize the fact that the study of criminal personalities is an art as well as a science.

There is more. An ill-informed person may believe that the reflection of himself seen in a mirror is the same representation that others know; but we must cultivate a broad view if we are to assess crime and criminals without bias and with realistic precision. An understanding of the individual offender will be imperfect unless it is accompanied by an intimate knowledge of men and women in different walks of life, and an ability to judge humanity humanely.

Progress in the application of the principles of social science proceeds by the method of trial and error, and a faithful study of crime and criminals demands the broad view of the social hygienist. Nonetheless, progressive ideas take time before they attract the interest of others, and the public must be satisfied with the value of scientific challenge before it will support the proposals of the social pioneer who is concerned with antisocial behaviour.

The approach in these essays is mainly psychiatric, and the opinions expressed are personal and do not necessarily represent official views. At the same time I have

had constantly in mind the practical day-to-day administrative questions with which I was concerned as a Prison Medical Officer and later as a Prison Commissioner and Director of Convict Prisons. I recognize the importance of studying offenders and offences by different methods. Particularly, I wish to emphasize the fact that if we aim at practical results the value of new doctrines must be tested by feasibility and common sense. If the supercilious critic derides the latter I would remind him that his attitude will be resisted by many well-informed observers.

Eighty per cent of approximately twenty thousand prisoners who were without previous proved offences and were serving a first sentence of imprisonment for a "finger-printable" offence had not been received into prison again as far as was known ten years later. It is among the remainder who return to prison that the most difficult legal, medical and administrative problems arise.

It is not suggested that studies of the majority are superfluous. Indeed, investigations in this group assist the differentiation of the imponderables with which the administrator as well as the scientist is concerned. It is, however, among the minority who return to prison that mental and character deviations from the normal are usually associated with criminal behaviour, and it is in this group that scientific study and individual treatment is especially important.

Acknowledgments are due to the Editors of *The Proceedings of the Royal Society of Medicine*, *The British Journal of Addiction*, *The Medico-Legal Journal*, *The Journal of Mental Science*, and *The Eugenics Review* for permission to reprint. I am also indebted to the Editors of *The Practitioner* for the inclusion of an extension of the essay on *Prostitution* which appeared in a special number of that journal. The essays on *Physical Factors and Criminal Behaviour* and *Sexual Offenders* first appeared in *Mental Abnormality and Crime*. The latter was read previously in abstract at a meeting of the Cambridge University Law Society. Both essays were enlarged, with the kind permission of Messrs. Macmillan of New York, for publication in the *Treatise on Scientific Proof and Relations of Law and Medicine*, Matthew Bender & Co., New York. They are included here by the generosity and courtesy of the Editor, Dr. Hubert Winston Smith, Professor of Legal Medicine, Illinois University.

My obligations to many writers are indicated in the text, and in the appended references. I am greatly indebted to my friend, Dr. H. T. P. Young, Director of Prison Medical Services, for reading and criticizing many of the essays in manuscript. But I alone am responsible for any faults the reader may discover.

II

THE STATE, THE CRIMINAL AND THE PSYCHIATRIST*

THE task of one whose work lies within the confines of a narrow speciality and attempts to interest those with wider activities than his own is not free from difficulty, and this is increased if his knowledge and understanding sometimes result from private statements made by men and women in explanation of conduct which has incurred legal punishment including the penalty of death. For here, as elsewhere, the physician must remember the relevant passage in the Hippocratic Oath and steadfastly refuse to "noise abroad" the things which should be kept as "sacred secrets". Moreover, a special responsibility devolves upon those who are concerned with medico-sociological problems to-day. The war of 1914-18 was followed by a marked impetus to the scientific approach to criminal problems, and the reconstruction of our daily life in the coming years will demand from those concerned with criminals, as from other specialists, well-conceived guidance which must be so clear and forceful that the co-operation of the public and administrators, as well as of the legal and medical professions, is enlisted and sustained progress established.

A prison psychiatrist, therefore, firm in the belief that physical and mental health are closely correlated with the welfare and security of society, can desire from his own profession no higher recognition of the importance of his chosen sphere of work than to be called upon to deliver this address.

THE STATE AND THE CRIMINAL

The observations of ethnologists go to show that the members of a primitive community are required to conform to ritual and observe certain rules of conduct. Similarly, cultured society requires its members to react to certain situations in accordance with approved and complicated patterns of behaviour, and the pressure of public opinion is usually sufficient to enforce the adoption of the accepted standards. If this fails the imposition of penalties may result, in the civil court if compensation to a private individual is the purpose, in the criminal court if the injury done affects the wider interests of society. The difference between crimes and civil injuries does not lie in the nature of the wrongful acts themselves, but in the subsequent legal consequences, and many criminals could be sued in civil proceedings for pecuniary compensation for the harm which they have done.

The law creates crimes since progress introduces unavoidable prohibitions, but an act may be a grave offence at one period and a trivial matter at another. Moreover, conduct may be criminal in one country and praiseworthy elsewhere. For example, Hoebel points out that the killing of infants, invalids and old people, as well as the act of suicide, are forms of acceptable homicide in Eskimo society and

* Presidential Address, delivered to the Psychiatric Section, Royal Society of Medicine, 12th October 1943, and published in the Proceedings of the Society, November 1943.

are, in whole or in part, responses to the basic principle that only those may survive who are able, or potentially able, to contribute to the subsistence economy of the community.

Crime is often due to motives which are both qualitatively and quantitatively similar to non-criminal motives, and it is generally just as biologically normal as ordinary behaviour. Indeed, law-breaking is so common that to determine who is guiltless might be as perplexing as the unanswered question of Pontius Pilate.

Modern advances, and the recent interest in the behaviour of children and young persons who commit legal offences have caused some observers to shrink from using the word crime for the minor infractions of the law committed by juniors, and to replace it by the term delinquency, reserving the more virile term crime for major offences committed by adolescents or adults. But this is not always so, the word delinquency is sometimes used by writers for all types of offences however serious their nature, and the word delinquent for adult criminals as well as for children and juveniles.

A crime may be regarded as an act or omission forbidden by law under pain of punishment, and the term will be used in what follows for major and minor offences, and the word criminal will be applied to all offenders who are punishable in adult criminal courts, for I believe that to euphemize here is to obscure the importance of minor social defects.

The classification of mental disorders accepted by the Council of the Royal Medico-Psychological Association in 1938, like most classifications, does not include the term "crime" or "delinquency". The Report on Mental Health by the British Medical Association Committee, issued in 1941, however, includes "delinquency" in the list of mental disorders. The Report states that the conditions enumerated overlap one another and that there are differences of opinion as to what the diagnostic terms cover. To catalogue delinquency without qualification as a mental disorder with oligophrenia, the psychoneuroses, schizophrenia, affective psychoses and the rest invites hostile criticism from informed observers, and well considered opposition from lawyers and administrators whose daily experience discredits crude over-statements and fallacious generalizations.

To suggest that delinquency is necessarily a manifestation of mental disorder not only leads away from truth but serves to impede, rather than assist, the scientific approach to the problems involved.

Lombroso declared that crime was a natural phenomenon and that it was as necessary as birth, death or conception. However this may be, standards of approved behaviour vary from time to time, and the innermost thoughts and undisclosed activities of our friends and acquaintances may evince unexpected deviations without transgressing the ordinary accepted standards of the average man.

Crime may be the response to a high sense of duty towards an individual or to a group, and it sometimes happens that an offender believes his act is right and proper although it is wrong in the sense that it is punishable in law. This result is unfortunate for the offender as well as for society since the acceptance by the law-breaker of the fact that his offence is wrong and his punishment just is, as the late Lord Haldane pointed out, an identification of his will with the will of his fellow-men, and a step towards compensating persons he has injured.

Although there is no justification for the belief that crime, *per se*, is an indication

of mental disorder, there can be no doubt that repeated criminal behaviour by the same offender may be the result of mental abnormality. It is apposite to remember that if human conduct is developed through the stages of pleasure-pain, gain-loss, public approval-disapproval to the higher level in which right prevails because the intention to adopt exalted standards and ideals is carried out regardless of the effect upon pleasure-pain, gain-loss, approval-disapproval, we may believe with Harold S. Hulbert that the development of the habitual criminal is fixed at the gain-loss level, and that his crimes are related to the fixation.

Although the legal conception of guilt is now independent of the idea of morality we cannot base our efforts at reformation on training for citizenship divorced from moral standards. It is, therefore, important to remember that modern research challenges the question as to whether compensation is the usual sequence in human affairs. Woods considers the correlation between mental and moral qualities is contrary to the popular idea. Thorndike states, "... in human nature good traits go together. To him that hath a superior intellect is given also on the average a superior character; the quick boy is also in the long run more accurate; the able boy is also more industrious. There is no principle of compensation whereby a weak intellect is offset by a strong will, a poor memory by good judgment, or a lack of ambition by an attractive personality. Every pair of such supposed compensatory qualities that have been investigated has been found to show correspondence." Chassell finds, "The principle of the mutual relationship of desirable qualities still remains unchallenged: as far as the relation between morality and intellect is concerned, correlation and not compensation is the rule."

The official classification of the Home Office divides crimes into six main groups which, however, are not mutually exclusive; viz. offences against the person, offences against property with violence, offences against property without violence, malicious damage to property, forgery and offences against currency, other offences. This classification lacks significance for the psychiatrist since the legal and official approaches differ from the scientific approach. The legal interest in a killing, for example, may depend mainly upon the guilt of the accused and the differentiation of murder from manslaughter. The medical interest will be chiefly concerned with the personality of the offender, both generally and also at the time the crime was committed.

For medical purposes crimes can be conveniently classified into acquisitive, aggressive, sexual, gregarious and the like, according to the instinct involved. This approach directs immediate attention to the emotional qualities accompanying the crime and the disposition of the offender.

Official statistics do not allow any precise figure to be given concerning the number of criminals whose offences are attributable to any particular instinct. Not only is there overlapping but the differentiation is often incomplete. For example, the figures for "breaking and entering" leave doubt as to whether the criminal belongs essentially to the acquisitive, aggressive or sexual group. The figures cannot be taken at their face value, for although the great majority of offences are apparently acquisitive the study of individuals often shows that a seemingly acquisitive offence is really due to the self-preservative or parental instinct, and that some cases of murder or assault, burglary, theft, arson and the like are primarily sexual offences and only incidentally associated with the aggressive or acquisitive

instinct. Again, the figures relating to crime and criminals are always open to the criticism that they never can include crimes which are not reported to the police, or the offenders who are not even suspected of committing crime.

The legal and administrative classifications of criminals need not delay us, the latter is amended from time to time in order to comply with progressive measures of administration. It was customary in the earlier years of the present century to discuss criminals under the headings of accidental, occasional and habitual, and these terms still represent, broadly, some features of criminality. In the scientific study of the criminal, however, it is important to consider the mental condition of the offender as well as the occasion which promoted the crime, and whether he is a nuisance or a menace to society before a decision can be reached regarding his capacity for future social adaptation.

From the medical point of view criminals can be classified broadly under the headings of normal, subnormal, mentally defective, psychoneurotic, psychopathic and psychotic personalities. But the groups sometimes overlap, and no psychiatric classification is likely to give entire satisfaction until the dividing line between mental diseases and character anomalies is established with some degree of precision apart from personal estimates.

The groups enumerated above and their sub-groups are fairly well defined by psychiatric practice, and I have suggested elsewhere that a criminal psychopathic personality may be defined, tentatively, as a person who, although not insane, psychoneurotic or mentally defective, is persistently unable to adapt himself to social requirements on account of abnormal peculiarities of impulse, temperament and character which may require specialized medical and rehabilitative treatment instead of, or in addition to, the ordinary methods of punishment before his social reclamation is likely to be effected.

Criminality is sometimes roughly measured by the nature, number and variety of offences which have been previously committed. The degree of turpitude in different classes of crime, as well as of different offenders in the same crime group, cannot be accurately assessed unless the individual offender and the circumstances associated with the crime are closely studied. Criminality and turpitude are not measured necessarily by the prescribed legal punishment. Murder, for example, must be punished with greater severity than theft, but the murderer who is not insane and who has been reprieved is unlikely to repeat his offence when he regains his liberty, whereas the criminal tendencies of the thief not infrequently prompt him to steal again as soon as an opportunity to do so presents itself.

The positive school of criminology considered crime was forced upon those who became criminal because of their inherited traits, but it is unnecessary to regard this view at any length, or call attention to recent studies in heredity when addressing an audience of psychiatrists, for our daily estimations of behaviour show that it is sometimes mainly endogenous, and at other times chiefly exogenous. Moreover, the interactions between heredity and environment are recognized by all observers to-day. Character and conduct may effect changes in the environment; conversely, environment influences character and conduct. It will suffice here to note the well-known facts that crimogenic traits which in themselves are socially useful may produce anti-social effects when synthesized in the offspring; that although many important new facts are emerging from recent investigations concerning the inter-

actions of the activities of the endocrine glands the resulting knowledge is, so far, of little practical value in the treatment of criminals; that crime in the individual is attributable to numerous causes and that no single cause is ever present; that the persistent criminal is on the whole more concerned with self in isolation than with self in the social setting, and often shapes his behaviour on phantasy, rationalization and projection; that personality takes time to reach its full development; and that practical experience seems to show that in a majority of cases as one gets older personality is a more important criminogenic factor than environment. ;

It is often stated with truth that criminal conduct is a maladjustment at the psycho-socio-biological level, but it is not always true to say that it is the result of the incapacity of the criminal to make an adequate social adjustment. The majority of persons found guilty of substantial offences for the first time, who were followed up, were clear of further charges during the subsequent five years, and proved themselves capable of social adjustment. The study of crime and criminals has suffered from the over-statements of doctrinaires. The intricate subjects requiring exploration demand a clear recognition of the fact that the connection of crime with mental abnormality is only a part of the problem. The association of crime and mental normality is also important and widespread. It is equally deserving of further research.

THE STATE AND THE PSYCHIATRIST

This rough blackboard outline must serve to indicate some of the aspects of crime and criminals with which the psychiatrist is immediately concerned. Before going further it is advisable to consider briefly the relations of the State to the Scientist, and since my working life has been happily spent in official duties my judgment may be biased in favour of the executive and administrative authorities. I therefore turn to the views of four eminent men of science.

Wilfred Trotter declared in 1933: "The senior professions of the Church and Law have always had prestige enough to enable each of them to keep a finger firmly and consistently in the governmental pie. They have, therefore, been able to see to it that any duty that was laid upon them should be set off by a corresponding privilege or immunity. The lowly and junior profession of Medicine, unlike its proud and elder sisters, has had no direct part and no direct influence in the work of government. It has, therefore, had to submit to its duties being piled up as occasion arose, with no resource for securing a due compensation of privilege and immunity except such slender sense of natural justice as governments possess, and their occasional doubts about the prudence of overloading a willing beast. These resources have shown all the ineffectiveness we might have expected. The result is that at a time when it is no longer possible to conceal the wholly unique importance of medicine for the very existence of social life, that profession finds itself of all professions the least in command of social prestige, the least privileged, the most exposed and the hardest worked. I do not mention this state of affairs because I think it is to be deplored. I do not think it is to be deplored. The evolutionary cause that has put the profession of medicine where it is may not be the one that would have been pursued by conscious wisdom, but it has had the result of putting medicine in the very small class of professions that, in this tame world, can still be called jobs for men."

Julian Huxley stated in 1934 that he had become "more than ever impressed with the fact that both our existing structure of civilization and our hope of progress are based on science, and that the lack of appreciation and understanding of science among business men, financiers, educational authorities, politicians and administrators was a serious feature in our present situation".

Sir A. Daniel Hall in 1937 said that "the working men of science are called upon to organize in order to make their point of view prevail in the affairs of the State. I recognize how alien this is to the temperament of the leaders of the world of science. They ask only to be allowed to remain in their laboratories, there to secrete knowledge without bothering about its purpose. That they conceive is their function in the community, but in the end such detachment means slavery and the destruction of the freedom of thought upon which science itself depends." And he recalls the disparaging remark of an American politician, a candidate for the Vice-Presidency, at the time President Wilson was running for President. "Brains," he said, "I can buy any of that lot for twenty dollars."

A. G. Tansley, speaking at Oxford University, in 1942, declared that "the current education of the men who are entrusted with the forming of Government policies has almost ignored and frequently despised science".

Ministers of State generally lack scientific education or achievement, but the knowledge and experience of the expert can never relieve the Government of the responsibility for judgment and decision in the direction of affairs. The executive is, indeed, sometimes willing to accept the advances in scientific knowledge which can be put to practical use. Whilst, however, a scientific training creates a habit of forming decisions upon reason it is not itself entirely free from emotional influence. Moreover, the scientist usually limits his explorations to a narrow speciality and this is becoming increasingly prevalent. Even when his results are positive, and can be applied to practical purposes, they may be unavoidably subordinated to wider interests or financial restrictions, and the situation of the moment must be focused clearly. This done there remains, and always will remain until a remedy is found, dissatisfaction on the part of the scientist who is affronted at the reluctance so often shown to utilize scientific knowledge to the full because it lacks popular appeal.

It was left to Ivan Petrovitch Pavlov to say in 1935 at Ryazan, his birthplace in Soviet Russia, "... Formerly science was divorced from life and alienated from the people, but now I see it is otherwise—I see the whole nation respects and appreciates science. I raise my glass and drink to the only government in the world which could bring this about, which values science so highly and supports it so fervently—to the government of my country."

It is becoming increasingly important for the scientist in a democratic State to make contact with the general public as well as with the governing authorities, since the latter may be unable to advance too far ahead of public opinion. Statesmen are few, politicians are numerous and are interested in the popular vote, and the scientist may find his valuable contribution neglected unless the public are interested in his work and force the politicians into activity. The difficulty lies less in the acquisition of knowledge than in obtaining quick and effective public action. It will be remembered that Sir Edward Mellanby discussed the question at some length in a recent Harveian Oration.

Although as doctors we may be less effective than legislators in the prevention of crime and the treatment of criminals it is right to recognize the fact that we are concerned with individuals rather than with groups, and that the offenders who come under our special care are usually the most difficult and the least responsive. They are sometimes referred to us only in the last resort, and we must serve them with optimism free from exaggeration, inspired by hope and encouraged by goodwill.

We must as physicians avoid any suspicion of self-advertisement, but a legitimate occasion to make contact with the public arises when evidence is given in a court of law concerning the mental condition of an accused person. Lawyers, administrators and mastermen of psychiatry are sometimes shocked by the unwarranted explanation of criminal conduct given by journeymen psychiatrists. It is important to check the natural tendency to over-interpret criminal behaviour in terms of mental abnormalities which are found in non-criminal cases. Opinions should be withheld until all the available facts concerning the circumstances of the crime are known and correlated with the findings of the medical examination. The offender must be appraised as a whole, and not according to the dictates of a medical fashion which may be, for the moment, interested in an isolated part of mental activity. I venture this trite remark because incorrect diagnoses are sometimes made regarding the mental condition of accused persons as a result of placing undue reliance upon hearsay, upon incomplete documentary evidence, and upon academic theories.

We cannot escape the fact that opinions are occasionally peddled in public with real detriment to criminology and psychiatry. But it is the duty of journeymen psychiatrists as well as the mastermen to enhance the reliability of medical evidence, and we must not assume greater knowledge than we possess regarding the diagnosis, prognosis and treatment of the pathological criminal. Moreover, we must not promise dividends we cannot pay. The law and the executive may wish for a clear-cut medical solution for dealing with an abnormal criminal, but our knowledge is the result of studying types of offenders with similar abnormalities, and we must often err if we are too insistent in the belief that the individual offender before us will necessarily conform to the usual pattern of his type.

Evidence in a criminal court may, for some reason entirely outside the medical purview, obtain widespread publicity, and may have real propagandist value which is all the more effective if it is clearly and simply stated. It is a misfortune that the difficulties inherent in the changing views regarding psychological functioning sometimes prevent even the mastermen from using ordinary terms of expression. It is an added misfortune that many mastermen of psychiatry are so actively engaged that they seldom have time to spare to stand back from their work, like the painter at his easel, and consider whether it is good.

We cannot disregard the fact that some psychologists who have no medical qualifications and no training in psychiatry are too ready to make a diagnosis concerning the mental condition of offenders they examine. I am not here concerned with the relation of the medical profession to the non-medical psychologist, but I have for over forty years had exceptional opportunities to study at close hand the evidence given in the criminal courts concerning the mental conditions of accused persons, and it would be simply untrue to say that it was always satisfac-

tory. I refer to this matter because the number of non-medical psychologists seems likely to increase, and their divergent views are likely to confuse juries if they are expounded in the criminal courts. I believe that courts and juries will be best served in this matter by refusing to accept the opinions of non-medical psychologists and psychotherapists.

I go further. If progress in this direction is to be achieved in the post-war period I believe that evidence concerning the mental condition of accused persons, and the manner of their psychological functioning should be accepted only from experts who are registered medical practitioners and that medical men who have no special qualifications as psychiatrists, however eminent they may be in other branches of medicine, should steadfastly refuse to be drawn into expressing opinions in the witness-box concerning the difficult matters which may arise in regard to the association of mental disease and crime.

It is sometimes proposed that a psychiatric and psychological examination should be carried out on all persons who come before a criminal court. In my view the scientific approach to criminal problems and the study of the criminal is hindered by extravagant statements of this kind. Is it conceivable that all the offenders referred to previously, who were found guilty of substantial offences and were clear of any further criminal behaviour during the subsequent five years, required a special psychiatric investigation? Can we believe that the large number of motorists who come before courts of summary jurisdiction should, or would, submit themselves for examination, or that there are ever likely to be a sufficient number of psychiatrists to carry out the proposal? Progress is best served by recognizing the hard realities which confront us, and by eschewing the fanciful and subversive assertions of doctrinaires.

The protection of society from the criminal and of the criminal from society concern both the State and the psychiatrist. The latter is sometimes not free from bias in favour of the criminal, and this seems to be almost inevitable since the training of the physician generally leads him to put the interest of his patient before other considerations. But in a criminal case the wider interests of society cannot be impoverished in favour of the offender, and any attempt to do so will eventually injure him as well as the society in which he lives.

On the other hand, too much stress cannot be laid upon the importance of maintaining the independence of the psychiatrist whose researches and opinions should not become subservient to the political fashion of the moment, as appears to be the case in Nazi Germany. At the same time the psychiatrist must bear in mind the fact that public opinion in England still lags behind the progressive penal policy of the executive authorities.

It is sometimes suggested that the mental condition of an accused person should be taken out of the hands of the jury, and that a medical referee sitting with the presiding judge should determine the issue. I believe this suggestion is thoroughly mischievous. If the results of a psychiatric examination are to be informed and purposive the accused must feel that the medical examiner is able to extend to him a bond of human sympathy and understanding, a realization of his difficulties and temptations, and a willingness to explore the winding paths as well as the direct road which led up to the crime. If the medical referee is merely to assess the value of the documentary evidence and the opinions of the expert witnesses he will often

find himself uncertain, dissatisfied and sometimes wrong unless he makes a personal examination of the offender. But it is quite impossible to carry out a psychiatric examination satisfactorily in court. I have in mind particularly the art of the psychiatrist, for in criminal cases the art of examination and the facility with which the examiner obtains rapport with the accused is often more important than abstruse scientific learning. We should not expect a modern Grinling Gibbons to carve a masterpiece of delicate and elaborate detail in wood unless he applied the artist's touch as well as the workman's hand directly to his material. Neither should we believe that the psychiatric referee would be able to work upon the delicate materials which make up mind and personality unless he applied his art, as well as his science, under the most favourable conditions available, and in immediate contact with the accused. On the other hand, if the medical referee is to examine the accused outside the precincts of the court the practice would present disadvantages and be inferior to our present methods.

There would seem to be less objection to a procedure which restricted the duty of the jury to finding the prisoner guilty or not guilty of the crime, leaving the question of insanity and irresponsibility to a medical tribunal before the court determines the sentence. The Secretary of State is already directed to set up such a tribunal in certain circumstances after the sentence has been delivered in capital cases (Section 2 (4) of the Criminal Lunatics Act, 1884). This clearly presupposes entire confidence in the psychiatric opinions at the disposal of the State.

It should be remembered that there seems to be nowhere any willingness to transfer the functions of the court and jury to the psychiatrists, and I do not believe that psychiatrists wish this duty to be imposed upon them. I believe we recognize that our training and experience are not necessarily the best to apply to wider issues, and that as psychiatrists we may be able to carry a case only partially forward to the final conclusion. Different interpretations of the significance of the same set of facts may be made by warring expert witnesses, and an intolerable burden would be placed upon psychiatry in its adolescence if it had the last word in a criminal court.

For example, many authorities consider sadism may be expressed by normal or abnormal behaviour. It may be the only discernibly unusual feature associated with a crime, and the immediate challenge may concern merely a question of degree. Against this must be balanced all the other relevant factors which may go to show that the accused is fully responsible. Are these factors to be outweighed by the divergent opinion of one of the disputing psychiatrists if he favours the accused, and considers that the degree of sadism manifested in the crime indicates a pathological condition which should excuse the criminal from the consequence of his act?

Again, other sexual perversions may also be the result of a constitutional anomaly, but is the psychiatrist the person to decide whether its overt expression should be more tolerated than that of sexual offences which are not due to perversion, and may be more urgent than the less forceful drives of many perverts? If so, what standards should he apply? Further, competitive jealousy is a common cause of murder. Is this to be regarded by itself as an indication of abnormal mental functioning in the circumstances, and so excessive that the accused ought to be considered irresponsible? If so, is the experience of a psychiatrist on this particular issue more reliable than the combined experience of twelve jurymen and an

experienced judge who, unlike most psychiatrists, is constantly studying at first hand and in considerable detail the emotions and reactions of large numbers of criminals?

Let us at once recognize the fact that criminal responsibility is a legal concept which the public understands and of which it approves, and that so far psychiatry has not replaced it by anything more precise or practical. Let us remember that the law is applied with elasticity in suitable cases. Let us regard criminal responsibility and the culpability recognized by medical men as two different things, and by leaving the former to the lawyers have more time to study closely the medical conception of culpability, for this is likely to become increasingly important with the crystallization of our knowledge regarding minor mental abnormalities. Perhaps as we approach nearer to the heart of the matter we may be more able to assist the lawyers in reshaping the doctrine of criminal responsibility as set out in the McNaghten Rules.

Meanwhile, it seems logical and just to detain the sociopathic offender, who is not insane or mentally defective but whose culpability is lessened on account of a minor mental disability, in a special type of establishment which is not an ordinary prison or mental hospital but a custodial institution in which judicial restrictions and modern therapeutic measures are combined.

THE CRIMINAL AND THE PSYCHIATRIST

In the early years of the present century psychiatric interest in the criminal was much occupied with the association of mental defectiveness and crime. The next period was largely concerned with separating the mentally defective offenders from the ordinary criminal population, and was particularly useful in placing the position in correct perspective. At one time it seemed that some enthusiasts wanted us to believe that prisons were almost unnecessary and that most of them could be profitably converted into institutions for defectives. It can be confidently stated that if the prison medical officers had allowed themselves to be corrupted by these views the study of minor mental and character abnormalities associated with crime would have been deferred. We seem now, generally, to have reached a period when informed reason has displaced uninformed credulity, and have learnt that the problem of crime and mental defectiveness, although important, is comparatively small.

In the Annual Report of the Prison Commissioners for 1932 I recorded three instances where the prisoners for some time had been regarded as mentally defective. As a result of prolonged observation during which a longitudinal view replaced a transverse section of their histories, and a change over from anti-social to social behaviour occurred, one prisoner was found to have suffered from mental conflicts during childhood which affected conduct until they were resolved. The repeated offences of the second were probably due to periodic physiological imbalance which was subsequently adjusted by marriage. In the third case the slow development of the personality which gave rise to the diagnosis of mental defectiveness was eventually caught up, and the youth became a normal man. Cases like these are particularly instructive for they dispel complacent diagnoses and emphasize the importance of prolonged clinical study.

In recent years the rearrangement of psychiatric thought regarding the genesis, association and classification of mental abnormalities has favourably influenced forensic psychiatry. Different views may be held regarding these matters and the psychiatrist must have no illusions. The interpretation of newly found knowledge is often more difficult than the ascertainment of new facts. Abstruse psychological hypotheses, although useful on suitable occasions, often have little practical bearing on the crime under consideration.

The psychological treatment of crime is so recent that its scope is still uncertain. It is not to be recommended lightly or without discrimination, and we may expect for some time to come that unsuitable cases will be suggested for treatment as well as those who are suitable. The study of minor mental disorders, as well as the introduction of new methods of treatment in later years have opened up new possibilities in the scientific attack on crime. A psychological investigation, however, may explain conduct but does not necessarily excuse it; and the comfortable doctrine of self-expression, regardless of the interests of society, causes distrust and opposition if it discounts the value of self-control and public security. There is a growing tendency in the criminal courts to consider the criminal more than the crime, but the welfare of the criminal must often be subordinated to the wider interests of society. Imprisonment may be necessary for public reasons in spite of the fact that non-custodial measures have been recommended by the psychiatrist. Conversely, detention over a prolonged period, with or without special psychiatric and rehabilitative treatment, may be desirable from the medical aspect, but may not be justified by the nature and circumstances of the crime.

Perhaps the most outstanding feature of the association of the modern psychiatrist and the criminal is the recognition of the importance of the emotional rather than the intellectual genesis of crime. It had, of course, long been recognized that certain crimes, particularly those of violence and sex, were primarily emotional; but it is comparatively new for offences such as theft, burglary, forgery, false pretences, arson and the like to be linked up with unapparent emotional activities.

The study of sexual crime, in particular, has contributed much in recent years to a better understanding of instinctive action when directed towards criminal purposes. It is not too much to hope that future study relating to the other instinctive activities will assist in the better understanding of criminal behaviour. We may assert with some degree of confidence that the usual penal methods will often prove to be inadequate to prevent the commission of sexually perverted crime. We may hope that research directed towards the study of perverted activity associated with the acquisitive, aggressive, parental and gregarious instincts will enable us to determine whether the usual penal methods will fail here also. Further knowledge may clear the way for the introduction of new methods for treating non-sexual perversions and for protecting society against them.

Psychiatrists reduce the probability of criminal behaviour by effecting the social adjustments of their patients at Child Guidance and Psychiatric Clinics. The difficulty of assessing results, however, is increased by the fact that anti-social tendencies may seem to be removed although the patient is more potentially criminal than his fellows when contact with him is lost.

This does not, of course, in the least diminish the importance of the psychiatric approach to crime, or the value of the psychiatrist in the diagnosis, prognosis and

more than four years on persons between twenty-one and thirty years of age, whose records, character and habits are such as to make such sentence expedient for the training of the offender; and

(b) Sentences of preventive detention for a term of not less than two and not more than four years on persons over the age of thirty, if by reason of the offender's criminal antecedents and mode of life such a sentence is expedient for the protection of the public. For certain types of offenders with records of repeated crime it is proposed that such sentences may exceed four but shall not exceed ten years.

Enough has been said to ensure the goodwill of psychiatrists in furthering the intentions of the Bill to grapple still more closely, individually, efficiently and humanely with the ever present dilemma of penal reform.

As a result of the investigation into the Psychological Treatment of Crime at Wormwood Scrubs prison, Hubert and I recommended the establishment of a special institution, under the administration of the Prison Commissioners, for abnormal and unusual types of convicted offenders. I have also referred to this in a later publication. This institution would serve as a clinic or hospital where convicted prisoners could be investigated and treated by psychotherapy and other means, and as a centre for criminological research as well as for co-ordinating the various aspects of after-care organization. In the institution selected cases could live under special conditions of training and treatment. Many who are unsuitable for, and unmodified by, the re-educative and rehabilitative influences of the modern prison system would be allocated to this section. Its aims would be to amend behaviour by the application of psychiatric experience. The institution would also serve as a colony in which a further type of offender could live who had proved unable to adapt himself to ordinary social conditions, but for whom reformative measures, however specialized, seemed useless and the inflexibility and restrictions of ordinary prison life inappropriate. A branch institution would serve as an observation and treatment centre for those who, because of minor mental abnormality, appeared to be unsuitable for, or had failed to respond to, ordinary Borstal training and for various reasons were considered unfit for early licence.

CONCLUSION

The scientific approach to crime and the scientific treatment of mentally abnormal criminals are urgently important and eminently practical matters, and will demand further attention in the post-war scheme of social justice. I have attempted in this address to indicate briefly the trend of modern thought, as I see it, concerning some of the intricate problems involved. In my judgment some of these problems lie within the wide borderland between mental disease and anomalies of character, rather than in the territory dividing mental health from mental illness.

However this may be, our part must be carried out in the spirit of scientists who are able to take long views and perceive the shape of things to come, who are concerned with men and women and the naked facts of life and living as well as with the inexorable realities of disease and death, who are willing to serve both State and law-breaker with all the energy and good will of our humanistic tradition, and who, in spite of disappointments and rebuffs, maintain an abiding faith in man's

usefulness to man. Moreover, as trustees of progress and truth we must not let our legacies remind us of the Writing On The Wall, for "The Moving Finger writes; and, having writ, Moves on. . ."

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III

SOME OFFICIAL CONTACTS WITH ADDICTION *

OFFICIAL contacts with addiction—including in that term alcohol as well as drug addiction—may be considered conveniently from the preventive, custodial, and curative points of view. In the following observations I shall attempt no more than mention a few facts and opinions connected therewith.

THE PREVENTION OF ALCOHOL ADDICTION

The Government of this country has been confronted frequently with diverse interests and opposing habits of thought in its efforts to prevent alcohol addiction. Drunkenness was one of the menaces to the health of the inmates of prisons in former times, and was encouraged by the system of "garnish" which was practised in many and compelled a prisoner to pay a stated sum of money on reception, the whole or portion of which was spent usually in drink for the prisoners. In the year 1812 "garnish" had been abolished in many prisons, but the Committee appointed in 1815 to report on the King's Bench, Fleet, and Marshalsea Prisons found in regard to the former that "In respect of the morals of the prison drunkenness is most common and there is a constant sale of spirituous liquors." It appears that a sort of public house was kept on the staircase, where spirits were not only sold and carried away, but people assembled of an evening to drink, and disturbed others by their riotous intoxication.

Some forty years before this John Howard protested against the practice which allowed liquor to be sold in prisons. He declared that it was highly requisite that no gaoler, turnkey or other servant should be allowed to "hold the tap", or to have any interest whatever in the sale of liquors of any kind. Little attention was paid to the Statute of 1751 (24 George II. c. 40) by which a grant of a licence for the sale of spirits in a prison was prohibited, or to that of 1784 (24 George III. c. 54) by which the grant of an alehouse licence and sale of beer was forbidden. The sale of liquors in prisons was a profitable undertaking. At the King's Bench Prison, for example, it yielded a profit of over £800 a year until the prison was closed in 1842. It is to be remembered that the prisons, generally, did not come under the control of the Central Government until the year 1877. But these facts indicate how difficult it was then, as now, to implement a statute unless the public supported the Legislature.

In recent times legislation has often had, directly or indirectly, a preventive character in regard to alcohol addiction. Thus the Children's Act of 1908, Part II, Section 13, by imposing penalties on those who went to bed with an infant and were at the time under the influence of drink and caused the suffocation of the infant, recognized the effect that drunkenness might have in bringing about unpre-

* A communication introductory to a discussion at a meeting of the Society for the Study of Addiction, on Tuesday, January 11, 1938.

meditated death. Part VI, Section 119, rendered a person liable to a fine not exceeding three pounds who gave or caused to be given to any child under the age of five years any intoxicating liquor, except upon the order of a duly qualified medical practitioner, or in the case of sickness, or apprehended sickness, or other urgent cause. Section 120 of the same Part prohibited the holder of the licence of any licensed premises from allowing a child under fourteen years of age to be at any time in the bar of the licensed premises, except during the hours of closing. Sections 5 and 6 of Part I of the Children and Young Persons Act, 1933, contains similar restrictions to Sections 119 and 120 of Part VI of the 1908 Act, except that in the later Act the prohibition refers to permitted hours and not to hours of closing.

The Small Holdings and Allotments in England and Wales Act, 1908, prohibited in Section 12, Subsection 1 (f) the use of any dwelling-house or building on the holding for the sale of intoxicating liquors.

During the First Great War the Defence of the Realm Regulations introduced several prohibitions. Regulation 10A gave a competent naval or military authority having control of dock premises power to prohibit any person from bringing into the premises any intoxicating liquor. A rule made under Regulation 35A prohibited a person in a state of intoxication from entering or remaining in an Airship or Kite Balloon Station. Another rule under the same Regulation prohibited any person, unless authorized by the Superintendent or Manager, from bringing into or having in his possession any intoxicating liquor whilst within an Ammunition Filling Factory. Regulation 40 prohibited any person from supplying any intoxicant to a member of H.M. Forces with the intent of eliciting information for the purpose of communicating it to the enemy, or for any purpose calculated to assist the enemy; or, to make him drunk or less capable of the efficient discharge of his duties; or, when on duty with or without any such intent. The same Regulation prohibited any person from supplying any intoxicant to a member of H.M. Forces when proceeding to a port for embarkation on board ship. Any member of the crew of a British ship was prohibited from supplying without authority any intoxicant to any member of H.M. Forces or Allies embarked as a passenger on the ship. Regulation 40A prohibited any person from supplying a member of any of H.M. Forces who was undergoing hospital treatment any intoxicant unless ordered by the doctor in connection with his hospital treatment.

The Intoxicating Liquor, Temporary Restriction, Act, 1914, empowered licensing justices, upon the recommendation of the chief police officer of the district, and for the maintenance of order and suppression of drunkenness, to suspend the sale or consumption of liquor on licensed premises in the area.

The Road Traffic Act, 1930 (20-1 Geo. V. c. 43), Section 15, authorizes the imposition of penalties on motor drivers in charge of motor vehicles on a road or public place if under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle, and allows a police constable to arrest without a warrant any person committing an offence under the Section.

The Licensing Permitted Hours Act, 1934 (24-5 Geo. V. c. 26), gives further discretionary power to the Justices under the Licensing Act, 1921 (11-12 Geo. V. c. 42), enabling them to vary the permitted hours for part of a year if in their discretion there are special reasons, otherwise the extension will be for a whole year.

the patient has entered the Retreat, he can be compulsorily detained therein until the expiry of the period for which he signed. It is, however, the practice to-day to discharge a patient under the Act, with official sanction, if it is considered desirable to do so, either because the patient refuses to co-operate in the treatment, or is unlikely to derive further benefit from detention, or for some other cause.

An inebriate is defined in the Act as a person who is by reason of habitual intemperate drinking at times dangerous to himself or herself or to others, or incapable of managing himself or herself or his or her affairs.

At the present time only two Retreats remain licensed under the Acts, and the vast majority of their patients are not admitted under the Act.

In the year 1930 only 9 patients were admitted under the Act

"	1931	"	8	"	"	"	"	"
"	1932	"	1	"	"	"	"	"
"	1933	"	7	"	"	"	"	"
"	1934	"	1	"	"	"	"	"
"	1935	"	3	"	"	"	"	"
"	1936	"	0	"	"	"	"	"

In 1893 a second Departmental Committee under the Chairmanship of the Right Hon. J. Lloyd Wharton reported and, in general, endorsed the findings of the Committee of 1872, and again urged the necessity for dealing with recidivists and criminal drunkards. The Inebriates Act, 1898, followed and simplified the methods by which inebriates could enter Retreats voluntarily, and also made provision for the compulsory detention in Inebriate Reformatories of the worst class of drunkards—those who committed crime as the result of their habits, or were charged continually in police courts for drunkenness and disorderly conduct. The removal from prisons of this particularly difficult class of offender was welcomed by all who were concerned with prison administration; but many drunkards still returned to prison, and not a few of them had been absent for three years in an Inebriate Reformatory. The Act of 1898 failed in practice, and the last Inebriate Reformatory surrendered its licence in 1921. Happily, by this time the problem of the inebriate offender was much less acute than in the pre-war period.

The State Inebriate Reformatories which developed under the Inebriate Act of 1898 received the most difficult type of inebriate. Some were transferred from the Certified Reformatories who were found to be unmanageable in those institutions. Up to 31st March 1906, 234 inmates had been admitted to State Inebriate Reformatories, 71 men and 163 women. Sixteen of the total number were committed direct from Assizes and Quarter Sessions under Section 1 of the Act, which provided for the detention in a State Inebriate Reformatory for a term not exceeding three years, or in any certified Inebriate Reformatory the managers of which were willing to receive him, of a person convicted on indictment of an offence punishable with imprisonment or penal servitude, if the court was satisfied from the evidence that the offence was committed under the influence of drink or that drunkenness was a contributory cause of the offence, and the offender admitted that he was, or was found by the jury to be, a habitual drunkard.

The remaining 218 inmates admitted into the State Reformatories were transferred from Certified Reformatories on account of refractory and unmanageable conduct. Most of the transfers were habitual drunkards sentenced from police

courts under Section 2 of the Act, and nearly all had been in and out of prison for years before the reformatory sentence was imposed. Section 2 rendered any person who committed any of the offences mentioned in the First Schedule of the Act, and who within twelve months preceding the date of the commission of the offence had been convicted summarily at least three times of any offences in the Schedule, and who was a habitual drunkard, liable upon conviction on indictment, or if he consented to be dealt with summarily on summary conviction, to be detained for a term not exceeding three years in any Certified Reformatory whose managers were willing to receive him. If the offender did not consent the justices could not convict him of the simple offence but were obliged to send the whole facts before a jury.

The late Dr. R. Welsh Branthwaite, a former Vice-President of this Society and the Norman Kerr Lecturer, 1907, and my predecessor as Inspector under the Inebriate Acts, in his annual report for the year ended 31st March 1906, wrote: "A few decent improvable cases have found their way into State Reformatories from time to time; but as soon as their condition has been recognized, such cases have been transferred to more suitable surroundings. With such material under control it is hardly surprising to find the good results of detention in State Reformatories, from a reformatory point of view, are very small indeed. Now and then there are pleasant surprises, but these are few and far between. So long as the managers of Certified Reformatories hold on to every case which justifies a glimmer of hope, as in fact they are doing and should do, the State Reformatory will remain an institution for the detention of the violent to benefit other institutions, and for the good of the community. Those of us who thoroughly appreciate the mental condition of the persons we are dealing with, their dangerous character and irreformability, never cease to rejoice that they are under care and control, regretting extremely the necessity which compels us to discharge them to freedom at the termination of sentence."

The Home Office is only concerned with the custody of insane alcoholists who have been found to be insane on arraignment, or guilty but insane by a petty jury at the court of trial, Assizes or Quarter Sessions, and whose crimes are due to alcoholism; and with prisoners whose insanity, due to alcohol, has been declared whilst the alcoholist is serving a sentence of penal servitude or imprisonment. Some of these patients are detained in the Criminal Lunatic Asylum at Broadmoor and others in County Mental Hospitals.

The detention of alcoholists in prisons has always been an important official contact with the problem of inebriety. The accompanying table shows the present position compared with the pre-war years:

<i>Number of Persons dealt with Summarily for Drunkenness, etc.</i>		<i>Number of Persons received into Prison On Conviction for Drunkenness</i>	
1910-14 (average)	193,354	1913	52,149
1930	58,609	1930	8,611
1931	46,846	1931	7,484
1932	33,858	1932	5,836
1933	40,620	1933	6,631
1934	44,506	1934	6,835
1935	48,110	1935	6,880

CURATIVE MANAGEMENT OF ALCOHOL ADDICTS

I have already stated that the last certified Inebriate Reformatory surrendered its licence in 1921. The State Inebriate Reformatories were closed during the Great War. In neither institution was the curative effect considered important enough to continue the experiment. It would seem, however, that the managements of the two Retreats licensed to receive patients under the Act of 1879 consider the power of detaining a patient who has previously consented voluntarily to submit to detention for a definite period still serves a useful purpose. I concur with this view as the result of my inspections at these establishments. The realization by a patient of the fact that he can be detained against his will appears to give support to the good intentions of some and to a recognition of the serious condition of affairs which induced them to consent voluntarily to a lengthy period of detention. Dr. A. E. Carver has stated that the circumstances under which the Act is likely to be of real utility are rare and are confined to those cases—e.g., dipsomaniacs—who fear that although they can usually be relied upon to co-operate may at certain times of special stress feel impelled to leave the protection of the institution and obtain drink, unless they take the precaution while in their normal senses of giving others the legal power to prevent them from doing so when the special stress arises. In this connection it is of interest to record the opinion of the Administrative Head of the Retreat for Women licensed under the Act. The Sister Superior of Spelthorne St. Mary informs me that she has come to the conclusion that patients received into that establishment under the Act do better, on the whole, on discharge than the patients who are not received under the Act. The number of such cases is so small that a different conclusion might result if they were more numerous, but the considered opinion of so experienced an observer that the most forcible characters are determined to give themselves the best chance of recovery by voluntarily detaining themselves under the Act is significant. It would lead us too far from our immediate subject to consider the curative effect of treatment in persons who have become insane from alcohol addiction.

The curative value of imprisonment for drunkenness has probably never been convincing. At the same time there can be no doubt that alcoholists derive benefit from even short periods of enforced abstinence. The improvement which takes place in their physical and mental state even after a week or a fortnight without drink has been well known to prison medical officers for many years. It has been alleged that the shock of repeated imprisonments, supplemented by attacks of delirium tremens and epileptiform convulsions which have been assumed to result from the failure to treat the withdrawal of drink, have been mainly to blame for the physical and mental deterioration formerly found in a large proportion of the habitual drunkards of pre-war years. Sir Herbert Smalley when Medical Inspector of Prisons in 1906 wrote: "Whilst freely admitting that many habitual drunkards are physically and mentally defective to start with, and that as time goes on the defects increase in intensity, and further that repeated imprisonment for short periods has no curative effect—owing, perhaps, partly to its lack of continuity—exception must be taken to the inference that this deterioration is due to the influence of imprisonment."

Prison medical practice, almost necessarily, has provided a large scale experiment

concerning the effect of the abrupt withdrawal of alcohol in determining the onset of delirium tremens. Dr. A. E. Carver considers no untoward symptoms arise from the sudden and complete cutting off of alcohol in young patients who have not acquired a high degree of tolerance, but that considerable suffering and risk is run by sudden withdrawal in elderly patients who have established a long standing tolerance, and that sudden deprivation causes misery, restlessness, muscular tremor, and hallucinations which may pass on to delirium tremens. Present day prison medical practice is not of much help in this matter as the number of receptions into prisons in England and Wales who develop delirium tremens is now so small. There were only seven cases in 1936.

In pre-war years the number of cases of delirium tremens in prisons was considerable. In the year ended 31st March 1907, there were 246 cases among over 212,000 prisoners, of whom no less than 62,991 were convicted of drunkenness, apart from the very large number of drunken persons committed for other offences. An inquiry ascertained the fact that of the 246 cases of delirium tremens one patient died, five were certified to be insane and were removed to asylums, 218 recovered completely, and the remaining twenty-two, who, owing to the shortness of their sentences, were not sufficiently restored to health to allow of their unconditional discharge, were sent to workhouse infirmaries or handed over to the care of their friends on the expiration of their terms of imprisonment. The inquiry also elicited the fact that epileptiform convulsions were rarely observed among alcoholists in prison. It was the general experience of the prison medical officers that in a large number of cases where prisoners were received into prison verging on an attack of delirium tremens, the enforced abstinence, together with the bland and easily assimilable diet and the administration of eliminating medicine, so far from precipitating an attack frequently shortened it.

My own recollections of this period and the subsequent years, when I was serving as a prison medical officer, confirm this view. In cases in which the prisoner was received into prison bordering on delirium tremens it was our practice at Brixton Prison to administer brandy to the patient with a view to preventing the development of the attack. The result was, however, frequently disappointing. I formed the opinion that the mental misery, the muscular tremors and the disinclination for food which were present on reception into prison in so many of those who later developed delirium tremens, were in fact symptoms due to the onset of the attack and were not withdrawal symptoms. In this connection it is of interest to quote Bleuler's opinion. He states: "Abstinence from alcohol is also said to produce delirium tremens. But this is very decidedly contradicted by the experience in sanatoria for alcoholics and in insane asylums, in which every alcoholic is kept abstinent from the time of entrance. According to my experience, and that of others, in hardly one case in a thousand does the delirium break out which could not have been demonstrated previously with a fairly good anamnesis or examination on entrance, while, on the contrary, many cases, already clearly diagnosable, recover in spite of abstinence." He quotes Wigert, who ascertained that the suppression of the whisky traffic during the general strike in Stockholm, August-September 1909, must have enforced abstinence suddenly on many thousand inebriates in the city which consumed 4.4 million litres of whisky in a year; and that instead of an average of four, six and a maximum of nine, only sixteen cases

of delirium tremens came to notice in the first week, one in the following week, and none thereafter until the reopening of the saloons. The author did not examine the individual cases, and Bleuler considers that even if the cases were examples of abstinence deliria the investigation proves them to be so rare that it would be a mistake to consider them a factor.

Of the 246 cases of delirium tremens in the prisons in England and Wales during the year ended 31st March 1907, only one died—that is, less than $\frac{1}{2}$ per cent. Henderson and Gillespie state that in uncomplicated cases death is rare but occurs in 3 or 4 per cent. Bleuler says perhaps in 1 or 2 per cent of the uncomplicated cases the patients die of heart failure. The mortality in prisons does not compare unfavourably with that of patients treated elsewhere for this disorder.

A brief reference may be made here to the valuable publication by the Eugenics Society on "Family Council Law in Europe"—the result of a study undertaken by that Society in 1927-9. The Family Council is stated to be an institution presided over by a Justice of the Peace, where family affairs can be discussed, deliberations made, voted upon, and legally settled; the responsibility of suggestions and decisions resting on the Family Council vote. The Family Council operates in France, and is recognized as an advisory body in Italy. It was at one time operative in Germany but is unknown in Scandinavia. In the Netherlands family consultations are recognized and must be made up of four members, two each from either parent's side. Generally speaking, it would seem that there is reluctance to deal with cases of "dipsomania" by this institution. In any case the system is not recognized in this country.

PREVENTION OF DRUG ADDICTION

Just as certain regulations introduced during the Great War under the Defence of the Realm Act may be considered to have had a preventive effect in regard to alcohol addiction, so too may some be considered to have had indirectly a preventive effect in regard to drug addiction.

Regulation 40B prohibited anyone selling, giving, procuring, or supplying cocaine other than to an authorized person unless certain conditions were complied with. The provisions applied to medical practitioners also. The manufacture of cocaine without a licence was prohibited, and the possession of cocaine was made a summary offence unless the drug had been supplied in accordance with a prescription, or the holder of the drug was licensed to manufacture it. An Order of the Army Council (LV.) prohibited the sale or supply of coca, cocaine, codeine, diamorphine, Indian hemp, opium, morphine, sulphonal and its homologues, also barbitone, benzamine lactate, benzamine hydrochloride, and chloral hydrate, to any member of H.M. Forces not being a registered medical practitioner, registered dentist, or registered veterinary surgeon, except under certain conditions set out in the Order. Order LVI. prescribed the form of record of dealings in cocaine or opium.

It will be remembered that the Road Traffic Act, 1930 (20-1 Geo. V. c. 43), to which reference has been made already, imposes penalties on motor drivers who are incapable of having control of their vehicle as the result of being under the influence of a drug. But the official contacts with drug addiction are concerned mainly with implementing the conditions of the Dangerous Drugs Acts.

A brief review of the legislative amendments during the five-year period 1932-6

is of interest in showing the direction of official contacts at the present time. The Dangerous Drugs Act, 1932, came into operation on 9th July 1933. Its purpose was to make such amendments in the Dangerous Drugs Acts, 1920 to 1925, as were necessary to conform to the provisions of the Geneva Convention of 1931. The Extradition Act, 1932, permitted offences in relation to dangerous drugs, and attempts to commit such offences, to be included in the list of extraditable crimes. The Dangerous Drugs (Consolidation) Regulations, 1928, were amended on 11th November 1932, by the amendment of the list of preparations exempted from the provisions of the Regulations. An Order in Council was made on 10th June 1932 applying the Dangerous Drugs Acts to acetyldihydrocodeinone, its salts, and any preparation, admixture, extract, or other substance containing any proportion of acetyldihydrocodeinone.

On 8th August 1933, an Order in Council was made under Section 2 (3) of the Dangerous Drugs Act, 1932, applying with certain modifications Part III of the Dangerous Drugs Act, 1920, to codeine and dionin and their respective salts. The effect of the Order was to make it unlawful as from 1st October 1933 to import or export these drugs except under licence. On 15th December 1933 Regulations (known as the Methylmorphine and Ethylmorphine Regulations, 1933) were made for controlling the manufacture, possession and wholesale distribution of codeine and dionin and their respective salts. The Regulations came into force on 1st January 1934.

By Provisional Rule, dated 13th September 1933, the Dangerous Drugs (Benzoyl-morphine) Regulations, 1928, were repealed and the Dangerous Drugs (Consolidation) Regulations, 1928, were amended so that the latter now apply to benzoyl-morphine and any preparation, admixture, extract, or other substance containing benzoyl-morphine. These alterations were made purely for the purpose of simplification and have not altered the legal requirement that all transactions in this drug must be licensed or authorized by the Secretary of State.

The Pharmacy and Poisons Act, 1933 (23 and 24 Geo. V. c.25), together with the Rules made under it (The Poison Rules, 1935, Statutory Rules and Orders, 1935, No. 1,239), came into full operation on 1st May 1936, and replaced all the existing legislation relating to the sale, supply, storage, and transport of "Poisons," which was repealed from that date. The substances to which the Act applies are those included in the Poisons List (Statutory Rules and Orders, 1935, No. 1,238). This Act and the Rules made under it make no substantial alteration in the law relating to the sale and supply of Dangerous Drugs.

During the year 1937 Statutory Rules and Orders were issued, excluding certain preparations containing morphine, cocaine, etc., from the Provisions of Part III of the Dangerous Drugs Act, 1920 (10 and 11 Geo. V. c. 46); applying Part III of the Act to all preparations of esters of ecgonine or of their respective salts, and to all preparations of ecgonine containing less than one-tenth per cent of ecgonine and to all preparations of esters of morphine; for controlling and restricting the possession, sale, and distribution of raw opium, coca leaves, Indian hemp, and resins obtained from Indian hemp and all preparations other than extract or tincture of Indian hemp of which such resins form the base; and for controlling the manufacture, sale, possession, and distribution of Dangerous Drugs to which Part III of that Act applies.

Addiction to narcotic drugs is not prevalent in this country. The estimated population of the United Kingdom at mid-year 1936 was 47,084,753, and according to the latest Government Report the number of addicts in the country known to the Central Office at the end of the year 1936 was approximately 616—313 men and 303 women. Of this total approximately 137 were members of the medical profession, 3 were dentists, 5 were pharmacists, and there were also 2 veterinary surgeons. The drugs involved were morphine and preparations 543, heroin 61, cocaine 52, and combined drugs 50. During the year 1936, 9 members of the medical profession, 1 dentist, 1 pharmacist, and 1 veterinary surgeon were convicted of offences against the Dangerous Drugs Acts. In nine of the cases in which convictions were recorded the authorization of the convicted person was withdrawn.

The table on pages 28–29 summarizes the number of persons reported by the police to have been proceeded against for offences under the Dangerous Drugs Acts during the year 1936.

The opium poppy is not cultivated in the United Kingdom and no raw opium is produced; the coca plant is not cultivated here, and the Indian hemp plant (*cannabis sativa*) does not grow wild in the United Kingdom and is not cultivated here. There is internal control of manufactured drugs, and the system of limitation of manufacture is applied in the following manner. All licensed wholesale druggists, including manufacturers, are required to render annual returns of their transactions in dangerous drugs. From these returns the annual figures of home consumption are calculated and these figures are the basis of the estimates furnished to the Supervisory Body of the country's requirements. Manufacturers are required to furnish quarterly returns of their manufacture and stocks.

<i>Offence</i>	<i>Number Proceeded Against</i>	<i>Dealt with under Probation of Offenders Act</i>	<i>Fined</i>	<i>Imprisoned</i>
<i>Raw Opium.</i>				
Unauthorized possession ..	2	—	2	—
<i>Prepared Opium.</i>				
Unauthorized possession ..	5	—	2	3 (2 also recom- mended for deportation)
Permitting premises to be used for opium smoking ..	1	—	1	—
Frequenting premises for the purposes of opium smoking ..	8	—	8	—
Possession of utensils for smok- ing	1	—	1	—
<i>Medicinal Opium</i>	—	—	—	—
<i>Morphine.</i>				
Unauthorized possession ..	7	1	3	3 (1 also recom- mended for deportation)
Carried forward ..	24	1	17	6

<i>Offence</i>	<i>Number Proceeded Against</i>	<i>Dealt with under Probation of Offenders' Act</i>	<i>Fined</i>	<i>Imprisoned</i>
Brought forward ..	24	1	17	
Unauthorized procuring ..	2	—	1	1
Failure to enter supply in Register	7 (including 1 case in Northern Ireland)	—	7	—
<i>Diacetylmorphine.</i>				
Unauthorized possession ..	1 (case dis- charged or withdrawn)	—	—	—
<i>Benzoyl-Morphine</i>	—	—	—	—
<i>Dihydrohydro-oxycodone</i> ..	—	—	—	—
<i>Dihydrocodeinone</i>	—	—	—	—
<i>Dihydromorphinone</i>	—	—	—	—
<i>Acetyldihydrocodeinone</i> ..	—	—	—	—
<i>Coca Leaves</i>	—	—	—	—
<i>Cocaine.</i>				
Unauthorized possession ..	1	—	—	1
Unauthorized procuring ..	1	—	1	—
Failure to keep drugs in locked receptacle	2 (including 1 limited company)	1	1	—
Failure to enter supply in Register	3 (including 1 case in Northern Ireland)	—	3	—
<i>Indian Hemp.</i>				
Unauthorized possession ..	8	—	6	2 (including 1 detained in police cells)
<i>No Drug (or more than one) specified in the Charge.</i>				
Failure to keep drugs in locked receptacle	7 (including 1 case dis- charged or withdrawn)	1	5	—
Failure to enter supply in Register	4	—	4	—
Total	60	3	45	10

Control is exercised over factories by means of regular inspections made without warning as to the date on which they will be carried out. Stocks and records are carefully examined and checked, and this method, in conjunction with the thorough examination and checking of quarterly and annual returns, has been found to provide an efficient method of supervision.

The inspection of licensed manufacturers and wholesalers is carried out by inspectors appointed by the Secretary of State. By Section 10 of the Dangerous Drugs Act, 1920, as amended by Section 1 of the Dangerous Drugs and Poisons (Amendment) Act, 1923, inspectors so appointed have power to enter the premises of any person carrying on the business of producer, manufacturer, seller, or distributor of any drugs to which the Act applies and to demand the production of and to inspect any books or documents relating to dealings in any such drugs and to inspect any stock of such drugs. Any person wilfully delaying or obstructing any inspector in the exercise of his powers under the Act or failing to produce or concealing or attempting to conceal any books, stocks, drugs, or documents is guilty of an offence against the Act.

The persons authorized to possess and use dangerous drugs for the practice or exercise of their respective professions or employments are: duly qualified medical practitioners, registered dentists, registered veterinary surgeons, pharmacists engaged in dispensing medicines at public hospitals, persons in charge of laboratories used for research or instruction and attached to an institution approved for that purpose by the Home Secretary, and public analysts.

Pharmacists in retail business in accordance with the provision of the Pharmacy and Poisons Act, 1933, are authorized under the Regulations to retail, dispense, and compound dangerous drugs and preparations containing such drugs. Certain hospitals complying with the conditions set out in the Dangerous Drugs (Hospital General Exemption) Order, 1924, have been exempted from the operation of the Regulations subject to the head dispenser employed holding one of certain specified qualifications.

Supervision is exercised over persons authorized to possess and use dangerous drugs by the inspectors appointed by the Secretary of State. Inspection of retail pharmacists is undertaken as a matter of routine by the local police, and on special occasions by the inspectors, who give the police technical advice and assistance in carrying out the routine duties. Medical practitioners are subject to inspection in regard to their records of dangerous drugs by Regional Medical Officers, who are appointed inspectors under the Acts and hold themselves in readiness to give advice in cases of addiction. Doctors, dentists, veterinary surgeons, hospitals, and all licensed persons are also subject to inspection by the inspectors appointed by the Secretary of State. When a pharmacist, doctor, dentist, or veterinary surgeon has been convicted of irregularities with regard to dangerous drugs the Secretary of State is empowered to deprive the offender of his authority to possess, supply, or prescribe the drugs. During the year 1936 this power was exercised in ten cases. In six cases the persons concerned were medical practitioners, in two cases dentists, in one case a pharmacist, and in one case a veterinary surgeon.

Thus the channels through which dangerous drugs circulate legitimately are open to frequent inspection, and the addict or would-be trafficker has little chance

of obtaining drugs from such sources without the fact of excessive supplies coming to light and proper investigations being speedily undertaken.

There will be some leakage varying from time to time in regard to smuggled imports, but the Reports of the Government to the League of Nations during the five years in question record the fact that no evidence was forthcoming of any organized illicit traffic in the United Kingdom.

CUSTODIAL AND CURATIVE CARE OF DRUG ADDICTS

The Home Office is only concerned with the custody of insane addicts who have been found to be insane on arraignment or guilty but insane by the petty juries at Assizes or Sessions when the addict is brought up for trial on a criminal charge. Such cases are rare; they are detained in Broadmoor Criminal Lunatic Asylum or in County Mental Hospitals. During the five-year period 1932-6 ninety-four persons were convicted of offences connected with the Dangerous Drugs Acts and received into prison to serve sentences up to four years' penal servitude. They do not usually present any particularly difficult problems after the withdrawal stage is passed unless the underlying mental abnormality is unusually pronounced.

It will be remembered that the Departmental Committee on Morphine and Heroin Addiction reported in 1926 that opinion was, on the whole, strongly in favour of the gradual withdrawal method of treatment in preference to abrupt or rapid withdrawal. The method of abrupt withdrawal was advocated especially by the medical witnesses—including myself—who were in medical charge of prisons, and found no deleterious effects usually arose when carrying out this method. The Report refers also to one witness, who was not a prison medical officer, and expressed the opinion that the cases in which it was found impossible to reduce the dose below a certain minimum, and necessary therefore to supply this dose for an indefinite period, were cases of persons who had been treated by the gradual reduction method.

Cases do arise from time to time when addicts in prison require the administration of the drug of addiction to carry them over a critical period, but they are comparatively few—e.g., two in fifteen cases. The prison medical officer is in a fortunate position when treating these patients, for they are under his entire control and he is assured that they are unable to obtain access to any unauthorized drug. The fact that the patient in the prison hospital is fully aware of this, and realizes that no amount of cajoling will obtain the drug unless it is essential, is also beneficial. I think there is some reason to believe that the sense of inferiority and dependence in the addict is less pronounced in prison because he realizes other patients in the same hospital are social failures like himself, and also because his own weakness is not contrasted so forcibly with the strength of normal men in the outer world. In such cases the patient is more likely to assist the doctor in the treatment. No figures are available to enable any comparison to be made between the ultimate results of treatment of addicts in prisons or as free men.

I am fully aware of the fact that these observations are mostly recapitulatory as far as the senior members of this Society are concerned. But we are constantly joined by new members and associates, and I have ventured to address myself

particularly to such of them as have not yet had an opportunity to consider for themselves this aspect of addiction.

Finally, I wish to thank Major W. H. Coles, the Chief Inspector, Dangerous Drugs Branch, Home Office, for information embodied in the latter part of the paper.

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IV

RESPONSIBILITY AND CULPABILITY *

RESPONSIBILITY

PROBABLY few medical witnesses in a criminal court are acquainted with the instructive discussion on cross-examination by Sir J. FitzJames Stephen in his *History of the Criminal Law of England*, but certain passages are relevant to my thesis. Stephen says: "In discussing the subject of criminal trials and the procedure, as to evidence and otherwise, to be observed upon them, people are usually tempted to forget their real character. Cool, unexcited bystanders often demand that a criminal trial should be conducted as quietly as a scientific inquiry, and are disgusted if any course is allowed to be taken which compromises the interests or character of third parties, or which leads to any sort of unseemly discussion. The truth is that litigation of all sorts, and especially litigation which assumes the form of a criminal trial, is a substitute for private war, and is, and must be, conducted in a spirit of hostility which is often fervent and even passionate. . . . A trial of any importance is always more or less of a battle. . . . Within its proper limits the battle must be fought with swords and not with foils. Unless this is clearly understood it is practically impossible to form a sound judgment upon the limits to be imposed upon cross-examination. . . ."

I would add, that unless this is clearly understood the finer type of expert witness may find himself "touched with a grievous sensibility", and his evidence will lose some of its effectiveness if calm scientific judgment is ousted by emotion.

Psychiatrists are sometimes called upon to express an opinion during a trial as to the responsibility of the defendant. At other times we are reminded that this is the duty of the jury and not our own concern. However this may be, we are concerned with the mental condition of the defendant; with his fitness to plead, and whether, if fit to plead, he suffered at the time the crime was committed from a defect of reason due to disease of the mind which prevented him from knowing the nature and quality of his act, or from knowing that it was wrong.

The ambiguities of the answers of the judges to the questions of the lords which followed the acquittal, in 1843, of Daniel McNaghten on the grounds of insanity are well known. But the fact that the case never came before the House of Lords in its judicial capacity is sometimes overlooked by medical men.

The questions and answers referred to the effect of insane ignorance as well as of insane delusions. But insanity affects the emotions and wills of men as well as their beliefs, and discussions concerning disorders in which emotional and volitional abnormalities predominate have brought about a wider immunity for insane persons than is sometimes supposed. This was almost inevitable. As John Mac-Murray points out: "The emotional life is not simply a part or aspect of human life. It is not, as we so often think subordinate or subsidiary to the mind. It is the

* Read at a meeting of the Medico-Legal Society, 27th January, 1944. Members of the Section of Psychiatry, Royal Society of Medicine were present. Published in the *Medico-Legal Journal*, June 1944.

core and essence of human life." And William McDougall stated: "Will, or will power, is the expression of character. It is character in action."

Although the faculty of self-control is impaired in most cases of insanity there is no doubt that the circumstances of a crime may prevent the medical witness from sustaining this assumption. Further, to accept the view that all insane persons are irresponsible for all their criminal acts because of their insanity is contrary to medical knowledge and experience. G. M. Robertson pointed out some years ago that this view would deprive all insane persons, without further evidence or inquiry, of their other responsibilities and rights, and that it would constitute a great hardship if, for example, the power of an insane person to make a will, who at present was held by the law to have this testamentary capacity, were taken away from him without inquiry.

The Lord Chancellor's Committee on Insanity and Crime, in 1923, recommended that a person should be considered irresponsible for an act committed under an impulse which he was deprived of any power to resist on account of mental disease. It made no further recommendation to change the law. In 1924, the Criminal Responsibility (Trials) Bill, which provided for a defence of irresistible impulse, was opposed by several Law Lords and was withdrawn by Lord Darling, the mover.

During the debate Lord Haldane said that he had never heard of the McNaghten rules embarrassing any judge when justice required an acquittal. Indeed, the elasticity of the law is clear to all. In a recent trial for murder (*Rex v. Buckfield*), the judge when passing sentence told the prisoner that "investigation would be made by the proper authorities as to whether there was any medical explanation of his act". And the Court of Criminal Appeal, when refusing to accept a plea of insanity which the jury has disregarded at the trial, frequently calls attention to the fact that the Secretary of State has special powers to enable him to order a medical inquiry concerning the mental condition of appellants—i.e. under the Criminal Lunatics Act, 1884, s. 2, ss. 4.

Medical men do not usually censure the criteria required to establish a verdict that the accused is insane on arraignment. Their criticism, more often destructive than constructive, is reserved for the criteria of irresponsibility according to the McNaghten rules. My own experience, and that of prison medical officers attached to the large remand prisons in England and Wales, shows that the evidence of insanity required to satisfy the jury that the accused is unfit to plead—because he is unable to distinguish between a plea of guilty or not guilty, to comprehend the nature and course of the proceedings so as to make a proper defence, to challenge jurors, or to have the details of the crime discussed with him—is more easily sustained than that required to establish a verdict of guilty but insane. This is probably due, in part, to the fact that the medical witness can be more convincing in his evidence regarding the mental state of the accused at the time of the trial than is often possible when referring to his mental condition at the time of the crime and before he comes under observation, and in part because the degree of mental alienation is usually greater than in cases where the accused is fit to plead. Moreover, a verdict that the accused is "insane on arraignment" is not necessarily final, as he can be brought up for trial if, and when, he regains his sanity.

Of insane offenders tried by juries in the years 1929–38 inclusive, 228 were

found to be "insane on arraignment", and 256 were found "guilty but insane". During the same period, of 477 persons who were tried for murder of persons aged one year and over, 75 were found "insane on arraignment" and 139 "guilty but insane".* Of prisoners on remand in custody during these years, 2,689 were reported to the police and petty sessional courts to be certifiable as insane, and were dealt with by the magistrates accordingly, whilst 994 were certified to be insane during the currency of their sentences and were transferred to mental hospitals.

It is sometimes suggested that since the criteria of certifiable insanity are successfully applied in courts of summary jurisdiction they might always be used in courts of sessions or assize. But the interest of the offender in the lower courts may often properly receive priority, whereas in courts of sessions and assize the public security must often be the first consideration. Although the *ipse dixit* of a medical witness may be accepted in a lower court there can be no doubt that medical evidence must be substantiated to the full in cases of grave crime coming before the higher courts. Moreover, the evidence of certifiable insanity offered on occasion in a summary court might mislead a jury, and as long as it is their duty to assess responsibility the test to be used must be one that they can understand as well as apply.

It has been said that the criteria of criminal responsibility are illogical. But the science of reason is not necessarily the best guide in the conduct of human affairs. It was logical for the French to request an armistice in 1940, and illogical for the British to continue the fight against Germany.

It is often stated that the criteria of criminal responsibility are unsatisfactory. But Mercier, whose work has seldom received a due measure of appreciation, and who clearly distinguished between the eristic and the dialectic controversy, stated in 1915 that he had examined every case reported for the last thirty years in *The Times* newspaper in which the plea of insanity was raised on behalf of a prisoner, and in every case that afforded reason for comment made in the *Journal of Mental Science* such comments as seemed to be required; and that he was unable to recall any case during that time in which a prisoner was convicted on evidence that appeared to him to justify the acquittal of the accused on the ground of insanity. For over forty years I have been closely concerned with the subject, and have no doubt that the present procedure and practice result in justice being done to the public as well as to the offenders.

Zilboorg points out that, although the formula introduced a century ago has been frequently criticized, it has been propagated throughout the Anglo-Saxon world, and has found its way into the criminal practice of England and America, whilst similar concepts prevail in Latin and Teutonic judicial systems. Mannheim reminds us that most Continental codes acknowledge an irresistible impulse, explicitly or by implication, as a reason for imputability. Zilboorg believes that the law relating to responsibility is unlikely to alter in the near future. Kinberg observes that even if a serviceable definition of imputability could be made it

* Of the remainder 86 were acquitted and 177 were convicted and sentenced to death. Of the latter 81 were executed, in 81 the sentence was commuted to penal servitude for life, 8 were transferred to Broadmoor after inquiry under the Criminal Lunatics Act, 1884, s. 2, ss. 4 were acquitted by the Court of Criminal Appeal, the verdict was quashed by the House of Lords in 1 case, and 2 were sentenced to be detained during His Majesty's Pleasure under section 52 of the Children and Young Persons Act, 1933.

would be of no use, and would before long be a hindrance in the rational solution of problems connected with criminal responsibility.

Special opportunities for studying at close hand the effect of medical evidence relating to criminal responsibility do not indicate any willingness of the legal or executive authorities or the public to transfer their functions to psychiatrists, and many may believe that as doctors we do not know anything clinically or scientifically about responsibility. We are mainly concerned with individuals, and our art is occupied with matters that concern the heart as well as the head. As psychiatrists we may assist in carrying a case forward to the final conclusion, but unless we accept the view that in cultured society the law must have the final word we may find ourselves "touched with the grievous sensibility" to which I have already referred.

We should recognize also the fact that if a medical formula of criminal responsibility was introduced the law might insist upon a rigid adherence to its specifications, with resulting hardship to offenders and embarrassment to psychiatrists. There can be no doubt, in the minds of those who have considered in detail the medical evidence in many trials for murder, that the urgent need of to-day is not a reform in the law regarding criminal responsibility, but an improvement in quality of our evidence as forensic psychiatrists.

Insanity and mental defectiveness are legal rather than medical terms, the former being used for persons who are found to be "guilty but insane" and "insane on arraignment" as well as for those who are certifiable under the ordinary Lunacy Laws. The word "psychosis" is used here for cases of major mental disease generally, and whether the patient is certifiable or not certifiable as insane. The term "mental defectiveness" has been defined in the Mental Deficiency Act, 1927.

It would seem that the English law has implicitly accepted the principle of modified responsibility in cases of mental defectiveness, some cases of drunkenness and infanticide. The Mental Deficiency Act, 1913, provided alternatives to imprisonment. In *D.P.P. v. Beard* the House of Lords emphasized the principle that drunkenness, not involving insanity, is a valid excuse in the case of all crimes requiring a specific intent for their commission if the drunkenness is so great as to negative the fact that the accused had, at the time he did the act, the accompanying intent necessary to constitute the particular crime with which he is charged. The Infanticide Act, 1938, accepted the principle of a disturbed balance of mind which, in certain circumstances, might justify a verdict of infanticide, and enable the defendant to be dealt with and punished as if she had been guilty of manslaughter and not murder.

The principle that a disturbed balance of mind in special circumstances modifies responsibility serves to remind us that the legal and executive authorities to-day attempt, whenever possible, to modify the punitive approach to crime and to replace it by measures adapted to the training, treatment and rehabilitation of the individual offender.

The courts of several States in America recognize the rule that punishment should be reduced when the accused is mentally disordered, although he may know the nature and quality of his act and that it was wrong, and is able to control his impulse to commit it. Deutsch reports that this has not been accepted as law in any state in the Union except possibly Nebraska.

In 1933 the principle of modified responsibility was legally adopted in Germany. The new formulation of the Penal Code stated: "An act is not punishable when the actor, at the moment of his action, in consequence of mental disturbance, of mental disorder or imbecility is incapable of understanding the unlawfulness of his action or of acting in accordance with his understanding." Mannheim asserts that it is commonly accepted that this provision is nothing but a re-statement of a law that had already been in force for several decades, and that psychiatrists, supported by the courts, had succeeded in improving a legal provision, with the result that their view became first unwritten and finally written law. Referring to this formulation, Aschaffenburg states that the alienist Carl Willmanns has opposed its adoption as law on the grounds of the great number of such cases, the difficulty of diagnosis, and the impossibility of treating any case according to its individuality. Aschaffenburg considers that these objections are justified, but constitute no bar to the legal acceptance of diminished responsibility. I shall refer to them again.

The Swiss Federal Code of 1937 sets out in Art. 11: "If the offender at the time of his act was mentally disturbed or his mental competency diminished or if he was mentally retarded to the extent that his capacity to recognize the illegality of his act or his capacity to act in accordance with this insight was diminished, the court in its discretion may impose a less severe penalty." Art. 12, however, provides an exception to Art. 11, where the partial responsibility was the result of purposeful action by the offender for the purpose of the crime committed.

Apart from the question of responsibility or modified responsibility, but rather closely related thereto, is the fact that the courts constantly consider the circumstances of the offence and exercise their wide discretion, except in cases of murder, when deciding the form and length of the sentence imposed.

CULPABILITY

Medical evidence in the criminal courts sometimes stultifies itself because the witness allows an emotional distaste for the legal restrictions concerning responsibility to overcome his scientific judgment. This can help neither justice, defendants nor psychiatrists. I believe that we can contribute more to the common good by leaving tests of criminal responsibility to the lawyers, and ourselves consider more closely the various mental conditions which may be properly regarded from the medical point of view as lessening culpability. When we have reached agreement between ourselves in this matter we may hope that lawyers will be in a better position to assess the evidence given to them in the criminal courts. But as psychiatrists we must remember that the first business of a Government is the defence of the community it serves, and that any amendment of the law should not weaken this. We must also refute the alluring suggestion that the scientific study of crime and criminals can always produce exact results comparable to those arrived at in the physical sciences. For in the words of Osler: "Variability is the law of life, and as no two faces are the same, so no two bodies are alike, and no two individuals react alike and behave alike under the abnormal conditions which we know as disease."

How then are we to acquire a better understanding of the matter? The term "criminal responsibility" is concerned with acquittal on the grounds of insanity

or alternatively with conviction and punishment, and "medical culpability" as used here with conviction and the degree of blameworthiness in cases of minor mental abnormality, which lies somewhere between that attached to the unlawful act of a normal person on the one hand and one who is insane according to the law on the other. If an offender who is responsible in law for his act or omission commits a crime as the direct result of a recognized form of mental abnormality the psychiatrist may consider to what extent he is culpable, and whether any medical recommendation should be made to the court on his behalf. It would seem that if we are to serve as explorers of facts rather than as mere hawkers of opinions we must approach the subject clinically, classifying our cases according to their mental and psychological reactions and avoiding abstruse speculations.

A convenient classification separates offenders into six main groups: normal, subnormal, mentally defective, psychopathic, psychoneurotic and psychotic. It will be agreed that at one end is the fully responsible offender, and at the other the psychotic who may be so insane that he is legally irresponsible. The remaining groups occupy midway positions and present different degrees of culpability as well as of social adaptability.

The number of mentally defective and insane offenders is given in official statistics, but it would be misleading to regard all the rest as entirely normal. There are in fact no official figures to show what proportion of the prison population is normal, subnormal, psychopathic, or psychoneurotic. In this country East and Hubert, as the result of an official investigation into the psychological treatment of crime, suggested that the normal group of offenders constituted at least 80 per cent of the receptions.

At the Psychiatric Clinic of the Court of General Sessions in New York City, where all prisoners are examined within the period between conviction and sentence—the total examined during a year averaging about 2,600—C. B. Thompson found only 1.5 per cent were affected by psychosis, 2.4 per cent were mentally defective, and 6.9 per cent were psychopathic personalities.

Before going further it is desirable to survey broadly the six mental groups of offenders to which I have particularly referred.

The Normal. Nathaniel Cantor states: "Anyone who has achieved a dynamic balance between the need for self-expression and the need for self-repression has a normal personality. Such a person will possess a sense of internal freedom, a feeling of inner confidence, and a lack of disruptive fear. . . . To accept fearlessly whatever life's circumstances bring is a sign of an emotionally mature personality. . . . Who of us then is normal? None of us, is the answer."

Normality when applied to personality embodies the idea of a standardized average. But normal standards not only differ widely, they are variable and elusive, and concern intellectual processes, emotional reactions, and willpower. Personal intellectual processes clearly vary from time to time apart from the deteriorating effects of disease. It may be noted in passing, however, that disease may temporarily heighten their effect. For example, states of mild mental excitement occasionally present an accused person to a jury in a more favourable manner than his ordinary mental level can secure.

The normal emotional level of ordinary men partly depends upon circumstance, and the emotional responses of an accused person in the witness-box may affect

the view of the jury regarding his guilt or innocence. In their daily work lawyers and doctors are immediately concerned with the emotional levels of others, and sometimes exploit them for special purposes. For example, in his inimitable speech on the Second Reading of the Matrimonial Causes Bill in the House of Lords in 1920, the late Lord Birkenhead said: "In the cases which have come to me within the last fortnight, if I had time to deal with them I could give your Lordships particulars which would reinforce my argument by emotion." And in much that followed he attacked the opposers to Divorce Reform with a direct emotional appeal.

Again, doctors from time to time attempt to exploit the emotional levels of others in order to obtain professional privilege in a court of law regarding the secrets of their patients.

In regard to the power to will, it is a matter of common experience to find that it often varies with internal causes and external circumstances over which the individual may have little or no control. It is clear that our ordinary mental levels in these matters fluctuate within a wide range of normality.

Normal standards are elusive because we are all too ready to standardize other people according to our ignorances, limited personal experiences and beliefs. We usually tend to over-value ourselves in order to offset our feeling of insecurity, and disguise our own inefficiency by exaggerating the inadequacies of others. The fallacies involved in our comparisons become apparent as soon as we realize how few people appreciate the fact that no one is always normal, and that often the most difficult person to understand and appraise is oneself. Honest endeavour and impartial criticism will usually enable us to assess our own status in matters of intelligence and operational skill, but, sometimes, the estimates of oneself are faulty, even when made by those endowed with a high level of attainment. For example, Sir William Osler, a great man as well as a great physician, said: "A few of my intimate friends really know the truth about me as I know it. My brains, in good faith I say it, are of the most mediocre character. But what about those professorships, you ask? Just habit, a mode of life, an outcome of the day's work."

The emotional life of the ordinary man is elusive since he understands comparatively little about it, and although he is interested and influenced by the emotions of others is seldom in a position to analyse them in detail because they are so often carefully guarded and hidden from public view. Nevertheless, the ordinary man often seems to judge the emotional lives of others more accurately than his own.

Estimates of the power to will are elusive because we so often lack some of the relevant details which an analysis of self or others requires.

Definitions in operational terms of mental attributes based upon operational laboratory tests may fail to satisfy our analytical requirements in estimating the culpability of accused persons. Personal values and ideas of normality may be acceptable if we realize the fact that they lack mathematical precision and may be faulty if they are founded entirely upon individual experience and the interpretation of ideal standards. Indeed, we may err in matters of daily observation. For example, apart from divorce cases, what are the usual relationships of married persons? One likes to assume that both partners are at least in conduct monoerotic. Experience, however, indicates that a minority of husbands are polyerotic. But is this so? Of five married brothers in an upper middle-class family only one re-

mained physically faithful to his wife. Is he, in this matter, an average sample of his kind, or do his four brothers represent normality? May it not be true that we do not know enough about these jealously guarded secrets, although our judgment is based upon observation and an ideal standard?

It would be misleading to assess mental normality always by normal conduct and the ability for social adaptation. Homosexuals, who lead chaste lives are, nevertheless, mentally abnormal if judged by the standards of heterosexuality. Further, if social adaptation is the hall-mark of normality, it must be a permanent ability, but we seldom know much about the temptations and stresses or private activities of many of our friends and acquaintances. To go still further and declare that the normal person permanently adjusts himself to social requirements, without causing unnecessary distress or injury to himself or others, merely introduces additional material for speculation.

Roback postulates an absolute normality as a quality attaching to behaviour which, in the course of ages, will be adjudged as reasonable. And he says that if counting the heads is a valid method of evaluation, then the heads should be those of the intellectual leaders and not of the general run of humanity at a given age, the rank and file of society. However this may be in the ordinary affairs of life, it would seem that in a practical assessment of criminal behaviour the standards of those from the same social status as the offender may rightly receive consideration.

If the view is accepted that normality is indefinable, the assessor remains aware of his limitations and of the necessity to estimate social and antisocial behaviour by the standards of others as well as his own. He is freed from the restrictions which so often limit judgment, invite error and encourage dogmatic assertion.

I believe that this conclusion is not as sterile as it may appear, and that by accepting it mistaken diagnoses may be avoided. Thus, the well-to-do shoplifter, whose criminal behaviour is too often attributed to mental abnormality by the prejudiced assessor, is seen in true perspective if normality is not unduly restricted by parochial impressions. Umbrella-stealing and other petty thefts are not confined to the poor, the needy or the pathological offender. Embezzlement by bankers, merchants, attorneys, trustees, directors and others; the wilful making of false income-tax returns; frauds on the railways and similar offences are often associated with high educational attainment and mental ability free from morbidity.

Briefly, everyone has his own base-lines of thought, mood and behaviour, which do not remain constantly at the same level, but are mainly parallel but fluctuating within personal limits. If the fluctuations are dissimilar and excessive there may be reason to doubt the normality of the person. On the other hand, although less violent fluctuations may be evidence of normality we cannot avoid the probability that the unfluctuating person is in fact a freak-specimen of our kind, but like all other offenders in this group fully responsible and therefore punishable, except for such modifications as mercy may promote.

The Subnormal. Dull and backward persons form a large and important class of criminals. Their place in the criminal, as in the social, scale lies between the normal and high-grade defective groups. The majority are socially efficient, for this depends upon character and temperament as much as upon intelligence. Their social capacity, is, however, restricted, because they are unable to attain the higher levels of educational accomplishment. They fail at professional work and the higher

forms of clerical work, but are often capable, steadfast and reliable manual or technical workers. Their mental inferiority is sometimes disguised by a special aptitude which can be profitably used for a particular purpose.

In forensic psychiatry the subnormal offender can usually be recognized without difficulty if all the material facts connected with the crime and the previous medical and social history of the offender are ascertained. There is no reason to consider that persons in this group are irresponsible, but there may be good reason to doubt, and occasionally to affirm, that their culpability from the medical point of view is lessened, particularly if they are known to have persistently committed a series of offences and their behaviour is unaffected by repeated sentences of imprisonment.

The Mentally Defective. During the five-year period 1924-8 of 1,414 mentally defective persons received into prisons in England and Wales, 1,005 were dealt with by the courts under Section 8 of the Mental Deficiency Act, 1913, and 409 were certified in prison under Section 9, after conviction. The corresponding figures for the five-year period 1934-8 show that the courts dealt with a larger proportion of defectives than before and left fewer to be certified in prison. This is probably due in part to the fact that in later years more accommodation has been available in certified institutions for delinquent defectives. But it may also be taken as an indication that the judicial authorities are more willing to accept a modified degree of responsibility in these persons than formerly, and consider that a mitigated form of detention is appropriate for those who are fit to plead, as well as for those who are unfit. Medical opinion will usually agree that culpability is lessened even in many cases of high-grade defectiveness.

The Psychopathic Personalities are receiving increasing attention at the present time. The term has been frequently abused, so that some observers consider it to be little more than a waste-paper basket nomenclature. Overholser observes that before the law can be expected to recognize the group as calling for specialized treatment it will be necessary for psychiatrists to come to a better agreement on the delimitation of the cases. However this may be, some more or less clear-cut clinical types can be distinguished from those whose origin, symptoms and disease processes require further investigation.

I have suggested elsewhere that the criminal psychopathic personality may be defined, tentatively, as a person who, although not insane, psychoneurotic or mentally defective, is persistently unable to adapt himself to social requirements on account of abnormal peculiarities of impulse, temperament and character which may require specialized medical and rehabilitative treatment instead of, or in addition to, the ordinary methods of punishment before his social reclamation can be effected.

Definitions of civilian or criminal psychopathic personalities present difficulties, and I believe that in forensic situations this type of mental abnormality is best depicted by a clinical consideration of the cases which are generally included under this heading.

D. K. Henderson, for purposes of study, considers three types, the predominantly aggressive, the predominantly passive or inadequate, and the predominantly creative. The creative psychopath is seldom arrested for crime and the grouping seems too wide for practical purposes in a court of law. E. Kahn describes sixteen groups in his clinico-descriptive classification, and some of his cases seem to fall

into the psychoneurotic forms of mental abnormality. H. S. Hulbert refers to some twenty groups and includes agitators, conscientious objectors, fanatics, publicists, cranks, vagabonds and others. He refers to the fact that their social maladaptation is perpetual and is to be expected as unmodifiable. And he considers that it is legally important for all persons in authority, especially the legal profession, to know something about the types and characteristics of these non-insane, non-sane deviates.

Over-simplification on the one hand and over-elaboration on the other may confuse the problems which arise when these forms of sociopathy are associated with crime. I entirely agree with A. A. W. Petrie that it is important to exclude a number of indefinite conditions from this heading, as well as early cases of insanity, and that the inclusion of the milder cycloid and early schizoid complicates a type of psychiatric work already vague and indeterminate. Nevertheless, I believe that our evidence in forensic situations and our ideas for purposes of investigating criminal problems will be more precise and practical if the non-progressive cycloid and schizoid personalities are considered apart from manic-depressive disease and schizophrenia, and are included among the psychopaths instead of the psychotics.

For the same purposes offenders who show permanent psychic inferiority, temperamental instability and gross ethical aberration should be added to the alcoholists, drug addicts, true sexual perverts and paranoid personalities to form the usual types of psychopathic personality associated with crime.

I believe also that just as intensive study has brought about a classification of the perversions associated with the sexual instinct, so may future research enable us to classify profitably certain criminal conduct as perversions of the acquisitive, aggressive and gregarious instincts and include them in the sub-groups of the psychopathic personality group of offenders. I recognize the fact that, here as elsewhere in the classification of abnormal mental states, overlapping of groups will occur. Indeed, I have considered here the constitutional psychic inferiors as a sub-group of the psychopathic personality group, and for convenience of study have transferred them from the subnormal group of a previous classification.

All psychopathic personalities are not criminals, but their constitutional inability to harmonize with other persons and situations exaggerates a criminal potentiality. Many are a disappointment to their friends and a nuisance to society. Some are a grave menace to social order, violent and disruptive. As the condition is permanent the will of the individual reacts in the same individually psychopathic manner in all similar circumstances. They often show no desire to correct their abnormality and may be unwilling to accept it as such.

Many cases seem to lie on the borderline between mental disease and anomalies of character rather than between mental health and mental disease, using the term "mental disease" for a more or less prolonged condition of mind in which its functions are materially disturbed or deranged from their normal mode of action, and the term "character" for the sum total of all those mental qualities which do not constitute, or are not permeated by, intelligence. The law considers these persons are responsible and there is much to be said for this view. On the other hand, the nearer the condition seems to lie to mental disease, and the further from an anomaly of character, the more inclined will be the psychiatrist to consider whether culpability should be modified.

It is, perhaps, particularly in this group of offenders that the dilemma of treatment arises. The law may sentence the offender to a term of imprisonment which is often short and ineffective. Medical considerations may indicate a prolonged period of detention and treatment as essential if any possibility of social adaptation is to be exploited. An insufficiently educated public may refuse to tolerate prolonged detention, however medically important it may be, if a similar offence committed by one who shows no mental abnormality is usually dealt with by a short term of imprisonment, a fine or a probation order.

The Psychoneuroses. Hubert and I pointed out that whilst the relationship between the hysterical personality and criminal behaviour is a close one the situation arising from arrest and a criminal charge is likely to produce hysterical reactions in many who have never before shown hysterical symptoms. Moreover, the prison environment predisposes towards the appearance of hysterical symptoms in a suitable subject but acts against their continuance except in the very severe case. Similarly, an anxiety state may result from the commission and detection of a criminal offence, and crime is not infrequently attributable to an anxiety state, although many offenders make no complaint and show little sign of overt fear. The association of crime with hysteria and anxiety states has been probably underrated and with obsessional states over-stated. Neurasthenia is occasionally a direct cause of criminal behaviour.

The psychoneurotic criminal usually recognizes the world about him in the same light as the ordinary man, and often has some insight into his condition. The psychotic criminal looks at the world through spectacles which are obscured by his delusions and hallucinations, or disordered thoughts and feelings; he may have no insight into his condition.

Here also, as in psychopathic personalities, the dividing-line between abnormal mental symptoms, and anomalies of character is sometimes obscure. In forensic situations, where the hysterical or obsessional symptoms persistently menace the security of society, it is well to remember that in our own time eminent psychiatrists such as Clouston, Conolly Norman, Savage, Goodall and others described "hysterical insanity" and Clouston, Hack-Tuke, Maudsley, and others used the term "impulsive insanity": Indeed in this group of offenders the forensic psychiatrist will evaluate degrees of full responsibility, modified degrees of culpability and of irresponsibility.

The Psychoses. As already stated, the term insanity to-day is usually limited to persons who suffer from a major mental disease which we know as a psychosis and who are thereby irresponsible according to law, or certifiable as insane. The latter may be regarded as irresponsible or their culpability modified, by both lawyers and doctors. At the same time there is no doubt that some patients in mental hospitals are deterred from doing wrong by the loss of privileges cautiously imposed upon them in order to encourage them to exercise self-control.

Since overlapping occurs in the different mental groups and sub-groups of offenders it is inevitable that differences of opinion among experts will occur in the diagnosis of border-line cases. Typical examples are well recognized but the psychopathic personalities require further study before individual views can be accepted always with the same degree of confidence that may be afforded to diagnosis in the mentally defective, psychoneurotic and psychotic groups. Further,

venture to doubt whether those psychiatrists whose work is almost solely confined to practice within the walls of a custodial mental hospital, or institution for mental defectives, are as well equipped for the diagnosis of normal and minor abnormal mental states associated with crime as those whose experience and research are less restricted.

It is common to find crime associated with an early form of psychosis in which the indications of mental disease are so tenuous that there are no sufficient grounds to justify any view except that the accused is culpable as well as responsible.

In pre-psychotic cases and when the mental condition of the psychotic patient deteriorates slowly the psychiatrist may be powerless to prevent the inevitable commission of a serious crime, because the potential offender refuses to accept medical treatment and the necessity for his care and control cannot be demonstrated with certainty to others before an explosion occurs. A glance at one's case-books adds to one's regrets that there is no legal method of dealing with the early psychotic potential law-breaker unless he voluntarily places himself under treatment before he commits a crime or becomes certifiable as insane.

Looking back, cases of murder, of suicide and other crimes would have been prevented if those foredoomed to commit a grave offence could have been placed under treatment, and if this failed, segregated in suitable custodial surroundings. May it not be that failure to do this, like our neglect to restrict the antisocial and antifamily activities of the alcoholic, is a crime of society against itself as well as against the potential offender?

TURPITUDE

Although the forensic psychiatrist is required as an expert to discriminate between criminal responsibility and medical culpability, he cannot claim any special knowledge concerning matters relating to the assessment of the turpitude of an offence which is unassociated with mental abnormality. To assess the degree of personal depravity and the baseness of conduct is an ordinary function of the judicial authorities, and a decision in the matter is determined by the known facts of the case and the experiences of daily life.

TREATMENT

The germ of an idea for the individual treatment of offenders was seen when Pentonville Prison was built and opened in 1842. This prison was constructed for the purpose of keeping selected convicts in separate confinement before their transportation to Van Diemen's Land where, subject to good conduct they would at once receive a ticket-of-leave which was equivalent to freedom.

Individualization is seen in Part I of the Prevention of Crime Act, 1908, which established Borstal institutions for the treatment of selected offenders. It is well known that the different types of lads are dealt with by allocating them to different types of Borstal institutions. Similarly, within certain limits, different types of adult offenders are detained during the currency of their sentences in different types of prisons. The Criminal Justice Administration Act, 1914, The Criminal Justice Act, 1925, The Children and Young Persons Act, 1933, The Infanticide Act, 1938, and the present Criminal Justice Bill, also show the modern legislative

approach to the individual offender. The proposals in the Criminal Justice Bill to establish Remand Centres and State Remand Homes for the special medical observation of Young Offenders, that probation orders may include a provision that offenders who, though not certifiable as insane or mentally defective, are suffering from some form of mental illness or abnormality which is susceptible to treatment may be required to submit themselves to mental treatment, and the introduction of sentences of "corrective training" and "preventive detention" for special types of offenders are of particular interest to psychiatrists.

With reference to convicted offenders, Hubert and myself and elsewhere, Stocks, Young and myself, have recommended the establishment of a special kind of penal institution where research into the problems of normal and abnormal criminal behaviour and the scientific treatment of abnormal offenders can be carried out. Here offenders who suffer from abnormal mental conditions but are not certifiable under the Lunacy or Mental Deficiency Acts on the one hand, and those for whom an ordinary prison is inappropriate on the other, would receive the individual attention they require. The Prison Commissioners recognized the principle in their Annual Report for the year 1938.

CONCLUSION

Although this brief survey lends support to Willmann's misgivings, regarding the numbers, diagnosis and individual treatment of those in whom the degree of culpability is modified, I am confident that the numbers can be ascertained by investigation, the difficulties of diagnosis overcome by research, and advances made in the individualization of treatment if the penal institution to which I have referred is established, and the broad proposals of the Criminal Justice Bill be adopted.

The typical examples of the clinical types present in the mental groups enumerated are well defined. But in the psychopathic personality group it is particularly important to avoid an uncritical tolerance of doctrines which offend the scientific approach to criminal problems. Moreover, I recognize the enduring significance of Trotter's warning that observational inquiry in such a field as clinical medicine may give results that are questionable on the one hand if too much value is given to conclusions essentially based on intuition, and on the other hand if the possibilities of exact observation and record are exaggerated.

For practical purposes the question of modified culpability largely depends upon our skill and ability to distinguish between the inherent constitution of the offender and the results of the impacts of disease, but we are frequently dealing in this matter with questions of degree. The position is further complicated by the fact that inherited traits may predispose towards mental disease as well as towards anomalies of character. Culpability, as I see it, is the more certain the more symptoms of recognized mental abnormality are lacking, the more insight the offender has into his condition, the more his emotional threshold is unaffected, and the more deliberately and frequently his will is concerned in the commission of the offence. Briefly, the more satisfied we are that a crime is due to faults of character and not to the effects of disease the more reason shall we have to consider that the law-breaker is responsible, although in some cases we may have reason to believe that his culpability is modified.

Table I

TOTAL PERSONS CONVICTED OF INDICTABLE OFFENCES INCLUDING THOSE AGAINST WHOM CHARGES WERE PROVED AND ORDERS MADE WITHOUT CONVICTION

Year	Total found guilty	Number of Persons at Different Ages.						
		Under 14 years	14-21	21-30	30-40	40-50	50-60	60 and over
1929 ..	53,322	6,380	15,226	13,529	9,159	5,321	2,436	1,271
1930 ..	56,766	6,863	17,061	13,989	9,374	5,526	2,607	1,346
1931 ..	59,366	7,587	17,386	14,761	10,075	5,694	2,569	1,294
1932 ..	64,958	9,014	18,875	16,481	10,746	5,696	2,777	1,369
1933 ..	62,660	9,743	17,176	15,576	10,574	5,573	2,644	1,374
1934 ..	65,736	11,645	18,403	15,344	10,561	5,589	2,827	1,367
1935 ..	69,849	13,873	20,637	15,199	10,508	5,571	2,640	1,421
1936 ..	72,785	14,459	21,681	15,467	11,143	5,806	2,803	1,426
1937 ..	77,529	16,413	23,080	15,974	11,551	6,024	2,967	1,520
1938 ..	78,463	15,559	24,008	16,392	11,929	6,063	2,963	1,549
Totals..	661,434	111,536	193,533	152,712	105,620	56,863	27,233	13,937

5; at age period sixty to sixty-nine, native-white 1.8, foreign born 1.4; at age period seventy and over, native-white 0.7, foreign born 0.4.

The Criminal Statistics England and Wales, are not immediately concerned with the medical aspects of crime, and the age grouping above the age of twenty is set out in decades, the oldest group being "sixty and over". Nevertheless, looked at broadly, certain features of interest appear from a consideration of the figures in Table II, although the official list of felonies and misdemeanours referred to in the Criminal Statistics are not given in detail. For the purpose of this study, the offences are considered in groups A, B and C of Table II according to the main instinctive activity which appears to be related to the crime. Other offences are not dealt with in this table; as they bear little relation to each other. At the same time the defects of this manner of classification must be admitted since for example, murder or theft may be due to the aggressive, sexual, acquisitive or parental instincts.

Table II shows that the frequency of the acquisitive, sexual and aggressive offences occur in this order in offenders under, as well as in those over, sixty years of age. Table II, A, shows that the frequency with which the different acquisitive offences occur in persons under and over sixty are the same in the two groups, except that in persons over sixty housebreaking is more frequent than shop-breaking. Many factors enter into the matter and the change of position may be associated with the fact that as age advances enterprise and audacity tend to decrease.

At the same time it must be acknowledged that stereotyped patterns of behaviour exercise an important influence on the lives of many so that, for example, the earning of money at first undertaken for a particular reason becomes so firmly established that the desire to accumulate wealth continues long after its original purpose

Table II

NUMBER OF PERSONS FOUND GUILTY OF CERTAIN INDICTABLE
OFFENCES 1929-38

A. Acquisitive Offences and (in brackets) place in group.

Offence	Age in years	
	Under 60	60 and over
Burglary	3,340 (4)	64 (4)
Housebreaking	9,064 (3)	132 (2)
Shopbreaking	16,862 (2)	112 (3)
Attempt to break and enter houses, etc.	1,008 (7)	16 (7)
Entering to commit a felony	2,763 (5)	57 (5)
Possession of housebreaking tools	1,444 (6)	35 (6)
Robbery	736 (8)	1 (8)
Larceny, embezzlement, forgery, fraud, receiving, coin- ing, etc.	532,979 (1)	10,896 (1)
Totals	558,196	11,313

B. Sexual Offences and (in brackets) place in group.

Unnatural Offences	316 (9)	19 (9)
Attempt to commit unnatural offences	471 (8)	35 (7)
Attempts to commit unnatural offences on males under 16	1,675 (3)	133 (2)
Indecency with males	861 (6)	68 (3)
Rape	272 (10)	8 (10)
Indecent assaults on females	895 (5)	56 (5)
Indecent assaults on females under 16	6,960 (1)	848 (1)
Defilement of girls under 13 to 16	1,534 (4)	58 (4)
Incest	494 (7)	27 (8)
Procuration	96 (11)	2 (11)
Abduction	41 (12)	—
Bigamy	2,524 (2)	44 (6)
Totals	16,139	1,298

C. Aggressive Offences and (in brackets) place in group.

Murder	179 (6)	10 (5)
Attempt to murder	113 (7)	10 (5)
Manslaughter	456 (4)	18 (4)
Infanticide	111 (8)	—
Felonious wounding	708 (3)	29 (3)
Malicious wounding	9,252 (1)	409 (2)
Assault	376 (5)	12 (7)
Attempt to commit suicide	4,895 (2)	554 (1)
Totals	16,090	1,042

has been achieved. Acquisitiveness also seems to be strengthened in persons who estimate their social value by the extent of their riches and not by what they have done to benefit society. This idea may persist even when their position and treasures have been illegally obtained, and their value to the State is no greater than that of any other fraudulent criminal. Arrogance of this sort is sometimes found in aged persons who are convicted of fraud and other acquisitive offences, and appears to be more a habit of mind than a temporary defensive reaction.

Cameron reminds us that in the nineteenth century there was a fairly widely held belief to the effect that an active sexuality was associated with probable longevity, and that recent animal experimentation has not tended to support this view. In the sexual offence group, Table II, B, the relative positions of bigamy and indecency with males in the two age-groups are, perhaps, not without significance. It may be that the lessened wage-earning capacity of the aged offender minimizes his opportunities, and his waning physical powers reduce his desire to commit bigamy. So too, the relative frequency of indecency with males committed by men over sixty may indicate their unattractiveness for the average woman and express a regression to an earlier stage of sexual development. Sexual offences in aged men are often due to the fact that phantasy and desire have outlived potency. It is notorious that in these cases sexual satisfaction may be obtained by indecent exposure, or by offences against children, and occasionally by such indirect methods as sending indecent letters through the post. Ruskin found an increased tendency toward committing such offences as exhibitionism and paedophilia by seniles and arteriosclerotics to an extent which comprised 60 per cent of the total offences of psychotics of this group. A further matter of practical importance is the fact that offences often tend to occur in a comparatively early stage of mental deterioration and must be differentiated from those which are due to the continuance of a long-established habit into old age.

Diethelm and Rockwell note that sexual desires which have been under control or repressed during adult life seem to become stirred up and threaten security in many people during the fifth decade. They found that the patients over forty-five years of age who were admitted to a psychiatric clinic and presented sexual psychopathology had shown a greater or less degree of it during adult life. Among ambulatory patients who suffered from a minor psychopathological disorder, these authors found that sexual tendencies which were either accepted or controlled by the individual and which were not of pathological intensity might increase in intensity in the fifth decade, and become a source of annoyance or worry.

Moore refers to the studies of Lange, Rössle and Hammond. Those of Lange indicate the fact that about half of the married men not older than twenty-five or thirty years, when a bilateral orchidectomy is done, continue to have a normal libido and potency. Rössle states that, in a series of 125 men, castrated under the German law for criminal sex offences, libido was weakened in approximately one-half of the cases. In seven men studied by Hammond castration after sexual maturity did not abolish libido. Moore concludes that the evidence suggests that in men in whom the psychic and neuromotor behaviour patterns of sexual activity have been established, complete loss of the testes does not necessarily prevent participation in sexual activity.

In the group of aggressive offenders (Table II, C) attempts at suicide occupy

the first position in persons over sixty. This accords with the fact that depressive thoughts are often in the forefront of the minds of the aged, and attempts at suicide occur in spite of knowledge that natural death will shortly accomplish the same purpose.

Table III

AGE AT TIME OF MURDER

A. MEN AND YOUTHS							
<i>Age-groups and (in brackets) percentage of total</i>							
Years	16-21	21-30	30-40	40-50	50-60	over 60	Total
1904-08 ..	13	42	31	21	11	4	122
1909-13 ..	8	49	35	21	9	3	125
1914-18 ..	4	25	18	15	12	4	78
1919-23 ..	9	38	26	17	16	3	109
1924-28 ..	9	50	24	16	7	1	107
Totals ..	43 (8)	204 (38)	134 (25)	90 (16)	55 (10)	15 (3)	541

B. WOMEN AND GIRLS							
1904-08 ..	1	6	1	1	—	1	10
1909-13 ..	1	11	3	2	1	—	18
1914-18 ..	1	11	4	1	1	1	19
1919-23 ..	5	21	6	2	—	—	34
1924-28 ..	20	35	11	2	—	—	68
Totals ..	28 (19)	84 (56)	25 (17)	8 (5)	2 (1+)	2 (1+)	149

The Criminal Statistics for 1928 give the number in age-groups of persons over sixteen convicted of murder in the quarter-century 1904-28. They are given in Table III. The figures for women are complicated by the fact that after 1922 juries were able to return a verdict of infanticide instead of murder and are ready to return special findings or verdicts of insanity in favour of an accused woman. But both sets of figures reflect the moderating influence of time on crimes of passion.

Figures from Broadmoor Criminal Lunatic Asylum (Table IV), kindly supplied by Dr. J. S. Hopwood, show that the proportion of homicides over the age of sixty compared with those under sixty is in round numbers 1 to 14. The proportion among sane murderers is 1 to 18 (Table II, C).

Table IV

OFFENCES AND AGES OF ADMISSION TO BROADMOOR 1ST APRIL 1923 TO
31ST MARCH 1943

OFFENCES	Age Groups (M—males, F—females) in years								TOTAL
	15 and under	16-19	20-29	30-39	40-49	50-59	60-69	70 and over	
	M. F.	M. F.	M. F.	M. F.	M. F.	M. F.	M. F.	M. F.	
Murder ..	— 1	16 2	86 58	119 93	55 33	39 10	22 4	9 1	548
Attempted murder ..	2 —	2 —	30 5	33 10	32 9	23 2	13 1	2	164
Manslaughter ..	— —	1 —	4 —	4 2	3 —	1 —	— —	1	16
Wounding ..	— —	2 —	21 1	33 3	14 3	20 2	9 —	3	111
Sexual ..	— —	2 —	12 —	16 —	11 —	6 —	1 —	2 —	50
Acquisitive ..	— —	2 —	45 2	73 3	36 1	21 —	5 1	3 —	192
Arson ..	— —	3 —	6 —	14 2	13 1	3 —	1 —	—	43
Other offences ..	— 1	— 2	4 —	13 4	8 1	6 1	6 —	1 —	47
Totals ..	2 2	28 4	208 66	305 117	172 48	119 15	57 6	21 1	912 m. 259 f.
Grand Totals ..	4	32	274	422	220	134	63	22	1171

E. Frankel found the percentage commitment rates by nativity and age in 1,000 murderers committed to the New Jersey State Prison also showed a small proportion of homicides in the older age-groups whether native-white, foreign born or negro:—

	Under 20	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65 & over
Native white:	13.1	25.6	23.8	12.8	8.7	4.7	4.4	1.6	2.5	2.2	0.6
Foreign born:	3.4	14.9	17.8	19.3	15.1	11.0	6.5	5.2	3.1	2.4	1.3
Negro:	8.1	16.8	18.2	20.2	14.5	9.4	5.4	5.4	1.0	0.3	0.7

The Criminal Statistics for 1928 considered the incidence of crime by age in the years 1911 and 1928. The age-groups of males over sixty in 1928, the youngest of whom were aged forty-six in 1914 when the first Great War began, suffered relatively very little from war losses and benefited from the prolongation of life which is so conspicuous a feature to-day. The group numbered nearly 600,000 more in 1928 than in 1911, yet the convictions for indictable offences fell from 1,009 to 709, and the incidence per million fell 52 per cent. This great reduction

must indicate some decrease in crime. The incidence of convictions per million living males in the various groups was as follows:

The elderly, aged	{	over 60 percentage fall	52
		50-60	„ „ 31
Men of war age	{	40-50	„ „ 30
		30-40	„ „ 22
Between war age in 1914-18	{	21-30	„ „ 18
		16-21	„ „ 22

The general inference appeared to be that the elderly profited most, morally and materially, by generally improved social conditions, and in particular to have been assisted by the prospect or receipt of old age pensions. It is relevant to note here that before the introduction of old age pensions, many elderly men and women voluntarily declared that they had deliberately committed offences in order to obtain the privacy, protection and shelter of a prison, and escape from the quarrels and interferences they were unable to avoid in the associated life of the Poor Law Institutions of those days.

During the period 1911 to 1928, the decrease in the incidence of indictable crime per million of the age-groups was greater in men over sixty than in any other adult age-group in each official main class of crime, except forgery and offences against currency. In the year 1928, however, there was a large increase in the incidence per million in the age-group fifty to sixty as compared with the year 1911 for obtaining by false pretences, frauds and receiving, etc., although all other official groups of indictable offences showed a diminution at this age-period.

These offences are often committed by professional criminals, many of whom in course of time figure in the older age-groups. Thus, a man born in 1882 was first convicted in 1897 for theft, and had been convicted fifteen times by the year 1930 when he was sentenced for forgery for the fifth time.

In 1929 the North of England had been suffering acutely from industrial depression, but the percentage to total numbers of indictable offences committed by men over sixty years of age was 2.1 in the North and 2.8 in the South of England. The general effect of a series of tables in the Criminal Statistics for that year showed that the industrial depression in the North had not made the incidence of crime among men aged thirty higher in the North, and at many points it was lower than in the South of England.

I have stated elsewhere that clinical experience suggests that in many cases as one gets older personality seems to be a more important crimogenic factor than environment. In young and middle-aged persons a first offence is only occasionally an early indication of mental abnormality, in elderly persons it should at once arouse doubts as to whether it is the result of senile degeneration. Repeated offences at all ages may be due to a minor mental abnormality, or to the formation of an acquired habit, and records show that this may arise in early life or later. Thus, a man born in 1862 was first sentenced to three months' imprisonment for theft in 1882. In 1930 he was sentenced to three years' penal servitude and six years' preventive detention for receiving stolen property and being a habitual criminal. In the interval he had been convicted for stealing, housebreaking and the like on twenty-five occasions, and in addition to many short sentences had

received eight sentences of penal servitude and one of preventive detention. Another man born in 1861 was unconvicted until 1898. In 1929 he was sentenced four times to penal servitude for three years, the sentences to run concurrently and to be followed by seven years' preventive detention as an habitual criminal. He had been convicted on seventeen other occasions for theft, burglary and similar offences and had served four previous sentences of penal servitude and one of preventive detention.

The Annual Reports of the Prison Commissioners for the ten-year period 1929-38 show that of convicted prisoners received into prison for indictable offences, non-indictable offences akin to indictable offences, and other non-indictable offences, whose ages were twenty-one years and over, 304,384 were under and 27,128 were over the age of sixty, a proportion in round figures of 11 to 1. During the same period 207 offenders between the ages of twenty-one and sixty were sentenced as habitual criminals to preventive detention under the provisions of the Prevention of Crime Act, 1908, Part II, a proportion of almost 5 to 1.

All the witnesses who gave evidence before the Departmental Committee on Persistent Offenders and had experience of Part II of the Prevention of Crime Act, 1908, agreed that the existing provisions were unsatisfactory. The fact that so few cases have been dealt with under the provisions show that they are usually recognized to be ineffectual for the purpose for which they were intended. Nevertheless, the figures quoted above suggest that there is some association between recidivism and the later period of life; that, in fact, many habitual criminals are undeterred by age from committing crime. If the proposals in the Criminal Justice Bill, are accepted, whereby courts are to be enabled to pass sentences of preventive detention in lieu of, but not in addition to, sentences of penal servitude or imprisonment, the effect upon the age-incidence of those so sentenced should be instructive.

There would seem to be almost no upper age limit to crime. Arado refers to a woman aged eighty-two who was then sentenced in America to fourteen years' hard labour. She had been before the courts thirty years before for criminal abortion. Septuagenarian women abortionists are not uncommon in this country. As one of them remarked: "You do not need your eyes to work down there."

So far the general criminal population in prisons has been considered. Goring analysed the age incidence of 682 first offenders convicted of serious offences and awarded sentences of penal servitude. He found the cases centred around three distinct age-periods: A period of adolescence and early manhood, rising rapidly to, and falling rapidly from, its culminating point which occurred between the ages of twenty and twenty-five; a more protracted and less emphatic middle-age period, rising and falling less rapidly to and from a point of maximum intensity which occurred between the ages of thirty-five and forty-five; and a transient period between the ages of sixty and sixty-five when an exacerbation occurred in an otherwise rapidly diminishing tendency towards crime.

In a recent* group of 9,197 prisoners of both sexes in the prisons of England and Wales convicted of various offences 290 were aged sixty years and over. Of these 71 were first offenders and 194 had been previously convicted three times or more. The elderly offender is often the professional criminal at the close of his

* 3rd April, 1944.

career, and viewed generally official statistics throw little light upon the mental background associating crime with senescence and senility.

SENESCENCE AND CRIME

In his Goulstonian Lectures on "The Neurology of Old Age", MacDonald Critchley quoted Létienne who "was bold enough to attempt a definition between senescence or healthy old age and senility: he states that in the former there are modifications in the organism which must not be looked upon as disorders; while in the latter there are actual alterations or lesions. Therapy is possible in the one he says, but impossible in the other." Critchley adds: "the inadequacy of this proposed definition is obvious, and I believe that no useful purpose is served by setting up artificial distinctions between the two states".

Nevertheless, in criminal situations the welfare of the community must be considered as well as the personality of the offender, and crisp views must be fashioned if possible regarding the antisocial potentialities of law-breakers. If, as many believe, growing old is as natural a process as growing up, and senescence is the counterpart of adolescence, it becomes a matter of practical importance to differentiate criminal behaviour which is associated with senescence, as a recent improvisation in the life-history of the offender or the continuance of a long-established habit, from offences which are attributable to the functional or organic mental diseases of senility.

Rothschild and others have pointed out that there is no correlation between the intensity of mental symptoms in the aged and the severity of the ascertained pathological changes. Wartman found in 500 consecutive autopsies that 90 per cent of the men and 85 per cent of the women over sixty years of age had cerebral arteriosclerosis, although 90 per cent of the men and 85 per cent of the women do not show mental symptoms. Rolleston considered that the difficulty of determining accurately where physiological involution ends and pathological lesions begin has caused confusion between physiological old age or senescence and the pathological condition of senility. He observes that the exceptional occurrence of the ideal condition of physiological involution without some definite evidence of superadded pathological change is shown by the experience of Warthin, who in thirty years of pathological work saw only twenty-five necropsies of uncomplicated senile death. Rolleston believed that old age is almost always but relatively physiological. Critchley considers that clinical and pathological study of the nervous system in senility suggests that ageing is not entirely a simple physiological process nor yet an exclusively pathological state, but that both features are operative though their relationship cannot as yet be determined. Robbins, Watters, Eustis and others find it convenient to differentiate between physiological, normal, old age and pathological, abnormal, old age. Bleuler states that senility often becomes a disease only as a result of the sudden cessation of the ordinary attractions of life, and Cameron opened a series of social clubs in connection with a special clinic to overcome the social isolation of the elderly, and the part paid by loneliness and lack of social contacts as causative factors in their breakdown.

If senescence is a physiological condition and not a pathological incident of life, difficulty arises when an attempt is made to determine its onset. If the menopause

in women is of some assistance in the matter where they are concerned, it must be admitted that its analogue in men is likely to elude detection. Although Werner describes in men vasomotor, emotional and intellectual difficulties comparable to those seen in women at the climacteric, other observers remark upon the vagueness of symptoms in men. Engle observes that the number of patients in large clinics presenting a male climacteric syndrome is small indeed in relation to the number of women with such symptoms, or in relation to the number of men in the total population. Werner placed the male climacteric at the age of fifty. Havelock Ellis thought it began at the age of thirty-eight. He quoted Kenneth Walker who places the age of this change of life in men at fifty-five to sixty, Max Thorek at seven to ten years later than in women, Rankin at between fifty-seven and sixty-three and Max Marcuse between forty-five and fifty-five.

In considering the climacteric changes in men and women it must be remembered that the conditions are not strictly comparable. In men the change does not terminate the capacity for reproduction which may be retained into advanced age. On the other hand, women at the climacteric realize that their reproductive activity is ending, and sometimes seem to forget that many remain physically attractive for some years, and often are more mentally attractive than when they were younger.

The chronological age of the average person may be a misleading indicator of the onset of senescence. Stanley Hall puts this in the early forties. Watters at fifty-five; Adami at fifty-five and Dublin at sixty-five. Many will agree with Rolleston that in healthy people the onset of senescence is so stealthy that it is seldom suspected by the individual, and that one man may be senile at sixty years of age whilst another is vigorous in both mind and body at eighty. The onset of senescence is seldom obvious at first to others, and since the senescent is often unwilling and sometimes unable to recognize its early subjective indications, it is often well established before it is accepted.

Clouston observed, nearly forty years ago, that there is a period of mental peacefulness, calm and health, with even a reasonable amount of energy of the right sort in many cases between the crisis of the climacteric and the beginning of old age. Those who look back to the beginning of the century and compare their elders of that time with their fellows of to-day may believe that as the span of modern life has lengthened, so has the onset of senescence often been delayed, although the process of growing old has not necessarily been affected in other directions.

Senescence has claimed attention throughout the ages. David's prayer: "When I am old and grey-headed O God, forsake me not," seems to anticipate the feeling of insecurity which is so apt to disturb the declining years of life. When wrathful Elihu replied: "Neither do the aged understand judgment," he acknowledged the inevitability of mental deterioration and echoed Job's belief in the omnipotence of God "who taketh away the understanding of the aged". The deliberate scepticism of Koheleth, suggestive of the physician's outlook, portrays the final stage of life with unrivalled imagery in the well-known verses of the last Chapter of Ecclesiastes. But as one reads in Ecclesiasticus, "how comely is the wisdom of old men", it is permissible to think that perhaps the present times are not less happy in this respect than were the days of Ben Sira.

Cicero defending old age in his famous dialogue declared that "old men who

are reasonable and neither cross-grained nor churlish find old age tolerable enough . . . old age is respectable just as long as it asserts itself, maintains its proper rights and is not enslaved to anyone . . . the great affairs of life are not performed by physical strength, or activity or nimbleness of body, but by deliberation, character, expression of opinion. Of these old age is not only not deprived; but, as a rule, has these in a greater degree. . . . Old men retain their intellects well enough if they only keep their minds active and fully employed . . . the crowning grace of old age is influence. . . ."

Shakespeare's sure thumb-nail sketch of the physical signs of old age and his inimitable portrayal of the senile psychoses are well known. Sir Thomas Browne refers to "that stupid Symptom observable in divers Persons near their Journey's End, and which may be reckoned among the mortal symptoms of their last Disease; that is, to become more narrow-minded, miserable and tenacious, unready to part with anything when they are ready to part with all, and afraid to want when they have no time to spend."

Osler wrote: "Insensibly in the fifth and sixth decade, there begins to creep over most of us a change, noted physically among other ways in the silvering of the hair and that lessening of elasticity, which impels a man to open rather than to vault a five-barred gate. It comes to all sooner or later; to some it is only too painfully evident, to others it comes unconsciously, with no pace perceived. And with most of us this physical change has its mental equivalent, not necessarily accompanied by loss of the powers of application or of judgment; on the contrary, often the mind grows clearer and the memory more retentive, but the change is seen in a weakened receptivity and in an inability to adapt oneself to an altered intellectual environment. It is this loss of mental elasticity which makes men over forty so slow to receive new truths. . . ." He declared that: "As we travel farther from the East our salvation lies in keeping our faces toward the rising sun, and in letting the fates drag us like Cacus his oxen, backwards into the cave of oblivion."

Thus orientated, the senescent, perhaps, can truly assess the intrusions of the arrogant publicist, the posings of the unseemly exhibitionist and the achievements of the honest scientist. Thus orientated, the senescent may wonder whether we do not become adapted to the idea of death by the discordant changes of an ever-changing world, which disturb our equanimity, cause us to war against novel substitutes and lead us to think that, perhaps after all, the cubists, crooners, irresponsible poetasters, jazz-band musicians and other freakish upstarts of our time serve a useful purpose in reminding us that "a satiety of life brings on the ripe time for death."

Many attributes of senescence may adversely affect the individual, and criminal behaviour may be due to an unexpected jolt to a tottering personality. When crime is associated with senescence, it is important to remember that ageing is not always a uniformly progressive and unobtrusive reduction of physical and mental power. A physical illness, grief or other severe emotional disturbance in an aged person may trouble the even tenour of life and quicken the rate of mental deterioration, but for sometime this may escape remark, particularly if the quickening is of short duration.

However this may be, personal experience of senescents has never offered to me

any instance in which physical and mental deterioration alternated in a manner at all comparable to the alternating periods of physical and mental development of childhood.

In criminal cases, when the police are unable to avoid delay in arresting a suspected offender, there may be special significance in the fact that in senescence the memory for recent events becomes impaired and reminiscence prevails. The reasoning power does not necessarily become less and often gains in strength and reliability until age is well advanced. Indeed, the wisdom of age, founded upon experience, is sometimes so impressive that it cannot be set aside lightly as an imaginary or ephemeral quality. And although intellectual resilience and the receptivity for new ideas are weakened in senescence, and decisions are reached with less alacrity than formerly, there can be no doubt that the amount of crime in the later periods of life is diminished in part by the fact that conduct is more influenced then by knowledge, reason and restraint, and is less affected by opportunity, emotion and the stimulation of the senses.

Essential competition is no longer a prominent factor in the lives of aged persons, and many are dependent upon the efforts of others for their well-being. They tend to become less acquisitive as well as less aggressive, and regulate their conduct accordingly. And although their altered sense of values may be in some degree defensive in character, it also often seems to be related to the fact that the demands of others upon them are fewer and less insistent, so that acquisitive, sexual and aggressive responses in social or antisocial directions are less inevitable and more easily controlled.

Perhaps one of the most outstanding evidences of senescence is the failure to command the attention and authority of former years. When an employer becomes for practical purposes the employee of his partner he may be exploited and forced unwillingly to take part in a fraud without fully understanding the implication of his act. And he is sometimes left to face the consequences alone.

The question of employment in old age is important. Since the industrial worker is often wrongly placed, and finds frustration and unhappiness in his occupation instead of fulfilment and satisfaction, he is sometimes surprised in later years to find that work is a privilege, and that the longer a person remains at a well-chosen occupation the longer will he enjoy life and experience the satisfaction which, in general, opposes antisocial behaviour. Even in advanced old age the privilege of personal service to others can often be enjoyed, and many senescent remain younger in thought by utilizing their leisure in assisting their friends. On the other hand, when greed, selfishness, uncharitableness, laziness and other undesirable personal traits have been unchecked throughout life they may become more noticeable as age advances and unmask them.

An additional reason for continuing to work as long as possible lies in the fact that although the emotional tone of the senescent is often lowered, old age can claim no immunity from anxiety and grief. When this comes it may prove overwhelming so that mental stability is only retained by the aid of labour, which is particularly effective in these circumstances if dedicated to an altruistic purpose. And whereas in earlier years a great sorrow may be resisted by the knowledge that it will be softened by time, even though the time be long, in old age there may be insufficient time in which to wear it down and insufficient inclination to attempt

to do so unless supported from without. Indeed, here as elsewhere throughout life, hard work is often the best antidote to grief and disappointment.

The significance of leisure is receiving increasing attention to-day from many thoughtful observers. It is often enjoyed mistakenly. Prolonged idleness corrupts and becomes irksome as well as harmful to the active-minded man, who may add cubits to his stature if he occupies his spare time with creative pursuits which harmonize with his ambitions and abilities.

The senescent suffers from, or profits by, the increased leisure which is his portion in later years, and since his circle of friends inevitably shrinks it becomes important to select the method of recreation which is most appropriate for the individual. In youth recreation serves a two-fold purpose; first, as a relaxation from labour and as a revivifying factor in promoting further endeavour; and second, as a means of training by individual and team exercises for the stern realities of life. In middle age the main purpose of recreation is to re-create; in old age to delay decrement.

If the restricted power and poorer achievements of old age are wisely accepted as being inevitable, and are at the same time carefully exploited, the senescent may long continue to enjoy and profit by his former recreations. Happily, it often seems that intellectual or operational skill lasts longest where it has most attained success, and may even be extended in directions which have remained unexplored through lack of time or opportunity. Nevertheless, the age-groups in our ever-changing modern world are still more or less segregated from each other, and the occupations as well as the amusements of aged persons become less social, less varied, more solitary and more proprietary than before. Unless the problem of leisure is treated with as much consideration in old age as it requires in youth and middle age an undesirable pattern of life may be adopted, and crime result from a newly acquired habit of relieving tedium by alcohol, or some other time passing appeasement.

With regard to both work and recreation, McDougall's warning that when we cease to strive we begin to die may be linked with his belief that it is better to die living than to live dying.

To view old age, or any age period in the life of the individual, in accurate perspective it is necessary to consider it as a whole and avoid the appraisal of the intellectual, emotional and volitional qualities of the mind as isolated parts, since they overlap one another and are also influenced by external circumstances. This is apparent when a new project is introduced, for it not only requires to be perceived and understood in the light of intellect and reason, but it also excites an emotional response of satisfaction or dissatisfaction, and demands effort to make a decision for its acceptance or rejection. And just as in senescence the intellectual qualities of the mind may persist into advanced old age so may the emotional qualities, and give rise to unexpected situations.

Intellectual reactions to the approaching end of life inevitably vary. Sir Thomas Browne said: "To learn to dye is better than to study the ways of dying." Thomas de Quincey wrote: "We should all think of death as a less hideous object, if it simply untenanted our bodies of a spirit, without corrupting them." Robert Louis Stevenson in his Samoan exile declared in the year before he died: "I wonder exceedingly if I have done anything at all good; and who can tell me? and why

should I wish to know? In so little a while I . . . will have ceased to be a memory. And yet—and yet—one would like to leave an image for a few years upon men's mind—for fun." McDougall, on the other hand, held that the desire for fame after death was the most irrational of all desires; and although a useful incentive for the young man was in old age foolishness, without mitigation of any kind.

Our social adjustments are largely affected by emotions which are apparent to others, but adjustment to the Infinite is often so elusive that it appears to be inconsistent to the onlooker. For example, the meticulous adherence to a high standard of moral conduct associated with a disregard for religious observance, or persistent evil-doing associated with fervent applications to Divine Authority, are everyday incidents.

A reluctance to deal with the problems connected with adjustment to the Infinite is sometimes observed in youth, and even in middle age the matter may be postponed. But it becomes an ever-pressing concern to the aged. For some adjustment is in the making, and many attend church services to find spiritual satisfaction in religious communion, whilst a few turn to cults and idealisms for moral support. Still others, whose minds perhaps are more complex, doubting and analytical, with much toil find their adjustment in a bleak philosophy which, nevertheless, according to some thinkers numbers many among the best and happiest of men. Henry Maudsley, at the age of eighty-two, wrote: "Of the two lights available for human guidance in the gloomy vale of tears, toils and fears is the faith the greater and reason the lesser light? That is the still disputed and unresolved question, which the optimist will continue to answer confidently by the inspiration of feeling, the pessimist less confidently and more soberly, after his doubting fashion, by the dry light of reason."

This much seems certain, religion, animated perhaps by the emotional incitations of music and a chorus of amens, and undisturbed by criticisms of unproved assumptions, exercises a powerful influence on the lives of many. And if adjustment to the Infinite has been made on grounds which fully satisfy the truth-seeker he may attain a mental peace which will serve him to the end. Religion, the unbroken link which unites the present with the past and is inherent in greater or less degree in all humanity, is one of our most important counter-checks to criminal behaviour. For although the obscurantism, errors and transgressions of some interpreters of doctrinal religion may offend us, there remains, and always will remain unharmed, a core of reality and truth which is universal in its application and abiding in its purpose. Even when adjustment to the Infinite excludes the tenets of orthodox religion the very solemnity of the occasions when its principles are considered, and the tremendous issues involved, tend to establish a sincerity of thought and behaviour which opposes the commonplace amoralities of our time, and corrects the modern shift of interest from immortality to the urgent problems of the world about us.

The spectator viewing the emotional reactions of our modern world cannot fail to be impressed by the fact that not only sexagenarians and septuagenarians, but also octogenarians form romantic attachments which sometimes end in marriage. Those who have had opportunities to watch the progress towards, and the accomplishment of, such unions can have no doubt that their inspiration usually differs little from that of younger persons except in the physical content, which becomes

in later years less important than its mental counterpart. Romance is encouraged by unusual circumstances, and the longevity of to-day, with its associated delay in the progress towards senescence, induces many understanding minds to believe that these unions are likely to become more frequent, and to regard them no longer with the disfavour of the lean-souled Victorian whose narrow point of view prejudiced his judgments on normality and abnormality in the sphere of sex. These alliances and their preliminaries cannot be omitted from our estimates of social and antisocial behaviour in the senescent of our day.

The tragedies of life are usually hidden from public view. So too, the disappointments, regrets and painful memories which deepen the shadows in the mental background of the senescent who lacks equanimity and has too long delayed acceptance of the warnings handed down throughout the centuries:

"The Worldly Hope men set their Hearts upon
Turns Ashes—or it prospers; and anon,
Like Snow upon the Desert's dusty Face
Lighting a little hour or two—is gone."

And again,

"I sent my Soul through the Invisible,
Some letter of that After-life to spell:
And after many days my Soul return'd
And said, 'Behold myself am Heav'n and Hell!'"

Memories are our most personal possessions and may be our nearest approach to paradise or the pit. Men of outstanding sincerity write their records of the past in "marble memories which wear not out but with themselves". Others trace their painful recollections in the sea-washed sand, fearfully determined to rid themselves of the oppression. But the importance of memory was acknowledged by Lady Macbeth when she called it "the warder of the brain", and if the mental background of the senescent is to be clearly understood we must recognize the fact that his memories are significant, and may antedate by many years our own experience. Further, we must assess their value in the light of this limitation.

Yet it remains true that as the senescent looks back upon his unaccomplished tasks, he may derive a measure of comfort from the fact that sowers and reapers were differentiated one from another nearly 2,000 years ago, and that few may reap where they have sown. He may reflect that it can be a better thing to lay down stepping-stones upon which others may travel towards a worthwhile goal than to construct a pathway which only leads to self-advancement.

In the field of criminology the action of the will may be considered as it is directed towards the discouragement of illegal acts which, in general, put the interests of the individual before those of society, and the encouragement of activities which are legal and useful to society however strongly they may be opposed to the desires of the actor. And just as the intellectual and emotional attributes of the mind deteriorate in senescence so does the power to will. A temporary or persistent exercise of will-power may be exhausting and is less frequently seen in the aged, although the negative will-power of obstinacy may be exaggerated. Will-power, forcing one to do what should be done in spite of personal wishes to the contrary, is necessary to attain a high level of accomplishment of course, but the senescent with a narrow self-regarding sentiment has usually reached towards the level of his desire and failing this has often concluded that all is vanity, and that

the effort required to gain the longed-for end by an exercise of the will is out of proportion to the value of the offered prize. In practical situations the lessened amount of will-power which can be summoned, and the brevity of its duration, may indicate the degree of deterioration which is present if compared with the same qualities in former years.

Although the Criminal Law occasionally exploits an emotional situation, it is for the most part concerned with facts and with reasoning. Forensic psychiatry, on the other hand, is mainly solicitous regarding the personalities and reaction patterns of mentally normal and abnormal men and women. As aged persons view the rapid passing of the years they may well remember the wording of a memorable bulletin which told a tense public that the life of a very sincere and much-loved man was "moving peacefully towards its close". If mental peace rewards the later years of some, and even be our death-night, all do not attain it. And when the hitherto blameless senescent becomes involved in illegal behaviour, as the result of his mental deterioration, he deserves the fullest understanding from those who sit in judgment upon him. He may be denied this unless there is insight concerning the background of his mental life.

SENILITY AND CRIME

Senescence then, apart from its physical concomitants, is characterized by a gradual lessening of the intellectual, emotional and volitional attributes of mind whereby memory, perception, receptivity, attention, affection, interests and desires become restricted, less vivid and less compelling. It passes into senility when the impairment becomes excessive, the mental activities imperfectly synchronized, and when initiative, the ability to form well-considered opinions and sustained effort fails and social maladjustment results. The patients are less concerned with external events, they become increasingly egotistic, and their emotional life is impoverished. The death of relatives affects them little although the outward expressions of emotion may be exaggerated. Dissatisfaction with their companions and surroundings marks the fact that the pleasures and obligations of former years have lost their appeal. Confusion of thought, a feeling of unhappiness or actual mental depression, disordered sleep, anxious forebodings concerning the present and fears for the future, unwarranted distrust of others and suspicions regarding events, restlessness and resistiveness indicate the passing of normal senescence into abnormal senility, and suggest to the forensic psychiatrist the lines upon which he may shape his evidence in a criminal court.

It appears to be generally accepted that the reason senility develops in some persons and not in others depends in part upon their inherent constitutional make-up, and the degree of cerebral arteriosclerosis present, upon the stresses which they have experienced as well as the persistence of lifelong nervous symptoms, and indirectly upon their manner of life. It may be noted that in one hundred patients suffering from psychosis with cerebral arteriosclerosis Clow found that emotional disturbances were apparently by far the most frequent factors to upset their limited adjustment and precipitate a psychosis. Williams, Quesnel, Fish and Goodman consider that in senile psychoses social integration as well as financial independence have not been attained, or have been denied to the individual when most needed;

and that preventive efforts would seem to offer some return. On the other hand, psychoses with cerebral arteriosclerosis tend to strike down the individual in a manner similar to other disease processes; personal and situational factors being relatively insignificant. These authors consider that preventive measures in such cases must await more exact understanding of the morbid anatomy and physiology of the disease processes.

The practical difference between senescence and senility in criminal cases is measured in terms of social adjustability and the capacity to deal with personal problems as they arise. The term senility is restricted here to senile and arteriosclerotic dementias. Other modifications of psychiatric illness occurring in the ageing such as presbyophrenia, Alzheimer's, Pick's, Jakob's and Kraepelin's diseases, the dementias following chronic psychotic and chronic toxic states, those associated with chronic neurological disorders and the like need no special consideration in the present context.

Dayton has recently stated that psychoses of the aged now appear as the leading problems of psychiatry, with senile and arteriosclerotic disorders showing a higher incidence than all other psychoses combined. However this may be, when aged persons are implicated in criminal proceedings it is desirable to differentiate the above conditions from senile and arteriosclerotic dementia. This applies with particular force to the differential diagnosis of the depressive and manic varieties of senility from examples of manic-depressive disease in the aged, and, generally, the possibility of a return to extra-mural social usefulness will be assessed in the light of the previous history of the offender.

It may be difficult to distinguish senile from arteriosclerotic dementia in persons accused of crime, not only because of the occasional overlap of symptoms but if prolonged observation before trial is impracticable. Reference has already been made to the work of Rothschild. He compared the symptoms and post-mortem findings in sixty patients of whom half were diagnosed clinically as seniles and half as arteriosclerotics. He found that anatomically pure forms of either were less frequent than combinations of the two, but one or other predominated as a rule and clinical evidence of a mixed nature was less frequent than might have been expected from the clinical findings. The criteria usually accepted in clinical psychiatry were further established. Senile psychoses occur later in life, are gradually progressive and last longer, and paranoid patterns are more common. Arteriosclerotic psychoses have usually a sudden onset, and show less intellectual impairment, more fluctuation in symptoms and transient neurological signs. Rothschild cautions against labelling any type of psychosis as senile arteriosclerosis when it affects an elderly person. In a later publication dealing with twenty-eight cases in which the diagnosis of arteriosclerotic psychosis was confirmed at the post-mortem many discrepancies were found between the extent of the local damage and the degree of intellectual deterioration. For example, structural damage in patients with severe intellectual impairment was sometimes less marked than that found in patients with less serious focal lesions.

Discussing thirty-one cases of senile dementia and twenty-nine cases of arteriosclerotic psychosis Rothschild states that a lowering of moral standards leading to sexual irregularities, alcoholic excesses, or dishonest practices occurred in a few members of both groups, but this was commoner among patients with arterio-

sclerotic psychosis. The senile dementia group included twenty-three female and eight male patients, and the arteriosclerotic group twenty-two male and seven female patients, and it seems possible that the sex-ratio had some connection with the result. For, in general, men commit crime more frequently than women; the proportion, in round figures, being 8 men to 1 woman in England and Wales.

In the early stages of simple senile dementia crime is usually minor in character, but serious crimes are rather frequently associated with the depressive, manic and paranoid varieties. In the depressive cases attempts at suicide are common and homicide, often altruistic in purpose, is not infrequent. The manic variety is rather than the depressive in criminal as well as in civil practice, and the offences are sometimes trivial in character. The paranoid variety seems especially liable to occur in people who are accustomed to view their contacts with suspicion, and hallucinations and delusions often give rise to crimes of violence.

The emotional importance of events long past and the comparative insignificance of a personal crisis was well shown by a man aged sixty-five, during a depressive phase of senile dementia. He murdered the elderly landlady who was the wife of his friend in spite of the fact that she had befriended him. He belonged to the labouring class and had led a quiet, temperate, industrious and introverted life. He cut the woman's throat as the result of delusions which were inherently incongruous, but the jury refused to accept the medical evidence of insanity and he was sentenced to death. At the after-trial medical inquiry into his mental condition he was unconcerned at his position, but broke down and sobbed when he referred to a girl he had not seen since their engagement to marry was broken off some forty-five years before on account of religious differences. His affection for the girl remained constant, and his memories of her affected him much more than the fact that he had killed a kind and hospitable woman and that his own life was in danger.

In addition to the depressive conditions associated with senile and arteriosclerotic dementias homicidal offences are occasionally, but less frequently, associated with manic, paranoid and confusional states. In some cases acute or chronic alcoholic intoxication is a superadded feature especially in cases of marital jealousy. Sullivan pointed out, and personal experience supports the view, that delusions of marital infidelity which result in crime are usually less absurd intrinsically in senile than in some alcoholic cases. The senile patient requires little proof to support his suspicions, which may be extravagant but, generally, are within the bounds of possibility. The alcoholic rationalizes more elaborately and his beliefs are more absurd.

The slender grounds on which the delusions are based in senile dementia were apparent in a thatcher aged sixty-eight. He shot his wife, aged forty-five, dead in the mistaken belief that she had incestuous relations with her son, aged twenty, and that she was pregnant in consequence. She was a sober, hardworking and respectable woman, and she called in a nurse as well as a doctor to examine her and convince her husband that she was not pregnant, but neither could persuade the homicide that his beliefs were false.

In matters involving criminal responsibility in the aged regard must be paid, of course, to the fact that the conduct and mental condition of senile offenders should be compared with the standards of their former years as well as with the standards,

of so-called normal persons. Indeed, where mental abilities are strikingly superior in the prime of life, a perceptible amount of deterioration due to age may sometimes, in a criminal charge, escape recognition by an uninformed observer, who may regard the accused as above the average of intelligence and ability for his years.

CONCLUSION

The mental background of the child delinquent, and of the adolescent and adult criminal, has rightly received increasing attention during recent years. Justice has been thereby assisted, and the reclamation of the offenders encouraged.

Although aged prisoners in this country have been for many years treated under a milder form of discipline than others, the mental background of the ageing offender before trial is also important, but has received less attention than is due, although the later period of life presents special problems to senescence and senility. The increasing recognition in modern days of the importance of studying the diseases of old age has enabled those who are concerned with the conditions which may affect criminal responsibility or medical culpability and treatment to view the aged offender more clearly, and these observations are intentionally discursive. For the aged offender must be regarded as a whole, and accurate estimates of his behaviour depend upon a synthesis of the physical, physiological, psychological, spiritual and psychiatric factors which operate in his special environment. My purpose is to insist that a knowledge of the mental background of the aged offender may suggest the most suitable way of dealing with him, and of protecting society from his misconduct.

Senescence will not acquit the offender of responsibility, although in advanced cases bordering on senility there may be reason to consider that his mental condition modifies culpability to an extent which medical men believe, as a result of their experience of disturbed minds, should be taken into consideration by a court of trial in determining the award, because the degree of blameworthiness present lies somewhere between that which is attached to the illegal act of a mentally normal person and one who is irresponsible because of insanity.

In early stages of senile or arteriosclerotic dementia, culpability according to medical standards may be modified; in advanced stages the accused may be properly considered insane according to the law. In all cases appropriate awards or treatment can be selected only by taking into consideration with other facts what the aged offender was, as well as what he is. His weaknesses demand our understanding, they may claim our sympathy if not our respect.

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VI

PHYSICAL FACTORS AND CRIMINAL BEHAVIOUR *

INTRODUCTION

IT is instructive to examine general concepts from time to time and consider whether they are as valuable as they are assumed to be. There can be no doubt that many people unthinkingly form a composite picture of what they believe to be the general appearance of the criminal. The portrait is invariably uncomplimentary, and some offenders, particularly perhaps those who engage in fraud, take pains to improve their personal appearance as well as their manners in an attempt to disarm suspicion on the part of their intended victims.

In the seventeenth century Sir Thomas Browne wrote: "There is surely a Physiognomy, which those experienced and Master Mendicants observe, whereby they instantly discover a merciful aspect, and will single out a face wherein they spy the signatures and marks of Mercy. *For there are mystically in our faces certain Characters which carry in them the motto of our Souls. . .*" [Italics mine.]

Among the immortal pictures of William Hogarth, the eighteenth-century satirist, were those which illustrated the principles of good and evil in scenes from the lives of *The Two Apprentices*. The results of Industry and Idleness were forcibly presented by contrasting success and honour in the one with crime and ruin in the other, and the latter in all its ugliness must have impressed those who reflected upon the lessons which the twelve engravings taught. In the nineteenth century the inimitable illustrations of George Cruikshank depicting Fagin, Bill Sikes and other characters in the works of Charles Dickens also emphasized the association of crime and evil-doing with personal ugliness. And although the criminologist before the opening of the twentieth century had replaced the theological idea of sin by a mundane conception of crime, he often failed to discard the opinion that this also was closely related to a repellant exterior.

Authors as well as artists frequently refer to a connection between physiognomy and antisocial traits of character. Havelock Ellis stated that when Homer described Thersites as ugly and deformed with harsh scanty hair, and a pointed head, like a pot that had collapsed to a peak in the baking, he furnished evidence as to the existence of a criminal type of man. Ellis mentioned the fact that long ago men referred to the organic peculiarities which they believed separated the criminal from the ordinary man, and quoted in support among others the proverbs: "Salute from afar the beardless man and the bearded woman," and "Distrust the woman with a man's voice."

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The often-recalled assertion of Shakespeare's Caesar:

"Let me have men about me that are fat;
Sleek-headed men and such as sleep o' nights;
Yond Cassius has a lean and hungry look;
He thinks too much: such men as dangerous."

stresses the relation between bodily appearance and character.

Although numerous treatises on physiognomy were published in the sixteenth century the development of anatomy in the seventeenth, substituting fact for fiction, diminished the quality of the output at that time. And by the Act of Parliament 17 George II. c. 5, 1743, all persons pretending to have skill in physiognomy were deemed rogues and vagabonds and were liable to be publicly whipped, or sent to the house of correction until the next sessions. Nevertheless, public interest in the subject continued, and an English edition of *Essays on Physiognomy* by Lavater (1741-1801) went through at least seventeen editions.

SCHOOLS OF PENOLOGY

The so-called classical school of penology is associated with the name of Cesare Beccaria, Italian publicist, mathematician, councillor of state, and magistrate, who in the year 1764 published his famous treatise *Dei delitti e delle Pene* ("On Crimes and Punishments"). He recommended the prevention of crime rather than punishment, and that if punishment was inevitable it should be prompt. He condemned confiscation, capital punishment and torture. His humane ideas directly influenced reforming action on the Continent, and were utilized in the French revolutionary code. Voltaire contributed an anonymous preface to Morellet's French translation of Beccaria's pamphlet.

Some forty years later Samuel Romilly, lawyer, politician and friend of Mirabeau commenced his attempt to reform the cruel and illogical criminal law of England, and although he obtained only partial success ensured ultimate victory by exposing its barbarity. His friend Jeremy Bentham, English philosopher and jurist, also devoted his precise and analytical mind to the subject and severely criticized the state of the law. His theories upon legal subjects influenced legislation in other countries as well as at home. In his *Introduction to the Principles of Morals and Legislation* Bentham considered that mankind was governed by two sovereign motives, pain and pleasure, and that the object of all legislation must be "the greatest happiness of the greatest number"—a phrase used twenty-five years before by Beccaria in his famous treatise.

In France, Rousseau, Voltaire and Montesquieu were associated with the humanitarian teachings of Beccaria, Romilly and Bentham, which assumed that every criminal act was a deliberate choice determined by a calculation of its prospective pleasures and pains. All that was needed to overcome the criminal purpose was to provide for every crime a penalty sufficient to outweigh its apparent advantages. It was believed that excessive penalties, such as death, were unnecessary and therefore unjust.

It is interesting to note that in the index to the text of Bentham's volume of *The Theory of Legislation* reference is made to crime, offences and criminality, but none to criminals or offenders. In fact, although this school was seriously concerned

with abolishing injustice and the vindictiveness of punishment, and believed that the function of punishment was solely deterrent, it paid little attention to the individuality of the offender.

The neo-classical school of the revolutionary period in France which followed, although not departing from the doctrine of the classical school that criminals are normal persons who have succumbed to temptation, modified the rigidity of Beccaria's view and accepted the fact that there might be differences among criminals. It insisted on the recognition of different degrees of moral and legal responsibility in the case of children and lunatics for whom justice demanded special treatment. The new school also demanded the recognition of mitigating circumstances in general, and whilst the older school was concerned merely with the deterrent effect of punishment the latter considered also that the reformation of the offender was one of the purposes of the award.

The modern doctrine that the punishment of the individual rather than of the crime he has committed is of paramount importance is an outcome of the fundamental principle of the neo-classical school.

The positive or anthropological school was a later product. It differed from the view of Beccaria and his successors and returned to the original view that the man who commits crime is specifically different from the man who does not. It went further, and believed that the criminal was predestined to a criminal career on account of his inherited traits and that he was therefore wholly irresponsible. Although society must be protected from his criminal behaviour the positivists considered that it was wrong and foolish to punish the criminal as if he were a free agent and able to select his course of conduct. This school aimed at the positive methods of science, and although many of the assumptions and alleged facts upon which its conclusions were based are no longer accepted by the modern school, which has arisen during the last quarter-century, a brief reference is due to some of its apostles.

ANTHROPOLOGICAL RESEARCH

The discoveries of Francis Joseph Gall in the anatomy of the brain will remain outstanding for all time. It is to be remembered, as the late Sir Henry Head pointed out in the Hughlings Jackson Lecture for 1920, that the idea that the underlying structure of the brain has an effect upon the formation of the skull, and in consequence that character could be foretold from the external conformation of the head, is only a small part of the theory put forward by Gall.

It is a calamity that Gall's scientific work is remembered for its mistakes rather than for its great achievements.

Although Gall mapped on the skull organs of murder and theft, his co-worker Spurzheim, and his disciple Combe modified the nomenclature in order to avoid discredit to the system of phrenological deduction.

In an article published in the *Transactions of the Phrenological Society* in 1824, Combe referred to the discovery by Gall that the size of the particular portions of the brain bears a relation to the energy of particular mental powers and dispositions. He stated that the phrenologist produces the actual skull of the criminal, or a cast of it, as evidence of the development, and proves the one exhibited to be

authentic and genuine. Having done so, he specifies the development of organs which it indicates. If the skull shows that Combativeness and Destructiveness and Acquisitiveness are large, but Benevolence and Conscientiousness small, and the trial shows that the criminal was an unprincipled thief and an obvious murderer, he draws the conclusion that the organs and dispositions correspond, and that he is entitled to represent the case as additional proof that those parts of the brain are connected with the tendencies ascribed to them in the phrenological system. Combe believed that if the real cause of human offences was excessive size and activity of the organs of the "animal propensities" it followed that mere punishment could not abolish crime, because it overlooked the cause and left it to operate with unabated energy after the infliction had been endured.

Combe particularly insisted that criminal legislation and prison discipline should be based upon physiology, and especially the physiology of the brain and nervous system, in order to be efficient. He published a pamphlet to this effect under the title *The Principles of Criminal Legislation and the Practice of Prison Discipline Investigated*, and Mr. Baron Alderson referred to it in his Charge to the Grand Jury at the Yorkshire Winter Assize of 1854 as a work which contained most valuable material for careful thought and observations, which every sincere reformer of the criminal population ought to weigh well and consider.

C. J. A. Mittemaier, Professor of Criminal Law in the University of Heidelberg, in a letter to George Combe written in 1842, suggested that phrenology could be applied with advantage to form a correct conception of the nature of certain crimes, and a sound judgment of the method of punishment necessary to deal with and prevent them. He believed that phrenology was of special importance in reference to questions of responsibility, in view of the consideration that certain organs of the mind which should guide a man's conduct might be extremely deficient, and other organs which in excess incited to certain crimes might be enlarged, and in proportion circumscribe an offender's responsibility.

Although anatomy, physiology, endocrinology, psychology and practical experience discredit to-day the phrenological diagnosis of character, the criminologist remains indebted to Gall and his followers. For they directed attention to the importance of the study of the individual offender, and to the fact that criminal legislation and prison discipline must be based upon scientific data in order to be effective.

Gall's observations on the cranial formation of criminals induced Lauvergne to study the convicts at Toulon who were under his care. He considered that the assassins presented "a peculiar face stamped by a seal of a brutish and impassible instinct. Their heads were large and receding with notable lateral protuberances, enormous faces, and masticatory muscles always in motion." A year before Carus stated that delinquents were to be distinguished by a narrow forehead, the insufficient development of the occiput and the length of the cranium.

Broca, who established the Anthropological Society of Paris in 1859, gave attention to the peculiarities of the skulls and brains of criminals. Ten years later Dr. G. Wilson read a paper at the Exeter meeting of the British Association on *The Moral Imbecility of Habitual Criminals as exemplified by cranial measurements*. He measured the heads of 464 criminals, and concluded that habitual thieves presented well-marked signs of insufficient cranial development, especially an-

teriorly. In 1879 Francis Galton illustrated a lecture to the Royal Institution with a composite portrait of Alexander the Great made by combining his image on six different medals and pursued this method of investigation in his studies on health, disease and criminality. He wrote: "I have made numerous composites of various groups of convicts, which are interesting negatively rather than positively. They produce faces of a mean description, with no villainy written on them. The individual faces are villainous enough, but they are villainous in different ways, and when they are combined the individual peculiarities disappear, and the common humanity of a low type is all that is left."

Among the criminologists of the latter half of the last century Lombroso held a foremost place. Havelock Ellis considered that he was influenced by the anthropological studies of Broca, the illuminating genius of Virchow, and Darwin's *Origin of Species* which furnished him with an "atavistic key". In 1876 Lombroso published his *L'Uomo Delinquente* and considered the criminal as an anatomical and physiological organic anomaly. He was aided by Ferri, who later became interested in the social aspects of criminology, by the anthropometrical studies of Marro, and by Garofalo who applied the conception of criminal anthropology to the law.

Lombroso's anthropological investigations of criminals appear to have arisen accidentally from his discovery of anomalies in the skull of a brigand. In a statement before the Congress of Criminal Anthropology held in Turin in 1906 he described how "... at the sight of these strange anomalies as a large plain appears under an inflamed horizon, the problem of the nature and origin of the criminal seemed to me resolved; the character of primitive men and of inferior animals must be reproduced in our time".

A study of the skulls of 383 criminals caused him to believe that certain anomalies present were more marked in criminals than in the insane. He considered that a comparison with the skulls of savages and prehistoric man showed the atavistic character of some of the anomalies. He asks: "Is it possible that individuals afflicted with so great a number of alterations should have the same sentiments as men with a skull entirely normal? And note that these cranial alterations bear only upon the most visible modifications of the intellectual centre the alterations of volume and of form."

Lombroso's anthropological and physiognomical observations were the result of the examination by himself and other workers of 5,907 criminals. He said: "The study of the living, in short, confirms, although less exactly and less constantly, this frequency of microcephalies, asymmetries, of oblique orbits, of prognathisms, of frontal simuses developed as the anatomical table has shown us. It shows new analogies between the insane, savages and criminals. The prognathism, the hair abundant, black and frizzled, the sparse beard, the skin very often brown, the oxycephaly, the oblique eyes, the small skull, the developed jaw and zygomas, the retreating forehead, the voluminous ears, the analogy between the two sexes, a greater reach, are new characteristics added to the characteristics observed in the dead which bring the European criminals nearer to the Australian and Mongolian type; while the strabism, the cranial asymmetries and the serious histological anomalies, the osteomates, the meningitic lesions, hepatic and cardiac, also show us in the criminal a man abnormal before his birth, by arrest of development or by

disease acquired from different organs, above all, from the nervous centres as in the insane; and make him a person who is chronically ill."

C. Mercier criticizing the deductions of Lombroso wrote: "As no two human beings are precisely alike, as everyone departs in some respect from the average, and as no fixed average was ever ascertained by the criminologist, it was easy to pick out in every criminal some character or other that appeared exaggerated or defective to a prejudiced eye, and to declare that this character is a "stigmata of criminality".

Lombroso considered that his anatomical studies enabled him to distinguish the criminal he believed to be born as such from the criminal of habit, passion or occasion whom he believed to be born with very few or no abnormal characteristics. He believed in the identity of the "born criminal" and the "moral imbecile" and demonstrated many similarities between the former and the epileptic in height and weight, the brain and skull, the physiognomy, the flat and prehensile foot, the sensibility, the visual field, motility, tattooing, etc. (Parmelee.) And he found: "Criminality is therefore an atavistic phenomenon which is provoked by morbid causes of which the fundamental manifestation is epilepsy."

In a later volume, *Crime, Its Causes and Remedies*, Lombroso wrote the complement to his study on *Criminal Man*, and refuted the accusation that his school neglected the social and economic causes of crime. He stated in the preface to the later work that "certain practical nations, less smothered than our own under a too glorious past, and for that reason less infatuated with the ancient codes, have already here and there arrived empirically, without knowing a word of criminal anthropology, at several of the reforms that I shall suggest. The asylum for the criminal insane, the truant schools, the ragged schools, the societies for the protection of children, and the asylums for alcoholics, and institutions which, without being a part of the criminal code, have been applied more or less completely in North America, England and Switzerland. . . ."

L. Grimberg, discussing emotional instability, which he considers is emotional defectiveness due to endocrine deficiency and an actual organic inferiority, finds in this sense a glimmer of truth in the Lombrosian theory of the born criminal. He thinks that the frequent physical defects found in habitual criminals have their explanation in the involvement of the endocrine glands concerned with growth and life activities.

Hermann Mannheim writes: "Did Lombroso's enthusiasm, however, really succeed in discovering the special criminal types that he sought, and are these types capable of definition according to anthropological characteristics? The almost unanimous opinion of to-day, as is well known, answers the second question in the negative. It is especially Lombroso's identification of the born criminal type with the notions of atavism and degeneration; the exceeding importance which he attributed to epilepsy; his belief in an anthropological criminal type of even international uniformity that are commonly rejected. The main features of his theory of the anthropological stigmata of the born criminal have been disproved by Baer and Goring, who independently examined the problem. Many of the statements made by Lombroso in this respect are to-day at best no more than curiosities, and even so far as they are partly confirmed by later researches they cannot be regarded as sufficient foundations for his sweeping conclusions."

Havelock Ellis in 1914 agreed with the statement of Hepworth Dixon in 1850 that the criminal countenance was at once repulsive and interesting. In the same volume he reproduced a series of imaginative portraits from the note-books of Vans Clarke, a former medical officer of Pentonville prison. The artist stated that the portraits were necessarily taken in haste, but they were true and were considered to be successful likenesses. Later, Goring, when medical officer of Parkhurst prison, compared them with a series of photographic outline profiles traced by him from a series of photographs selected at random from the official portraits of convicts at Parkhurst. Goring's composite portrait suggests the ordinary citizen. The composite imaginary portrait resulting from the drawings of Vans Clarke favours imbecility.

On my introduction to prison medical work at the opening of the present century I was impressed by the unattractive appearance of the convicts at Portland prison and attributed it to their criminality. The experience of later years proved this view to be mainly incorrect, and the unattractiveness to be due to four principle causes. One disappeared when the Mental Deficiency Act, 1913, came into operation and withdrew from the prison population an appreciable number of mentally defective persons. Further improvement was noticeable as soon as prisoners were allowed to grow their hair instead of having it cut close to the scalp with clippers. Betterment increased when their clothes no longer bore the broad arrow stamp and the ungainly uniform of the prisoners was altered so as to approximate to ordinary civilian clothing. Perhaps the greatest change was observed when the harsh penal discipline was replaced by humane understanding, for the facial expressions of many prisoners altered when they were no longer treated as criminals to be suppressed, but as men and women whose co-operation was necessary for their reformation.

I have stated elsewhere that the student of criminal physiognomy is rightly concerned with more than mere facial and cranial outlines. For if we accept modern psychological teaching that the instincts with their accompanying emotions form the basis of character and temperament and thereby affect human conduct, and if we consider that the emotional reaction is reflected in part by an alteration of facial expression, we can believe that permanent and characteristic changes will be engraved upon the features by a frequently repeated emotion, or its corresponding mood if long continued. There can be little doubt that in certain cases the facial expression so impressed may suggest the nature of the crime and the habit of the criminal. But it is a suggestion only. For although everyday experience tends to show that some observers are particularly gifted in the accurate interpretation of the facial expressions of casual acquaintances, estimations of character by this means in any series of criminal cases are so frequently at fault as to be quite unreliable unless corroborated by ascertained facts.

Havelock Ellis referred to anomalies of the teeth, ears, hair, trunk and limbs in criminals which various disciples of Lombroso enumerated and regarded as stigmata of degeneration. It is unnecessary to consider them here. Considerable stress was attached to the fact that tattooing was common among criminals. In the year 1901 I examined 500 convicts at Portland to ascertain the frequency, and found that 43 per cent were decorated in this manner. It seemed to be a smaller proportion than was usual in the personnel of the navy and army at the time.

Although much of the research work carried out during the latter part of the nineteenth century failed to stand the test of time we recognize to-day the debt we owe to the men who were groping to find a trail which would lead towards the scientific understanding of crime and the informed treatment of criminals. As Mannheim states Lombroso "saved criminal science from the shackles of merely academic abstractions". Moreover, Lombroso and his co-workers and followers taught us the fallacy of assuming that the use of a current scientific method of research is necessarily as valuable as an enduring scientific method of thinking. They also illustrated the fact that whilst progress depends largely upon new ideas, scepticism and suspended judgment, as Wilfred Trotter pointed out, are the very essence of the scientific mind. When considering their work we shall do well to remember Trotter's declaration: "The only way to the serene sanity which is the scientific mind—but how difficult consistently to follow—is to give to every fresh idea its one intense moment of cool but imaginative attention before venturing to mark it for rejection or suspense."

The positive school studies the individual criminal as a bio-social phenomenon with the scientific means at its disposal. The rapidly developing interest in the psychological aspects of morbid mental conditions since the earlier years of the present century has brought about an important change of emphasis from the anthropological to the psychological associations of criminal conduct, and the research worker to-day studies the criminal as a bio-socio-psychological phenomenon.

ANTHROPOMETRICAL RESEARCH

Kinberg states that the tendency of European criminology is rather towards the individual, endogenous theory of criminality, while Northern American criminologists are more inclined to see its chief causes in social factors. He considers that one of the reasons for these divergent attitudes to the causal problem may well be the considerable differences in the social conditions in Europe and America. He writes: "European society is old, its roots go far back into antiquity. Customs, traditions, moral standards, and behaviour-patterns have been inherited from father to son for countless generations, the growth of the population and material progress has been slow and continuous without sudden changes. . . . America, on the other hand, is a young country and has in a century doubled its population many times over, not by a natural growth, but chiefly owing to a stream of immigrants from all parts of the world. . . . Owing to the enormous natural resources of the American continent the material advance has frequently been almost explosive. . . . In this heterogeneous population there are also a great variety of moral conceptions which at the same time are more mobile owing to, among other things, the intensity of the social processes of disorganization and reorganization. Being uprooted from his mother country and its standard of behaviour the quondam moral ideals of the immigrant become more or less completely demolished. That demolition means that for a longer or shorter period after his arrival in the new country and until he has had time—if he ever does—to adapt himself to the new social conditions, he is in a critical and dangerous state."

Grimberg considers that not only may there be a conflict between a native-born child and his immigrant parents but also with the imposed concept from the outside

with which the family itself is in conflict. Sheldon and Eleanor Glueck stress the fact that social workers and criminologists have often referred to the probable conflict of points of view and standards between the native-born younger generation and the foreign-born elder, and consider this an important causal factor of criminality in America.

Can there be any doubt that the personal and social dissimilarities of, say, the United States of America and Great Britain make it desirable for each country to view the problem of crime in the other through lenses provided by that other?

During the first decade of the present century seven medical officers of the Prison Service of England and Wales carried out a series of anthropometrical measurements in the convict prisons. Service conditions enabled Charles Goring to examine a larger number of men for this purpose than any other one of us in the team, and he was eminently suitable for collating the material. This he did between May 1909 and November 1911 in the Biometric Laboratory of University College, London, under Professor Karl Pearson. The results were published in 1913.

Goring summarized the results of this inquiry into the physical characters of criminals thus: "We have exhaustively compared, with regard to many physical characters, different kinds of criminals with each other, and criminals as a class with the law-abiding public. From these comparisons *no evidence has emerged confirming the existence of a physical criminal type, such as Lombroso and his disciples have described.* [Italics in original text.] Our data do show that physical differences exist between different kinds of criminals: precisely as they exist between different kinds of law-abiding people. But when allowance is made for a certain range of probable variation, and when they are reduced to a common standard of age, stature, intelligence, and class, etc., these differences tend entirely to disappear. Our results nowhere confirm the evidence nor justify the allegations of criminal anthropologists. They challenge their evidence at almost every point. In fact, both with regard to measurements and the presence of physical anomalies in criminals, our statistics present a startling conformity with similar statistics of the law-abiding classes. The final conclusion we are bound to accept until further evidence in the train of long series of statistics may compel us to reject or modify an apparent certainty—our inevitable conclusion must be that *there is no such thing as a physical criminal type.*" [Italics in original text.]

Goring believed that "the tendency to be convicted and imprisoned for crime is influenced by the force of heredity in much the same way, and to much the same extent, as are physical and mental qualities and conditions in man". Elsewhere, discussing the Aetiology of Crime he stated that his anthropometrical investigation assumed "the possibility that environmental, as well as constitutional, factors play a part in the production of criminality".

Earnest Albert Hooton is a recent critic of Goring's work. In his anthropometrical study of *The American Criminal* Hooton states: "There are many portions of Goring's work which are of great value. His notable contributions are in the study of criminal physique which he finds definitely inferior, thus confirming the conclusions of Lombroso, in the influence of age upon crime, in the vital statistics of the criminal, in the mental differentiation of the criminal (which again agrees with Lombrosian ideas), and in his investigations of "force of circumstances",

fertility and heredity. He cannot be denied great credit for his painstaking investigation of these important aspects of crime. He also deserves abundant praise for the variety of delicate and ingenious statistical devices he employs, although his method of using them is frequently culpable.

"In his efforts to disprove physical differentiation of the criminal Goring displays most of the faults which he charges to Lombroso, and others of which Lombroso was never guilty. In an early stage of Goring's work, Professor Karl Pearson asked him the question: 'And what if Lombroso's theory be established by your analysis?' 'I shall accept it as the foundation of criminology, but shall none the less condemn Lombroso as a traitor to science.' Professor Karl Pearson quotes this reply with apparent approbation, but it seems to the present writer* to epitomize the lack of an objective viewpoint and the prejudice which inevitably vitiates the work of the scientist who approaches his task with an emotional preconception of its issue. Actually Goring left the problem of the relation of the criminal's physique to his offence unsolved. Mathematical formulae and verbal sophistries may befuddle lay readers, but no one who reads and understands Goring's *English Convict* can accept his conclusions until he shares the prejudice of the author."

It is not my intention to enter into this controversy. It must always be remembered that Goring dealt with a limited class of prisoners—recidivists and others convicted of serious crimes.

Hooton considers that "Criminals are inferior to civilians in nearly all their bodily measurements. These differences attain statistical significance and general criminological validity in body-weight, in stature, in biacromial breadth, chest depth, chest breadth, cranial circumference, nose height, ear length, head height, and upper facial height. Criminals also diverge from civilians in having higher fronto-parietal indices, lower facial indices, higher nasal indices, higher zygo-frontal indices and greater relative sitting height. These differences appear to be independent of age and state sampling."

He declares that several outstanding morphological differences exist between criminals and civilians. For example, we are told that tattooing is commoner among criminals than among civilians; that criminals probably have thinner beard and body hair and thicker head hair; that criminals have more straight hair and less curved hair and have more red-brown hair and less grey and white hair; that low and sloping foreheads, thin lips and compressed jaw angles are commoner in criminals than in civilians, and so on.

Hooton believes that his information definitely proves that it is from the physically inferior element of the American population that native-born criminals of native parentage are mainly derived. He says: "My present hypothesis is that physical inferiority is of principally hereditary origin; that these hereditary inferiors naturally gravitate into unfavourable environmental conditions; and that the worst or weakest of them yield to social stresses which force them into criminal behaviour." He recognizes, however, that the results of his investigation, so far, cannot be said to have any great practical utility. In *Crime And The Man* he points out that "No one . . . would conceive it possible to utilize for purposes of practical criminal diagnosis any rigid multiple combination of morphological features supposed to constitute a criminal type. . . . All that can be expected of the . . . typing

* I.e. Hooton.

of criminals is that excesses of this kind or that kind of offence may be demonstrated for the several sub-groups."

Frank A. Ross reviewing Hooton's anthropological study states: "Hooton appears to have the mistaken idea that all data gathered in any fashion in jails, penitentiaries, etc., are sample data in the sense that they represent the universe of the criminal. He makes brave and convincing defence of his materials and acknowledges certain flaws, even going so far as to correct some differences. But in the light of present-day knowledge of sampling methods his data appear to be open at points to specific challenge." William B. Tucker summarizes the objections raised by the critics of Hooton's reports in his *Criminological Studies*. They say "Hooton did not take non-physical factors into account sufficiently; his assumption that incarcerated criminals are representative of all criminals is untenable; his controls were inadequate; and some of his statistics are open to challenge." With regard to the first of these objections, Tucker points out that "Hooton deliberately chose not to study the non-physical basis of crime, leaving that aspect to the sociologists and criminologists." Concerning the second, Tucker calls attention to the fact that "there is some evidence that prison samples are not characteristic of all criminals, but this is a practical problem which is difficult to overcome when one wishes to study a group of criminals, and lacking the perfect group to be studied it may not be unwarranted to accept tentatively the representativeness of the prison group." As to the inadequacy of Hooton's controls, Tucker considers the objection does not pay enough attention to the fact that a total of 3,203 non-criminals were employed in the analysis. He also considers that careful study fails to reveal serious misuse by Hooton of statistical techniques, though the interpretation may be sometimes questioned.

Tucker adds: "Making due allowances, therefore, for such relatively minor faults in Hooton's argument, it still may be conservatively stated that physical (anthropometric) differences have been demonstrated between criminals and non-criminals, but especially among offence groups. If this position is tenable—and it seems to be, on the evidence available—there should be no cause for concern, but rather cause for quickened interest, to follow down a lead offering greater or less promise of solving the complex cause of crime." He refers to Langfeldt's findings that leptosomes and schizothymes were the commonest physical and psychological types amongst criminals; to the work of Berry and Büchner who found a correlation between the size of the head and intelligence and found criminals to have lower brain capacity than other groups; to the anthropometric study of Illinois convicts by Gray in which the difficulty of the problem was seen in the fact that a great many of the measurements were affected by the age of the individual, and to the works of de Pina and Frassetto who advocate a more comprehensive morphological method than reliance on such indices as the cephalic or nasal index alone.

Attempts to assess the importance of anthropometrical measurements and the physique of arrested criminals must be restrained by two factors. First, it is a matter of common observation that the criminal in custody is frequently drawn from a stratum of society in which the economic position is unfavourable for physical development. The effect of the free issue of milk to school children in England, and a better approximation of their diet to developmental demands, will be watched with interest. It may affect the results of future studies concerning the

relation of physique and crime in adolescent offenders. It may show that both are affected by a common factor. Second, we do not know whether the criminal in custody belongs to a special type, the least intellectually fit, and in consequence the most likely to be arrested.

The criminal is a product of the society in which he lives, and we have no reliable figures to show what the proportion of apprehended law-breakers is compared with those who escape arrest and are accepted as law-abiding samples of the community. The unarrested offenders are undoubtedly numerous, and Total War has made it clear for all to see how many customers are also accomplices who encourage the black-market criminals. Further, from the point of view of moral turpitude and the amount of injury done to society, some observers may consider that persons who for their own gain rob others of the truth, by broadcasting false statements on political and other issues, are more culpable than many necessitous people who appear before a criminal court for a minor offence.

✓ RECENT RESEARCH AMONGST ADOLESCENT OFFENDERS IN ENGLAND

During the years 1930-6 inclusive, 4,000 male adolescent offenders from London and the surrounding areas were examined under my direction for the purpose of statistical study at Wormwood Scrubs Boys' Prison. Although the investigation was not primarily concerned with anthropometrical data a brief reference may be made to some of the findings. It should be noted that there were no means by which the difficulties arising when an attempt is made to compare large statistics of offenders in custody with a comparable and non-criminal group of the same size could be overcome. Indeed, no one can say how many lads in a non-criminal control group have committed undetected crimes, or how many of them will commit crime in future. The data, however, enabled a comparison to be made between lads with previous convictions and those of the same age with none.

Stature. There was no evidence of association between repeated offences and stature. The mean height of lads with a record of offences against property and the person was greater than for the sexual and discipline group of offenders at ages sixteen, seventeen and nineteen, and was not exceeded by any other group at eighteen, but at no age was the excess significant. The other groups did not show any significant variation either.

Weight. There was no appreciable difference of mean weight between the first and second offenders; the excess was only apparent for those with a record of two or more previous convictions, but was not statistically significant for any age taken alone. The consistent excess in weight of lads with more than one previous offence at every age could scarcely be fortuitous and could not be accounted for by the difference in mean stature. It probably indicated a slightly better average nutrition or muscular development amongst the lads who had served several sentences, and since the first sentence is usually one of probation the excess may be accounted for by the lads having received a more carefully balanced diet during the period of detention in an Approved School or Borstal Institution than when at liberty.

Hooton reached the opposite view, and found that recidivists among native-white prisoners of native parentage, and at all ages in certain prisons and reformatories in America, tended to be lighter in weight than first offenders.

As I have said, the lads investigated at Wormwood Scrubs prison were selected from London and the surrounding areas. A comparison of their mean heights and weights with the mean heights and weights found by Cathcart, Hughes and Chalmers in 1929-32, in employed males of the same ages and mostly of the artisan class taken from London and other large towns in England and Scotland, shows no tendency for the lads convicted of crime to differ from them in stature, and there was no certain evidence of any association of criminal tendencies and underweight.

Chest Girth. Among the Wormwood Scrubs lads a slight excess of chest girth for repeated offenders compared with first offenders was found in nine out of ten half-year age groups, but in no case did the excess amount to twice the standard error, and only in three groups was it greater than the standard error. Lads with a record of two previous offences showed excess over the first offenders at each age, whilst those with three or more previous offences registered an excess at sixteen to nineteen years, but only at age sixteen was the excess statistically significant. Hooton found that recidivists in the American criminals tended to be different in chest breadth in comparison with first offenders. When grouped according to the nature of the offences no significant differences were noted at any age in the lads at Wormwood Scrubs, nor was there any consistent tendency for any of the groups to have high or low chest measurements throughout the age scale (i.e. sixteen to twenty-one years).

Pre-pubertal or pubescent development was noted in 20 per cent of the lads of sixteen and seventeen years, in 6 per cent of lads of seventeen and eighteen, falling to about 2 per cent in lads at twenty years. There was no significant difference according to the nature of offences.

In connection with the hypothesis of physical inferiority among criminals accepted by Lombroso, Goring and Hooton it may be noted that the physique of the present population in England has greatly benefited by modern hygienic improvements as well as nutritional betterment, and that this has chiefly affected the social groups from which most offenders are drawn. The causality of environment cannot be denied.

An observation in the year 1883 by Francis Galton, when he was sixty-one years of age is instructive. He stated: "I may be permitted to give an example bearing on the increased stature of the better housed and fed portion of the nation, in a recollection of my own as to the difference in height between myself and my fellow colleagues at Trinity College, Cambridge, in 1840-4. My height is 5 feet 9 $\frac{3}{4}$ inches, and I recollect perfectly that among the crowd of undergraduates I stood somewhat taller than the majority. I generally looked a little downward when I met their eyes. In later years, whenever I have visited Cambridge I have lingered in the antechapel and repeated the comparison, and now I find myself decidedly shorter than the average of the students. I have precisely the same kind of recollection and the same present experience of the height of crowds of well-dressed persons. I used always to get a fair view of what was going on over or between their heads. I rarely can do so now."

Vision. About 12 $\frac{1}{2}$ per cent of the lads investigated at Wormwood Scrubs had bad or impaired vision. The proportion was rather higher at ages nineteen to twenty, but the excess over that at ages sixteen to eighteen was of doubtful significance. The group with a record of sexual offences showed a significantly higher propor-

tion with poor vision at ages nineteen to twenty, but not at ages sixteen to eighteen. Combining all kinds of offences, the frequency of poor vision among the first offenders was rather less than among the repeated offenders at each age group and significantly so at ages eighteen to nineteen. The association of poor vision with multiple offences was not significant when all ages were treated together.

Hearing. Only 4 per cent of the lads had bad or impaired hearing. The proportion was significantly higher at ages nineteen to twenty than at ages sixteen to eighteen. No evidence was found of any association between impaired hearing and the number of offences.

When considering the physique of adolescents, however, it is important to remember the phenomenon of occasional acceleration of growth noted—as Duckworth points out—by Quetelet in 1870, and of periodic variation of growth investigated by Godin. The latter observer during a period of five years studied a large number of adolescents and measured one hundred of them at intervals of six months during the period and found sudden augmentation of the increment of growth at the fifteenth year. His figures were supported by those of Carlier although Quetelet's failed to exhibit a similar increase. Duckworth suggests that this may be due to the deliberate selection by Quetelet of his subjects. He adds that more recent researches distinguish two particular periods of growth activity in respect of stature, namely from five to seven years and from thirteen to sixteen years respectively, and that with these two periods alternate others when circumferential growth predominates.

G. E. Friend found that the school boys at Christ's Hospital, Horsham, attained a maximum rate of increase in height during spring, while that for weight occurred in the autumn. He also found that during the latter half of the period when rationing was in force during the war 1914-18, the rate of growth as measured by the height tended to slow down in the sixteenth year, whereas under the more satisfactory nutritional conditions which later prevailed the retardation was not normally observed until late in the seventeenth year.

OTHER RESEARCHES

Age may be an important factor in the causation of crime. The Criminal Statistics, 1937, for England and Wales show that the number of male offenders found guilty of indictable offences per 100,000 of the population is greater in the age groups fourteen and under sixteen years than in the age groups ten and under fourteen years. After the age of sixteen the rate per 100,000 shows a decrease in each successive age period. Thus in the years 1930 to 1937 the average number of offenders of the ages ten and under fourteen years per 100,000 of the population in that age group was 788; at the ages of fourteen and under sixteen 822; at sixteen and under twenty-one years 708; at twenty-one and under thirty years 446; at thirty years and over 171; whilst the average for all ages of the male population over the age of ten was 354 per 100,000.

Although no figures are available to show the amount of misconduct in children between the ages of five and seven years, such as would constitute a legal offence if they had been aged eight—when criminal responsibility in England and Wales may be proved—and which might be connected with growth activity, it is perhaps

significant that Duckworth's second period of growth activity, namely from thirteen to sixteen years of age, corresponds with the period of most lawlessness. It would almost seem that the organism is so occupied with its physical development at this period that there is no surplus energy for social development. The problem, however, is complex. Physiological, psychological and environmental factors may all press heavily upon the individual during puberty and adolescence.

W. Healy found poor physical condition was relatively infrequent either as a major or minor factor in the causation of delinquency. C. Burt found among 197 boys and girls whose ages varied from five to eighteen years, that in 12 per cent of the boys and 5 per cent of the girls an excessive or inadequate development of the physique figured as a probable factor in causing delinquency. Of these the delinquent boys were commonly undersized and the delinquent girls were usually overgrown. Burt states that the clearest instances of adolescent crime in his cases occurred when physical development was unusually early and mental and moral development retarded or delayed. He found premature or excessive sexual development among nearly 10 per cent of the girls and only 4 per cent of the boys. In the typical case size, strength, figure and form, sexual functions and sexual consciousness were developed prematurely together. He also found that defective physical conditions were, roughly speaking, one and a quarter times as frequent among delinquent children as they were among non-delinquent children from the same schools and streets.

Verner Wiley, in 1930, reported to the London County Council on 803 children (696 boys and 107 girls) admitted to Ponton Road place of detention. The group showed "a very marked inferiority in respect of nutritional state and physical make-up when compared with the average London children as met with in the age-group examinations".

In an investigation into Juvenile Delinquency in the Liverpool area J. H. Bagot found among the delinquents and the general school population the most significant difference was a considerably greater amount of subnormal nutrition among the delinquents. He considered that there might be some reason to think that inferior health is an important factor in causing delinquency.

In 1936 A. Royds carried out an inquiry, under the auspices of the Oldham Council for Mental Health, into the relationship of delinquency and environment. He reported that 48.9 per cent of the offenders were of normal physique, 18.8 per cent were above normal, and 32.2 per cent were below normal. Any case which deviated in its height and weight ratio by more than 5 per cent from the Anthropometric Ratio given in the Board of Education Medical Report was regarded as above, or below normal for the purposes of this classification.

F. E. E. Schneider, when medical officer at Pentonville prison, estimated the vital capacity of 600 adult recidivists on reception into and discharge from the prison. The results led him to conclude, within the limits of the investigation, that the vitality or health of the average criminal recidivist is not much below that of other men, that his health improved in favourable surroundings, which implied that his surroundings were not favourable when he committed the offence, and that imprisonment had a beneficial effect on his health.

Benjamin Frank and Paul Cleland studied a group of 504 inmates of the New Jersey State Reformatory and concluded that there was no significant relationship

between physical capacity and mental level, nor between physical capacity and the type of crime committed. The evidence of a relationship between physical capacity and the number of institutional commitments was inconclusive. On all tests of force the guards were superior to the inmates, but the latter were superior to a group of guards in the same institution with respect to velocity measures. The authors used MacCurdy's test and defined physical capacity as the capacity of the large muscle groups to translate power, and that it is "conditioned by two factors, that of muscular force inherent in the innervation of the muscle cells. Ideally these two factors should so combine in the expression of physical power that the result is efficient movement with the least expenditure of energy".

The degree of criminality in different offence groups, or even in persons in the same group, may be incorrectly assessed unless studies are made of individual offenders and the circumstances associated with their offences. Murder, for example, is necessarily punished more severely than theft, but the murderer who is reprieved, and is not insane, is unlikely to repeat his offence, whereas the criminal tendency of the thief often urges him to steal again as soon as he regains his liberty. Only experience can assess the degrees of turpitude in different cases of murder or theft.

The anthropological school believed the criminal was irresponsible on account of faulty inheritance, the environmental school placed the blame for criminality upon the society which allowed adverse social conditions to exist. The modern school, recognizing the importance of both inherited and environmental factors, finds sometimes one and sometimes the other predominates; and since physical and mental qualities sometimes overlap in a perplexing manner a reference to some modern observations is warranted.

A striking contribution to the study of the hereditary constitution of the criminal has been made by Johannes Lange in his investigation of criminal twins in Germany. His method involves a study of the behaviour of monozygotic twins, dizygotic twins and other siblings. Monozygotic twins are the result of fission of a single ovum, and dizygotic twins develop from two separate ova and their inherited qualities are no more alike than those of siblings who are not twins. The childhood environments of both classes of twins, however, are likely to be similar. If so, and if hereditary factors dominate behaviour, a closer similarity in conduct may be expected in monozygotic than in dizygotic twins. If the hereditary factor is of little importance the criminality of pairs of monozygotic twins will show no more similarity than in pairs of dizygotic twins and the dissimilarity in the criminal behaviour of monozygotic twins will provide material which will enable the environmental factors to be assessed. Since the environmental factors will be more nearly the same in dissimilar twins than in any other pairs of siblings, except mono-ovular twins, whilst the hereditary endowment will be the same, differences between the behaviour of pairs of the former and pairs of the latter will tend to increase as the influence of the hereditary factor decreases. If, however, the hereditary factor is important and the environmental factor is unimportant the criminal behaviour of monozygotic twins will be more alike than that of the dizygotic twins, and that of the latter will show no more similarity than is found in any other pair of siblings. In thirteen monozygotic pairs of twins Lange found both twins had been sentenced for an offence in ten cases, and in three cases only one twin had broken the law whilst the other had not. Of seventeen dizygotic twins both twins

had only been sentenced in two cases, whilst in all the rest only one twin had come before the courts and the other had not. A comparison between the criminality of dizygotic twins with the criminality found in ordinary siblings showed that both of a pair of dizygotic twins were not sentenced more frequently than was expected. Lange concluded that: "Heredity does play a role of paramount importance in making the criminal. Our rough figures also permit the conclusion that heredity alone is not exclusively a cause of criminality, but that one must also allow a certain amount for environmental influences. Even our monozygotic pairs did not by any means show complete agreement in their attitudes to crime. The fact that in about one quarter of the cases only one of the monozygotic twins was sentenced must be interpreted as showing that in these cases some environmental influence or other determined the criminal behaviour."

The Rosanoffs and Handy found in ninety-seven pairs of twins of an adult criminal group thirty-three pairs of male twins who were probably monozygotic. In twenty-two cases both twins were criminal, in eleven only one was criminal, the other not. There were twenty-three pairs of dizygotic twins in the group, and in only three cases were both of the twins criminal. A similar result was found for female monozygotic and dizygotic twins.

Heinrich Kranz found in thirty-two monozygotic twins twenty-one (66 per cent) were concordant, each twin of the pair having a criminal record; and eleven (34 per cent) were discordant. Of forty-three dizygotic twins of the same sex twenty-three (54 per cent) were concordant and twenty (46 per cent) were discordant, and of fifty dizygotic twins of different sex seven (14 per cent) were concordant and forty-three (86 per cent) discordant. He adds: "This indicates that of the monozygotic twins, about two-thirds were concordant in respect of criminality; of the same sexed dizygotic, about one-half were concordant, and of different sexed twins about one-seventh were concordant."

Friedrich Stumpf found in a modern study that the number of criminal pairs was eleven out of eighteen identical pairs, and seven out of nineteen fraternal pairs. These deductions, like those of Lange, are based upon small numbers, but personal experience leaves me in no doubt that certain crimes are almost entirely endogenous; for example, those directly due to constitutional types of mental disorder. Others appear to be almost entirely exogenous; for example, offences committed by normal persons under the stress of particular circumstances.

In the investigation at Wormwood Scrubs prison a criminal heredity was significantly associated with a history of more than one conviction in lads with a record of offences against property, and it appeared probable that for about sixty lads in the group of 3,622 a criminal family history was a causative factor in the commission of further offences after the first conviction. There was no evidence of any association between an insane heredity and the number of convictions. The figures suggest that a family history of mental defectiveness may have been responsible for about six lads committing offences in the discipline and sexual groups, and that a family history of epilepsy might be considered responsible for about eight lads committing offences in the discipline group. But I have no reason to consider from our work at Wormwood Scrubs, or from other personal experiences over many years that criminality, as such, is transmissible.

CONSTITUTIONAL TYPES

Kretschmer's work on *Physique and Character* led him to consider that there is a distinct relationship between the two, and he classified the physical characteristics of some 400 men and women into four types: The *asthenic* or *leptosomic* is of slight physique and is essentially deficient in thickness and of average unlesened length; the deficiency in thickness is present in all parts of the body so that the average weight as well as the total circumference and breadth measurements are below the general average for males. The *athletic type* is recognized by the strong development of the skeleton, musculature and skin; the height is above the average and the torso broad. The *pyknic type* is characterized by middle height, rounded figure, deep vaulted chest and prominent abdomen. The *dysplastic type* is, for the most part, undersized; in the face there is a scanty and insufficient modelling of the prominent parts of the nose, lips and chin. The bony relief of the forehead is correspondingly weak.

Kretschmer divides the temperaments into schizothymic—the reserved shut-in, solitary, day-dreaming type, and the cyclothymic—who present well-marked mood-swings, at one time elated at another depressed. He divides these two main groups into sub-groups and considers that schizophrenic patients are derived from the former group, and manic-depressive patients from the latter. He formulates his results thus: "There is a clear biological affinity between the psychic disposition of the manic-depressives and the pyknic body type. There is a clear biological affinity between the psychic disposition of the schizophrenic and the bodily disposition characteristic of the asthenics, athletics and certain dysplastics. Vice versa, there is only a weak affinity between schizophrenic and pyknic on the one hand, and between circulars and asthenics, athletics and dysplastics on the other.

E. Mezger considers the pyknic type of person, being more sociable and adaptable, is less likely to commit crime and is more easily reformable. G. Aschaffenburg believes the pyknic type is prevalent among occasional offenders, and that the asthenic and athletic types have a larger share among habitual offenders.

Werner S. Landecker refers to two studies, each based on one hundred cases, one published by Kurt Boehmer dealing with inmates of a German prison, the other by S. Blinkov dealing with murderers of Turkish descent in the Russian province of Aserbaidzan. In both groups the proportion of pyknics was considerably lower than that of the other types. The German study does not substantiate the assumption that pyknics commit acts of violence but the athletic type appeared to be associated with such offences. In the Russian study asthenics outnumbered any other type among the murderers.

Willemse records a series of detailed observations upon 177 delinquents in South Africa between the ages of sixteen and a half and twenty-one and a half years. But a perusal of the literature will cause many to doubt whether the types are as definite as described or have the importance claimed for them. In a prison population extreme forms, as elsewhere, are seen but transitional forms and mixed types occur. Kretschmer himself acknowledges the fact that mixed types are as frequent as pure. He states: "Our description of types . . . refers not to the most frequent cases, but to ideal cases, to such cases as bring most clearly to view common

characteristics which in the majority of instances appear only blurred, but which, all the same, can be empirically demonstrated."

Numerous leptosomes and athletics were met with by Olof Kinberg in a group of murderers examined by him, but only one pyknic. He found pyknics also were rare among habitual criminals, but leptosomes, athletics and mixed forms were numerous. He does not, however, state the number of murderers in the group nor the proportion of pyknics to asthenics and athletics in the general population of Sweden.

The difficulties of relating temperament and physique in individual cases is apparent from the literature. For example, S. Kraines states that in studying a freshman medical school class he found it almost impossible to classify the majority of students into typical physical categories, and only a few extremes were of a typical character. Linford Rees in a recent investigation into physical constitution and abnormal mental states in 389 soldiers who were successive admissions to hospital found no evidence for definitely segregating physical types of the kind envisaged by Kretschmer. He formed the opinion, however, that the physical aspect of human constitution is more than an incidental factor, not only in determining susceptibility to mental disorder but also influencing the form and progress of the illness. Rees considers that the study of physical constitution as an integral part of the total personality should prove an interesting study for clinical research in psychiatry.

According to J. I. Cohen, Kretschmer's work on physique and character offers little that is new. In an analysis of the anthropometric measurements of male and female patients suffering from mental disorder he found two factors, one governing general growth or magnitude, and the other governing differences in proportion. On eliminating the general factor he found a statistically significant relationship was established between physical proportions and a diagnosis of mental disorder.

The relation of physique to temperament is even more elusive in adolescents than in adults, and in the investigation of the adolescent offenders at Wormwood Scrubs prison any attempt to ascertain the connection was intentionally omitted. Nevertheless, the criminologist must keep himself informed with the recent studies of workers in this field. If much of it refers to physical and psychotic types, rather than to those who are criminal, there may be nevertheless an indirect association if crime occurs in a psychotic who belongs to a definite physical type.

However this may be, I entirely agree with Landecker's view: "The thesis of an association between physique and character should be applied in the field of criminology with extreme caution. . . . There are a variety of other factors which contribute also to the formation of behaviour patterns. Science is not yet in a position to determine the share of the constitutional factors as compared with others."

PHYSICAL ILLNESS AND CRIME

The behaviour of a man who is ill often differs much from his behaviour when well, and although the significance of the association between ordinary physical illnesses and criminal behaviour is often inconclusive a direct connection can sometimes be traced between the illness of an offender and his offence. Such was the

case in an elderly invalid who many years ago suffered from a severe attack of bronchitis which confined him to bed seriously ill and made him depressed, anxious and irritable. After a quarrel with his wife he was left alone whilst she sought protection in the house of a neighbour. He left his bed and followed her, supporting himself by the street railings in front of the houses and killed her. Elsewhere I have described cases where persistent criminality was attributable to head injuries received during the War 1914-18. Wallace found delinquents more physically mature but presenting a greater number of physical defects than ordinary school children. Lott found in a series of one hundred court cases representing specially difficult problems that physical disabilities were present in twenty-six and had a very definite bearing on the behaviour of twelve of them. Hrdlicka states that there is not a single physical sign, or collection of such signs, that would justify the diagnosis of anyone as a prospective criminal.

Many important new facts are appearing as a result of investigations into the activities of the endocrine glands—for example the pituitary, thyroid, gonads, and adrenals—whose internal secretions affect the functioning of the individual. At the same time it must be admitted that although the resulting knowledge is impressive its present application in the treatment of criminals leaves much to be desired. E. Mapother and A. Lewis, writing in 1937, stated: "Evidence, still inconclusive, is accumulating to suggest that the blind use of the endocrine glands in the theory and practice of psychiatry has had its day."

Organic inferiority is not uncommonly associated with criminal behaviour. Many cases of exhibitionism in men and lads is the result of sexual inferiority, and occasionally cases of murder are based upon it. A young man murdered his ardent sweetheart and then attempted suicide because he feared a degree of impotence would prevent his consummation of the marriage. At the same time, as we look out upon the world, we find that although organic inferiority may result in delinquency and crime it frequently leads to great social success.

It may be difficult to decide in particular cases whether the physical or mental condition of an offender has been predominant in causing a crime. A jealous young man murdered his sweetheart and was sentenced to death. He was under the observation of an experienced prison psychiatrist before and after trial and until conviction showed no evidence of physical or mental disease. After the trial he became unusually anxious and developed tachycardia, excessive sweating and fine tremors of the hands. There was no exophthalmos, but the physical and mental state suggested a mild degree of thyroid dysfunction. When I examined him the condition had been present for several days. I attributed it to his position, and this view was corroborated by the fact that all the symptoms disappeared a few hours after his suspense was removed on being told that the sentence was to be carried out.

A brief reference is here due to the much-debated question concerning the advisability of sterilizing criminals. It may be stated with confidence that no physician, biologist, eugenicist, or criminologist is in a position to declare that the criminality of any individual will be transmitted. As I have said elsewhere amidst so much difficulty, doubt and perhaps misunderstanding, eugenic sterilization, as a means of combating crime, appears to be unwarranted. The minor operation is inappropriate as a prevention of sexual crime. Even the major operation does not necessarily

castrate the mind. It may be harmful to the individual operated upon, and may also lead to a false sense of security in the public mind. At the present time there is insufficient evidence to determine its value in this connection. Both minor and major operations, as punitive expedients, are contrary to public sentiment.

CONCLUSION

In this matter as in other human affairs the picture is inevitably one of constant change, and the relation of physical factors to criminal behaviour demands further exploration in many directions. For example, the treatment of certain forms of criminal behaviour by organotherapy; the treatment of emotional imbalance in adolescents on the lines recently advocated by Harold S. Hulbert; a large-scale comparison of the electroencephalographic records of aggressive criminals and normal people; the effects of hypoglycaemia, hydration, and hyperventilation, and so on. Misconceptions in the past have often obscured research, and the findings should always be compared with those of other field workers, whilst patience, scepticism and suspended judgment should be our watchwords.

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VII

SEXUAL OFFENDERS *

DISCUSSION

AMONG the flotsam of modern society sexual offenders require special consideration. At the same time anyone who approaches the subject of sexual crime from the scientific aspect is confronted with some difficulty. For criminology has hardly reached the dignity of a science, and psychiatry has scarcely attained the high estate of maturity. Moreover, the subject impinges upon social morality and religious doctrine, and the ordinary citizen is tempted to appraise sexual misconduct in accordance with the manner in which it personally affronts him, rather than by the measure of its social importance, or its significance as an individual shortcoming.

Further, although the ethics of the Christian religion are beyond reproach and the scientific quest for truth must be disciplined as well as sincere, the exponents of religion on the one hand and of science on the other sometimes fall short of the standards required to illuminate their particular points of view.

So it comes about that the ordinary man occasionally ignores the opinions proclaimed by religion and science and establishes his own standard of sexual behaviour. This is frequently based upon ignorance and unreliable premises, and in this matter ordinary men or women may be incompetent to assess accurately the activities of others.

This much is certain, in regard to sexual as well as to acquisitive and aggressive activities, we must either live on a higher level than the rest of the animal world or fall to a lower. We cannot live on the same level, for apart from other considerations, our activities have numerous impacts and may adversely affect social security unless the potentialities of the higher levels of behaviour are exploited. It is also important to bear in mind that, particularly in matters concerning sex, emotion is often uninfluenced by reason and may obey chance circumstances.

Although monogamy is to-day the most favoured solution of the sexual relationship between men and women it is clear that not inconsiderable forces constantly operate to disrupt it. The daily press frequently presents us with examples of what amounts to polygamy when men and women repeatedly remarry after successive divorces. Society has not so far introduced alternatives to the promiscuity associated with professional prostitution or non-professional libertinism.

It is not my purpose here to consider ordinary sexual relationships, but since some foolish moderns occasionally suggest to women that marriage has been imposed upon them as a form of serfdom in order to gratify the desires of men, it is well to remind ourselves from time to time that it protects women from them-

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selves, as well as from men, and raises the status of both sexes in their intimate relations with each other.

Ideas change with the times. The Mosaic Law imposed the penalty of death on both parties when a married woman committed adultery. The old Roman Law punished adultery on the part of the wife, but not on the part of the husband; and although a father had the right to kill both his married daughter and her accomplice if she was taken in adultery either in his house or her husband's, a husband had no such right as to his wife in any case, and no such right as to her accomplice unless he was an infamous person or a slave taken in his own home. By a law of Cnut's a woman was to forfeit both nose and ears for adultery, and in the seventeenth century the ecclesiastical law punished both adulterous accomplices with extreme severity. Stephen called attention to the fact that when the Divorce Act of 1858 was under discussion in England the suggestion that adultery should be treated as a criminal offence was decisively rejected.

The Swiss Federal Code of 1937 includes adultery among Offences Against The Family. Article 214 states: "A married person committing adultery and the partner guilty with him (or her) shall, on petition of the injured lawful spouse, be confined in prison for not over one year or shall be fined if a divorce or legal separation ensued as a result of this offence."

Kenny pointed out that the English law regarding sexual offences does not inflict criminal penalties upon all those acts which ecclesiastical law prohibits and used to punish, and which the law of contract still visits with the sanction of Nullity, but it selects for criminal prohibition only those in which there is also present some further element—whether of abnormality or violence or fraud or widespread combination—that provokes such a general popular disgust as will make it certain that prosecutors and witnesses and jurymen will be content to see the prohibition actually enforced.

The criminal law is intended to maintain the standards of behaviour which are considered to be necessary for the welfare of the community, but which cannot be enforced by the operations of the civil courts; this is particularly noticeable in the case of sexual offences. It is concerned with the grosser breaches of sexual misconduct which, on account of their abnormal character, associated violence, or other circumstance, or the immaturity or mental disability of the victim, can only be repressed by criminal sanctions.

Jeremy Bentham (1748–1832) in his classification of offences referred to "imaginary offences" which he defined as "acts which produce no real evil, but which prejudice, mistake or the ascetic principle have caused to be regarded as offences. They vary with time and place. They originate and end, they rise and they decay with the false opinions which serve as their foundation." He instanced the vestal virgins who were buried alive for unchastity and he considered, so far as the public are concerned, that sexual offences in which there is neither violence, fraud, nor interference with the rights of others could be arranged under the head of "imaginary offences".

Sexual offenders are more liable to be misjudged by prejudice and ignorance, perhaps, than the majority of criminals, and bias is almost inevitable if their conduct is reviewed solely in the light of narrow personal experience and the tastes and distastes of the assessor. Many persons of both sexes are grossly ignorant on sexual

matters in spite of the modern tendency to discuss the subject with a considerable amount of freedom. Some husbands, in effect, commit rape upon their wives because they do not understand the art of married life, and do not realize that a woman is at a disadvantage unless a psychical approach precedes each physical contact. Sexually anaesthetic men and women who are incompetent to pass judgment upon the inter-relationships of the sexes may be called upon as members of a jury to assess the guilt of a sexual offender; and sexual behaviour is often gauged by persons who regard any sexual activity as perverse unless it conforms to their accustomed and restricted pattern of behaviour.

Sexual activity is essentially a physical response to a mental stimulus which may affect different persons in different ways, and one person may be attracted by a feature or quality to which his neighbour is indifferent. Most discussions on crime take place on common ground, and the disputants address themselves to facts related to similar experiences of life as their fellows. In sexual offences this may be impossible, for no one can be sure that he approaches the problem from the same angle as his fellows whose sexual experiences, and the direction of whose innermost thoughts on such matters, are usually undeclared.

This is particularly the case where women are concerned. A man may have some reason to believe that his manner of approach to sexual conduct or misconduct corresponds with that of other men, but few may learn the innermost thoughts of women on the subject. The matters which are most significant to them in connection with the physical and mental aspects of sex are usually concealed, and often unsuspected by others.

Further, although we may generally pass sound judgments upon the ordinary affairs and manner of life of our friends and acquaintances, a few of whom may for a moment unlock the cupboard which contains a skeleton and expose it to our view, fewer still in affairs of sex open to others the double-locked sanctuary which retains the highest and noblest memories of a deep affection. For these are often too sacred to be lightly uncovered even to oneself. They may, perchance, be secretly taken from their wrappings in hours of difficulty or despair to serve as an inspiration or an encouragement, but they rarely reach the light of day save in the delirium of illness or in the low mutterings of impending death.

The importance of viewing sexual offenders broadly is obvious when one considers the evil of prostitution, for it is tolerated in some cultures and not in others, and Bentham pointed out that the kept mistress may be regarded as almost as infamous as the prostitute. Nevertheless, some may agree that when the former remains under the same protection continuously she may compare favourably with the woman who rapidly indulges in one or many marriages for a short period. Here as so often elsewhere, it is more instructive and equitable to ascertain the purpose of behaviour than to consider the manner of its presentation.

Moreover, as Putnam observed: "It is true, however those who have not looked into the matter may think otherwise that, in the eye of science, perverted instincts such, for example, as an excessive passion for a person of the same sex carried from the realm of thought into act, finds its analogue in many overdone or even quasi-normal relationships of daily life. It is a question of degree that is at stake, and although for purposes of punishment, prevention, public self-protection and social

standards we must draw sharp lines yet knowledge should make us prudent in passing scientific judgments."

The foregoing is not intended to belittle the gravity of sexual crime. Indeed, the Pentateuch code of social hygiene forbade homosexuality, bestiality, incest and other sexual irregularities. But in order to attain a true perspective of this complex group of offenders it is necessary to recognize the fact that sexual crime may be the result of depraved brutality, selfish indulgence or sublime emotion. Moreover von Hentig has reminded us that in sexual offences the element of seduction may emanate from the victim who then proceeds to the rank of an accomplice.

When we consider the state of flux which exists to-day concerning sex morality, and the fact that we cannot yet see clearly its future direction, it is surely both elementary and fundamental steadfastly to insist that the matter be connected with morality in general?

Sexual offenders are generally regarded as individuals who engage in certain illegal sexual activities. The medical conception is wider and includes cases of theft, housebreaking, burglary, common assault and murder if the offence has for its purpose the immediate or delayed gratification of normal or abnormal sexuality. As when a man steals or breaks into a house to obtain possession of a woman's underclothing in order to satisfy a fetishistic activity, or knocks a woman down in the street to possess her shoe for the same reason, or murders her under the influence of jealousy, or when she attempts to save herself from being raped. So too, when a well-to-do woman steals from a shop in order that the tense feeling aroused by the danger of detection may act as a sexual excitant.

CLASSIFICATION OF SEXUAL OFFENCES

A study of the literature shows that sexual offences are considered under different headings by different authorities. In England and Wales they are officially classified as follows:

Unnatural offences—that is, carnal knowledge of any animal and carnal knowledge by a man of a man, or a woman per anum. Any person above the age of fourteen years who permits himself or herself to be so carnally known is a principal in the first degree.

Attempts to commit unnatural offences—including assaults with intent to commit unnatural offences, indecent assaults upon male persons, and male persons soliciting for immoral purposes.

Indecency with males.

Rape—that is the offence of having carnal knowledge of a woman against her will by force, fear or fraud.

Carnal knowledge of a female idiot, imbecile, defective or lunatic.

Indecent assaults on females.

Defilement of girls under thirteen, and of girls aged thirteen and under sixteen years.

Incest.

Procuration—including living on the earnings of prostitution, detaining women in brothels, etc.

Abduction. Bigamy. Prostitution. Indecent exposure.

STATISTICAL FINDINGS

In the year 1938, the last for which figures are available at the time of writing, the number of sexual offences committed by males was in round figures ten times the number committed by females. For all kinds of offences the proportion is 8 to 1. The reasons for this are probably various, and biological, psychological and social factors seem to influence the result.

The number of official sexual offences known to the police in England and Wales in the year 1938 was 5,018 against 4,646 in 1937. The number of crimes known to the police, however, exceed the number of persons found guilty because many crimes are committed of which the offenders remain undiscovered, or though discovered or strongly suspected cannot for some reason be prosecuted, and also because a person convicted of an offence frequently admits numerous other offences and asks that they may be taken into account when the court passes sentence. In such a case although there is only one person convicted the conviction includes many crimes.

Of the 2,321 persons found guilty of indictable sexual offences during the year 1938:

119 or 5 per cent were under the age of fourteen.

356 or 15 per cent were aged fourteen and under seventeen.

354 or 15 per cent were aged seventeen and under twenty-one.

209 or 9 per cent were aged twenty-one and under twenty-five.

269 or 12 per cent were aged twenty-five and under thirty.

1,014 or 44 per cent were aged thirty and over.

Among these were 1,104 cases of indecent assault and 274 of bigamy.

The number of sexual offenders dealt with at the Central Criminal Court, Courts of Assize and Quarter Sessions was:

18 aged fourteen and under seventeen.

150 aged seventeen and under twenty-one.

287 aged twenty-one and under thirty.

527 aged thirty and over. A total of 982.

The offences of which they were convicted were:—

<i>Offence</i>	<i>Males Convicted</i>	<i>Females Convicted</i>
Unnatural offences	58	—
Attempts to commit unnatural offences	76	1
Indecency with males	141	—
Rape	40	—
Indecent assaults on females	115	—
Defilement of girls under 13	31	—
Defilement of girls 13 and under 16	179	—
Incest	40	4
Procuration	15	2
Abduction	4	—
Bigamy	195	81
	894	88
	982	

In addition to the above, persons aged seventeen years and over (sexes not differentiated) were found guilty by courts of summary jurisdiction as follows: Attempts to commit unnatural offences (indecent assaults on male persons under sixteen) 225; indecent assaults on females under sixteen, 657; indecent exposure, 1,574; offences by prostitutes, 3,192.

The Annual Report of the Prison Commissioners for 1938 shows that 246 males were received into prison for unnatural offences and attempts, etc.; 483 males and one female were received for rape and other offences against females; 110 males and 22 females for bigamy; 154 males and 32 females for brothel keeping and living on the earnings of prostitution; 5 men and 172 women for prostitution, and 449 men and 81 women for indecent exposure.

The reconviction rates among males guilty of five types of offence were:

Age	Violence against the person	Sexual Offences	Frauds and false pretences	Breaking and entering	Larceny
16 and 17	21.4	22.9	48.0	35.1	28.8
18-20	28.6	11.3	30.5	28.5	26.3
21-29	19.6	16.6	24.4	28.0	23.1
30-39	10.5	13.1	15.8	30.7	14.9
40 and over ..	8.3	5.6	9.9	32.1	10.0

The number of persons found guilty of indictable sexual offences in the five-year period 1934 to 1938 show a gradual rise from 1935, although the year 1934 showed a higher figure than 1935. They are set out hereunder in age groups:

Year	Under 17	17 and under 21	21 and under 30	30 and over	Total
1934	353	232	400	829	1,814
1935	347	235	379	811	1,772
1936	429	232	429	838	1,928
1937	397	294	394	950	2,035
1938	475	354	478	1,014	2,321

The following figures show the proportion per 100,000 of the population aged seventeen and over found guilty of offences during the years 1934-8:

Year	Violence against the person	Sexual offences	Fraud and False pretences	Breaking and entering	Larceny	All other offences
1934 ..	3.9	4.9	15.6	10.8	110.2	5.8
1935 ..	4.4	4.7	15.0	10.1	107.7	5.6
1936 ..	4.3	5.0	14.9	10.0	111.3	5.7
1937 ..	4.9	5.3	14.1	11.2	116.5	5.8
1938 ..	4.7	5.9	15.3	13.1	117.3	6.2

There was a slight decrease in the proportion of persons found guilty of frauds and false pretences; a slight increase in the proportion of persons found guilty of violence against the person, sexual offences and in the "all other offences" group; and a still larger increase among offenders found guilty of breaking and entering and larceny.

The proportion of sexual offenders is not sufficient to cause alarm, and the sentences imposed in Britain are much less severe than they often were in the early years of the century. If imprisonment is regarded as a means of ensuring social order there can be no doubt that a further measure of security can be assured by the imposition of the authorized heavier penalties.

The above figures may be very different elsewhere, and Bonger was under the impression that the amount of sexual criminality which had been ascertained in Southern Europe was somewhat greater than in the northern areas of the Continent. However this may be, it is an interesting fact that whereas, broadly speaking, in England eight men commit crime to one woman the figures for bigamy are less than three men to one woman.

There can be no doubt that sexual activities and sexual offences are related to national qualities, and that national habits such as alcoholism are likely to be reflected in the estimates of sexual crime in different communities. Discussing, in 1936, the criminality among the Jewish and non-Jewish populations in ex-Russian and ex-Austrian Poland, Hersch found that it was much less among the Jewish population for all kinds of offences against the persons—that is to say, for crimes against life, against health and the body, against sexual morality and the family, against individual liberty and against honour. In ex-Russian territory offences against sexual morality and the family in 1924-5 were 1 Jew and 3.9 others per 10,000 of the inhabitants; in ex-Austrian territory 4.1 Jews and 8.2 others per 10,000 of the inhabitants. Van Vechten found in America the commitment rates for native-whites and foreign-born whites were respectively for rape .4 and .2 per 10,000 and for other sex offences .3 and .4 per 10,000.

Bonger, quoting G. Aschaffenburg, recorded the fact that in Germany sexual offences occurred most frequently in the months of June and July. He also quoted Rosner who stated that in France in the years 1827-70 indecent offences against children and against adults reached their peak in the same months, as did also indecent offences in England in the years 1905-9. Bonger pointed out that the increase had already started before there was any question of a noticeable rise in the temperature, and it is therefore probable that the lengthening of the days and the better weather allows opportunist crimes to take place in quiet woods and parks. Further, sexual offences are naturally committed more in the open air and upon strangers. Bonger suggested that the remainder of the rise is connected with an enhanced sexual urge at this time.

CAUSAL FACTORS

Social

Bonger stated that sexual criminality is committed to a large extent by unmarried people. In his anthropological study of the American Criminal, Hooton found a great excess of unmarried men among criminals in general, but he also found that

rapists and other sex offenders tend to marry in excess of the total criminals although the differences were not statistically significant when due allowance had been made for state sampling. Goring found from a comparison of quinquennial marriage rates of first offenders convicted of different crimes that crimes of fraud, which included forgery, coining and embezzlement, as well as every kind of fraudulent pretence, distinguish particularly a class which, at the same time, has a larger proportion of married persons than have other classes of criminals and has also a different age distribution, i.e., crimes of fraudulence are committed at a later age than other crimes. The age distribution of offenders convicted of incendiarism and other forms of wilful damage to property, stealing, sexual offences and crimes of violence against the person "are fairly similar to each other; their respective marriage rates, allowing for expected variations due to random sampling are in close accord".

Bonger pointed out that numerous persons in present-day society grow up in an environment in which there is no possible sublimation of sex-life. Inadequate housing accommodation, which brings children into close contact with sex-life when they should be kept away from it, bad example, and the low mental standing of parents are mentioned by him as important factors.

Biological

The importance of biological factors in connection with sexual crime does not always receive the attention it deserves. But striking illustrations are sometimes observed in the lower animals as well as among ourselves which indicate the significance of the mental as opposed to the physical aspects of sexual attraction, and interest in the psychological and sociological aspects of sexual crime should not obscure the importance of the biological associations.

Human society, like other animal societies, is sustained by the fundamental urge of the sex instinct. Although the desire for offspring may be often present and the predominant factor in human mating, it is clearly not always so.

There seems to be little doubt that parental emotion is usually the result and not the cause of sexual union in the lower animals. But if we consider the elaborate courtship of the Great Crested Grebe, and the aphrodisiac advances of the male warbler in "ecstatic mood", holding a leaf or piece of stick in his beak before his prospective mate, as if suggesting, as Pycraft observed, the work of nest building and its delightful sequence, we are led to believe that an association between courtship and the idea of future offspring may be an occasional and necessary antecedent to the mating of some of the lower animals.

The monogamous habits of the higher apes and some birds appear to be the result of physical and environmental as well as mental factors. But when I observed a thoroughbred stallion who was serving two mares on alternate days, in the act of uniting with one of them immediately dismount before penetration had taken place on hearing the other, whom he could see across the stable-yard, neigh to him, it seemed clear that his mental associations with her were more important than his physical contact with her rival.

When, too, I think of the bull sea-lion who asserts his ownership of a cow, wandering from his harem towards a rival bull, by seizing her so that she is torn to pieces in the tug-of-war between the two, and of the female baboon in the London Zoological Gardens who was torn in pieces when her mate died and the unmated

males fought to possess her, I am reminded of the men I have examined who murdered the woman of their choice, determined that if they could not possess her no one else should have that privilege. Again, there is a strong likeness between the activities of the flagellant sadist and that of a male Painted Terrapin, who was observed by Pycraft to swim around and oppose the path of the female. Having done this he closed up, and with his long whip-like fingernails beat her about the head so rapidly that nothing more than their blurred image was visible.

For the most part union between the two sexes is more easily accomplished among civilized men and domestic animals who are able to obtain an abundance of food and better chances of maintaining a high standard of health than often appears to be the case in the natural state. The love antics and exhibitionism of birds show us the mental stimuli which are intended by the males to attract the females and serve as preludes to physical union. The remarkable display by the Argus pheasant of his wing and erected tail feathers to the female, described by Darwin and others, is well known.

Pycraft suggested that an amorous dalliance was, perhaps, the invariable rule among animals, although it takes many and strange forms. He described, for example, the undignified caperings of the ardent male crocodile which are accompanied by roars and bellows only emitted during the mating season, and by an overpowering odour of musk discharged from glands in his tail and lower jaw which at length overcome the apathy of his chosen mate. Indeed, in some cases of exhibitionism as I pointed out some years ago, one is reminded of the courtships of the farmyard and the love antics and "showing off" indulged in by certain animals to arouse sexual desire in the females of their species.

Among animals attempts at sexuality between members of the same sex are often seen on our home farms as substitute reliefs to sexual tension, and would be regarded as sexual deviations if they occurred between men or between women. Normal sexual activity in man is expressed through biological channels and the preliminaries connected therewith. Abnormally action may go no further than the preliminary overture, or it may be expressed in directions which appear to have little biological significance. For example, bestiality is a not uncommon offence in some districts and under certain circumstances, but Crew points out that it is uncertain whether unwillingness to mate with an individual of another species is a widespread phenomenon.

Some light is thrown upon the biological associations of sexual perversions in men by recent observations of Roheim who studied the Central Australian native in his home. He finds it hardly possible to understand their psychosexual life without taking into account the importance of homoeroticism. Discussing the cruel practice of infibulation on Somali women and their defibulation on the wedding night Roheim states that sadism among Somali men, who always have a whip at hand, cannot develop into a special perversion because it is simply the normal condition.

The forensic psychiatrist giving evidence in a criminal court in a sexual case, and the lawyer who examines him are, I believe, likely to be sometimes more intelligible to a jury if they have the biological approach to sexual offences in mind than if they only concern themselves with abstruse psychological theories which may not stand the test of time.

Physical

The personal attributes and attractions of the woman who is the victim of a sexual offender do not usually seem to be considered in any detail by the attacker. In a recent case with which I was concerned an edentulous virgin of unprepossessing appearance was raped in her seventieth year and murdered by a man of twenty-six who was not drunk, mentally defective or suffering from mental disease.

In some cases of homosexuality the attractive appearance and physique of the accomplice may be an important causal factor. The physique of the offender may be a factor when physical development is precocious and much in advance of mental growth if desire is uncontrolled by the reason and judgment which will restrain it in later years.

Apart from alcohol the ingestion of aphrodisiacs in England is rarely associated with sexual crime. There is little doubt that some persons occasionally drink alcoholic liquor because of its action as a sexual excitant, and that a sexual crime results. Some who take alcohol solitarily or convivially almost accidentally commit similar offences. In this connection it may be noted that Kratzmann, referring to the impudicity of many alcoholists, finds the reason in the fact that alcohol strengthens their life instinct and consequently also the sexual instinct.

Scharffenberg has pointed out the difficulty there may be in determining when the offender is an alcoholic, or under the influence of alcohol at the time of the offence, whether alcohol is really the cause of his behaviour. He considers that to prove such was the case one must be able to affirm that had the offender been sober he would not have committed the offence. He agrees, however, that alcohol is often a concomitant cause in certain categories of sexual offences.

Ernits, in 1922, showed the association of alcohol and assaults on women. He pointed out that the temperance movement in Esthonia received an impetus from the Finnish temperance movement during the last quarter of last century, and that the first World War brought about in Esthonia the prohibition law of 1914. This at first produced good results, but owing to the prolongation of the war, the Russian Revolution, the German occupation, the Esthonian War of Independence and other causes, alcoholic liquors were again legally on sale from 30th June 1920. His figures show that assaults on women increased from the first half of 1920, being then 13 as against 34 in the first half of 1921, as well as in the second half of that year.

An enlarged prostate gland is sometimes alleged to be a common cause of sexual crime in elderly men but there is reason to believe that the connection has been exaggerated. At the same time it may be noted that a sexual offence sometimes seems to be related to climacteric changes in men and women, although the majority of those presenting sexual abnormalities do not show any demonstrable abnormality of their endocrine glandular systems. It is to be remembered that castration in adult men does not necessarily abolish sexual desire or phantasy. Forel stated that men castrated in adult age may cohabit with their wives, and Havelock Ellis and other observers have arrived at the same conclusion. These opinions are significant in connection with the proposal which is sometimes put forward, and has been practised in Germany, that castration should be adopted as a method of preventing sexual crime. Even if potency is destroyed, castration of the body does not enforce castration of the mind, desire may continue and result in indecent assaults.

Psychological

The various psychological impacts which affect sexual behaviour are frequently insufficiently appreciated, but become apparent when it is remembered that auto-suggestion may be a cause of impotency. That is to say, a man may be impotent if he believes that he is so. On the other hand sexual pleasure may be mental as when sexual phantasies are unaccompanied by sexual activity.

A chance occurrence in which sexual pleasure is experienced for the first time with emotional intensity may, by its associations, permanently affect the sexual life of the individual. A sadistic murder was traceable to a sexual experience in childhood. The personal taste of a shoe-fetishist was due to an experience at puberty when the shoe of an attractive girl played an important part. The pollution of a girl's underclothes by a youth, and her resulting dismay, served to condition his future activities as a sadistic dress-defiler.

The view that sexual crime is usually an expression of mental abnormality is often incorrect. The strength of the sexual urge, whether the activity is normal or perverted, varies in different persons. This is important medico-legally, for we do not acquit a rapist because he is over-sexed and may have more difficulty in restraining himself than many others, and it may be inexpedient to accept the psychological difficulties of the pervert when deciding the appropriate award for his offence, if he is not mentally defective or suffering from some form of mental abnormality other than his perversion. And although the strength of the sexual urge is sometimes sufficient to cause the sexual offender to defy the penalty he may incur, the same choice is made by many thieves and fraudulent persons, and by many aggressive offenders who are rightly held to be responsible.

A recent medical declaration alleges that on no account should the sexual instinct be thwarted and that continence is definitely harmful. To this a medical critic justly replied: "Presumably a state of cultural stagnation is well worth while if premarital promiscuity and complete sexual licence are the recompence." Indeed, if so, why should not the aggressive and acquisitive criminal also be allowed to exercise his instincts as he wills, and hasten the social chaos which must inevitably follow on unrestrained licentiousness.

Our social and ethical customs are based upon the cumulative experience and wisdom of our predecessors as well as of our contemporaries, and if it be true that every dream represents the fulfilment of an unconscious wish and that our phantasies cover the full range of criminal activity, it would seem that we are all potential criminals. Discussing the so called "insufficiently dressed" dreams Putnam observed: "Such dreams show, what we ought in the interests of human sympathy to recognize, that between ourselves and those whom we stigmatize as 'exhibitionists' and therefore criminals the difference important as it is, is one of degree alone."

It is convenient to regard the earliest form of sexual interest as that in which the individual discovers that he can obtain sexual pleasure from self-stimulation. This may commence in infancy or early childhood, and is probably at first a purely mechanical activity. In the second, or homosexual, stage of development the object of the sexual instinct becomes another individual and of the same sex. In the third, or heterosexual stage the sexual object is an individual of the opposite sex. This appears to be the normal manner of development. The stages may overlap, or be

arrested at any point in the process and the development is then said to be "fixated". Through propinquity or more specific environmental stimulus phantasies tend to develop round the autoerotic form of pleasure and as development proceeds become associated with persons of the same or opposite sex, or other animate or inanimate objects.* For many years the normal sexual goal may not be realized or understood and the phantasies may be associated with the individual himself and with all possible relations and emotions that arise between human beings. So it comes about that in phantasy sexual feeling may become associated with the infliction and bearing of cruelty, or may interest itself in activities such as excretion, exhibitionism and the like, the exact form depending upon the experience of the individual, his treatment by adults, the stories he is told or the books that he reads.

Moreover, free sexual development or sexual development along abnormal lines is opposed by ordinary social standards. There is the general disapproval and condemnation of overt sexual behaviour, and the general pressure applied to make the individual conform in development and behaviour with what is considered to be in a particular society ethically correct and socially acceptable. The first type of opposition will tend to drive out of the forefront of the mind all sexual preoccupations and interests particularly those which are tabooed. The second type of obstructive factor will tend to shape the individual into leading, or attempting to lead, a monogamous heterosexual life. But, as this is highly complicated in form and to some extent variable in different peoples, it may often become associated with other sexual patterns which are less socially acceptable among some peoples and illegal among others. Our social system is only one of many alternatives and it is far from perfect. Formerly homosexuality was encouraged in Grecian states to strengthen educative influences for cultural purposes, or to make a special military system more cohesive and effective. Incest was common among the Ptolemies.

A true sexual perversion may be regarded as sexual activity, in which complete satisfaction is obtained without the necessity of heterosexual intercourse. It must be persistently indulged in, preferably in reality, at any rate in phantasy, and not merely be a substitute for a preferred heterosexual activity which is unobtainable for some reason. Both sexes indulge from time to time in perverse activities but these seldom lead to criminal proceedings against women.

Perverse activity which is a preliminary to ordinary sexual relations is excluded from the above definition. Sexual perversion may mean an interest in an abnormal sexual object, or abnormal sexual activity, in a combination or in a synthesis of the two. Examples are met with in a case of bestiality, an exhibitionist, a sadistic homosexual and a type of transvestite.† Usually in addition to the main perversion there is an interest in and frequently a performance of other perversions, and it may therefore be difficult to classify the offender unless the predominance of a particular activity is clear. I have recorded a case in which exhibitionism, masochism,

* I have made full use in much that follows of the views put forward by W. H. de B. Hubert and myself in our *Report on the Psychological Treatment of Crime*, London. H.M. Stationery Office. 1939.

† The term *exhibitionist* is confined in this article to those who purposely and indecently expose their genital organs or adjacent parts to others, and is not used for the large group of persons who adopt means to publicly call attention to themselves on various occasions for gain or to satisfy their vanity. *Transvestite*, or *sonist*, is the term used for those who derive pleasure from cross-dressing; that is in wearing the clothing of the opposite sex, or behaving as member of that sex.

flagellation, frottage and bestiality were combined in the same man, and the combination of homosexuality with sadism or masochism is extremely common.

In some persons, therefore, we find a tendency towards a general sexual perversion, whilst other factors determine the particular interest involved on a special occasion. It would appear that in such cases one is dealing with a personality factor since environmental factors alone would be unlikely to determine such variations of behaviour. Further, many sexual perverts are quite normal in ordinary heterosexual relationships, but have a strong bias towards one, and sometimes more than one form of perversion. Moreover, cases of sexual perversion occur in families of sexual perverts under circumstances in which common environmental factors can be excluded with some degree of certainty.

The environmental factor associated with a sexual perversion may be an early experience of perverse activity arising before the ordinary sexual pattern of activity has been established, or from a more recent happening which actively repels the normal heterosexual expression. Occasionally a more general environmental factor may favour the development of the perversion in persons who are so disposed. For example, discussing the environmental factors leading to the development of homosexual tendencies East and Hubert refer to "influences which destroy the acquired cultural standards erected against homosexuality". Again, J. C. Mackwood, as a result of his psychotherapeutic work, at Wormwood Scrubs prison has been much impressed by the family constellation in the psychogenesis of homosexuality. He finds the atmosphere of the "broken home" is extremely common, and that if the father does not play his part and take a proper interest in his son the latter is left skirt-bound and in increasing dependency and thralldom to his mother: "When the father is weak and gives in for the sake of peace, or spends most of his leisure outside the home, he lets down his son and betrays his scope for suitable development."

The unconscious psychological factors elucidated by deep mental analysis are too involved for presentation here, and are not acceptable to all observers. Wertham states: "The extremists who see in psychiatry the sole and ultimate solution of sex crimes claim that most, if not all, of these offenders suffer from some individual mental disorder which should be treated by psychological individual methods. They want the psychiatrists to decide once and for all which individuals are treatable and determine how long their treatment should last. They want the doctors to decide definitely that they are cured or else pronounce them definitely incurable, as if it could be predicted that every sexual offender would fit into one of two cubby-holes for the rest of his life."

Psychiatric

Sexual offences are occasionally directly attributable to mental defectiveness, some forms of psychopathic personality, psychoneurosis and insanity. The responsibility of the accused may require special consideration at his trial but it is unnecessary to consider here the various medico-legal problems which may arise in connection therewith since, generally, the principles involved in sexual cases are applicable to other forms of criminal behaviour.*

* *Mental defectiveness* signifies an arrested or incomplete development of mind—in English law existing before the age of eighteen, whether arising from inherent causes or induced by disease or injury. A *psychopathic personality* is an individual who presents certain forms of mental abnormality

Broadly speaking, in the ordinary affairs of life the behaviour of ordinary men is largely controlled by the fact that penalties are liable to be inflicted if antisocial tendencies are indulged. In mental defectiveness the penalty is either not envisaged or is too remote to counterbalance a present advantage. In the majority of psychopathic personalities and psychoneurotics the penalty may be clearly appraised, but is outweighed or obscured by the urgency of the desire to commit the illegal act. A tendency towards self-punishment is sometimes apparent in the psychoneurotic. In the insane the penalty may be ignored, unrecognized or welcomed.

Among mentally defective persons received into prison, sexual offences in England and Wales come second in frequency. Acquisitive offences take priority. Usually the sexual crime is of a minor character, but murder and rape occur. Occasionally two mentally defective persons commit a sexual offence on each other and disprove the view that grossly mentally abnormal persons do not conspire together to commit a crime. The importance of sexual offences committed by mentally defective persons lies in the fact that they are almost inevitably repeated unless the offender is placed under care and supervision.

Psychopathic personalities often commit sexual offences. The sexual perverts are included in this group of mentally abnormal persons here and in many classifications, and this is convenient in our present state of knowledge. But some sexual offenders appear to belong to the constitutional psychic inferior group of psychopathic personalities and are not necessarily sexual perverts in the narrow sense.

Psychoneurotic persons sometimes show their sexual inferiority and striving for superiority by committing a sexual murder or other sexual crime. The hysterical sexual offender of this group is, however, usually a nuisance to society rather than a menace, as for example, when he sends indecent letters through the post, and in mild cases of exhibitionism. The sexual life of the hysteric has usually a complicated pattern: precocity, repression, extreme flirtatiousness and provocativeness, combined with frigidity and the gradual development with a married partner of an intricate and abnormal emotional relationship is a rather common sequence. In general, sexual crime, like other crimes committed by hysterical persons has a histrionic element often associated with it.

It is frequently extremely difficult to assess the amount of psychoneurotic compulsiveness in sexual crime, as the normal sexual urge has in many men and women a strong element of compulsion as well as of periodicity. The known circumstances of the crime must be considered in detail and compared with normal sexual activity, together with the intention of the accused, before an accurate assessment can be made as to the part which psychoneurotic disorder has played in bringing about the illegal behaviour. I believe, as a result of personal experience, that sexual crime is seldom due to true obsessional disorder and that clear-cut obsessional states are less frequently a cause of crime than is sometimes supposed. Aubrey Lewis has put the matter clearly. He states: "Sexual offences or perversions are sometimes referred to as though they were obsessional; they are really no more so than gluttony. The patient enters into the act and willingly entertains the anticipation

otherwise unclassified. The term *psychoneurosis* is used for some minor mental disorders which involve only a partial change of personality. *Insanity* is used in this article for convenience, and refers to those psychotics in whom certifiability and irresponsibility are legal consequences. *Psychosis* is the term generally used for major forms of mental disorder which involve a widespread change of personality and often necessitates certification.

of it; he has none of the true obsessional experience even though afterwards he recognizes the unwisdom of his act and may say that he had a preliminary repugnance which had been more of the intellect than of the will, if one may so express it. There are of course rare instances in which sexual offences have been of an obsessional nature."

An anxiety state may be a causal factor of a sexual offence. On the other hand a crime may be committed in order that the fear of detection may increase emotional excitement sufficiently to enable a release of sexual tension, as in the case of the woman to whom I have already referred, who stole articles from a shop finding that fear of arrest produced in her a condition of sexual erethism.

Psychotic persons, who suffer from a major mental disorder, are frequently associated with criminal behaviour. The usual forms met with in sexual offenders are schizophrenia, manic-depressive disorder, general paresis, the alcoholic psychoses, epilepsy and dementia.

Schizophrenia is rather frequently associated with sexual crime and with homicidal crimes which are sexual in origin. Morbid impulsive sexual conduct is sometimes an early manifestation of a schizophrenic illness and the phantasies, delusions and hallucinations which may be present are often frankly heterosexual or homosexual in character. The offender may have some insight into his condition and be willing to discuss the events connected with the crime.

Manic-depressive disease may be associated with sexual crime in either the elated or depressed phase. In the elated the crime is often impulsive. In the depressed phase a sexual crime may also be impulsive but may be the result of delusions and deliberation. At times a homicidal sexual crime may be of an altruistic nature. In some cases of mental depression a sexual crime may be the result of an attempt to temporarily replace gloom by a pleasurable experience.

In general paresis sexual offences are less frequent than some earlier writers declared. When they occur they are usually, in my experience, of the minor sort and are carried out in a particularly shameless manner.

The alcoholic psychoses are rather frequently related to sexual crime. The aphrodisiac action of alcohol together with the blunting of conscience and reason which accompany alcoholic excesses often cause major and minor forms of sexual crime apart from declared mental disease, and the mental and moral deterioration which gradually overtakes many alcoholists is also occasionally associated with illegal sexuality.

Idiopathic epilepsy is only rarely related to sexual crime. In elderly men sexual crime is often due to the fact that phantasy and desire have outlived potency and may be an indication of senile degeneration. Senile sexuality, deprived of an adult victim or accomplice sometimes expresses itself by indecent assaults upon willing and unwilling children. Homosexual crimes of a minor character sometimes occur early in the course of the disease. Murder due to sexual delusions concerning the married partner arises in persons of both sexes. Senile sexuality sometimes expresses itself by sending indecent letters through the post to persons who may be strangers. In one case a septuagenarian wrote obscene matter on strips of paper which he dropped on the floor of a well-known shop in London hoping women customers would read what he had written.

THE SEXUAL OFFENCE

It may be reasonably argued that the victim of a crime is sometimes an accomplice, as when unguarded articles are temptingly displayed to the view of the customers passing through the various departments of a shop and are stolen.

In sexual crime, for example, homosexuality, the passive agent is often an accomplice and just as culpable as the active partner. In heterosexual offences the position may not be so clear, but sometimes there is reason to believe that the woman or girl was consenting and to that extent an accomplice. But usually she has no complicity in the crime and will suffer an injustice if the contrary is assumed.

There seems to be little doubt that young children may be harmfully affected if a sexual assault is made upon them, but they sometimes show an absence of fear or sense of guilt which is notable. Von Hentig records the case of a child who actively debauched her father, and of a girl who did so when her father was gravely ill. Many years ago I had under observation a boy aged sixteen who repeatedly attempted to have incestuous relations with his mother after his father had left for work early in the morning.

On the other hand sexual fixation may be encouraged by the parent. I have recorded the case of an insane youth, aged twenty-two, who came under observation charged with assaulting the police. His father was many years older than his mother and they soon separated. She took accused, their only child, with her and they lived a rather solitary life together. During the remand he wrote passionate love letters to her, and she described to me various sexual activities which took place between them with her assent.

When young children are sexually assaulted by their elders the act may have a different interpretation to them. Eliasberg has reminded us that in the child "the psychosexual background, the eroticism, is either missing or different and the whole drawing changes with the perspective. If one can show that the narrative of the child has too much grown-up perspective, that there is too much psychosexual eroticism and apprehension, this may shatter the credibility of the whole testimony."

One of the weaknesses of modern methods of punishment lies in the fact that no restitution is usually made to the victim of a crime for the injury he has suffered. When rape is followed by pregnancy an additional hardship is inflicted on the woman.

In this connection the case of *Rex. v. Bourne*, which came before a jury at the Central Criminal Court in July 1938, is of interest. The defendant, Mr. A. W. Bourne, obstetric surgeon to St. Mary's Hospital, London, and consulting surgeon to Queen Charlotte's Hospital was called upon to answer a charge of unlawfully using an instrument with the intent to procure the miscarriage of a girl under the age of fifteen, who had been raped by soldiers on 27th April. After the assault the police surgeon found evidence of rape and physical injury, and later a woman doctor formed the opinion that the girl was pregnant. Mr. Bourne consented to take her into St. Mary's Hospital for observation and curettage. After tests for pregnancy and venereal disease, the former having proved positive, the operation was performed. Giving evidence Mr. Bourne, whose integrity was never impeached, said that he had operated in a similar case in 1935, and in that instance his house

surgeon refused to assist him. That fact had decided him on the next opportunity to obtain a ruling in court. In the present case after observation he formed the opinion that the shock to the girl had been very great, far greater than she was willing to admit. He had carried out the operation on these grounds, i.e. the danger to the health of the patient. He added that he could not draw a line between danger of life and danger to health; if one waited for danger to life the woman would be past assistance. He attributed great importance to the element of fear in cases in which conception occurred as the result of rape and violent assault; he also considered this danger to be much greater for a child than an adult. He considered it dangerous in the present case for the girl to bear a full term child. This view was supported by other eminent medical witnesses. Summing up, Mr. Justice MacNaghten said that the word "unlawfully" implied the exception which was expressed by Parliament in the proviso to the Infant Life Preservation Act, 1929, s.1. That Act prohibits the killing of an infant before it has attained an independent existence, but after it has become capable of being born alive:

"Provided that no person shall be found guilty of an offence under this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother."

His Lordship added that, in his opinion, to preserve life meant more than to save from immediate death, and that no hard-and-fast line could be drawn between preserving life and preserving health. If in the present case the Crown had satisfied them that Mr. Bourne had not operated in good faith for the preserving of her life, then he was guilty of the offence with which he was charged; but if the Crown had failed to satisfy them on this point, then the law entitled Mr. Bourne to a verdict of acquittal. After deliberation the jury found Mr. Bourne not guilty, and he was acquitted.

THE SEXUAL OFFENDER

Heterosexuality

This term is restricted to the normal sexual activity which is directed towards a member of the opposite sex, and under the heading of heterosexual offences are included rape, carnal knowledge, incest, indecent assaults on unwilling women, and sexual interference with girls under the age of consent.

It is sometimes alleged that it is impossible for a man of ordinary physique to overcome a woman of ordinary strength and have carnal knowledge of her by force and against her will. It would almost seem that those who hold this view persuade themselves that the rapist treats his victim with the consideration that men usually adopt towards the women they meet socially. But what are the facts? During the ten-year period 1929-38 258 men were convicted of rape in England and Wales and it is difficult to believe that in this matter the armchair critic is right and 3,096 jurymen and women were wrong, or that his opinion is of more value than that of the experienced High Court Judges who presided at the trials. Moreover, medical men dealing with these cases are sometimes revolted by the brutality inflicted upon the victim. In a recent case of murder, with which I was concerned, the homicide stated that he took a journey of some hours determined to have sexual intercourse with the girl of his fancy by force if she resisted. She did so and was killed. In another case a woman was murdered whilst struggling with her attacker.

She received three fractures of the jaw, thirteen ribs were broken, the liver was ruptured and there were numerous bruises about the chest, abdomen, arms and legs as well as the local injuries due to penetration. It is unnecessary to refer to other examples since lawyers, pathologists, police surgeons, and prison psychiatrists are aware of the injuries which are sometimes inflicted on women when forcibly raped.

Reference has already been made to the fact that incest was practised by the Ptolemies. It may be added that in Babylonian Law it was punished by death or exile according to its heinousness, and that formerly it was not generally treated as a crime in England, although with other offences against morals it was made punishable by death in 1650. Herbert quotes Blackstone that since the Restoration it had been left to "the feeble coercion of the spiritual courts". Writing in 1883, Stephen stated "the only reason I can assign why incest in its very worst forms is not a crime by the laws of England is that it is an ecclesiastical offence and is even now occasionally punished as such".

These matters are mentioned because experience leaves one in no doubt that although incest has been a criminal offence in England since 1908 (The Punishment of Incest Act), and in 1922 the proviso that the proceedings were to be heard in camera was repealed (Criminal Law Amendment Act), there is still much public ignorance of the fact that it is a misdemeanour and is probably more frequent than is sometimes supposed.

During the years 1929-38, inclusive, 471 males and 49 females were convicted of incest. The majority of the women were over twenty-one years of age. The fact that among men incest was much more prevalent in the age-group forty to fifty years than at any other age suggests that many were widowers with daughters living at home.

In regard to other heterosexual offences it is hardly necessary to add that indecent assaults on unwilling women, and interference with girls under age may not be evidence of mental or sexual abnormality.

Fewer sexual offences occur in women than in men, and the law has been more occupied with protecting women and girls from men than men and boys from women.

Sexual offences among women are usually heterosexual and those connected with prostitution are the commonest. The prostitutes who are received into prison form a collection of very different individuals. Some are depraved and alcoholic; others are mentally defective or psychotic, some are constitutional psychic inferiors; many are temperamentally unstable, hysterical and suggestible; others are idle, vicious, deceitful and unscrupulous. It is significant that when answering the questionnaire of Katherine B. Davis, of 1,006 replies, 30 women viewed prostitution as a necessary evil and 24 favoured regulation.

Homosexuality or Sexual Inversion

As already inferred this term is applied to cases in which the sexual impulse is directed towards a member of the same sex, and it is well to remember that acceptable standards of conduct in many directions change with the times.

At the present time sexual behaviour reaches extremes which are condoned by some and decried by others. The position is fluid; so much so that some observers see little objection to restricting homosexual crimes to acts which cause bodily

injury, or contaminate young people, or offend against public decency. There is reason to believe, however, that ethical considerations and religious observances enable some, perhaps many, homosexuals to lead chaste lives, and that to amend the law and permit homosexuality would make their self-denying efforts still more difficult.

The fact that the social attitude adopted towards homosexuality has varied considerably in different people at different periods suggests that it has often been regarded as a normal method of sexual expression. If the usual definition of a sexual perversion is accepted many homosexual offenders are not sexual perverts. For example, those who occasionally indulge in homosexuality as an adventure, as a substitute when long deprived by circumstances of ordinary sexual relationships, as a temporary convenience and as the result of a surfeit of experience in heterosexual relationships or fear of venereal disease. It is found in persons who show no other marked mental or physical abnormality; they may be of superior intelligence, prominent and successful in creative work and in occupations of social importance. It is well to remember that the proportion of homosexuals in the general population is probably large and that antisocial conduct appears to be less certainly attributable to mental abnormality in proportion to the frequency with which the corresponding antisocial tendencies are found in the ordinary population.

There is perhaps even more uncertainty in regard to the amount of homosexuality among women than among men. Katherine Davis states: "My own observation in both educational and penological institutions leads me to believe that the phenomena . . . are much more widespread than is generally suspected." She found among married women selected from ordinary civil life, women's clubs and colleges, and unmarried women college graduates, that over half (605 of 1,200) who answered a questionnaire had at some time or other experienced intense emotional relationships with other women, and that over a quarter admitted that the relationship was carried to the point of overt homosexual expression. Sofie Lazarsfeld considers homosexuality in women is far less frequent than frigidity which she puts down as varying between 60 and 90 per cent. Forel satisfied himself with the statement that the condition is not rare in women.

Homosexuality may be constitutional or acquired, and in many acquired cases a constitutional factor seems to be also present. Generally, a clearer view of the condition is obtained if it is regarded as the result of a combination of various causes.

The importance of the constitutional factor was emphasized by Havelock Ellis who found family or hereditary inversion in 35 per cent of the cases, and he referred to the findings of Romer which were similar. In a recent study Lang came to the conclusion that many cases of homosexuality are hereditarily determined. In a series of seventy-nine cases of homosexuality in males coming before the courts investigated by East and Hubert it appeared fairly certain that a factor related to the physical type concerned might play an important part; attractive and good-looking boys and young men would be predisposed to the development of homosexuality because they would be likely to attract homosexuals and be seduced by them. A constitutional element is occasionally suggested by the fact that some male homosexuals have undoubted feminine physical characteristics. But as a rule the

active homosexual partner does not show any gross exaggeration in his own person of the physical attributes of the opposite sex. The condition is often associated with more than one other perversion, and it would seem probable that a significant number, particularly among the well educated, adopt a career in the artistic pursuits in which women excel.

East and Hubert found seduction in early youth or childhood was the commonest single environmental factor found in the series investigated, and it seemed that this was probably far more likely an explanation of homosexuality than one which depends upon the assumption that there is commonly some specific glandular influence acting in a feminine direction in these cases. Apart from seduction homosexuality appears to be sometimes acquired as the result of conditioning, when an early sexual experience is associated with an older person of the same sex. It is sometimes connected with parental warnings regarding the dangers of venereal disease which repress heterosexual and stimulate homosexual interests. In certain families the general parental attitude has much the same effect. For example, those who desiring a daughter bring up the son in as girlish a manner as possible. Or the widowed mother who indirectly in her desire to keep her son to herself and away from other women, produces in him a homosexual outlook by fostering tendencies, perhaps already present, thereby increasing the chances of homosexual seduction. Briefly, we considered the factors which predispose towards homosexuality are first, a general tendency towards a varied and primitive kind of sexual outlet; second, in some cases at any rate, a specific inherited tendency towards homosexuality; third, a physical type which predisposes towards early seduction by homosexuals which may be regarded as the fourth factor, and the most important of the environmental causes.

The tendency towards homosexual interest may be realized for the first time at any age. In the series referred to above the earliest homosexual activity remembered occurred at the age of four. In some cases the patient will not discover his tendency until he reaches middle age. If the activity is released by organic brain disease the offender may be over sixty years of age. In cases where the individual may not have recognized their implication he will be able to remember dreams or phantasies in early life which have had a homosexual significance. Occasionally it appears to be true that an offender did not realize his homosexual tendency until it was expressed in a criminal action on a sudden impulse, and sometimes it may be first declared during a state of alcoholic intoxication.

According to the usual view homosexuality is unrelated to other forms of sexual perversion, and is due to environmental influences combined with a constitutional factor predisposing towards femininity which may be glandular in origin. There is, however, no reason to regard heterosexuality and homosexuality as being necessarily antagonistic, and many homosexuals are bisexual.

In bisexuality, as Havelock Ellis pointed out, although there is pleasure and satisfaction in relationships with both sexes there is usually a greater degree of satisfaction in connection with one sex. Moreover, we often find among our own friends and acquaintances estimable men and women who possess, in a more or less marked degree, traits of character usually associated with the opposite sex, without there being the slightest reason to suspect their sexual behaviour is perverse or unusual.

The forensic recognition of bisexuality is important in cases of latent homosexuality. A man who had been married for some years and consummated the marriage from time to time, although his real interests were homosexual, murdered his male paramour.

It is sometimes suggested that the association of other sexual perversions, and of general asocial and antisocial activities, with homosexuality is simply due to the fact that they are a persecuted class, and therefore tend to become associated with those who are condemned for other reasons. This is only relatively true. There can be little doubt that the majority of homosexuals escape arrest and many who are imprisoned are shunned by their fellow prisoners. Further, an investigation carried out by Hubert on an unselected group of women homosexuals as well as other studies upon female offenders, prostitutes and others showed that women homosexuals, as a group, have many characteristics which may be regarded as perverse and asocial in considerable excess of those shown in a heterosexual group. The writings of Havelock Ellis support this view to some extent. He referred to women homosexuals as showing a considerable proportion of individuals who were somewhat abnormal in other respects, and he believed that they were more inclined to commit crimes of violence than other women.

It is sometimes said that alcoholists, as a class, are essentially homosexual. A latent homosexuality may be exposed by the aphrodisiac effect of alcohol, together with the fact that the alcoholist for the most part drinks in the company of his own sex. But many are strongly heterosexual and personal experience leaves me in no doubt that more heterosexual than homosexual crimes are due to alcohol.

As far as criminal cases are concerned I believe also that the causal association of homosexuality and paranoia has been exaggerated. Discussing non-criminal cases Henderson and Gillespie consider "the importance of homosexuality in the etiology of paranoia is not so widespread as the psychoanalytical school would have it".

A homosexual experience causing a persistent feeling of guilt may be a precipitating factor of a schizophrenic illness, or of a reactive depression. I have recorded the case of a restaurant cook, approaching middle age, who attempted to murder the man who shared his private lodgings. Investigation showed that sexual relations had existed between them, the prisoner being the passive agent. When he discovered that his companion was going to marry their landlady he became anxious, depressed and irritable, and was under medical treatment for these symptoms when he committed the crime in a passion of jealousy and revenge. It is, of course, generally recognized that suicide pacts in members of the same sex are sometimes the result of mental depression due to a homosexual entanglement.

It should be remembered that in the above presentation the term homosexuality is restricted to cases in which the sexual impulse is concerned. To include in this term occasions when for social or convivial purposes men like to get together with other men, and women with other women, on a non-genital level, is an extension of its meaning which to many seems unwarranted and in the present context would be worse than useless.

Exhibitionism

In criminal cases this term is used to denote indecent exposure of the genitals and more rarely the gluteal region, and stresses the motivation of the act. It is not

used for the large number of persons who endeavour by some means or other to obtain the spotlight of publicity.

Social prohibitions relating to exposure vary with the times, and a visit to many bathing beaches will show how much our ideas on the matter have been modified in recent years. Briefly, the motive behind exposing part of the body on social occasions in a conventional manner differs from that of the pervert, inasmuch as it is an adult method of attracting the opposite sex in order to bring about a closer relationship with an admirer on a future occasion. The pervert adopts a childish method of attracting attention to himself in order to experience sexual gratification at the time of the exhibition, without physical contact or long-term objective.

The sexual object of the typical heterosexual exhibitionist is fairly well fixed. She must be a stranger, sometimes more than one person must be present, and her age must be fairly constant, girls of a particular age are sometimes essential. In the ordinary heterosexual relationships exhibitionists show no tendency to enjoy exhibitionism on the part of their partner, nor do they tend to exhibit themselves. In homosexual exhibitionism the act may be a commercial solicitation, but examples of true homosexual exhibitionism occur.

Exhibitionists form a very varied group. The true exhibitionist pervert prefers this method of sexual gratification to any other, and many deliberately seek opportunities for exhibitionistic adventures. Others fight against the desire and wish to have it removed. Some, who are not true perverts, expose themselves as a means of inviting sexual intercourse with a stranger, and in cases of mental subnormality this primitive method of approach to a woman who has aroused sexual desire is easily understood. There appears to be no tendency for exhibitionism to be associated particularly with hypersexuality or hyposexuality, and in many cases the exhibitionist who wishes to overcome his perversion will find he is able to restrain himself from criminal behaviour if he never goes out alone.

Offenders who show this form of sexual behaviour usually have a history of autoerotic behaviour from the age of puberty or before. The step from this to indecent exposure to passing women in a relatively unfrequented place may not be a great one in some men. I believe that in the majority of the cases the importance of phantasy cannot be overlooked, and that in some the excitement and element of anxiety associated with the possibility of arrest stimulates phantasy and becomes a desirable addition to autoerotic satisfaction. The act soon becomes a habit which is indulged in conditions of increased sexual tension, and physical satisfaction becomes so closely associated with it that it often persists where other women are concerned after marriage, although normal sexual relations are established with the married partner.

Additional precipitating factors are the presence of a general tendency towards sexual perversion, a disposition which leads to careless behaviour, lack of moral control and imperfect emotional development in social relationships. Some exhibitionists carry out their perversion for several years, and in many cases the stereotyped character of the act is shown by the fact that it is often repeated in the same place, at the same time of day and to the same person. In many cases a history of heterosexual play in childhood is common and may remove at an early age the barrier between the sexes and predispose to exhibitionism.

Occasionally some local physical abnormality may predispose towards the act,

but usually any such explanation should be regarded with suspicion. Fear of ordinary sexual relations or of venereal disease, or an inability to obtain normal heterosexual relations may be precipitating factors. It may be an isolated act in connection with a chance opportunity. It may be the result of the loss of control which follows alcoholic indulgence, and the desire to urinate may suggest the activity. It may be the result of mental defectiveness, psychoneurosis or psychosis as well as states of psychopathic personality.

The impulsive quality of exhibitionism is usually clearer than in other types of perversion, or in any other, except very rare types of crime. The exhibitionist often becomes seized with an ever-increasing urge to carry out his desire and it may overwhelm him. There may be no anxiety, but in men who are constitutionally predisposed to become anxious in situations of tension it may be present. The pleasurable aspect of the act may be obscured until tension is relieved at the time of the exposure. In many cases the urge is complex and other objectives in carrying out the performance may become apparent. The universal obsessional characteristics appearing in comparable situations where one thing is anxiously balanced against another as in "doubting mania" is usually absent, and there is no suggestion of a separation off of a morbid part of the mind, such as is found in the obsessional patient against which the healthy part can be opposed. The obsessional subject usually shows evidence of a long-standing obsessional personality before asocial or antisocial conduct is declared, and this is exceptional among exhibitionists. Nor were occasional obsessional symptoms at all common in the series investigated by Hubert and myself.

Sadism and Masochism

The term sadism is used here for activities which enable sexual satisfaction to be obtained by inflicting pain, and masochism for activities which provide sexual satisfaction by suffering pain. The victim of a sadist is not necessarily a masochist, and the aggressor of a masochist is not necessarily a sadist.

The infliction of suffering on oneself, or seeking out situations which enable others to inflict suffering upon one may also have a pleasurable effect apart from sexual accompaniment. But to include under the heading of sadism and masochism conduct which is pleasurable in a non-sexual manner would inappropriately extend this thesis. For the same reason the more abnormal and complicated situations and conditions arising through mental disease or any grossly abnormal emotional behaviour pattern, from whatever cause other than sexual, are excluded.

The cruelty or bearing of pain in sadism or masochism is the most striking feature, as a rule, of the emotional life of the sadist or masochist, and in many cases a complicated ritual of a stereotyped pattern precedes the act, and is an essential accompaniment.

It is convenient to group sadism and masochism under the same heading, because although clinically they often exist separately an element of masochism may occasionally appear in the sadist and an element of sadism in the masochist. In criminal cases of sadism the masochistic element is usually absent. In civil cases the sadistic and masochistic elements are apparently more usually associated together in the same individual.

Havelock Ellis considered sadism and masochism were based on normal human impulses and reinforced weak impulses, and that they were extremes of tendencies

which in slight degree are within the biological sphere. The sadist is not necessarily impelled by the desire to be cruel, his objective is to arouse a specific emotion. So too, the masochist does not necessarily wish to suffer cruelty, but to experience the specific sexual emotion which pain incites. Sadists and masochists are often under-sexed rather than over-sexed. Strong sensations and emotions such as anxiety and grief appear both from the literature and practical experience to act sometimes as sexual stimulants, and as Ellis points out, may produce pleasure although painful in themselves.

W. McDougall regarded sadism and masochism as the impulses of the two opposed but independent instincts of self-assertion and submission respectively. And it is a matter of common observation that in sexual contacts the aggressiveness of the man is opposed to a degree of submissiveness in the woman. At the same time both men and women may exhibit evidence of sadism and masochism.

Freud stated: "The sexuality of most men shows a taint of aggression, it is a propensity to subdue, the biological significance of which lies in the necessity of overcoming the resistance of the sexual object by actions other than mere courting. Sadism would then correspond to an aggressive component of the sexual impulse which has become independent and exaggerated and has been brought into the foreground by displacement." He stated in another passage: "A sadist is simultaneously a masochist, though either the active or the passive side of the perversion may be strongly developed and thus represent his preponderate activity." Many will agree with his view that if children of a delicate age "become spectators of the sexual act between grown-ups, for which an occasion is furnished by the conviction of the grown-ups that little children cannot understand anything sexual, they cannot help conceiving the sexual act as a kind of maltreating or overpowering, that is, it impresses them in a sadistic sense. Psychoanalysis also teaches us that, such an early childhood impression contributes much to the disposition for a later sadistic displacement of the sexual aim."

Discussing sadism and masochism East and Hubert state that the reasons leading to the development of this abnormality are often difficult to determine, but probably they are in all cases specific and environmental. Many "remember gaining sexual pleasure from phantasies of this nature in early years, and very often remember pleasure obtained from actual performances. Contact with others with similar, or opposite, tendencies and certain types of story also have a direct influence. . . . The child thinks of human relations so much in terms of like and dislike, friendship and enmity, kindness and unkindness, physical caress or cruelty that the developing sexual feeling readily associates itself with the dramatic form of these attitudes. It is a well-known finding also that children who are ignorant of inter-sexual relations will, upon learning something of them associate them with a sexual feeling in themselves and the conception of a violent attack by the man on the woman. In addition to this, various abnormal personality types who tend to associate sexual feeling with excretory or nutritive activities will, by easily appreciated associations, tend to develop sadistic and masochistic interests. Individuals who, through constitutional factors or unfortunate experience develop very strong aggressive drives, such as resentment or antagonism, will tend to link them with sexual feeling developing at the same time and with a similar result."

Sadism is not confined to heterosexual activities, it is a common accompaniment

of homosexual crimes. A sadist when his confidence is gained readily admits that he obtains sexual pleasure from the act, and this seems essential for diagnosis. The only exception is when there is a very strong reason to assume that sexual excitement was present although the individual cannot afterwards verbalize the fact that it was present physically or mentally. For example, if he has frequently obtained sexual pleasure from phantasies similar in content to the activity. Such was probably the case in a youth aged seventeen, who came under observation charged with wounding a woman who he attacked unawares in her home. She became unconscious for a short time as the result of the blows she received, and on recovering found the youth standing over her. He had made no attempt to escape or steal, and had not indecently assaulted her. A short time before he had, in a public street, jumped upon the back of a girl, a stranger to him, and tried to strangle her without any provocation. There was no loss of consciousness on his part during either attack. He showed no evidence of mental disease or defect, epilepsy or psychoneurosis during the months he was under supervision. To extend the term to cover cases in which sexual feeling may have been present in this way raises questions as to the exact meaning of "unconscious" sexual pleasure, and of the right to identify interpretation with material actually presented by the subject.

In forensic situations cases of sadism can be conveniently considered in connection with reality, phantasy or simulation. Sadistic crime includes murder, attempted murder, wounding and lesser bodily injuries, as well as sexual assaults, damage to property by cutting and slashing, ink-splashing and the like.

As a cause of murder sadism may operate alone or in association with an attack of manic-depressive disease or other mental disorder. In one case a woman and a child were murdered and two other women were seriously assaulted before the homicide was arrested. A less aggressive type is the man who stabs a woman or girl with a penknife or needle as he passes her in the street, or strikes at her with a stick, or as in one case with a stout piece of wire. The dress-slathers and dress-defilers belong to this group. A married man, aged twenty-three, had never been in the hands of the police until he was arrested and convicted of slashing with a safety razor the dresses of two women on the same evening. A widower was convicted of throwing on to ladies dresses, from a fountain-pen, a solution of horse excrement which he prepared at home for the purpose, so that if arrested he might attribute the soiling of the dresses to splashings from the road. Sadistic arson, so-called, is probably infrequent in Britain and an incorrect diagnosis may be made if the statements of the offender and the details of his offence are not carefully scrutinized. There appeared to be some reason to consider that a youth, aged twenty-one, set fire to some hayricks to produce an emotional state in which sexual erethism was an important feature. He had derived sexual gratification from sadistic conduct with boys, and masochistic phantasies accompanied autoerotic activities and were present in his dreams.

The sadist may indulge in his abnormality only in phantasy. In some an act is imagined to cause pain and humiliation, as in the epistolary sadist. The importance of phantasy in sexual affairs generally is well recognized, and sadistic acts and phantasies in association with inanimate objects may be of forensic importance. I have referred elsewhere to the case of a fetishist who committed burglary to obtain possessions of women's shoes which he then slashed savagely with a knife. He

was detected in prison cutting the throats of women in the photographs which other prisoners retained in their cells, and he admitted that by so doing he derived full sexual gratification. Cruelty may be inflicted upon animals for a sadistic purpose and occasionally maiming of domestic animals, cattle and horses, is attributable to the same cause.

Sadism may be simulated when a rapist kills his victim in order to silence the only witness of his crime, or uses extreme violence to overcome her resistance or to effect his escape. In one case the murderer mutilated the bodies of three prostitutes in a manner which suggested that they were the victims of a sadist. A medical examination of the prisoner, a voluntary statement by his wife and another by a prostitute with whom he had recently had connection, together with a full consideration of all the circumstances of the murders made it clear that he was not a sadist. There was reason to believe that he mutilated the women in an attempt to lead the police to attribute the crimes to a sadist rather than to a robber and so divert suspicion from himself or, alternatively, suggest that the crimes were due to insanity.

Personal experience and observation lead me to recapitulate the following findings of forensic importance: Sadism may be attributable to an early sex experience; it may be expressed early or late in life; it may be practised upon inanimate objects with full effect, and upon animals or a person of the same or opposite sex; it may vary in intensity from mild phantasy to savage murder; it may be accompanied by a stereotyped ritual; it may be expressed at different times in the same manner by the same person; it may be used as a sexual stimulant in cases of sexual inferiority; it is usually more pleasurable to the sadist than normal sexual intercourse which is generally of secondary importance, but it may be used as an occasional alternative; it may be controlled, uncontrolled, and when associated with mental disease uncontrollable. The sadist may be sexually inferior; he may have masochistic tendencies; he may be homosexual, heterosexual or bisexual; his victims are usually fortuitous and may be of widely different ages; the degree of violence used may depend upon the delay which occurs before full sexual satisfaction is reached, that is to say the greater the delay the greater the violence; the greater the violence used the more likely is the act to be associated with gross mental abnormality. The sadist may refuse medical treatment; he may be insane according to the law and irresponsible; he may be fully responsible; he may suffer from some minor form of mental abnormality and present various degrees of culpability.

Crime is seldom due to masochism if this term is restricted to the definition given above, but it sometimes appears in convicted offenders. A young woman convicted of theft frequently cut herself about the arms, legs and breasts, and inserted pins and needles under her skin usually one or two days before the onset of menstruation. She derived sexual pleasure and felt relieved when she inflicted the pain upon herself and saw blood from the incisions.

Sado-masochistic practices appear to be more attractive to some women than is sometimes suspected. A sadist stated that only one of several girls who were not public women refused his invitation to beat them, and there was reason to believe that he spoke the truth.

In *Rex v. Donovan* it appeared that the defendant was a sadist and made suggestions to a girl which if taken seriously meant that he intended or desired to beat

her. According to the evidence of the defendant, and that of a young woman who said that she had overheard some of the telephone conversation, there was talk between the defendant and the prosecutrix which left no doubt that she had expressed her willingness to submit herself to the kind of conduct to which he was addicted. The defendant was convicted at Quarter Sessions of assault in that he beat the girl with a cane. The conviction was quashed by the Court of Criminal Appeal on the ground that there was a misdirection to the jury in regard to the consent of the prosecutrix since in the absence of facts which proved the act to be unlawful in itself, the defendant could be convicted only if the prosecution negatived consent. In regard to the assault the Court of Criminal Appeal declared that: "If an act is unlawful in the sense of being in itself a criminal act, it is plain that it cannot be rendered lawful because the person to whose detriment it is done consents to it. No person can licence another to commit crime. So far as the criminal law is concerned, therefore, where the act charged is in itself unlawful it can never be necessary to prove absence of consent on the part of the person wronged in order to obtain the conviction of the wrong-doer. There are, however, many acts in themselves harmless and lawful which became unlawful only if they are done without the consent of the person affected. What is in one case an innocent act of familiarity or affection may in another be an assault, for no other reason than that in the one case there is consent and in the other consent is absent. As a general rule, although it is a rule to which there are well-established exceptions, it is an unlawful act to beat another person with such a degree of violence that the infliction of bodily harm is a probable consequence, and when such an act is proved consent is immaterial. We are aware that the existence of this rule has not always been clearly recognized." The court then referred to well-established exceptions and continued: "In the present case it was not in dispute that Donovan's motive was to gratify his own perverted desire. If in the course of so doing he acted so as to cause bodily harm, he cannot plead his corrupt motive as an excuse. Always supposing, therefore, that the blows which he struck were likely or intended to do bodily harm, we are of opinion that he was doing an unlawful act no evidence having been given of facts which would bring the case within any of the exceptions to the general rule. In our view on the evidence given at the trial, the jury should have been directed that if they were satisfied that the blows struck by the prisoner were likely to be intended to do bodily harm to the prosecutrix, they ought to convict him, and that it was only if they were not so satisfied that it became necessary to consider the further question whether the prosecution had negatived the consent. For this purpose we think 'bodily harm' has its ordinary meaning and includes any hurt or injury calculated to interfere with the health and comfort of the prosecutor. Such hurt or injury need not be permanent, but must no doubt be more than merely transient or trifling." (*The Times Report*, 28th July 1934.)

Fetishism

The term fetishism, generally employed to signify the application of objects made by art to magical and religious purposes, is used in psychological terminology in different senses to imply sexual perversion itself, or to cases in which sexual interest is mainly centred on a part of the body of the desirable individual which may be little adapted for sexual purposes, or upon an inanimate object such as a shoe or other article of her (or his) clothing. Fetishism is not confined to hetero-

sexuals, in rare cases it is associated with homosexuality. Thoinot and Weyssse record the case of a male homosexual fetishist who was erotically excited by contemplation of the patent leather shoes of other men.

Here as elsewhere in considering the sexual offender it is to be remembered that, "so far from their being only one pattern of sex life it would be nearer the truth to say that there are as many patterns as there are individuals".

Slight degrees of fetishism are, of course, entirely normal. Every lover tends to become attracted to some individual feature of the person he admires, or to some of the various articles that come into contact with her. This tendency becomes abnormal when the striving for the fetish replaces the normal sexual aim, or when the living feature or inanimate object is divorced from the personality which it replaces and itself becomes the exclusive sexual object.

The fetishist may commit burglary, theft and assault in order to provide himself with the required article of female clothing, and some fetishists find the garment must be stolen if full satisfaction is to be obtained. The shoe fetishist occasionally appears in the criminal courts, and many years ago a man came under observation who had knocked down several women in the streets of a London suburb in order to possess one of their shoes. The hair fetishist was also a rather frequent offender at the time when young girls wore their hair plaited down their back. A man, aged thirty-one, was arrested as a suspected person. He went up to a little girl in the street and cut off some of her hair, and was arrested with the scissors in his hand and the hair in his pocket. At his address were found five plaits of hair of different colours, loose hair of two different colours as well as seventy-two hair ribbons. He was not mentally defective, and no psychoneurosis or psychosis was present. He served in the army in the East and had committed similar offences there. The activity was traced to its origin, and was influenced by the fact that he was living apart from his wife, and the fear of venereal disease prevented indulgence in promiscuous intercourse.

In the simpler type of case sexual excitement becomes associated by chance with a particular activity or object during a period of emotional tension, and by repeated phantasy usually combined with auterotic manifestations becomes increasingly important and fulfils the primary sexual need. In the more complicated case a relatively harmless perversion developed in a similar manner allows partial outlet to a much more dangerous urge, such as a strong sadistic interest. A youth investigated by East and Hubert obtained sexual pleasure from collecting, making and playing with knives and from sadistic phantasies in which he made imaginary attacks on girls.

Unless the confidence of the offender is obtained mistakes are likely to arise in criminal cases, and an act which has a simple explanation may be regarded as a fetishistic manifestation. In a case of murder associated with rape the homicide took away with him an article of his victim's underclothing, and it was suggested that this was a fetishistic act indicating sexual abnormality. In fact, the homicide frankly stated at a psychiatric examination that he thought the article when examined would show signs of seminal stains and give a clue to the cause of the murder. So he took it away with him, and disposed of it at the first opportunity.

Transvestism or Eonism

Cross-dressing was prohibited for either sex by the Mosaic law. (Deuteronomy,

xxii, 5.) Whatever purpose lay behind this decree it is a well-known fact that sexual pleasure in either sex is sometimes derived from wearing clothing of the opposite sex.

The act may be relatively unimportant in itself but may dramatize phantasy if the pervert looks at his image in a mirror when so clothed. On the other hand when associated with other perversions it may lead to fatal consequences. In a case which did not come before a criminal court transvestism, in an under-sexed married man, was associated with autoeroticism and masochistic practices including suspension. The activity was accompanied by a highly complicated ritual which was carried out by the pervert when he was alone. It ultimately miscarried and caused his death by strangulation.

Although homosexuals may dress up as women to increase or vary their attraction to other men, the true male transvestite obtains sexual gratification from pretending to be a woman, and his phantasy is facilitated by wearing her clothing. In appearance, manners, and interests they seem and feel more feminine than masculine and naturally adopt the little characteristic mannerisms of women. Investigation often shows that as children their play and general behaviour was girlish, and as they grew older they acquired feminine rather than masculine occupations, associating and identifying themselves with women in preference to men. It is important to distinguish this type from the homosexual as they pass their lives with no sign of sexual interest in their own sex. Perhaps both are derived from the same physical type, but in the true transvestite early homosexual seduction appears to be unusual and sexual activity is confined to phantasy and autoerotic habits.

Havelock Ellis considered that whereas it is normal for a man to identify himself with the woman he loves the transvestite carries the identification too far, stimulated by a sensitive and feminine element in himself which is associated with a rather defective sexual virility on what may be a neurotic basis. He also held the view that an abnormal childhood with too close attachment to the mother, who might herself be rather abnormal, predisposed to the condition. He regarded it as a remarkably common anomaly, and in his experience came next in frequency to homosexuality among sexual deviations.

Horton and Clarke state that the studies of transvestism may be roughly grouped as psychoanalytic and non-analytic. The non-analytic studies have the disadvantage of making little attempt to explain the reason for the manifestation and the analytic studies suffer from paucity of cases.

In criminal cases it must be remembered that the male transvestite is sometimes arrested for an apparently non-sexual offence such as burglary or theft which, as I have already stated, may satisfy a fetishistic perversion. In the class of case under consideration it may fulfil the transvestite's urge.

Some people are under the impression that although cross-dressing in either sex is innocent when no one is deceived, as at a fancy dress party among friends, it becomes an offence as soon as any person is deceived, or if there is an attempt or intention to deceive, even with no ulterior purpose in view, such as fraud. The matter was discussed as far as Britain is concerned in an article on "Masquerading" published in *The Justice of the Peace*, 26th February 1938: "Cross-dressing may, prima facie, be evidence of an intention to commit some crime. The same is true of any disguise. Particularly may a man masquerading as a woman in a public

place incur suspicion under section 1 of the Vagrancy Act, 1898, which deals, *inter alia*, with persistent soliciting or importuning by a male for immoral purposes. . . .

"At Dorking, in 1933, a man found in woman's clothes was convicted of being a suspected person loitering with the intention of committing a felony; obviously cross-dressing like any other disguise, may be material to such a charge, whether the defendant be a man dressed as a woman or a woman as a man.

"In connection with cases of this type, where the motive is to obtain money or other material advantage, and not to satisfy some impulse, it is well to remember that the offence of obtaining money by false pretences can be committed without words. A hundred years ago in *R. v. Barnard* (1837), 7 C and P. 784, a man was convicted under the head of false pretences who obtained goods from an Oxford tradesman when dressed as an undergraduate, and that offence, or the modern offence of obtaining credit by fraud, might well be committed where the pretence consisted merely in wearing the clothes of the other sex, if by that means the fraud has been successful.

"Apart from suspicion of an intent to commit offences which can be committed only by a male, such as rape or importuning in breach of section 1 of the Vagrancy Act, 1898, the law is the same for men and women.

"We have heard it suggested that dressing in the clothes of the opposite sex may be somewhere an offence under byelaws or under Local Act. But we are reasonably sure no such byelaw has been made for good rule and government, or would (now that confirmation of such byelaws has been made necessary by the Local Government Act, 1933) be confirmed by the Home Secretary. There is no other heading under which byelaws to this effect are possible, unless for the regulation of a pleasure-ground, and here again we have come across no such byelaw and are sure that none exists.

"As regards the old local acts, no one can be sure of anything but we have found no such local acts and we should be exceedingly surprised to find one.

"In many cases which come before the public there is no element of scientific interest. There is a crime or an attempted crime, for which a disguise is adopted. It is, however, vital to remember that it is the crime itself and not the disguise, the fraud in the sense of obtaining money, goods or credit, and not the mere deceit which is the offence. We repeat that the mere wearing of clothes appropriate to the opposite sex, and even the deceiving of other people by so doing, cannot, where there is no attempt to obtain money or attempt to commit some other criminal offence, be made the ground of any criminal charge."

Paedophilia, Necrophilia, Voyeurism and Bestiality

The sexual perversions which do not usually lead to criminal behaviour need not be considered here. A brief notice of the less frequent sexual perversions, namely paedophilia, necrophilia, voyeurism and bestiality is, however, necessary.

In paedophilia there is sexual attraction to children or immature girls, and this may be due to influences which delay or prevent the formation of ordinary social and sexual relationships, such as mental defectiveness, retarded emotional development, or senile impotency. Interference with girls under age is hardly to be considered as abnormal if the girl is sexually mature, consenting and conceals her true age.

Necrophilia, sexual intercourse with a female cadaver, is a very uncommon

offence, and my own experience is limited to four cases in which each offender was mentally defective. The necrophiliac has sometimes deliberately ravished a corpse. On other occasions the woman was killed in a sexual attack and her death enabled the homicide to carry out his purpose. It is difficult to believe that anyone could commit this act unless gross mental abnormality was present. Forel states that some sadists are necrophiliacs for fear of becoming assassins.

Voyeurism calls for police action if a concealed observer of courting couples indulges in his secret pleasures so recklessly that he is detected and assaulted by his victims. But more serious cases occur. A middle-aged man led a normal sexual life as far as could be ascertained until his wife died. He lived then with his grown-up daughter and induced her to bring men home for an immoral purpose so that he could watch the incidents which took place between them.

Bestiality is not uncommon in rural areas, and may be the result of sexual deprivation, mental defectiveness or other gross mental abnormality.

TREATMENT

The defendant in a criminal court occupies the limelight for a brief moment and the attention of his judge. A few, psychiatrists and others, see him before and after trial in the wings, and study the manner of man he is when the paint and powder are removed together with the tinsel and trappings.

The proportion per 100,000 of the population of persons aged seventeen years and over who were found guilty of sexual offences during the five years before the Second World War, and their reconviction rates do not compare unfavourably with other groups of offenders. Experience shows that the sentences of imprisonment or penal servitude now imposed are generally effective when the offence is the result of normal impulses. Mentally defective and psychotic sexual offenders usually repeat their offences unless they are detained in appropriate institutions. Sexual perverts may be prevented from committing a further sexual offence by a sentence of imprisonment, but there is often a grave risk that the offence will be repeated when liberty is regained. In such cases the present position is unsatisfactory and may menace social security.

The first prerequisite for improvement is a better understanding in which the public must share, of normal and abnormal sexuality. But a proviso is necessary, for some of our self-appointed liberators seem to insist upon unrestricted sexual indulgence as a condition of personal health. "It would seem that we are expected to disrupt society for the convenience of a few who are willing to lower themselves to the level of a social and ethical automaton."

Second in importance is the before-trial medical examination of the accused by an experienced psychiatrist. This will decide whether mental defectiveness or mental disease is present, and whether the offender requires care and supervision in an appropriate mental hospital. It will also determine whether the offender is suffering from a lesser form of mental abnormality which may be amenable to psychotherapy or more general psychiatric treatment. It cannot however predict whether treatment will be successful, for many such offenders treasure their sexual gluttony and are unwilling to wholeheartedly submit to medical treatment which is intended to modify their taste, unless an alternative and equally pleasurable method of sexual gratification is provided.

The third requirement is close collaboration between the courts and the psychiatrists. Already some progress has been made in this direction, and valuable work done by accredited clinics in the diagnosis, treatment and social adjustment of some sexual offenders. In this connection Wertham states: "There is nothing about the work of the psychiatrist in these cases so technical that it could not be explained to anybody. His armoury of tools does not require unintelligible words and phrases. He is not a necromancer. Often a psychiatric expert is expected to be involved, mysterious and obscure. But this is unnecessary and misleading. All he can do is to try and find facts and then to use them. Frequently the more obvious facts give the clue."

Some sexual offenders are on the border-line which separates normality and abnormality, but in our present state of knowledge enforced detention may be the only method available for dealing with them if social security is to be immediately secured. And although frustration invites conflict and its sequelae, and the sexual offender, like others, may not be responsible for his natural tendencies he must be held responsible for his actions if he is not insane or mentally defective, and in varying degree culpable for the manner in which he behaves.

The psychological treatment of the sexual offender has its limitations and an exaggerated idea of its value is sometimes discernible. Of course the offender must be willing to co-operate, but this is not enough. Mackwood points out that "the criterion for treatment is anxiety which is subjective, and not the objective acts". And in this connection anxiety becomes an active driving force, whereas willingness has often no more than a passive and transient effect.

Young has well expressed the advantages and disadvantages of psychotherapy in prisons founded on his experience at Wormwood Scrubs prison. He says psychotherapy "is carried out under an unusual form of stress (in prison) in isolation from normal contacts, the encouragement of friends, and from opportunities to test the progress made, and in conditions which are often disadvantageous in other ways. On the other hand the desire for cure has an added urgency to most prisoners, and the environment an abnormal freedom from extraneous distractions, though there is also an artificially heightened news value, both for the patient and other prisoners, which may injure co-operation and transference at a stage when the loss is not easily recovered." I would add that in my view the psychotherapist should not occupy an administrative post in the penal establishment, and should be a psychiatrist specially selected for the work.

The anxiety of some homosexuals is emphasized by Bleuler who has experience of homosexuals who had themselves castrated and are now happy to be released from the struggle and fear of prison.

If a sexual offender receives a non-custodial award in the hope that he will submit himself to medical treatment he may do so, but refuse to co-operate with the psychotherapist. On the other hand, until the public is better advised a sentence of imprisonment long enough to give medical treatment a complete trial may appear to some unjustified for a minor sexual offence such as exhibitionism.

As short sentences of imprisonment often have no therapeutic value in this class of offence, and having regard to the social adjustment of the sexual offender as well as the security of society, the following alternatives seem to offer themselves if

the offender is not dealt with as an insane or mentally defective person, and the case is not dismissed by the court:

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| 1. Probation, with or without a condition of residence. | } With or without
psychiatric treat-
ment including
psychotherapy. |
| 2. Imprisonment for periods reaching the upper
rather than the lower authorized limits. | |
| 3. Corrective training or preventive detention. | |

It is hoped that future legislation will empower courts to make medical treatment in suitable cases a condition of a probation order so as to further determine its value under these circumstances, and that Corrective training and Preventive detention as envisaged in the Criminal Justice Bill may reach the Statute Book.

This seems as much as is likely to meet with public approval for the present. It will be recognized that short of imposing an indeterminate sentence of custodial detention there may still be some failures. But as I have stated elsewhere the medical treatment of these and other types of offenders in a special penal institution administered on colony lines with psychiatric treatment when required should enable much needed research to be carried out, and better results obtained in cases which now appear incorrigible.

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VIII

PSYCHOPATHIC PERSONALITY AND CRIME*

DISCUSSION

PSYCHIATRIC research has elucidated many unrecognized facts and added much to our knowledge of the causes of criminal behaviour in mentally abnormal persons. At the same time the fluidity of modern psychiatry, itself evidence of progress, makes it difficult to always present simply and clearly modern views in a court of law.

This is particularly the case in matters concerning the non-sane non-insane aberrant individuals known as psychopathic personalities in many classifications, as constitutional psychopathic inferiors by some writers, as neurotic characters by Zilboorg, as abnormal personalities by Healy, and whose abnormalities are referred to by the Army Authorities of the United States of America as constitutional psychopathic states, and by Henderson as psychopathic states. It is my purpose to consider their association with criminal behaviour.

The criminal law requires facts to be ascertained and their relation to the offender as well as to society to be understood. When individual or group behaviour assails social order and security it becomes necessary to interpret it in terms of motive and intent. In modern terminology we endeavour to determine its motivation.

In this matter confusion is likely to result if the statements of accused persons are accepted without criticism or question; if attested facts, which clearly show the motive and intent of the accused at the time the offence was committed, are disregarded; if excuses for criminal behaviour are unnecessarily based upon assumptions of unconscious motivation; and if the offender's ability to deal with his instinctive urges in a lawful manner is distorted by unwarranted suppositions.

Although it is true that a careful medical investigation into the mental condition of an offender is required when the motivation of a crime is obscure, it is also true that in the majority of cases there is no obscurity, and sometimes it may be harmful to the offender as well as to society to explain illegal behaviour by a remote hypothesis.

The motivation of mentally normal and subnormal offenders is usually apparent to an informed and experienced observer. Obscurity is generally due to the fact that relevant information is purposely withheld from him. In mental deficiency, psychopathic personality, psychoneurosis or psychosis the motivation is often only disclosed as the result of a psychiatric investigation.

No special difficulty arises in differentiating psychopathic personalities who commit crime from normal or subnormal persons, psychoneurotics or psychotics. Uncertainty regarding the boundaries of mental defectiveness and psychopathic personality, however, and the fact that the constitutional element is significant in

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both, appear sometimes to confuse their essential differences. And there can be little doubt that the forensic study of psychopathic personalities has been delayed through exaggerations regarding the frequency and importance of mental defectiveness in relation to crime.

Moreover, a distinction is equally important in civil life. It would surely outrage the public conscience if such persons as Joan of Arc, Napoleon and Lawrence of Arabia, listed as psychopathic personalities by Henderson and Gillespie, as well as other psychopathic personalities known to many of us, were proclaimed mentally defective persons and permanently detained in certified or state institutions for defectives. Let it be also remembered that mental defectiveness is incurable, and the assertion "once defective always defective" is still axiomatic.

The Joint Committee on Mental Deficiency of the Board of Control and of the Board of Education reported in 1929 that the diagnosis of mental deficiency may be established without a full history from the data observed by the medical examiner, but it can never be firmly sustained however much it may be suspected on the evidence of history alone. This statement loses much of its accuracy when applied to psychopathic personalities in whom a detailed, accurate and complete history may be much more valuable than a personal examination. Indeed, an experienced observer cannot live long in daily contact with a mentally defective person without becoming aware of his abnormality, but one may be on close terms with a psychopathic personality and have no knowledge of his disability.

Further, although Tredgold states that no niche can be found for the mentally defective person in which he can live without supervision, it is a matter of common knowledge that many psychopathic personalities order their lives usefully and successfully.

The observer who fails to differentiate between mental defectiveness and psychopathic personality appears to have no place for persons whose ethical abnormality arises from disease after the age of eighteen unless they are mentally subnormal, psychoneurotic or psychotic, and therefore has no reason to offer which would carry weight in modifying the award in a criminal court in favour of the accused. But the psychopathic personality is well endowed intellectually as a rule, and there is reason to believe that treatment sometimes socializes his character and behaviour, when these are antisocial, to an extent which is advantageous to himself as well as to others.

No one who is constantly occupied with problems connected with the psychiatric aspects of crime can be satisfied with a position which fails to discriminate between mental defectiveness and psychopathic personality. From the clinical, medico-legal, therapeutic and research points of view this discrimination is essential for progress in the domain of forensic psychiatry.

FREQUENCY

The number of psychopathic personalities in the civil population is unknown since many never reach the psychiatrist's consulting-room and pass through life with their mental abnormality undeclared and unrecorded by their associates.

Savitt reports that during the fifteen years 1920-34 the average distribution of psychosis with psychopathic personality among first admissions from New York

City to all institutions for mental diseases in New York State was only 2.17 per cent. At Creedmoor State Hospital during the fiscal year 1937-8 the total number of patients admitted and diagnosed as psychosis with psychopathic personality was only 2.1 per cent of all admissions during that year. But, as Savitt points out, only the small minority of psychopaths who have psychotic episodes tend to reach a mental hospital, and his figures throw little light upon the number of psychopathic personalities in the civil population.

Constitutional psychopathic state headed the list of principle psychiatric disorders in the American Army hospitals in 1938, and occupied second place to mental defectiveness in 600 neuro-psychiatric cases at a United States of America Naval Training Centre. Curran, in 1942, found 5 per cent of the cases admitted to Royal Naval Hospitals and Sick Quarters in Great Britain with neuropsychiatric disorders were diagnosed psychopathic personality. Eliot Slater, in the same year, found that in a study of 2,000 neurotic soldiers in an E.M.S. Neurosis Centre, 265 were diagnosed psychopathic personality, but the group "included all patients in whom there was held to be a constitutional abnormality of personality of fairly severe degree, mainly responsible for any neurotic symptoms or failure of adaptation. The abnormality might be of any type, and included, for instance, cyclothymics, long-standing hysterics, the severely and chronically anxious, as well as those usually included under this head."

Of 130 ex-service patients treated at the Royal Edinburgh Hospital for Mental and Nervous Disorders from the beginning of the war to the autumn of 1943 Stalker found forty-five suffered from psychopathic states as described by Henderson.

Estimates of the number of psychopathic personalities who commit crime vary with the concepts and personal bias of the assessor, and with the emphasis attached to the psychopathic syndrome. Different observers tend to give widely different estimates, just as still happens in regard to the association of mental defectiveness and crime.

The difficulty of assessing the proportion of psychopathic personalities in the criminal population becomes evident when the literature dealing with the condition is reviewed apart from its relation to criminal behaviour. The various groups are sometimes so ill defined as to appear all inclusive, but delimitation is necessary if we are to make clinical distinctions in a court of law with some degree of precision.

In a series of 4,000 juvenile delinquents Healy and Bronner found 2.8 per cent were psychopathic personalities, and they state: "We firmly stand against the diagnosis of psychopathic personality made simply on the basis of repeated misconduct without other signs of psychopathic trends—there are too many other causations of misconduct." I may add that prison experience in England and Wales gives full support to this view.

Dealing with psychopathic personality H. S. Hulbert declares: "The delinquent is rarely psychopathic." Kraines, on the other hand, expresses the view that: "These persons are ill, just as the psychotic patient; and the habitual criminal is a socially sick person who may have a recoverable or incurable illness, the true nature of which can be determined by proper investigation." The habitual criminal in England, however, is often a person who has deliberately chosen crime as a

career, and may show none of the criteria considered necessary before a diagnosis of psychopathic personality or other mental abnormality can be made.

Prewer, in 1944, found that of 1,000 naval offenders received into Naval Detention Quarters, eighty-seven were psychopathic personalities; and he excluded from this number fifteen schizoid and two cycloid personalities. Service offences, however, for the most part, differ from crimes in civil life, and we have at the present time no data to show how many offenders are received into civil prisons whose crimes are associated with psychopathic personality disabilities.

LIMITATIONS

For practical purposes the mental condition of delinquents and criminals are conveniently classified into six main groups: normal, subnormal, mentally defective, psychopathic personality, psychoneurotic and psychotic. But the clinical picture is not always as clear as this statement might suggest since the groups often overlap. For example, a psychopathic episode may occur in a mentally defective, psychoneurotic or psychotic patient, and a psychopathic personality may develop a psychoneurosis or psychosis.

In 1834 Prichard described moral insanity in a letter to Dr. Tuke as: "The mental state of persons who betray no lesion of understanding, or want of power of reasoning and conversing correctly upon any subject whatever, and whose disease consists in a perverted state of the feelings, temper, inclinations, habit and conduct. Such individuals are sometimes unusually excited and boisterous; and others dejected (without any hallucinations), sometimes misanthropic and morose." In modern times the term "moral insanity" is translated "psychopathic personality", and important additions to the literature on the subject have been made by Partidge, Kahn, Schneider, Cheney, North, Levine, Petrie, Slater and many others.

In his Salmon Memorial Lectures Henderson emphasized the importance and place in psychiatry of the psychopathic personality, and stimulated interest in the clinical types. He also outlined principles for their social rehabilitation. He described them as "individuals who conform to a certain intellectual standard, sometimes high, sometimes approaching the realm of defect but yet not amounting to it, who throughout their lives, or from a comparatively early age, have exhibited disorders of conduct of an antisocial or asocial nature, usually of a recurrent or episodic type, which in many instances, have proved difficult to influence by methods of social, penal and medical care and treatment, and for whom we have no adequate provision of a preventive or curative nature. The inadequacy or deviation or failure to adjust to ordinary social life is not a mere wilfulness or badness which can be threatened or thrashed out of the individual so involved, but constitutes a true illness for which we have no specific explanation." Elsewhere, Henderson states: "The life histories of these patients teach us that we are dealing with persons who from a tender age, and out of a variety of causes, have proved a problem to themselves as well as to the world at large, people who psychobiologically have remained at an immature, individualistic, egocentric level, who are determined to get their own way irrespective of the cost, who fail to grow up to any sense of reality, and are so changeable and fickle that they lack persistence of effort, and are unable to profit by experience. Their emotional development and

their judgment and forethought have not kept pace with their ideational component. Their conduct throughout life has been punctuated by disturbing episodes which have given rise to great anxiety. Their higher inhibitory control mechanisms are in abeyance and they are dominated entirely by their emotional instincts."

Curran and Guttman, discussing the social significance of psychopathic personality maintain the view that: "Psychopathic personalities as such cannot be regarded as medical problems, although they are very prone to develop abnormal reactions which would bring them into the medical domain. The possession of an abnormal character leads to difficulty in adjustment in normal social life and therefore such personalities frequently show up as petty criminals, vagabonds, prostitutes. It would, however, be quite wrong to assume that all abnormal characters are of a socially undesirable kind. . . . Psychopathic reactions are characterized by their transient, episodic, and often explosive character, and by their reactivity to environmental factors. The storm may be very violent whilst it lasts, and may take the most diverse forms—loss of temper, impulsive conduct, fits of depression and uncontrolled weeping, suicidal attempts, fugues—but it is usually soon over, although it may be readily provoked again."

The psychopathic personality usually appears in the criminal courts as a non-sane non-insane individualistic and discordant person. He may be of subnormal, normal or supernormal intelligence. Sometimes he presents evidence of exceptional ability and this may be seen in several directions. Whether possessed of subnormal, normal or supernormal intelligence effective output is often adversely influenced by the fact that the necessary effort is ill-timed and ill-considered. Judgment is often biased, and action explosive as well as variable. The psychopathic personality is frequently incapable of making satisfactory social adjustments in particular directions because of transient and episodic anomalies of character, emotion, moral sense or sexual make-up. He is, for the most part, unable to put himself in the position of others and consider the issue from their point of view, or act accordingly. He fails to appreciate the fact that in human relations a common denominator of thought and action is often indispensable. He may be tolerated within his own circle because there is a good deal of class loyalty in different grades of society, but in the constructive work of the world contacts must be made without as well as within a special group. He often fails because in modern society each one of us depends to some extent upon others for our personal comfort and well-being. Consequently we resent unreliability when we have a right to expect effective assistance, we refuse to tolerate aggression and injustice, and we are affronted by the selfishness of the egocentric if it violates the welfare of others and runs counter to accepted social prohibitions. It is characteristic of the different types of psychopathic personalities that they are unable to subordinate a short-term gratification to a long-term advantage. Many are unable to make a sustained effort of a particular pattern, to profit by experience and learn the restraining influence of reality. Some have insight into their condition. The impressive self-criticism of T. E. Lawrence, in spite of its beauty of expression, makes painful reading: "I began to wonder if all established reputations were founded like mine, on fraud . . . the praise-wages of my acting had now to be accepted. . . . With men I had a sense always of being out of depth. . . . There was a craving to be famous; and a horror

of being known to like being known. . . . To put my hand on a living thing was defilement. . . . I had a longing for the absolutism of women and animals. Many things I had picked up, dallied with, regarded, and laid down; for the conviction of doing was not in me. . . . I was a standing court-martial on myself . . . the truth was I did not like the 'myself' I could see and hear."

These are not the words of a happy man. They are recalled here in order to accentuate the fact that even the supernormal psychopathic personality may be unable to overcome his constitutional disabilities, and to show that his range of usefulness is restricted if his responses to stimuli are ruled by perverse urges and inhibitions. They also point to the fact that in our judgment of the psychopathic personality we must consider, as in other cases of mental abnormality, not only an activity or series of activities but their motivation.

Elsewhere I have described the criminal psychopathic personality, tentatively, from the medico-legal aspect, as a person who, although not mentally defective, psychoneurotic or insane, is persistently unable to adapt himself to social requirements on account of abnormal peculiarities of impulse, temperament and character, which may require specialized medical and rehabilitative treatment, instead of, or in addition to, the ordinary methods of punishment, before his social reclamation is effected.

Omnibus descriptions are open to the criticism that they widely embrace different types, whereas only certain features of each are common to others. Curran and Mallinson head a recent valuable survey of the literature of psychopathic personality with the apt quotation: "I can't define an elephant, but I know one when I see one." And Kenneth Walker's reference to the story called "The Disagreement as to the Description and Shape of the Elephant", in which those who handle one in the darkness only understand it in respect of the part they touch, is not without significance for those who study this group.

Many of the cases seem to lie in the borderland between mental disease and anomalies of character rather than between mental disease and mental health. The Oxford English Dictionary defines disease as absence of ease. Horder says: "A disease is the sum of all those recognizable changes which result from the disturbance of the state of equilibrium which, being serviceable to the individual, we term Health." Ryle defines a disease as "the whole consequence of a conflict between man (or animal) and the noxious agencies in his environment". He points out that the patient, the pathologist, the physician and the surgeon interpret the term differently, and he quotes Sydenham's observation: "A disease, in my opinion, how prejudicial soever its causes may be to the body, is not more than a vigorous effort of nature to throw off the morbid matter, and thus recover the patient." It seems clear that many psychopathic personalities judged by these standards cannot be regarded as suffering from disease. For their particular reactions often represent the man himself rather than the effect upon him of "noxious agencies" and "morbid matter".

The conception of character as the growing modifiable and self-regulating part of the personality is even more elusive. It covers the volitional and inhibitory phases of behaviour and is the driving force which, to a large extent, is dependent upon intelligence and temperament. Shand describes the "Stages of Character" under three headings which he says "roughly correspond to the three levels of

mental development: (1) the instinctive; (2) the emotional; (3) the level of sentiment; and again roughly these three are represented in (1) the life of the animal; (2) the life of the child and (3) the life of the adult human being. The first is the most perfect in organization; but also the most rigid, in which intelligence has least formative influence. The second is the most helpless and marks the transition from a lower to a higher form of organization for which the guidance of the adult mind is indispensable. The third is the most plastic and comprehensive; but its organization is never completed. In it reflection, reason and self-control have their full opportunities; yet it is the region of folly and error, with which we can hardly charge the animals; of mistaken valuations followed by disillusion; of progress and decadence; of constancy and infidelity. It has never been understood."

The development of character is progressive, and for the most part advances more or less gradually. It is reasonable to believe that in some psychopathic personalities the advance ceases somewhere between the second and third levels of mental development mentioned by Shand, or in the lower levels of the third. In other cases it would seem that from various causes regression from a normal level of development to a lower has occurred.

CAUSATION

The study of psychopathic personality stresses the importance of the constitutional factor if the aberrant behaviour cannot be traced to conflict, and is inconsistent with the particular or general situation under consideration. But in some cases the psychopathic activity appears to be related to early fixation, and in others to later psychical conditioning.

Moore thinks of constitutional psychopathic conditions as mild forms of insanity. Partridge writes: "As compared with some of the other mental deviations, the class of psychopathic reactions may be said hardly to have arrived in psychopathology."

Bleuler considers that: "We have here to deal with deviations from the normal in all possible directions and mixtures." If this comprehensive view is accepted it would seem to demand an authoritative decision delimiting the standards of normal conduct. Often, standards of behaviour are said to be outside the range of normality because they extend beyond the assessor's personal experience, which may be quite limited in certain directions although extensive in others. And this very fact may lend an artificial air of authority to his pronouncements, just as when the hand of the Hindu fell on the trunk of the elephant in the dark and caused him to say: "This creature is like a water-pipe."

Slater calls attention to the fact that "With few exceptions the psychopathic personality is the result of a combination of hereditarily determined tendencies, which in other combinations might have led to normality or even to a superior type of personality." He stresses the fact that "character must be determined by many thousands of different genes, and it is difficult to isolate the fact in any one".

The study of psychopathic personality is very far from completion, and it would seem that we have not passed the stage when the scientific approach to the problem should be as simple as possible if it is to be constructive. Genetic and other studies therefore will be valuable only in so far as they relate to cases in which the diagnostic criteria are faithfully attested. It may be that here, as elsewhere, the

general medical practitioner who studies different generations of the families he attends can contribute much to our knowledge. For he can observe the effects of social and antisocial traits of character as they pass from the parents to their descendants.

Humphreys accepts the view that psychopathic personality, like mental defectiveness, represents arrests in development, especially mental development associated with social inadequacy. Chornyak writes: "Egocentricity is a normal stage early in childhood of personal maturation . . . this type of psychopathic personality is fixed at this early egocentric level because of damage to the most recently acquired areas in the cerebrum." Earl D. Bond suggests that the term egocentric psychopath may be more appropriately changed to idcentric psychopath on the assumption that there has been a lack of development either of the ego or superego. Sprague would seem to agree with Partridge. In discussing the psychopathology of psychopathic personality he states: "There has not been reported any structural pathology which would offer a somatic or neuro-pathological foundation for psychopathy. Hence we must consider it as a functional abnormality, a behavioural deviation from what is customary."

Binder analysed 350 cases of illegitimate pregnancy from material supplied by the municipal social agency of the city of Basle. One-third were normal, one-sixth oligophrenic, and one-half psychopathic. Henderson stresses the importance in such cases of emotional conflicts and insecure living conditions in leading up to conduct disorders of the antisocial type. In thirty-four illegitimate persons under observation Henderson found 50 per cent presented the picture of a psychopathic state.

If the clue to character is related to early memories, which in some cases become essential factors in the creation of aberrant behaviour, it seems clear that an innate factor must be present also, since the same memory arising at the same time in a sibling of a near age, may have no untoward result. And since the different types of psychopathic personality differ so much from one another the endogenous and exogenous causative factors may perhaps be most profitably studied in types rather than in the group as a whole.

Discussing abnormal characters Curran and Guttmann write: "It is perhaps worth mentioning that bodily anomalies frequently co-exist with the psychological anomalies in these abnormal characters and all the so-called nervous symptoms, such as tremors, restlessness, profuse sweating, vasomotor lability with blushing and fainting, and an allergic disposition are frequently found combined with the psychopathic anomalies, though detailed correlations have yet to be made. The same is true as regards morphological anomalies, often called stigmata, asthenic build, disproportion in physique, under-development of the secondary sexual characters or heterosexual features."

It is well to bear in mind as Curran and Mallinson point out that all abnormal characters do not in fact develop abnormal mental reactions: "The possession of an abnormal character does not in itself constitute a medical problem unless of course it is most illegitimately so defined." They also point out that "to equate psychopathic personality with abnormal character . . . approximates perilously to making the study of psychopathic personality co-extensive with the major part of psychiatry".

A practical view will accept the fact that neurological, biochemical, and psychological changes as well as inherited and more general environmental factors may so alter behaviour as to render the individual incapable of social adaptation.

Goltz's classical experiment in which he induced a condition of "sham rage" in a dog by removing a large part of the thalamus, and the hypersensitivity to aggressive stimuli which is a feature of the thalamic syndrome in man are significant. Best and Taylor refer to the suggestion that certain conditions in man, for example, the manifestation of fear in cases formerly described as "shell-shock", the unreasoning rage in some cases of drunkenness, and the emotional instability of certain mental disorders associated with degenerative changes in the cortex may be due to the release of the hypothalamus from cortical control. Le Gros Clark, postulating the relation of the functions of the frontal cortex and hypothalamus refers to Elliot Smith's description of this area as the seat of the higher mental faculties, and he states elsewhere that the prefrontal areas may be regarded as "a final product of cerebral development where the activities of the purely cortical mechanisms underlying the intellectual components of personality are equated with the activities of the hypothalamic region which are associated with the more fundamental and primitive components". Cox refers to cases which show that lesions removed from the cortex may cause profound alterations in conduct, whilst Alpers in a recent study of the literature discusses personality and emotional disorders associated with hypothalamic lesions which were related to antisocial behaviour.

The pathological findings in cases of encephalitis lethargica, and the effects of the disease upon personality and behaviour rendering the latter at times indistinguishable from the antisocial activities of certain psychopathic personalities, are well known. So too, the occasional result of accidental as well as operational injury to the brain on conduct. I have elsewhere described a case that would now be classified as psychopathic personality in which a young man received an injury to the head in the war of 1914-18. Shortly afterwards his character changed and his career was marked by deceit, lies, thefts, extravagancies and callous selfishness. A pulsating area due to trephining to relieve pressure on the brain was present over the left Rolandic area, together with paresis on the right side of the face, wasting of the right arm, weakness of the right hand and an alteration of speech. The physical signs were clearly the result of damage to the brain, and it was reasonable to attribute the coincidental character changes to the same cause.

The criminologist, however, cannot disregard the fact that injury and disease may produce a pathological condition of the brain without evidence of psychosis or psychopathic personality. He must also consider the socializing effect on some psychotics of the modern operation of prefrontal leucotomy, and the significant fact that the static view of the central nervous system is undergoing modification. Golla has recently stated: "It seems as though the central nervous system can re-orientate itself. If it cannot work in one way it will do so in another. . . . If there is dysfunction in one part another will take on its function."

Ingham considers that from the neurological aspect, constitutional psychopathic inferiority implies a failure in some important adjustment to environment largely due to innate constitutional conditions, and that this implies variation from the normal in the arrangement of the inherent structural patterns of the brain. He says:

"To-day it is generally conceded that, in the last analysis, all thought and all behaviour are the results of physical and chemical reactions in living tissues."

Having regard to the similarity between the E.E.G.'s of aggressive psychopaths and those of young children, Hill and Watterson suggest that "cortical immaturity" is a factor in the causation of this type of psychopathic personality. They also consider that on the evidence gathered by them from control material and patients, as on that obtained by other workers, one can have no doubt that an abnormal E.E.G. constitutes a handicap for its possessor in the matter of biological adaptation, failure of which may result in emotional behaviour. It is interesting to note that in a group of seventy-five criminal psychopaths Silverman found 80 per cent revealed abnormal or border-line abnormal E.E.G. tracings.

A longitudinal section of the behaviour of elderly psychopathic personalities supports the view that ageing may assist in directing aberrant behaviour along socially acceptable lines. The fact that the values of life change with the years seems to be related to physiological as well as psychological influence, and the researches of various workers in physiological pathogenesis are stimulating. Such, for example, as the work of Broster and his colleagues on the adrenal cortex and intersexuality, the induction of alkalosis by means of hyperpnoea by Lennox and others in precipitating epileptic seizures, and the observations of Hill and others on the effect of hyperventilation, hydration, and hypoglycaemia in cases of "dysrhythmic aggressive behaviour".

The "experimental neurosis" induced in dogs by Pavlov as a result of the "clashing of excitation with inhibition" aroused in the differentiation of visual stimuli, and in sheep by Anderson and Liddell in the differentiation of auditory stimuli, are perhaps not without significance for the criminologist who wishes to take a wide view of the disorders of conduct. For the term "criminal habit" used in Acts of Parliament, in the law courts, in official documents and discussions, as well as by psychiatrists, sociologists and others denotes a very real phenomenon. And Pavlov's statement that "the different kinds of habit based on training, education, and discipline of any sort are nothing but a long chain of conditioned reflexes" is especially noteworthy when considering recidivism. Nevertheless, in the study of the neurological, biochemical and psychological causes of behaviour a facile and illogical tendency to argue from the particular to the general must be avoided.

Whether, as I incline to believe, the subject of psychopathic personality should be first studied in regard to the different types or whether, as Curran and Mallinson suggest, its structure can be most appropriately approached by using the term in a wide sense, there will be general agreement that the causation of the aberrant behaviour of the psychopathic personality offers scope for much needed research in many directions.

CLASSIFICATION

Different authors have suggested various classifications of the many groups of psychopathic personalities, and the differentiation from psychoneurosis is not always clearly defined. This is particularly unfortunate in medico-legal situations, since dubious and widely comprehensive statements in a court of law add to the uncertainties connected with an already obscure subject, and to the insecurity of the syndromes of psychiatry.

The American Psychiatric Association classifies psychopathic personality: With pathologic sexuality—indicate symptomatic manifestations, e.g., homosexuality, erotomania, sexual perversions, sexual immaturity. With pathologic emotionality—indicate symptomatic manifestations, e.g., schizoid personality, cyclothymic personality, paranoid personality, emotional instability. With social or amoral trends—indicate symptomatic manifestations, e.g., antisociality, pathological mendacity, moral deficiency, vagabondage, misanthropy.

Healy presents four groups: the unstable egocentric personality, the constitutional inferior personality, the idiosyncratic personality, the psychotoid personality. Henderson refers to the predominantly aggressive, the predominantly passive or inadequate, and the predominately creative.

The above, together with the classifications of Kraepelin, Partridge, Kahn, Schneider, Strecker and Ebaugh, Sadler, Bleuler and others have as a common denominator the fact that they all recognize the condition as essentially a disorder of social conduct. Normal conduct, however, is a theoretical postulation and the injunctions and prohibitions of to-day will not necessarily be our standards and guides tomorrow.

From the medico-legal point of view psychopathic personality is associated with particular considerations, and the benefits to society which owe their origins to the aberrations of state builders, writers, musicians and others must be taken into account when estimating the harm inflicted by some psychopathic personalities upon others. It may be misleading to limit the academic connotation of the term to overt deviation of behaviour, since there can be no doubt that some homosexual psychopathic personalities, for example, lead irreproachable lives, and the activities in other groups are not necessarily antisocial unless a very wide use of the word is accepted.

The classifications of some authorities support the view of White that psychopathic personalities occupy a place between the criminal and the insane. Nevertheless, even when conduct is grossly aberrant it may not be criminal. For example, de Saussure, in 1929, described the case of a pervert aged about thirty who had been married for seven years and whose sexuality was fully satisfied by standing on his head and remaining in this position for thirty seconds. Other gross sexual perversions of a non-criminal nature including coprophilia and solitary elaborately constructed sado-masochistic practices are probably known to many of us who are field-workers as well as students.

I have suggested the following clinico-descriptive classification as useful in criminal cases: Psychic inferior personalities; aggressive egocentric personalities; ethical aberrant personalities; alcohol and drug addicts; sexual perverts; schizoid, cycloid and paranoid personalities. This classification, like many others, includes the sexual perverts. Henderson and Gillespie in their well-known textbook describe sexual aberrations among the psychoneurotic reaction types. In a later study Henderson refers to sexual offenders under the heading of psychopathic constitution. J. R. Rees refers to sexual perversions under the heading of psychoneurotic delinquency, and Hubert and East refer to the not infrequent association of sexual offenders and psychoneuroses.

Perhaps the difference is largely a matter of emphasis. In psychoneurotic crime

stress is laid on conflict, and the resulting reaction of the patient; in psychopathic personality on constitution, and the action which is normal to the individual.

I have excluded from the classification so-called kleptomania and pyromania because genuine examples of these conditions are, in my experience, uncommon; and when unconnected with the affective and schizophrenic or organic reaction types of disorder, or mental defectiveness seem more appropriately considered among the epileptics, hysterics and compulsive-obsessive states. Some are malingerers. Dealing with hysteria in another connection Anderson doubts whether it is entirely justifiable in all cases to include in the groups of hysterical characters pathological liars, swindlers, writers of anonymous letters and others. I would add that a similar doubt arises also when some of these offenders are included in the psychopathic personality group.

DIFFERENTIATION

Discussions on the clinical varieties of psychopathic personality must accept the fact that one type often overlaps another, and just as the symptoms of many diseases are seldom present at the same time in any one patient, and an adequate description of an illness must usually present a composite picture of the symptoms in several cases, so too, a composite picture is often required to feature a particular type of psychopathic personality.

Psychic Inferior Personality. In any community certain individuals stand out from their fellows because their characters and personalities are above the average. Others frequently, or constantly, demonstrate their inferiority in both particulars. When they are heavily loaded with inferiority, which markedly affects their social adjustments adversely they may be regarded as psychic inferior personalities only if the disability is persistent. For no man can hope to be at his best at all times: anxiety, fatigue or physical illness may temporarily alter his reactivity and reduce his efficiency, but as soon as these are removed the normal man returns to his normal level of behaviour.

In many cases the condition appears to be essentially constitutional in origin, but at times the environmental factor seems to be of particular significance. If, for example, the head of a family holds strong patriarchal views and also enforces them with assertive zeal he may secure obedience in the home and forfeit the growth of independent self-reliance in his children. The modern parent, perhaps wiser in his generation, usually cultivates a relationship with his children which encourages their affection and comradeship, and leads to a steady development of self-confidence which flourishes by the restraint, wisdom and experience of the parent directing the enthusiasms, desires and energies of the child. Nevertheless, psychic inferiority may result when both parents and environment appear to be favourable, and it would seem that in these cases certain factors which contribute to the inferiority have been transmitted to the children through the parents acting as carriers.

Psychic inferiors are often good natured and likeable people; facile, placid and sociable. But they lack will-power and resourcefulness, and avoid making decisions. Hence they are incapable of successful improvisation and follow the line of least resistance. They avoid responsibility and are unable to deal with situations which

require persistent effort. They readily form antisocial habits and lack the force of character which enables the ordinary man to overcome the everyday difficulties of life. They are suggestible and often ill-advised in selecting their friends and acquaintances. Their emotional activity, for the most part, is blunted, and they are more willing as a rule to receive than to give. They may be, however, useful citizens within their individual limitations. They may be successful in married life if their partners are of the dominant type able and willing to protect and guide them, and ready to accept the ever-present duty of shielding them from the vicissitudes of life. But if death, or a temporary difficulty or separation, leaves the psychic inferior to face responsibility alone he soon fails to maintain the social security to which he has been accustomed under the shelter of his lost companion since he is essentially a parasite. Indeed, if it be true as a modern writer* has declared that in general we make the voyage of our lives by dead reckoning, it is also usually true that the psychic inferior personality is unable to steer a true course alone even though he be assisted by the most modern equipment.

If criminal conduct is exhibited it may be markedly aggressive; murder and suicide may result. But usually the crimes committed are minor in character, and petty thefts, embezzlements and the lesser forms of fraud, as well as the less aggressive varieties of sexual offences are frequent accompaniments.

Since the characteristic features of this type of personality are negative and positive qualities are necessary for satisfactory social adjustment, it is not surprising that many psychic inferiors become recidivists. Their conduct in prison is related to their negative attributes. They are usually quiet, orderly, industrious, prudent, contented and well meaning. They gain some measure of emotional discipline in the orderly routine life of prison. But the good intentions, which for a brief space actuate their social relationships on leaving prison, soon succumb to the stresses and hazards of life in the outer world, and they return to prison for offences which, on the whole, are more a nuisance than a menace to social security. Their incurability is not surprising since their character is founded upon an insecure basis, which prevents them from making the adjustments necessary for success in a complex modern world. Nevertheless, a measure of adjustment can sometimes be attained if appropriate modifications of the environment are assured.

This was a noticeable fact in the war of 1914-18, when recidivists belonging to the psychic inferior group were absorbed into the Forces, and often surprised those of us who knew them by the manner in which they satisfied the authorities in the performance of their duties under the supervision of an understanding senior, and with the support they obtained from identification with the unit in which they served. At the same time the outcome of enlistment in the Fighting Services during war-time is unpredictable, since it depends upon the unknown stresses which may arise in future situations. Undoubtedly, a proportion of those taken into the Fighting Services become liabilities.

The following cases illustrate types of social inadequacy in this group:

Male. Aged twenty-six years. Attempted suicide. There was no family history of mental disorder. His father was an aggressive domineering person who frequently thrashed the accused, and his cruelty to the boy was known to the neighbours. His brothers looked down upon him as a weakling, and there was a doubt in his mind

* R. B. Cunninghame Graham.

as to his legitimacy. His mother was killed in a motor accident when he was aged eighteen, and her death deprived him of her support in all his difficulties as well as of her affection. He was on good terms with his sister. He left school in Standard VII and obtained work in a factory, but after a year his father transferred him to a colliery so as to earn better wages. Later, a month at sea was followed by enlistment in the Army during peace-time. He was unable to accommodate himself to the life, and made three attempts at suicide in order to obtain his discharge when he was upset by trivial occurrences. After fifteen months' service he returned to civil life and obtained different employments, sometimes retaining them for a few months, at other times only for a few days. At the time of his arrest on the present charge he had made six other attempts at suicide, and had received two short sentences of imprisonment on different occasions for these offences. He had also served a short sentence for false pretences. The attempts at suicide were not accompanied by the histrionic features which Gillespie so aptly associated with the hysterical personality. They were not related to manic-depressive disorder, but they were responses to situations which an ordinary person would overcome without difficulty. He was rather above the average in intelligence, but was conspicuously inferior in his manner of life and method of dealing with life's problems. He was unable to establish friendships, but enjoyed outdoor amusements which were free from responsibility. His sexual interests were normal and he had a love affair which ended when he suspected the girl was friendly with another man. Observation over a period confirmed the diagnosis of psychic inferiority and showed the importance of adjusting his life, as far as possible, to the inadequacies of his personality. The hope that he might attain a limited degree of success was encouraged by the fact that his physique and general health were good.

The following case was seen with Surgeon Lieut.-Commander G. Tooth, R.N.V.R.:

Male. Aged thirty-eight. Naval Offence. This rating stated that his father was intemperate and that his sister was in a mental hospital. He was sent to an Industrial School for theft and remained there until he was sixteen years of age. He then went to sea for nine months, and since then has had many occupations for short periods only. He joined the Navy during the World War, but finding the life distasteful attempted suicide and also deserted in order to obtain his discharge. He had not served overseas and was never in action. He had been convicted in the civil courts nine times between the years 1924 to 1942 for wilful damage, loitering, being on enclosed premises and theft. He was untruthful in a purposeful manner and alleged, unsuccessfully, that his thefts were due to an impulse which he could not control. He read popular works on psychology and used the information to excuse his civil and naval offences. He was alert and intelligent, but he was unreliable and lacked will-power. He was suggestible and based his conduct on short-term aims. He was unable to accept the ordinary difficulties and responsibilities of life, and desired to take all and give nothing in return. His emotional tone was blunted. He married a widow but soon left her, and was unconcerned when she went to live with another man. He was inclined to boast of his civil and naval offences. He was solitary and without ambition, he was satisfied with his inadequacy because he failed to appreciate it. He worked well in prison and was well behaved. He found there the security and freedom from the difficulties of life

against which he was unable to contend in the outside world. His health and physique were good. He was a psychic inferior with slight schizoid trends and his future seemed likely to be unsatisfactory to society. It by no means follows that it will appear unsatisfactory to him. Indeed, if the years bring him parasitic ease he is likely to be content although he remains in a backwater all his life.

Incorrigibility was persistent in the following case (previously recorded in the Report on the Psychological Treatment of Crime. East and Hubert).

Male. Aged seventy-four. Rogue and vagabond. The family history showed no factors of medical importance. A brother had been in prison. His father was a respectable bricklayer and both parents were teetotallers. He was apprenticed to a trade, but found picking pockets as one of a gang more profitable, and at the age of seventeen was sentenced to five years' penal servitude for frequenting the crowd at the entrance to Sadlers Wells Theatre and stealing a gentleman's watch. Eleven previous convictions were proved against him at the time, and although it may be thought that his future criminal career was determined by the long sentence imposed upon him it seems likely that a criminal habit had been already formed. In addition to nine summary convictions as a suspected person forty-three offences were recorded between the years 1882 and 1937 for theft, suspected person, rogue and vagabond, attempted theft and once for assaulting the police. For these offences he received sentences of imprisonment totalling 179 months, and terms of penal servitude amounting to twenty-five years. He had also been bound over on four other occasions.

He was well preserved physically and mentally. His health was good and there was no evidence to suggest that he had at any time suffered from any mental disorder. He was alert, intelligent, quiet, sensible in conversation and a rather likeable old man. He never married, but kept in touch with his relations and they welcomed him to their homes when he was discharged from prison. He lived for the moment and was unable to take the long view. He was a wishful thinker who refused to acknowledge the realities of life, and was without ambition. He experienced little satisfaction when his crimes succeeded and little disappointment when they failed. He was not hostile to the society which had taken from him so much liberty, and never rebelled against the mischances of life. He was industrious and well behaved in prison and had become institutionalized to some extent. He was a nuisance but not a menace to society, and if his qualities of character had been less negative might have directed his life towards useful citizenship.

Psychic inferiority was associated with manic-depressive disorder which culminated in murder in the following:

Male. Aged forty-five. Murder (two charges) and Attempted murder. His father was dead, but he remained in contact with his mother and siblings. No mental disorder in the family was admitted. He was a single man, and a near relative considered that he had never been able to stand alone. On leaving school he was employed at a newspaper office and was then apprenticed to a baker and followed that employment for six years. During the war of 1914 to 1918 he served in France and on demobilization obtained work as a labourer, and later was employed on night duty at an institution for about five years. Between 1925 and 1943 he remained at one occupation for two years, at another for a few months and left both of his own accord. The greater part of these years were spent in prison. He served

sentences varying from eighteen months to one month for thirty offences: fourteen were for wilful damage, others for false pretences, theft, fraud, being on enclosed premises, loitering and twice for attempting to commit suicide. They were all trivial and might be regarded as indications of social inadequacy, and none were for violence against others. He was of average intelligence but lacked the power to will or make sustained effort. He persistently followed the line of least resistance and was unable to deal with the ordinary difficulties of life satisfactorily. The desire of the moment actuated his decisions, and he disregarded long-term advantages if they were opposed to short-term gains. He was unable to profit by experience or adjust himself to the realities of life. His emotional reaction—apart from manic-depressive periods—was blunted; he was unable to make friends and was unconcerned with his numerous sentences of imprisonment.

In later years his relatives became disturbed by the alteration in his character, and apprehensive at his occasional outbursts of excitement. Between 1933 and 1940 he made five attempts at suicide, and was twice certified as insane whilst serving sentences in prison. He was transferred to a mental hospital and was looked upon as a case of manic-depressive disorder.

He called at a lodging-house occupied by a widow and asked for accommodation. As he was being shown a room he demanded money from the woman and when she refused grasped her by the throat and said: "I've got to kill you." She gave him some money and became unconscious. He then left her. Three days later he knocked at the door of another apartment house in the same district and throttled the landlady with his hands. He stole the money in her handbag and left her dead. Three weeks later he gained admittance to another apartment house in the same district, and killed the landlady by strangling her with a shoe lace. Although this murder was also committed for gain he took nothing from the house. Two days later he gave himself up to the police and gave them a clear account of the crimes. Whilst awaiting trial the experienced prison medical officer found him elated, querulous, and aggressive. If crossed in any way he was at once resentful. He was suspicious, argumentative, and quite indifferent regarding the moral aspect of his crimes, which he freely admitted. He expressed no remorse for his victims. He was considered to be insane by the prison medical officer, but he did not come within the McNaghten ruling and the jury refused to accept the defence of insanity. At an after-trial inquiry into his mental condition he was certified to be insane and was transferred to Broadmoor Criminal Lunatic Asylum.

Aggressive Egocentric Personality. Crimes committed by this type of psychopathic personality are often a danger to society as well as to the offender. The aggressive egocentric, like the young child, is over-concerned about himself and resents the restraint which others impose upon his capricious self-indulgence and narcissistic outlook. He is not merely selfish, but also assertive, wayward, irritable, impulsive and unreliable. He lacks self-discipline and makes little or no effort to control his instinctive urges in a reasonable manner. His unbounded self-confidence, conceit and exaggerated self-regard antagonize many of his associates. He is critical of others but as a rule is uncritical of himself; he is difficult to persuade as he believes himself to be the most important star in his particular constellation. He refuses to compromise in difficult situations and meets opposition with impulsive and often violent behaviour. His general pattern of response is characterized

by emotional tension, and he is often unscrupulous in his dealings with others. His egocentricity limits his ability to concentrate on matters which are unrelated to himself, but if his interests lie in idealisms his true personality may not be apparent to those who are inexperienced in the unscrupulousness which is sometimes exhibited by the thwarted idealist.

Although the aggressive egocentric psychopath has confidence in his ability to meet difficult situations he fails to recognize the difficulties which his intolerance creates in his relations with his associates. His ready acceptance of responsibility is an attribute of his aggressiveness, but it seems to be due, to some extent, to his inability to appreciate the chances of failure, and until this occurs he may be envied by his companions.

Crimes committed by offenders of this group range from murder to assaults, attempted suicide and sexual offences; drunkenness and violence to property as well as motor offences are frequently associated with the condition. The offender's reaction to imprisonment varies. Many, aided by the discipline and routine of the institution, control themselves and work well. Others are uncertain, aggressive, impulsive, undisciplined, explosive and unreliable. Occasionally a prison paranoia results.

The successful, aggressive, self-confident egocentric is not included in this group of abnormal personalities. It is not merely a question of degree which here separates the normal from the abnormal, but the fact that emotional instability and an inability to profit by experience make the conduct of the aggressive egocentric psychopathic personality incalculable, unreliable and often dangerous. The qualities which require firm guidance if success is to be attained are uncontrolled and act injuriously to the man himself as well as to society.

Male. Age forty-five. Throwing corrosive fluid with intent. No reliable information concerning the family history was available. The prisoner had not suffered from any serious illness. There was no reliable history of his childhood. As an adult he soon came to be regarded by the police as a danger to society, a black-mailer and a bully. He first came to their notice at the age of twenty-one and was sentenced to two months' imprisonment as a suspected person, loitering. Later, he was convicted of burglary and received a sentence of nine months' imprisonment. Still later he was bound over for malicious wounding: he struck a man over the head causing a wound which required six sutures. After this he was convicted of firing a pistol at a man at point-blank range whilst playing cards because he had lost some money; he received a sentence of nine months' imprisonment. On completing this sentence he was convicted of receiving a motor-car knowing it to be stolen and was sentenced to twelve months' imprisonment. In the following year he was sentenced to ten years' penal servitude for throwing corrosive fluid over a woman with whom he had cohabited, and soon afterwards was sentenced to nine years' penal servitude for wounding an official with intent to do him grievous bodily harm. During his imprisonment he threatened the staff as well as his fellow prisoners and violently assaulted the latter on two occasions. His general health was good. He was alert, intelligent and showed no evidence of idiopathic epilepsy, psychoneurosis or psychosis. His violent outbursts were excessive responses to situations which would not have produced a trigger-like reaction in a normal person. His egocentricity was marked. He was selfish, conceited, assertive, irrit-

able, explosive, quarrelsome and without thought for the feelings of others. He declared that he preferred to deal personally with anyone who he thought had wronged him. He was boastful and untruthful. After a prolonged medical interview on one occasion, and perhaps because of it, his conduct remained satisfactory for some months, but the improvement was not maintained and further episodic explosions occurred. He remained unable to profit by experience and short term aims regained their ascendancy over long-term advantages. He was so satisfied with himself that it seemed unlikely that he would be able to permanently adjust himself to social requirements.

It is recognized, of course, that successful aggression feeds on its victims. The bully reinforces his aggressiveness at their expense. This phenomenon is so common that it cannot be considered abnormal. Indeed, in his distorted way the bully profits by experience. This man, however, over a long period received disciplinary awards for his violent misconduct in prison. He was unaffected because of his inability to profit by the past, and this, together with the facts recorded in his history, brought him within the group of unstable egocentric abnormal personalities.

A climax was reached at the beginning of manhood in the following case:

Male. Aged twenty-six. Murder. The homicide came from a respectable home, both parents were alive and his father had been employed by one firm for twenty years. Two brothers older than himself were married, a younger sister was unmarried and another was dead. No mental abnormality was recorded in the family history. The prisoner left school in Standard VII and was transferred to a central school and reached the highest class. On leaving school he obtained employment at a good wage but left at the age of seventeen after a quarrel with his father. He then enlisted in the Army but disliked the life and his father obtained his discharge. After a period in civil employment he rejoined the Army but was discharged on medical grounds. At the age of eighteen he deserted a girl who had become pregnant by him. He went out with another girl and soon afterwards attempted to strangle a third girl who made disparaging remarks about her. After leaving the girl unconscious he gave himself up to the police and as a result was sentenced to detention in a Borstal institution for three years. He had been previously convicted of theft. During this sentence he boasted about his wanton acts; he was arrogant, conceited, and callous but well behaved. On his release from the Borstal institution he married the girl he had attacked. Subsequently he was convicted and sentenced to periods of imprisonment for stealing a cycle, stealing a motor-car, and for robbery. He attempted suicide twice and served a short sentence of imprisonment for one attempt. His wife made ample provision for him when he left prison after the robbery, but he gave way to violence and spent his time drinking with different women. At the time of the murder he was wanted by the police for bilking a taxi-driver. When his wife was out he broke open the gas-meter and stole the contents, and having strangled their child with his wife's stockings left home. He spent the money drinking with women and when it was exhausted gave himself up to the police. He appeared to have been fond of the child and the motive for the crime was undisclosed and could be only assumed. There was no reason to think that he was under the influence of drink at the time. The death sentence was commuted to penal servitude for life.

There was no evidence of psychoneurotic or psychotic disorder. He was mentally alert and above the average in intelligence. He was impulsive, irritable, aggressive and selfish. Apart from the effect of drinking, the explosive violence to himself and others, which temporarily relieved the rising emotional tension of the moment, was so opposed to his long-term interests and so ungoverned by experience that it appeared as an exaggerated response to slight episodic impacts. At the same time the long period of controlled behaviour in the Borstal institution was misleading when an attempt was made to estimate the usefulness of his future career.

It is important to differentiate the above types of offenders from the criminal whose aggressiveness and violence form part of his stock in trade:

Male. Aged thirty-seven. Possessing firearms to endanger life. He was a married man with several children but at the time of his present crime had not lived with his wife for a considerable period. He had been previously convicted for thefts, and on two occasions had been discharged on his own recognizances for these offences. On the third occasion he was sentenced to three years' detention in a Borstal institution. This was followed by a short sentence for loitering, and subsequently of penal servitude for robbery with violence. He was working with a gang of criminals and knocked a man down in the street and robbed him of £300. On the present occasion he was concerned with others in a Post Office robbery, and when arrested tried to get at a loaded revolver he was carrying in order to shoot the police and escape. At the Borstal institution he was found to be intelligent, alert and energetic. He was quick-tempered but was able to control himself. He placed too high a value upon his capacity and over-estimated his importance in the labour market. He was found employment by the authorities on discharge from Borstal which would have led to steady advancement but he exchanged it for other work which was better paid and only temporary. He wrote from the Borstal institution: "I can stick to anything when my inclination lies that way, not for honesty's sake but because it suited me better. . . . As I had urgent need of money at that time I turned to the only means I had of obtaining it in any quantity. So I took the situation laughing up my sleeve, as it were, at the people who thought I would work for such paltry wages. During that time I was still engaged in thieving to make up what I considered a living. . . ." This statement expressed much of his outlook on life. He was a clever mechanic and could have earned good wages but he was vain and unscrupulous and had chosen a criminal career determined to enjoy the profits. He was callous and selfish, untruthful and brutal. His crimes were not the result of psychoneurosis or psychosis but were committed with a full realization of the chances he took. He could control himself when he wished to do so. His violence was not the trigger-like response of the unstable aggressive egocentric psychopathic personality but the cool determined aggression of the calculating terrorist. It was not surprising that when his conceit was vanquished in prison and he found terrorism availed him nothing, distortion occurred, and a mild prison paranoia resulted.

Ethical Aberrant Personality. The essential character features in this group are an unusual forcefulness of several instinctive urges, an exaggerated emotional instability, an abnormal deficiency of will-power, together with a lack of ethical understanding and an inability to profit by experience, so great that in spite of

normal or superior intelligence the individual is a danger to society and sometimes to himself.

Under the heading of Constitutional Ethical Aberrations, Bleuler includes "enemies of society, antisocial beings, moral oligophrenics, moral idiots and imbeciles. Moral Insanity." But the factors which produce antisocial behaviour and crime are so complex that it is important, from the medico-legal and research points of view, to restrict the grouping of mentally abnormal criminals to the generally accepted syndromes of psychiatry. It will often be found very difficult to consider that an enemy to society or an antisocial person is, by that fact alone, an abnormal person in the ordinary use of the word.

Moral sentiments are gradually acquired, and their growth depends upon the teaching, practice, code and custom accepted by parents, sibs, teachers and associates. Many enemies of society and antisocial persons as well as criminals are the result of faulty instruction and training. Their unlawful activities arise from environmental conditions and mental conflicts which can often be traced to their origin without difficulty. Others, from a variety of causes, select crime as a career. But in many ethical aberrant personalities environmental conditions are entirely favourable as far as can be judged, and no conflict can be attested as the cause of their criminality.

Burt, like many others, is dissatisfied with the term moral defectiveness, and as an alternative suggests temperamental defectiveness. Henderson and Gillespie, and some others, now use the term psychopathic state or psychopathic personality for this group.

Their numbers are small, and as I have already stated the ethical aberrations sometimes arise as the result of a mentally disabling illness affecting the patient after he has reached the age of eighteen and therefore excluding him from the moral defective group. The mental abnormality appears to be similar and may be expressed in the same way as in the cases which occur earlier in life. They may be considered as examples of Moral Insanity, but from the medico-legal and research points of view are usually conveniently included, as here, among the ethical aberrant personalities.

The clinical criteria of this group are so well known that only a brief reference to them is required. As I have said, the intelligence may be normal or supernormal. Excitability, instability, irritability, quarrelsomeness, spitefulness, cruelty and destructiveness are usual features. Acquisitiveness, aggressiveness and sexuality predominate and may be uncontrolled. Priority of self against all others, a callous indifference to the rights and feelings of others, and an absence of affection accompanied by lack of forethought or wisdom, together with a permanent inability to appreciate the importance of reality and the value of communal rights and conventions, are distinguishing criteria. Although emotional regard for others is absent, strong uncontrolled emotional displays in situations which oppose the egocentric desires of the individual are frequently exhibited.

A lack of ethical understanding does not of itself constitute this psychopathic condition. Indeed, the ethical aberrant personality may display verbal morality in his discriminating replies to ethical perception tests, but he fails in their practical application to situations which concern himself. And since the offences result from the exaggerated activities of many instincts in the same individual, the criminal

record is seldom restricted to one class of offence, as so often happens in the case of the habitual criminal. Some pathological liars and pathological swindlers belong to this group.

The crimes committed by the ethical aberrant personality include murder, attempted murder, assaults, arson, rape, indecency, theft, fraud, embezzlement, damage to property and the like. They are usually committed for an inadequate purpose and are distinguished by a lack of concealment and disregard for the results. An almost constant indication of the condition, is the fact that the associates of the ethical aberrant personality recognize that his conduct is unusual and that he cannot be relied upon. So it comes about that he usually commits crime alone.

Discussing the occasional effect of brain injury on conduct in the section on causation above I have briefly alluded to a case in this group. Other examples are described in some detail in my book on Forensic Psychiatry under the headings of Moral Imbecility and Moral Insanity.

A recent case is the following:

Male. Aged forty-two. Murder. There was no record of mental abnormality in the family history. From an early age this homicide was a thief and a liar, often for no apparent reason. At the age of sixteen his father refused to let him live at home as his conduct was intolerable. There was no reliable information regarding his occupations in earlier years, but he appeared to have never had any settled employment. He was a clever designer but was unable to apply his conspicuous talents with any degree of regularity, and his behaviour was so erratic that his career was marked by an occasional success which was followed by a series of failures. He married an estimable lady for her money and position; he had no sexual interest in women and flagrantly practised homosexuality before and after marriage in a manner which was intended to hurt his wife's feelings. For the greater period of their married life they lived apart, but he persuaded her to become a Roman Catholic in order to prevent her from divorcing him. He frequently quarrelled with her and used the most profane and obscene expressions to emphasize his hostility. He ordered valuable presents to be sent to her as a peace-offering and regain her favour, but he left her to pay for them. Over a period of years he obtained very large sums of money from her but his enterprises consistently failed, and in these and other directions gross extravagancies were only paid for by the generosity of his wife. In spite of her constant kindness and consideration he circulated scandalous and wholly untrue statements about her. He also made outrageous statements about important people who had incurred his displeasure. On one occasion he was bound over at the police court for an assault on a man, and on another occasion for using threats. He was suspected of having wantonly killed a valuable dog he owned. He threatened to kill himself because a young homosexual accomplice became interested in a woman. He sent his wife a letter on black-edged paper saying he was about to commit suicide and followed this up with further threats to do so. At this time he came under the notice of a psychiatrist who made a diagnosis of moral defectiveness and he was admitted into a mental hospital, but he shortly afterwards escaped and did not return.

He strangled a youth who was his homosexual partner at the time, and the next morning the maid on entering the room found him in bed asleep with the corpse by his side. He then locked himself in and turned on the gas-fire without lighting

it, and when the room was forcibly entered was found lying by the fire more or less unconscious. His career was punctuated with revolting homosexual experiences, deceit, lies, frauds, cruelty, aggressiveness and a complete disregard for the rights and feelings of others and of social prohibitions in general. He was a teetotaler, and was not a drug addict. His abnormal conduct was persistently callous and unexplained by the immediate situation. He did not consider the probable consequences of his indulgencies and had no remorse for his conduct but there was no lack of ordinary intelligence. The details of his vicious and criminal activities fill very many pages which confirm the diagnosis of moral defectiveness, or ethical aberrant personality. He refused to allow a defence of insanity to be raised at his trial and was sentenced to death. As the result of an after-trial inquiry into his mental condition he was transferred to Broadmoor. The diagnosis was independent of the homosexuality of the patient, except that in this feature, as in the rest of his conduct wanton selfishness and callousness were outstanding.

It is clear that there are several features common to the aggressive egocentric personality and the ethical aberrant personality as outlined above. They may perhaps with some fitness be looked upon as subgroups of an idiosyncratic personality group. But the classification adopted in this article is intended to bring into prominence the fact that in criminal cases aggressiveness is the dominant feature in the one and amorality in the other. It seems that this distinction is useful in present day studies of psychopathic personalities and crime.

Alcohol Addicts. Discussions on alcohol addiction have been, perhaps, more adversely affected by bias than most other debates on social problems. MacCurdy's statement that "the alcoholic is before he ever touches a drop, an abnormal person" expresses only a partial truth for those who doubt whether anyone is normal. Trotter's dictum that "In the tragic conflict between what he has been taught to desire and what he is allowed to get, man has found in alcohol, as he has found in certain other drugs, a sinister but effective peacemaker, a means of receiving for however short a time, some way out of the prison-house of reality back to the Golden Age" eloquently declares a psychological fact. But it is not universally applicable if we accept the view that some alcohol addicts drink although they are unencumbered by disagreeable experiences or unpleasant thoughts. For although alcohol provides a method of escape for some it also furnishes others who are care-free with an added pleasure, and it is an interesting fact that in classical antiquity convivial excess appears to have been frequent among the most prosperous sections of society.

Some persons seem to take alcohol in order to raise their affective tone to normality, and others to raise it from normality to a euphoric level. The former blindly search for emotional ease, the latter less blindly and less excusably for unusual pleasures.

The alcohol addict may be defined as a person with some insight who is unable to forego his addiction, or maintain a reduction of its intake to an innocuous amount in spite of the fact that he is causing injury to himself and others by his indulgence. Before deciding that he is a psychopathic personality appropriate emphasis must be given to his mental constitution. For it must be remembered that indulgence in alcohol may be a symptom of other mental disorder; particularly in criminal cases, when it is often associated with manic-depressive disease, general

paresis, the psychoneuroses, high-grade mental defectiveness or epilepsy. Some alcohol addicts seem to arrive at that state as the result of habit alone. I have already referred to the fact that the psychic inferior personality is frequently an habitual criminal, and there seems to be little doubt that some alcohol addicts belong to the psychic inferior group because of the ease with which they form certain habits if they lack the positive qualities of mind required to resist them. But it is important to study the individual in this matter rather than generalizations. The middle-aged man who has hitherto led a normal life and then indulges in alcohol in order to escape from domestic and business anxieties when his mental and physical abilities are beginning to decline may be suffering from fatigue, anxiety, reactive depression or other mental disability, but is not likely to be included in this group of psychopathic personalities if he has previously been abstemious.

In the absence of psychosis, psychoneurosis, mental defectiveness, or evidence of psychic inferiority it may be considered that the alcohol addict belongs to a special type of psychopathic personality if his addiction cannot be traced to a relevant cause other than an apparently inherent inability to make social adjustments without its assistance; if it arises before or during the early years of maturity; if it persists although the addict is aware of the injury he is causing himself and others by his inability to forego a transient psychomotor stimulus and euphoric affective tone; and if he is unable to order his life on a long-term basis in this matter.

The release from morbid inhibitions which alcohol produces may seem to be advantageous. The removal of shyness, for example, resulting in an easy sociability lends an attractive feeling of power to the addict and seems desirable to him in spite of the manner by which it is attained. In everyday life we see the transition from seclusive introversion to companionable extraversion by the aid of alcohol. But the release from morbid inhibitions effected by alcohol having an adverse result and giving rise to antisocial behaviour is also common knowledge. Thus, in cases of constitutional or acquired homosexuality overt activity may be inhibited by social and ethical considerations, but is likely to be expressed if the higher controls are narcotized by alcohol. Similarly with exhibitionism, sadism and masochism. The picture may be complicated by the aphrodisiac action of the drug, but the matter is mentioned as it exemplifies the manner in which one type of psychopathic personality sometimes overlaps and influences another.

The path of the lawyer and administrator, as well as of the diagnostician and therapist, will be easier when we know more about the predominating factors associated with alcohol addiction. The view that it is attributable to inheritable influences leave some inquirers dissatisfied. Perhaps part of the answer is at present hidden in the unsolved reactions of chemical substances upon the human organism. And perhaps modern research is narrowing the field of exploration as it narrows the pathological conditions directly ascribed to alcohol as a poison. Thus, the distinguished members of the Alcohol Committee set up under the Medical Research Council refer to the modern work of Wechsler, Minot and his colleagues as well as of Jolliffe and others which indicates that the so-called alcoholic peripheral neuritis is not due to alcohol itself but to the failure of the diet of the alcohol addict to contain sufficient amounts of the vitamin B complex. The statements of Caldwell and Hardwick in their survey of neuropsychiatric studies in vitamin B

deficiency that "recent work strongly suggests that some mental disease is produced by a lack of these accessory food factors" may be shown by future research to be significant here also.

Psychopathic personalities of this group, like other consumers of alcohol in excess, may commit almost any offence. Homicide and other crimes of violence are particularly frequent. No offence is pathognomonic of the condition, but periodicity and the commission of similar activities on repeated occasions may suggest its psychopathology if manic-depressive disease, epilepsy, obsessive and menstrual mental aberrations are excluded. The general characteristics of the alcoholic psychopathic personality are well known and need not be repeated here. It may be noted, however, that on reception into prison symptoms of deprivation may appear in the form of irritability, depression, insubordination, aggressiveness and hostility. If persistent they generally denote a significant degree of mental deterioration.

Drug Addicts. Adams divided drug addicts into four main classes:

1. *Stabilized addicts*; who do not increase the dose of the drug but never exceed a certain, usually, small quantity which is, as a rule, employed for its stimulant effects. They are, to all appearance, normal useful persons bearing none of the ordinary stigma of addiction.

2. *Accidental addicts*; who have acquired the habit through legitimate medical treatment, or through want of caution in the administration on the part of doctor or nurse, or through self-treatment for some painful ailment, or who, without any positive evil in their nature have drifted into indulgence through bad example or bad surroundings.

3. *Natural addicts*; people of inadequate personality, drawn from the type of persons variously termed 'psychopathic' or 'psychoneurotic' or "mentally unstable". They are peculiarly liable to become addicted if circumstances are favourable.

4. *Criminal addicts*; who use drugs in search of new sensations, or to fortify themselves for a life of crime or for depraved motives such as the search for aphrodisiacs.

Adams pointed out that not all are agreed whether a cure should be attempted in the first class. Many in the second class desire to be cured and often are cured by judicious treatment. A large number in the third class have no real wish to be cured, and in all cure is difficult and relapses common. In the criminal addict cure is almost hopeless.

More generally, drug addicts may be studied according to their use of narcotic and non-narcotic drugs. The addictions of the latter do not usually lead to criminal behaviour. Narcotic drug addicts may be divided into those who use, for example, morphine and its derivatives to ease physical and mental pain, or cocaine for its pleasurable effects, and those who use barbiturates for their hypnotic effect and often when there is no real insomnia. The number of drug addicts in this country who commit crime as a result is insignificant.

In all cases of morphine and cocaine addiction a character change, directly attributable to the use of the drug, sets in so quickly that an addict may commit crime early in his addict career. Whether all those who take these drugs habitually to their own disadvantage and that of others, and cannot permanently abstain, belong to the psychic inferior group or to a special group of psychopathic per-

sonalities is, perhaps, doubtful. But in a wide view of psychopathic personality associated with crime it seems desirable to consider them in a special setting.

The Mayor of New York's Committee on Drug Addiction, in 1931, found that of 318 males treated the majority using heroin, and the remainder, except a very few cocaineists, being morphinists—50 per cent were constitutional psychopaths, and the majority of the remainder were criminals, vagrants, paranoid personalities or homosexuals.

Sexual Perverts. A true sexual perversion may be described as a persistently indulged sexual activity in which complete satisfaction is sought and obtained without the necessity of heterosexual intercourse. Slater found in the group of 265 psychopathic personalities to which I have already referred, and which included a wider range of persons than is accepted in this article, that an inhibited sex life was especially frequent. He found a similar result in 137 mentally defective persons in the same investigation. Slater observes that this inhibition "is clearly a quality of deep biological significance, and it may be that it is genetically associated with factors that make for inferiority of intelligence and temperament". I would add that in many sexual pervers coming before the criminal courts sexual inferiority is a noticeable feature.

Sexual perversions associated with criminal behaviour were considered in a Report by Hubert and myself in 1939 and more recently by me elsewhere. It will suffice to recall here the fact that exhibitionism is the most frequent perversion seen in the criminal courts, homosexuality, paedophilia and sadism less frequently, and fetishism as well as transvestism infrequently. I have personal experience of only four cases of necrophilia and one of pygmalionism associated with crime. Bestiality is usually a crime of convenience.

Schizoid, Cycloid and Paranoid Personality. Attention may be drawn to these types of mental constitution if they show marked social maladjustment in their daily lives. The solitary shy retiring schizoid given to day-dreaming and taking little interest in the external affairs of life may declare himself by his eccentricity and unsociability; the cycloid at times elated and at times depressed, by the clashing of his mood swings with the activities of his companions; the suspicious asocial paranoid by his biased interpretation of the intentions of others, which canalizes his thoughts and limits his conduct to provocative responses. They are frequently seen of course in ordinary civil life and need no special consideration here.

If they commit crime and are examined in cross-section whilst awaiting trial their mental condition may suggest early schizophrenia, manic-depressive disorder or paranoia, but after sentence further observation will show the unprogressive nature of their disability. Although a crime may appear to have little connection with the mental aberration of these offenders it is important to remember that their personal difficulties in civil life may become exaggerated in the ordinary prison surroundings if these are unadapted to individual requirements.

TREATMENT

Psychopathic personalities present particularly difficult problems to lawyers, administrators and psychiatrists. We cannot expect those who are responsible for social security to be greatly interested in the subject so long as offenders who are a little unusual are classed together without any differentiation. I believe that until

our knowledge of the subject is greater we can study the criminal psychopathic offender best through the clinical types set out here.

Generally surveyed, the psychopathic personality belongs to the non-sane non-insane group of offenders, and the penalties usually applied to others who are sane or insane are often unsuited to them. Some differ so little from the normal that any special medical recommendation to the court would affront the offender and disturb the public conscience. A few are so abnormal that they must be regarded as legally insane in their own interests and those of society. The majority of cases lie somewhere between the two extremes and present varying degrees of culpability. The question whether medical treatment or punishment, or a combination of the two, should be administered can only be determined by the judicial authority after the facts in each case have been carefully reviewed. I believe that a sentence of imprisonment adds force to psychological treatment in some cases and assists in adjusting the psychopathic personality to his environment. If the special penal institution to which I presently refer is established experimentation can be also made in the adjustment of the environment to the psychopathic offender.

The significance of the constitutional factor of the psychopathic personality has discouraged therapy, and an enthusiastic advocacy of psychological treatment must be avoided until results on a sufficient scale of well-attested cases are published. The many conditions met with in psychopathic personalities are peculiarly resistant to treatment. O'Mally states psychoanalysis as a therapeutic measure seldom produces here satisfactory results. North considers that the prognosis is more favourable when serious manifestations of psychopathic behaviour do not arise before adolescence. Levine believes that the psychopathic personality is often more difficult to treat than the neurotic, because the difficulties of the former often have a large element of pleasure connected with them which he is unwilling to forego. Silverman holds the view that treatment of psychopaths along psychotherapeutic lines has not been fruitful. Probably all those who have long experience of these varieties of offenders will largely agree with these findings.

Perhaps the constitutional factor is sometimes over-emphasized. In another connection Aubrey Lewis points out that constitution is the more or less stable product of the interaction of heredity and environment whilst the organism is developing. And perhaps Glover had something of this in mind when he stated that there is a considerable difference between analysing a drug addict and analysing a drug addiction. The clinical fact remains that in many cases treatment must be directed toward the long and difficult task of amending the character of the offender rather than the speedy dissipation of a collection of acquired symptoms.

Preventive treatment is all important, and the earlier its application the better will be the effect. To ensure this end many medical men require training in mental hygiene, and it should not be difficult for them to appreciate when a case should be examined by a psychiatrist. The provision of more psychiatric units and out-patient clinics will facilitate both the in-patient and out-patient treatment of psychopathic personalities.

The Criminal Justice Bill, 1938, indicated the direction of official thought in the modern treatment of crime, but it cannot be denied that in this country public opinion lags far behind, and for the most part is uninterested in the subject. It is beginning to bestir itself in some directions, and post-war planning should

impress the fact that although society must be protected from the criminal he, too, must be protected from himself as well as from society.

The prevention of crime and the treatment of the individual offender is a problem of social science as well as of penology. It is sometimes suggested that the psychiatric approach to crime provides a sentimental excuse for wrong-doing and that the credulous acceptance of psychiatric opinion subverts the principles of moral integrity and social security. This view is encouraged by the great variety of personal traits which are sometimes put forward as evidence of mental abnormality, but which seem to be no more than the ordinary variations of character we find from time to time in ordinary persons.

Medical and supervisory treatment during probation or short sentences of imprisonment, often fail. And although a short sentence may be an appropriate award for an offence committed by a psychopathic personality it is often inappropriate for the reclamation of the offender and useless as a punishment. It should therefore receive little approval from an informed public. We are here concerned with one of the most difficult problems associated with mental abnormality and crime. It is far from solution. Modern psychiatry is, however, dynamic and new methods of investigation and treatment are being introduced. When accepted methods fail the remedy lies in awarding a substantial period of detention in a special institution established on lines somewhere between a prison and a mental hospital as proposed by East and Hubert. Such an institution administered on colony lines by the Prison Commissioners would protect the public from major as well as minor crimes, and enable the psychopathic personality to be studied closely and the possibilities of his re-education and reclamation to be explored.

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IX

SOCIETY AND THE CRIMINAL*

INTRODUCTION

MY first and wholly pleasant duty is to express my thanks for the honour you have conferred upon me in electing me as President. I do not assume this office lightly, for I am aware that former Presidents of the Society have been men whose pre-eminence in Law, Science and Medicine has been irrefutably established.

The lawyer studying his clients' interests in chambers sometimes seems far removed from the chemist or toxicologist working in his laboratory, and from the doctor at the bedside or autopsy table. Nevertheless, a knowledge of law, like scientific knowledge of a more exact character, is only gained by learning, and doctors also have always attempted to base systematized knowledge upon the study of accurately observed facts. So it comes about that knowledge and understanding acquired by different methods, form the bonds which unite in a common purpose in a court of law lawyer, scientist and doctor.

When, however, their manners of investigation into the causes and circumstances which bring about the situations collectively concerning them are considered, it seems well to remember that the scientific attitude is always anxious to avoid any influence of our emotional nature, and this is one of its greatest difficulties. The intellect of the lawyer, as I see it in this connection, is essentially instrumental, and perhaps emotional activity in the course of his professional duties may be avoided. But here I am not fully assured, for I am aware of the two standards of advocacy recognized at the Bar in criminal cases. Since restraint is imposed upon counsel for the prosecution, I sometimes find it rather difficult to understand why so much latitude is allowed counsel for the defence. I appreciate the difficulty to a layman of drawing a distinction between what is permissible in the two cases, but it can hardly be accepted that counsel for the defence who uses his dramatic skill to influence favourably the emotions of the jury on behalf of his client can escape from some taint of emotion himself in the process. Moreover, I find a Law Journal in 1942, discussing a legal decision in the House of Lords, stated, "... those of us who obtained pleasure from discussing *Chandler v. Webster* will now be just as happy to discuss the decision of their Lordships which supersedes it." It would appear from this that pleasurable emotions may be aroused among lawyers by contemplating intricate arguments on highly complicated commercial problems which are incapable of producing any affective display among scientists or doctors.

A calm attitude of detachment may be a comparatively easy task for the scientist among the reagents, test-tubes, lenses, prisms and delicate instruments in his laboratory. Yet a successful experiment bringing a prolonged investigation to a final conclusion can hardly fail to bring him a measure of emotional satisfaction.

* Presidential Address delivered at the meeting of The Medico-Legal Society, Manson House, Portland Place, London, W.1., on 25th October, 1945, and published in the *Medico-Legal Journal*, December 1945.

But a measure of emotional insight is essential for the clinical work of a physician, whose main purpose is to comfort and cure. Hence, almost inevitably, his approach to medico-legal problems is less free from bias as a rule than is the intellectual impersonality of the lawyer, or the detached disposition of the exact scientist.

Emotional bias is, perhaps, particularly significant in the branch of medico-legal work with which I am concerned. As a forensic psychiatrist I have constantly to remind myself that Anatole France, not without reason, caused his Village Doctor to declare: "A doctor whom pity accompanies to the bedside of his patients will find his observation not sufficiently acute, his hands not sufficiently steady. We go wherever compassion for the human race calls, but we must leave pity behind us. . . . I gave my patients my energies and my intellect. I did not give them pity. God forbid that I should place any gift, howsoever precious, above His gift of pity! Pity is the widow's mite; it is the incomparable offering of the poor man, who with generosity outstripping that of all the wealthy in this world of ours, gives with the gift of his tears a piece torn from his heart. For that very reason it is that pity must be dissociated from the carrying out of a professional duty, how noble soe'er that profession may be."

Even so it may not be presumptuous, although it be provocative, to suggest that at the back of their minds lawyers, scientists and doctors may endorse the statement of one of the very few classical medical writers of this country, Sir Thomas Browne, who in both his *Letter to a Friend* as well as in his discussion on *Christian Morals* repeated this passage: "Let not the Law of the Country be the non-ultra of thy Honesty; nor think that always good enough which the Law will make good. Narrow not the law of Charity, Equity, Mercy; joyn Gospel Righteousness and Legal Right; be not a mere Gamaliel in the Faith, but let the Sermon on the Mount be thy Targum unto the Law of Sinai."

At least this may be said: Law, Science and Medicine have intellectual, emotional and spiritual values without which a democratic society will falter and ultimately fail.

A healthy individualism is characteristic of British democracy. Education, tradition and many elements of our national character prevent the technical terms used by expert witnesses from being over-valued. But when medical terms are criticized it is sometimes forgotten that other professions and many occupations have their own jargon. I need only mention here such words as barratry, champetry, asportation, demurrer and the like which convey a precise meaning to a lawyer, but leave a doctor turning over the pages of a dictionary.

The duty of a medical witness, as I understand it, is to assist truth and justice by stating the facts ascertained by medical examination and by interpreting them according to scientific knowledge. I therefore refer to a matter which has puzzled me for a long time and which the late Mr. Justice McCardie mentioned in the Eleventh Maudsley Lecture on *Truth*, delivered before the Royal Medico-Psychological Association in 1930. He said: "It is somewhat curious that the Oath administered to the expert witness is exactly the same as that administered to ordinary witnesses of fact. He is sworn to tell the truth, the whole truth and nothing but the truth. . . . The Oath does not in words refer to matters of opinion."

The evidence of the forensic psychiatrist is mainly concerned with the opinions

he has formed as the result of certain deductions he has made from facts which have been observed by himself and others. But, even if the facts are accurately observed, the deductions faithfully conceived, and the opinions clearly presented they are frequently challenged by an opposing expert. Is it not presuming too much to insist that the opinions of the expert witness necessarily represent the whole truth and nothing but the truth however learned, authoritative, painstaking and honest he may be? Might not an amended Oath be more obligatory upon the sincerity and conscience of the expert witness than a formula which suggests omniscience?*

RETROSPECT

Standing four square amidst the difficulties of the present it may be advantageous sometimes to look back into the past whilst our thoughts are debating future problems and probabilities. In this way we may perhaps find some guidance in aligning our experience with future objectives, and what at first appears to be mere speculation may prove to be of some practical value.

For example, what might have been the result if the Ecclesiastical Criminal Law, instead of undergoing a process of decay throughout the centuries, had remained indispensable, and instead of over-reaching itself had been satisfied with courageously attempting to exercise a broadminded and regenerative socio-religious influence on the law-breaker? Is it not possible that the administration of the criminal law, and the prevention of crime as well as the treatment of the criminal might have profited? And further, may not the ecclesiastical arrogance of the past provide the modern expert witness with a moral?

As I understand the matter, many thoughtful minds to-day are, and for many years have been, much concerned with the absence of spiritual guidance in our daily life and of teaching bearing upon ultramundane affairs. It would be an easy task to indicate the little help the man in the street received in the interval between the Great Wars from those who should be his advisers in these matters. The little success achieved in combating the determination of so many men and women to pursue amusement and material advantages and neglect any serious contemplation of the imponderables and ultimate values of life and living, is indisputable. The Bishop of Southwell recently declared that: "If we want a society of free men in which human dignity is safeguarded a lost dimension must be rediscovered. . . . When the eternal background is eliminated, the stature of personality is dwarfed . . . man's status must be reaffirmed and no merely secular or 'scientific' theory of life can guarantee that."†

The difficulties to be surmounted in the contest between reason and emotion in a modern world with its ever increasing competition for mere existence and its manifold complexities are immense, and are increased by the childish optimism of ignorant persons as well as by the contemptuous indifference of some intellectuals. But the social and personal advantages of enlightenment regarding the exercise of self-control and worth while citizenship, and the unveiling of the

* The expert's oath in Germany differs from the oath of other witnesses: "I swear that I will give my testimony impartially and conscientiously according to my knowledge. May God help me." (G. Aschaffenburg.)

† The *Sunday Times*, 2nd July 1944. Art. "Eternity and Politics."

disadvantages of over valuation in matters concerning short-term desires and the underestimation of long term aims, cannot be denied.

If it be true that moral and social obligations should control industrial and social values, and that individual, national and international corruption results when they are thrown into the discard, it seems clear that the more direct and appealing the teaching of this fact the more will moral and social obligations encourage individual, national and international welfare. Although this may be a materialistic outlook it retains an element of spirituality. For if we insist upon nothing but truth and realism it would seem that we are led, as J. S. Haldane stated, to the standpoint of religion. We are also directed towards improving social conditions and preventing criminal behaviour.

The hygienic aim of much Biblical teaching is apparent if crime is looked upon as a problem of social health. The proximity of religious, social and crime preventing instructions in the Decalogue is significant, and references in the Pentateuch to homosexuality, cross-dressing and bestiality seem to indicate the recognition of their antisocial as well as antireligious entanglements.

The religious approach to criminal problems is relevant to my thesis for religion, law, and science are all concerned with our inherent antisocial tendencies. In the prevention of crime and the treatment of criminals law and medicine require assistance from religious as well as social organizations, and from other agencies whose direct contacts with individuals or groups provide opportunities to disseminate the principles which guide us towards social health. Little first hand knowledge in the prevention of crime is required to appreciate the prophylactic importance of the Boy Scout movement with its simple, direct and broad scout law; of Boys' Brigades founded on the belief that "Religion and discipline are the primary needs of youth to-day"; of the Boys' Club movement which demands a high standard of discipline authorized by common consent to procure physical, mental and moral fitness in preparation for fitness for citizenship, and of other voluntary organizations having similar aims for the welfare of girls as well as boys. If, too, future social conditions provide more time for recreation for weekly and monthly wage earners provision must be made, if such recreation is to be profitably employed, to encourage alternatives to indolence and mere self-indulgence during leisure hours.

We sometimes forget that when two individuals with similar interests and desires pass their lives in proximity, sooner or later, one tends to dominate the other. Much the same seems to occur on a larger scale where groups are concerned, and unless the emotions are controlled by reason and goodwill they are apt to encourage antisocial behaviour, and disaster may follow. We have witnessed this in our own time on a gigantic scale, and the effect of regarding malefactors as national heroes is patent to all. It is to be remembered that although man is rightly described as a social animal and crime is sometimes referred to as antisocial conduct, the criminal as a rule is only antisocial to the major group of society. His thoughts, habits and behaviour are integrated, and he is a social being within the small antisocial group to which he belongs.

Consider for a moment alcoholism, drug addiction and prostitution, since they frequently illustrate the importance of group impacts upon potential offenders.

In the general advance of public opinion concerning alcoholic intemperance we seem to see one of the most important influences which can be employed in combating insobriety. Although at one time drunkenness was regarded as evidence of manly vigour it is now looked upon by many as an offensive vulgarity which makes the alcoholic an unreliable friend, an embarrassing companion, and an untrustworthy associate. Among the factors which encourage sobriety have been mentioned the legal restrictions concerning the sale of alcohol, a notable increase in the standard of living among wage earners, recession of the poverty line, cheap and better amusements, improved facilities for education, provision for social advancement in many directions, and the cumulative effect of what, in general, may be called social progress. To these must be added the educational value of social and religious organizations in direct contact with alcoholists, and the forces which go to make up public opinion. Briefly, legislative changes and altered social conditions rather than any possible progress of psychiatry in the treatment of individual patients has contributed to the result.

Drug addiction is related to alcohol addiction by the fact that an underlying psychopathic basis is often responsible for the attempt to deal with the emotional difficulties of life by their aid. W. H. Coles, Chief Inspector of the Dangerous Drugs Branch of the Home Office, suggested a possible explanation of the startling disparity of the size of the problem in this country as compared with the United States of America might be found in differences in the national characteristics of the two peoples. It was not a characteristic of the British race to indulge in narcotic drugs, but many of the races from which the mixed population of the United States of America was drawn were addicted to the use of opiates. The question of giving proper instruction to persons in the medical and allied professions acquiring the habit of drug addiction, and the imperative need to warn persons who would be professionally authorized to handle hypnotic drugs, was considered by the Advisory Committee of the League of Nations on Traffic in Opium and other Dangerous Drugs in 1937.

In his Norman Kerr Lecture in 1923 Sir William Willcox gave association with drug addicts as one of the commonest causes leading to the initiation of the drug habit, and impressive figures from America, Canada, Germany and India emphasize the evil effects of the association.

The vigilance of the Home Office has had for many years the situation in this country well in hand but, having regard to the increased demand for morphia in war time and for other drugs of addiction to relieve war strain in the civil population, it will not be surprising if the situation here and elsewhere causes some anxiety in the immediate post-war period.

Drug addiction is occasionally directly associated with criminal behaviour. A criminal may acquire the habit of taking drugs intentionally using the effect to assist him in accomplishing a crime. Others, in consequence of their addiction to drugs, or the effect of abstinence, or some other cause may also commit crime. And every narcotic drug addict should be regarded as a potential criminal if circumstances deprive him of his drug of addiction and he can only satisfy his craving by committing a crime to obtain it. Further, every drug addict should be looked upon with suspicion, not only because he may seduce others whose psychopathic constitution renders them easy victims to addiction, but because of

his unreliability in an emergency. From different angles drug addiction is clearly a problem of social hygiene.

Again, although prostitutes are not interfered with by the police except for disorder or annoying persons by solicitation, prostitution is frequently associated with crime. Among its usually accepted causes may be recalled economic difficulties, maladjustment at home, promiscuous and indecent living due to overcrowding, the demoralization of young people by their elders, the example of luxury, self-indulgence, loose thinking, loose habits and customs in certain classes of society, corrupting amusements and literature, and seduction by profligate men and women. Alcohol is often a contributory cause, and drug addiction an occasionally associated habit, whilst mental and temperamental abnormalities are common correlates. Apart from these, prostitution becomes a pressing problem for the social hygienist because of its association with the spreading of venereal disease as well as with crime and criminals.

The modern outlook on crime as a biosocial problem stresses the importance of both human and environmental factors, and one cannot pursue the latter far before one is brought up against problems involving various aspects of social health. This is clear from the work of recent investigations in this country and elsewhere. Thus, the Feversham Committee stated in 1939: "Emphasis is shifting from the crime to the person committing the crime, and an effort is being made to take into account the needs and distinctive characteristics of the individual offender. Then, again, it is slowly being recognized that to understand the individual one needs to understand not only his character and circumstances at the time the crime was committed, but also the environment in which he has grown up and the factors which have had an influence on the building of his personality." Bagor's investigation into Juvenile Delinquency in the Liverpool area, and the medico-sociological research into the conditions of 4,000 Adolescent Criminals at Wormwood Scrubs prison are recent studies in this direction in England.

Although the relation of social conditions and criminal behaviour is recognized by many with some degree of accuracy, in normal times the connection is brought into strong relief by war conditions. The circular issued jointly by the Home Office and the Board of Education in 1941 showed that for the first four months of the war there was throughout the country an increase of about 28 per cent in the number of children under 14 found guilty of indictable offences compared with the same months in 1938. For the first twelve months of war the increase was about 41 per cent as compared with the previous twelve months of peace. The figures support the general contention that war increases delinquency and crime rates among juveniles.

Evacuations and transfers, the absence of fathers in the fighting services and of mothers during the day at war work, and the interruption of school life are obvious disruptive influences. Moreover, juveniles of school age in employment have been faced with new temptations, they have earned high wages but have lacked experience in the use of money. The excitement and unrest resulting from the war and a new born spirit of audacity and adventure, together with the black-out, have also increased the crime rate.

The Home Office circular declared that "one of the best means of checking delinquency in war time, as in peace, is to provide more, and more varied, social

and recreative facilities to meet the needs and tastes of all sections of youthful community, and to challenge youthful exuberance to interest itself in useful service." In short, the duty of society to the potential criminal was expressed. Indeed, the importance of maintaining ordinary social relationships with offenders of all ages, whenever possible and expedient, forms one of the foundation stones of the Probation System.

In passing it may be noted that formerly war was said to decrease the crime rate among adults, and the explanation was not far to seek. It seems probable, however, that the effect of total war may prove to be very different.

Many persons consider criminal conduct is remote from their own reputable lives. It does not occur to them that a social injury may be inflicted upon another and become a criminogenic factor unless we regard the difficulties and dangers of our fellows as well as our own, or that in our efforts to attain personal security we must exercise caution in dealing with our associates. A crime committed in the family of a boastful egoist may prevent him from analyzing the situation and from ascertaining to what extent his own example has contributed to the offence. He often attempts to save his face by clamorous assertions that the crime is due to mental abnormality when it is due to his own imperfections as a parent.

Many people who have no interest in progressive ideas concerning the prevention of crime and the treatment of criminals closely study the criminal trials reported in the daily press. Others spend the time before switching off the bedside lamp reading stories which trace in detail the steps leading to the detection of an imaginary crime. As in Pepys's time,* criminals to-day are objects of public entertainment, and the prevention of crime and the treatment of criminals outside official and quasi-official circles are largely subjects of general unconcern. But a serious and costly defect in a society endeavouring to maintain its proper place nationally and internationally should surely engage the interest of all who take a wide forward view of citizenship.

Indeed, as Cantor states: "Anyone who has to do with problems of human relations has an important place in the field of mental hygiene. The skilled psychiatrist is the expert; but all of us, in relation to each other, can apply the principles of mental hygiene according to our own degree of skill and understanding." I would add that in a broad sense mental hygiene is an important part of social hygiene.

Moreover, in the study of human relationships it may be profitable to consider some of the social weaknesses of our times, and the manner in which they are occasionally reflected among criminals. We may relieve ourselves of some conceit if, for example, we consider the fact that the exhibitionists in our midst have their copyists in the criminal world, where some estimate their importance by the size and position of the headlines allotted to them in the public press. The compensatory value to the criminal of exhibitionism of this sort is sometimes instructive. At an interview in the prison hospital shortly after his arrest for murder the accused became much interested in a press-cutting on my office table with a photograph of himself inset. He expressed his satisfaction on reading it, and was flattered by

* It will be remembered that in 1663 Samuel Pepys recorded in his Diary the fact that he paid a shilling to stand in great pain upon the wheel of a cart in the City of London for an hour waiting to see a man hanged. It was said that at least twelve or fourteen thousand people were in the street at the time for the same purpose.

the amount of publicity he had gained. Another murderer exulted in the fact that his name would be in the papers two days later when they announced he had been hanged. There is, of course, another side to the matter, and to some offenders the accounts in the press of their arrest and conviction is the worst part of their punishment.

The treatment of crime and of criminals is a matter for the government of the time. But, as J. A. Spender states: "... government is an art and not a science, and an art of a highly experimental kind, probably in its infancy and proceeding by trial and error to ends which it is impossible to see." The politician makes use of slogans to influence the emotions of the electors in his favour, but in dealing with criminals practical people will agree that we must not allow the twittering sentimentalist to mislead us. For he tends to unjustly transfer our sympathy from the victim to the perpetrator of the crime, he indulges a weakness which fears truth and forthright action, and he diverts attention from the purpose under consideration by focusing values on the pleasurable emotions which his sentimentality arouses in himself and his kind.

Let us by all means exercise sympathy and understanding when dealing with criminals. But, also, let us distinguish between sentiment and sentimentality and avoid the latter since it not only causes opinion on the right treatment of criminals to be subordinate to the pleasant feeling it arouses in the sentimentalist but stimulates in him the evil of self-righteousness. It also gives the astute discerning criminal an opportunity to excuse himself for his misconduct, and to improperly exploit the leniency of the sentimentalist who is dealing with him. Moreover, sentimentality towards the offender may be indistinguishable from moral complicity in his offence.

In social affairs it is important to discriminate between mere change and advance lest we press for sweeping alterations which time proves to be unproductive. Personal experience leads me to believe that there are occasions when important changes regarding the treatment of criminals produce the best results when they are introduced gradually, so that the criminal is given an opportunity to assimilate the educative and reformatory value of the change rather than stretch out greedily to seize a new advantage.

Again, practical experience can leave many in no doubt that in dealing with human affairs the best results may often be attained by impressing upon individuals the fact that those in authority look to them for their highest efforts, and that by confirming this expectation they will improve their own conditions. Acceptance of this principle is, of course, one of the foundation stones of the Probation System, and must surely be in the forefront of the mind of the probation officer in carrying out his duties. The modern policy of the Prison Commissioners to foster this attitude among the prisoners under their charge has met with striking success.

At the same time, there will always be in any large group of men and women, whatever their profession or occupation, a small proportion of back-sliders, and society cannot deprive itself of the power to use stern measures to combat malignant opposition should it occur. Further, to treat the offender with more consideration than is shown to the poor and law-abiding man, who resists temptation in order to maintain his integrity, may encourage the potential criminal and defeat a benign purpose. It is one of the duties of a government to prevent any

weakening of the bonds which unite society in an acceptable whole, and although the criminal has certain claims upon society they must be subordinate to the rights of others. Retributive justice, therefore, cannot always be discountenanced, for certain crimes arouse the public sense of the fitness of things and a demand for penalties. From a practical point of view resentment at a particularly evil form of wrong-doing is a healthy reaction which recognizes the danger to social security if cruelty and injustice flourish, and if the evil man is encouraged to be satisfied with his evil.

The present times afford an outstanding example of the necessity for condign punishment to be awarded to those malefactors who disrupt society by their malignant assumptions and still more malignant activities. Kirchway points out that "the policy of retribution is justified and sustained by an ethical philosophy which regards punishment as an integral and inevitable element in wrong-doing" and "has been consistently maintained by the idealistic philosophers from Plato to Thomas Aquinas and from Kant to T. H. Green and his disciples." In this matter a moral choice between a greater or lesser evil may be inevitable. Although the evil of the offence be greater than the evil of the punishment the result of the latter may not be entirely good or entirely bad, and robust action unmarred by vindictiveness must occasionally replace the compassion which may be felt for those who commit less heinous crimes.

The ever present dilemma of penal reform was referred to by Oppenheimer in his book on *The Rationale of Punishment* in these words: "To steer a safe course between the Scylla of public opinion and the Charybdis of the criminal mind is one of the most difficult tasks which the modern Statesman has to accomplish, and practical experience alone can teach him to adjust penal sanctions in so delicate a fashion that, without violating the one, they operate upon the other." In the words of Spender we come back to the method of trial and error. A method which, on the whole, serves its purpose reasonably well but haltingly, and will serve it better as statesmen become more scientifically minded themselves and more willing to trust modern progress in the scientific approach to problems of social psychiatry. But long experience, and rather special opportunities to judge the matter, enable me to appreciate the criticisms of lawyers and executive authorities when they are asked to accept certain doctrines of psychology which have eluded the discipline imposed upon other sciences. It would ill serve the purpose of these remarks to grant suavity priority to forthrightness, and as doctors we must accept the fact that psychiatrists as well as psychologists are not sacrosanct, and that our teachings are sometimes suspect.

Indeed, when psychiatrists and psychologists complain that the law does not prevent crime, and that our recommendations should be substituted for legal punishment, we invite the retort that as we often fail to prevent insanity the lawyers should attempt to do so, supported by the fact that the law has been more successful than medicine in the prevention of inebriety.

Moreover, as Meerloo, the Dutch psychiatrist, states: "A scientist is also a man of the people and not above the law of mass suggestion." Ample proof of the truth of this statement is found in the history of medicine. G. M. Young expressed the views of others as well as his own when he declared: "We do not fear science, or suspect it, or despise it. But we do very often have occasion to resent the wholly

unscientific temper in which some men of science propound their conclusions passing off hypotheses as axioms and to fear the consequences. . . ."

A better understanding of criminological problems has enabled lawyers and doctors as well as the executive authorities to place individualization, whenever possible, in the forefront of practical measures for the treatment of criminals. Nevertheless, much public opinion is still ill-informed, and too often considers punishment should fit the crime rather than the criminal. Human nature being what it is, and apparently in some fundamentals unchangeable, this view is easily understood. Happily we British have entire confidence in our judiciary. But the education of public opinion in enlightened methods of dealing with criminals is a gradual process in which lawyers, doctors and other social hygienists must take part.

Although the law may be relied upon to measure out awards so that the security and well being of society and the proper interests of the offender are balanced in the scales of justice, it sometimes seems that the layman looks upon the contest in a criminal court as lying between the injured party and the accused. If the injury is slight public opinion is apt, perhaps, to take a more short-sighted view than would be the case if it was fully appreciated that the dispute lies between society and the offender. For it refuses to support medical evidence which advises a considerable period of enforced restraint in order to effect a medical cure and change a habit of mind which, although not due to insanity, is the result of a minor form of mental abnormality which experience shows is often amenable to treatment if sufficiently prolonged. A mild as well as a severe case of scarlet fever may injure society by its infectiousness unless compulsory segregation is enforced, and many will believe that one of the duties of psychiatry is to educate public opinion to apply the same principle when less severe forms of crime are committed which will be inevitably repeated to the detriment of society unless prolonged treatment is adopted. The security of the public and the rehabilitation of the offender are our immediate concerns and, as Spier points out, the stronger the impulse to commit crime the greater the need for treatment. He quotes Waite, who says: "Irresistible impulse would be the very antithesis of defense for conviction."

It is true that the psychiatrist makes his recommendations to the court of trial in the light of his experience of other persons suffering from similar mental difficulties as the offender before him, and although he cannot be assured that his patient will react to treatment in the same way as the majority of his kind the advice, if carried out, will often be less haphazard than many of the sentences now imposed.

But is this the best that can be done? During the World War millions of men and women in the fighting services, in the factories and elsewhere, have been trained and educated in realistic undertakings, and the importance of faithfully carrying out an essential operation which demands accomplished and assured control for its completion has been impressed upon them. Their critical faculties can hardly have escaped education in the process, and matters which have been previously accepted with complacency may no longer appear satisfactory to them. Further, raising the school leaving age, and other educational reforms envisaged, will in time produce a public critical of social customs and emphatic in its demand for improvements.

This will be, of course, all to the good as long as it is not forgotten that trained knowledge does not necessarily impart an ability to criticize other branches of activity outside the scope of its own speciality. It is also to be remembered that the ignorance of some business and professional men in matters relating to crime and criminals is astonishing. A well educated, successful and wealthy business man seriously informed me recently that Broadmoor Criminal Lunatic Asylum should be emptied into a lethal chamber as the inmates were not mad but bad, and could control their passions if they wished to do so. It need not be added that he had never visited or taken any interest in this mental hospital. An eminent surgeon also recently declared in my presence that he did not believe that it was possible to rape a woman. Even assuming that he forgot the fact that the Pentateuch made rape a capital offence,* that a woman may be raped when under the influence of alcohol or other stupefying drug, and that a married woman may be raped by a man personating her husband, one could only feel alarmed at his ignorance that a woman may be raped if she yields to her attacker through fear of death or duress. The case books of those of us who are intimately concerned with offences of this character afford ample proof of the grievous injuries received by women in their efforts to resist the ravisher, and of admissions by homicides whose capital offences have been associated with determined attempts and sometimes completed acts of violent rape.

The seven points enumerated by the ancient Roman lawyers to be taken into account in determining the penalty for a crime are today mainly restricted to considerations respecting the offence and the offender. A complexity is introduced in a modern world by the fact that the effect of the award upon public opinion must also be considered. But the effect upon the offender when a substantial penalty is imposed, and the most favourable time for the sentence to terminate can sometimes only be decided by a future change in his mind and by the unpredictable happening of future events.

Criminal judges have frequently declared that the determination of the penalty is the most difficult and anxious part of their duty. It will be remembered that Sir Roland Burrows recently told this Society that there was something to be said for the view that the function of the courts should be limited to saying whether the accused was guilty or not guilty of the offence charged. "Then what happened to the defendant afterwards should be decided by some authority after proper consideration, and treatment or imprisonment or other punishment imposed upon that individual, so that he should, if possible, be turned into an ordinary law abiding member of society or else be excluded from society. That might or might not be combined with the discretion of the judge to determine whether it was a case where combined punishment or some form of precaution such as probation should be imposed, and limited only to those cases where, in the view of the court, a man should receive that kind of treatment."

Although the determination of the sentence dismisses a legal problem it often leaves a biosocial problem unsolved. For this involves considerations affecting the offender's bodily health and physique; his mental health, emotional and volitional tendencies; his intelligence and educational abilities; his social, occupational and sexual conflicts; and his moral and spiritual dispositions.

* Deuteronomy xxii. 25.

As I see it the award of a modern criminal court has two primary aims. First, to secure public safety whilst retaining confidence in the equitableness of the judicial authorities. Second, to affect the offender in the manner which is most likely to ensure his reclamation. Might it not be worth while to consider, in certain offences other than murder, whether the court should declare the award in terms of a minimum and maximum period of detention, and leave the date of release to be determined later within those limits by some other authority on the evidence then before it?

The War Department to United States of America troops going abroad issued to them *A Short Guide to Great Britain*. Therein appeared a paragraph on British justice which referred to the Briton in these words: "He is also the most law-abiding citizen in the world, because the British system of justice is just about the best there is. There are fewer murders, robberies and burglaries in the whole of Great Britain in a year than in a single large American city." It would lead us too far afield to consider the many factors which have brought about this result, but as social hygienists the constant aim of lawyers and doctors, supported by the executive and administrative authorities, must be to reduce still further the incidence of factors in our social life which have an adverse effect upon its well-being. And here it may be found that the narrower the possibilities of operative improvement the more difficult will it become to effect the betterment desired.

PROSPECT

So far I have outlined a few of the thoughts which come to mind as one attempts to pre-visualise the direction of progress in the treatment of crime and criminals. As lawyers and doctors we must share with society in general a part in directing education in the material and moral aspects of citizenship, and in guiding social progress so that the reduction of crime and a still more enlightened treatment of criminals is expedited. There is only time to consider here some of the medical implications which this purpose reveals.

I have long insisted upon the importance of the scientific approach to crime and criminals. But scientific research is concerned with normality as well as abnormality and criminals, for the most part, are often no more abnormal than the lawyers and doctors who study them. Herein, as I see it, lies an occasional weakness in the investigation of offenders if the examiners are only concerned with the study of abnormal patients.

Indeed, I sometimes wonder whether it would not be profitable to hear more papers and discussions at scientific meetings on the different aspects of normality. I mention this in no spirit of carping criticism, but because I do not doubt that progress will be restricted unless we recognize the fact that the mentally abnormal criminal is the exception and not the rule, and because I have a profound faith in the part which psychiatry can take in future progress if wisely directed.

It will be remembered that formerly in cases of insanity juries could either find a general verdict of not guilty, or a special verdict that the accused committed the act, but that at the time he was *non compos mentis* and thereupon the court gave judgment of acquittal. It will also be remembered that the Statute of 1800, entitled "An Act for the Safe Custody of Insane Persons Charged with Offences",

made it lawful for the Court to direct such finding to be recorded and to order such person to be detained during His Majesty's Pleasure. Society was thereby protected from the insane person who was likely to commit further offences if his liberty was unrestrained.

To-day we recognize that there is a considerable non-sane non-insane group of offenders. Like the accused who was formerly acquitted and set at liberty if he was insane they are often discharged from custody, and repeat their offences because no adequate provision can be made at the present time for their supervision. I believe that psychiatry is becoming sufficiently advanced to assist justice to apply an appropriate sentence to this group, which will protect society from the offender and the offender from himself. For although the non-sane non-insane offender is responsible, his degree of culpability may be sometimes less than that of the ordinary offender, and more than that of the insane. His mental abnormality sometimes requires more prolonged treatment under detention than would be considered suitable for a similar offence carried out by a normal person, and a prison or mental hospital is not the type of establishment suited to the purpose. A special type of custodial penal institution, as I have pointed out elsewhere, is required. I believe that in time it would commend itself to the judicial authorities and to the public, and help to amend the short-sighted policy of today which is often so disturbingly ineffective.

It will be generally agreed that research is required to advance our knowledge of the non-sane non-insane offender, and that progress has been made in this direction. But much remains to be done, and it is regrettable that the investigations carried out in social studies, as well as studies particularly concerned with mental health, have no co-ordinating authority such as a National Social Science Research Council empowered to direct research and correlate the findings of intra- and extra-mural workers in various fields of social hygiene. Isolated investigations carried out under the auspices of a Government Department and other organizations may lose some of their usefulness because they are not undertaken with the same object, and are not strictly comparable to other studies.

It must be recognized, also, that psychiatrists tend to specialize within their own subject. It seems that any post-war scheme of medical reconstruction should bring about a more effective liaison between the child guidance psychiatrist, the mental deficiency expert, the psychotherapist, the biochemist, the research worker and the forensic psychiatrist.

CONCLUSION

A last word. Progress in the past has been for the most part along the uncertain path of a trackless desert. At times our guides have led us with a measure of foreknowledge, but have often lacked the certainty of direction which is assured to those who travel along a highway. A greater awareness on the part of Society, aided by the clear vision of the Law and the Executive, together with the researches of Medicine will direct our efforts towards a still more enlightened treatment of crime and criminals. But we must be mindful of the fact that the crust of our civilization has worn even thinner than when John Buchan called attention to the matter in 1935, and that even the most favourable social conditions and the

steadfast application of sound scientific principles will not efface all crime, since human nature alters but little where its fundamentals are concerned.

The centuries pass, and perhaps each from time to time applies its own veneer. But it is only veneer. The original core of our human frailty remains. And so, as a romanticist* wrote nearly sixty years ago: "The balance sways, and the story runs—here a gain, there a loss, and Nature's great average struck across the two, whereof the sum total forms one of the factors in that mighty equation in which the result will equal the unknown quantity of her purpose."

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X

MILESTONES OF PENOLOGY*

INTRODUCTION

THE privilege of addressing the Cambridge University Medical Society involves a corresponding obligation, and since there is much truth in the belief that the past is the prologue to the present, and that the latter can be fully portrayed only by a knowledge of the former, I invite you this evening to look back and consider with me some of the landmarks which were passed before the present position in the treatment of crime and criminals was reached.

A correct view on the subject of crime demands a broad outlook, extending on the one hand into the realms of mysticism and on the other into the confines of materialism. But it is not necessarily concerned with moral behaviour. Indeed, no one during the World War, could have been accused of immorality if they committed the offence of failing to darken a window during the blackout hours unless the meaning of the word was wantonly extended. Moreover, a crime may be committed for altruistic reasons. The late Professor Kenny of this University pointed out that: "A person's conduct may amount to a crime, even though, instead of being an evil to the community, it is, on the whole, a benefit; as where a defendant was held guilty of the offence of a common nuisance, because he had erected in Cowes Harbour a sloping causeway which to some extent hindered navigation though by facilitating the landing of passengers and goods it produced advantages which were considered by the jury to more than counterbalance that hindrance." (*R. v. Ward.*)

The Lombrosian doctrine that the criminal is born as such discouraged well-intentioned efforts to reform and train him. When this superstition was no longer respected it was suggested by many that crime was a disease and that the criminal was a mentally abnormal person. Elsewhere I have shown the fallacy of this view. I need only say here that the total number of persons found guilty of offences in England and Wales during the year 1938 was 787,482 and that the population of Great Britain excluding Scotland and Northern Ireland in 1931 between the ages of five and sixty-five was computed at 37 millions in round figures. Crime, then, is not the isolated factor in social life which some people assume it to be. Although the figures include persons who have committed more than one offence in the year they do not include the persons whose crimes are undetected, and the enquirer is left doubting who among us is guiltless. This reflection has, I believe, a salutary effect when we are dealing with crime and criminals, and enables us to view the problems before us with some degree of accuracy.

The manner of man who commits crime was recently set out by Sir Alexander Maxwell, the Permanent Under Secretary of State, Home Office, and formerly Chairman of the Prison Commission, in these words: "That persons found guilty of criminal offences are, for the most part, ordinary folk, seldom showing abnormal

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characteristics, is one of the first things noted by everyone who is brought into contact with a considerable number of offenders. In a prison one prisoner differs from another as one clerk or one labourer differs from another, but between a hundred prisoners and a hundred persons chosen at random from the street outside the resemblances are more noticeable than the differences. In each group there will be found a similar mixture of good and bad qualities, strains of kindness and streaks of selfishness, companionable fellows and self-centred people, masterful personalities and weaker characters, a few who are specially intelligent and a few who are noticeably dull. In each group there will be some accustomed to comfortable circumstances and many who are poor. Perhaps among the prisoners the proportion of noticeably egotistic and noticeably shiftless characters will be higher than in the other group, but otherwise the ordinary observer will find it hard to discover differences between the two groups."

Sir Philip Game, formerly Commissioner of the Metropolitan Police, in a recent article states: "The professional criminal of to-day is no longer the Bill Sykes type of violent ruffian. The police to-day are up against brain rather than brawn, and the criminal has most, if not all, the facilities of transport and communication they have themselves."

In bringing to your notice some milestones of penology I do not forget the fact that Hilaire Belloc wrote: "There are two obstacles to the description of any people in any age. The first is the difficulty of presenting what is obvious from the outside but not perceived from the inside. . . . The second is the difficulty of presenting what is obvious from the inside but not perceived from the outside. . . ." I shall endeavour to avoid both these obstacles in what follows.

I am also reminded that Lord Macmillan stated in the Fifteenth Maudsley Lecture: "The expert mind, as a species of the genus professional mind, is apt to have failings as well as excellencies. The attainment of highly specialized knowledge of one isolated subject tends to create a certain arrogance of assurance. It is not unnatural to assume that if you know *more* about a subject than anyone else you know it *better* than anyone else. But is that necessarily so? It might be so if human life and human knowledge were divided up into watertight compartments, and it were possible to deal with each compartment by itself. But we cannot isolate any one factor in the social organism. The inter-relations of the parts with each other and with the whole are infinitely complex. The result is that the conclusions of the specialist, however convincing they may seem to him within his own sphere, have often to be corrected and modified when brought into relation with wider considerations."

PUNISHMENT

In former times death was the penalty for treason and all felonies, and at the end of the eighteenth century there were over two hundred capital felonies. For misdemeanours the punishments were fines, whipping, or exposure in the stocks or pillory. Public whipping was ordered up to 1850, and the Criminal Justice Bill, 1938, proposed that the existing powers of the courts to pass sentences of corporal punishment should be abolished. The punishment of the stocks began to die out in the early part of the nineteenth century, though there is a case recorded at Rugby in 1865. The pillory was abolished in 1837. Although imprisonment was

originally recognized at Common Law as a lawful punishment for misdemeanours it was not used for its own sake but to assist the Crown to exact its fines.

With regard to capital offences it may be noted that after William the Conqueror separated the ecclesiastical from the secular courts the clergy began to put forward a claim that all persons in holy orders should be exempt from secular jurisdiction in civil and criminal litigation. Any clerk accused of crime could claim "benefit of clergy", and was accordingly sent to the bishop's court and was tried by a jury of clerks and usually obtained an acquittal, and even if he were convicted the court could not inflict death but could only degrade and imprison him. The term "clerk" included a number of persons in what were called minor orders, and in 1350 the privilege was extended to secular as well as religious clerks, and finally the test of being a clerk was the ability to read the opening words of the first verse of the fifty-first Psalm, which became known as the "neck verse". In 1487 it was enacted that these mere laymen should receive benefit of clergy once only and should be branded by fire on the hand to provide evidence to this effect. Under Henry VIII benefit of clergy was removed from "wilful murder of malice aforethought" and in 1705 the educational test was abolished. Trevelyan, the historian, wrote: "Not only monks and parish priests, but professional men, and an enormous crowd of menials and minor officers of clerical establishments, and in later times anyone who could make some show of being able to read, were safe from the dread of any serious penalty for such crimes as burglary, rape, and homicide, at any rate for the first offence. It was only too easy to obtain minor orders, and the attraction to baser spirits of such privileges and protection was great."

From early times the lawful place of detention was the common gaol, and in 1403 it was enacted (5 Henry IV, c. 10) that justices should commit only to the common gaol. The King's Courts at Westminster had National Prisons of their own, but prior to 1877 the County and Borough prisons belonged to the local authorities. Although no list of common gaols exist there were according to Sidney and Beatrice Webb some two hundred in the country in the sixteenth, seventeenth and eighteenth century. They were owned and maintained by various authorities. The County gaol was in the keeping of the County Sheriff, but private gaols existed and were used as sources of income by ecclesiastical potentates, territorial magnates and others. The gaol was sometimes part of an ancient castle, or a few rooms or dungeons in an old tower, gatehouse or public building, and rooms in a local alehouse were used for the purpose.

In the middle of the sixteenth century other prisons arose under different statutes and were known as Houses of Correction or Bridewells, and were under the direct administration of Justices of the Peace. Their purpose was not to punish criminals, but to make wantonly idle and disorderly persons work with a view to reforming their character and habits and to deter others. By the end of the seventeenth century the Houses of Correction became divorced in effect from the Poor Law, and were places of punishment for minor offences, and the Master had power to exact from his prisoners whatever labour he chose to set them to perform, partly in support of their maintenance, but mainly as a supplement to his own salary. In 1720 Justices were authorized by Statute to commit vagrants and other minor offenders, as well as persons unable to find sureties, to the common gaol or house of correction as they thought fit.

Although originally the gaol and bridewell were intended to be used for different purposes, the gaol for safe custody and the exaction of money, the bridewell for reformation and deterrence, they became more or less assimilated, and during the eighteenth century were commonly under the same roof. In 1865 the difference was finally abolished and the combined establishment under the name of prison was placed under the jurisdiction of the Justices in Quarter Sessions, the jurisdiction of the Sheriff being limited to prisoners under sentence of death. The Sheriff is still responsible for carrying out the sentence of death and, within certain limits, fixes the date of execution, and attends thereat himself or is represented by the Under-Sheriff.

The common gaol was seldom erected for the purpose to which it was put, and often consisted of underground dungeons with little light or ventilation, and there is overwhelming evidence that the health of the prisoners suffered in consequence. John Howard, who from 1773 to his death in 1791 devoted his life to visiting the prisons in Great Britain, Ireland and the Continent, and to prison reform, wrote: "One may judge of the probability there is against the health, and life, of prisoners crowded in close rooms, cells and subterraneous dungeons for fourteen or fifteen hours out of the four and twenty. In some of the caverns the floor is very damp; in others there is sometimes an inch or two of water: and the straw and bedding is laid on such floors, seldom on barrack bedsteads. Where prisoners are not kept in underground cells, they are often confined to their rooms, because there is no court belonging to the prison, which is the case in many city and town gaols. Prisoners confined in this manner are generally unhealthy. Some gaols have no sewers or vaults, and in those that have, if they be not properly attended to, they are, even to a visitant, offensive beyond expression: how noxious then to people constantly confined in these prisons."

Howard called attention to the fact that the window-tax which was introduced in the year 1696 and abolished in 1851, was one reason why the rooms in some prisons were so close, for the gaolers were required to pay the tax and were tempted "to stop the windows and stifle the prisoners." No allowance was made in many gaols and most bridewells at this time for the supply of bedding or straw for the prisoners to sleep on. If there was any straw it was not changed for months, and became worn to dust. Many prisons, bridewells and town gaols were without water, and in some that were supplied the allowance to each prisoner for all purposes did not exceed three pints a day. The prisoners generally were undernourished, and in some prisons half-starved. They were so weak on discharge that many were incapable of any labour. Sickness was rampant and gaol or typhus fever and smallpox were a menace to public health. Dr. Lind, the eminent physician to the Royal Naval Hospital at Haslar, wrote in an *Essay on the Health of Seamen*: "The source of infection to our armies and fleets are undoubtedly the jails: we can often trace the importers of it directly to them... It often proves fatal in impressing men on the hasty equipment of a fleet... The first English fleet sent last war to America, lost by it above two thousand men." Howard states: "In another place he [Lind] assures us that 'the seeds of infection were carried from the guardships into our squadrons—and the mortality, thence occasioned, was greater than by all other diseases or means of death put together'."

There can be little doubt that the disappearance of typhus fever from the prisons

was largely due to the interest of Howard in the subject and to the hygienic improvements upon which he insisted. He was also much concerned with the prevalent disease scurvy which was common in his day in the Navy as well as in prisons.

It seems clear that Howard, like many others at the time, believed that this disease was due mainly to faulty hygiene. It is surprising that he did not get nearer the whole truth for he visited Haslar, where a quarter of the patients suffered from scurvy, and was acquainted with and evidently valued the medical opinions of Dr. Lind, who was an authority on the disease. Sir George Newman refers to Lind as "the leader of men who conquered scurvy", and reminds us that he believed sea scurvy was traceable to the continuance of sea air, cold rainy weather, and wet clothing, and considered its direct causes were deficiency in the diet of fresh green vegetables, and an excess of salt meat and fish. Its prevention consisted in putting the seamen into warm, dry, clean and well ventilated surroundings, and giving them a dietary consisting of a due mixture of animal and vegetable substances combined with oranges or lemons or their juices.

In passing I may remind you that Sir Gilbert Blane, physician to the fleet under Lord Rodney, was a disciple of Lind's and not only issued popular leaflets but persuaded the Admiralty to put an end to scurvy by regulation in 1796 that lemon juice should be prescribed for naval ratings. At the same time Sir John Pringle, who was physician-general to H.M. Forces in the Low Countries and has been described as the founder of military medicine, insisted, like Blane, that the new knowledge as to the prevention of scurvy should be put into practice. So it came about that the health of prisoners in the country's gaols was improved through the insight and energy of these Naval and Military physicians. I may perhaps add that Sir Gilbert Blane, in 1823, gave evidence before a Select Committee of eminent physicians appointed to enquire into an outbreak of scurvy at the newly opened penitentiary at Millbank, where more than half the prisoners were affected by the disease. He was in some doubt as to whether scurvy was infectious, and he quoted a doctor at Portsmouth who said it had become infectious in a whole district of that town.

It was in the same year that Sir Robert Peel's Gaol Act, besides consolidating the whole of the Statute law on the subject for the first time, made it peremptorily the duty of the Justices to organize their prisons on a prescribed plan, and to furnish quarterly reports to the Home Secretary upon every department of their prison administration. They were expressly required to adopt as the basis Howard's four principles: the provision of sufficient, secure and sanitary accommodation for all prisoners; the transformation of the gaoler or master from an independent profit maker into the salaried servant of the local authority; the subjection of all criminals to a reformatory regimen; and the systematic inspection of every part of the prison by visiting justices.

The constitution lacked the machinery to secure enforcement of the statute, but it acted as a stimulus to the more progressive local authorities, and a considerable number of the more important prisons were rebuilt under its influence. That this was overdue is clear from a provision in the statute that if each prisoner could not have a separate cell, he should at least have a separate bed.

When one considers the unhealthy state of the prisons at and before this time,

and the drunkenness, debauchery, brutality and extortion carried out within their walls, any criticism must take into consideration the manners and customs of the period. Samuel Pepys, the English diarist, who was in 1673 transferred by the King from the Navy Office to the Secretaryship of the Admiralty, entered in his diary on October 13th 1660: "I went out to Charing Cross, to see Major-general Harrison hanged, drawn, and quartered; which was done there, he looking as cheerful as any man could do in that condition. He was presently cut down, and his head and heart shown to the people, at which there was great shouts of joy." Again, on January 21st 1664 he writes: "Up, and after sending my wife to my aunt Wright's to get a place to see Turner hanged, I go to the 'Change; and seeing people flock to the City, I enquired, and found that Turner was not yet hanged. And so I went among them to Leadenhall Street, at the end of Lyme Street, near where the robbery was done; and to St. Mary Axe where he lived. And there I got for a shilling to stand upon the wheel of a cart, in great pain, above an hour before the execution was done; he delaying the time by long discourses and prayers one after another, in the hopes of a reprieve; but none come, and at last was flung off the ladder in his cloak. . . . It was believed there were at least 12 or 14,000 people in the street."

At this period the quarters of men executed for treason were boiled. Eden Hooper quotes the following extract from the life of J. Ellwood (1670), who was in Newgate during the reign of Charles II, "When we first came into Newgate there lay (in a little by-place like a closet in the room where we were lodged) the quartered bodies of three men who had been executed some days before for a real or pretended plot, and the reason why their quarters lay there so long was that the relatives were all that while petitioning to have leave to bury them; which at length with much ado, was obtained for the quarters but not for the heads, which were ordered to be set up in some part of the City. I saw the heads when they were brought up to be boiled; the hangman fetched them in a dirty dust basket, out of some by-place, and setting them down among the felons he and they made sport of them. They took them by the hair, flouting, jeering and laughing at them; and then, giving them ill-names, boxed them on the ears and cheek. Which done the Hangman put them into his kettle, and parboiled them with Bay Salt and Cummin-seed,—that to keep off the fowls from seizing on them. The whole sight (as well as that of the bloody quarters first, and this of the head afterwards) was both frightful and loathsome and begat an abhorrence in my nature."

The practices of the times is well shown in Eden Hooper's *History of Newgate*. An illustration is given of a coloured sketch by Rawlinson published in 1809 which shows the death sermon being read in Newgate Chapel to some ten men and women about to be executed. They are grouped round a table on which is placed a coffin.

To complete these grim stories it may be added that the drawing of the intestines from the executed subject was first dispensed with, and then the quartering process, until by 1820—when the last execution for treason took place at this period—the five culprits were beheaded after the hanging but were not drawn and quartered. Since 1868 all hangings have taken place within the prison walls (Eden Hooper).

In the seventeenth century Crown Pardons were granted to condemned felons conditionally on their agreeing to be transported overseas and they were shipped

to the acquired territory in America. This continued until the American Colonies achieved their independence in 1776. In 1767 the Judges had been empowered (8 Geo. III, c. 15) to order transportation as a form of sentence, and in 1861 the capital felonies were reduced to murder, piracy and the burning of dockyards.

In the ordinary affairs of life many of us, in moments of reflection, have been impressed by the fact that a chance circumstance has produced important results entirely disconnected from its origin. It has been considered probable that the rediscovery of Australia by Captain Cook in 1770 determined the prison history of Britain for nearly fifty years. For the system of transportation which this colony afforded was instituted in 1788 and was organized and extensively used up to the year 1840. Thereby, parliament was relieved of the necessity of devising any improvement in the methods for the punishment of crime at home. An Act of 1775 authorized the detention of felons who were not executed and were awaiting transportation to be detained on the hulks or floating prisons stationed at Woolwich, Portsmouth and elsewhere; and in 1778 imprisonment on the hulks was made a separate form of legal sentence in place of transportation. In 1857 the Penal Servitude Act provided that no person should be sentenced to transportation and that sentence of penal servitude should be passed instead. Sidney and Beatrice Webb estimated that some 150,000 convicts were sent to Australia, Tasmania and Norfolk Island and remained there. It should be added that of some 5,000 men and women transported to New South Wales during the years 1795 to 1810 about 9 per cent died on the voyage. The travelling conditions seem to have improved later, for the ship *Nile* left Portland Roads on July 5th 1850 with 300 males, and arrived at Hobart Town on October 3rd, only one convict having died on the voyage.

Turning for a moment to India it may be noted that in 1784 the British Government introduced the system of transportation for Indian prisoners. The first batch of Indian convicts were sent to Bencoolen in S.W. of Sumatra in 1787. When Bencoolen was transferred to the Dutch in 1823 the convicts were sent to the island of Penang. But two years later Penang was closed and Singapore opened. In 1867 life convicts were sent to the Andamans, and in 1873 convicts were transferred there from the Straits and all convicts sentenced to, and physically fit, for transportation were sent to the Andamans.

As a result of the World War the Penal Settlement of Port Blair fell into Japanese hands. Many of the prisoners were repatriated before their arrival. Colonel F. A. Barker, formerly Senior Medical Officer Port Blair and Inspector-General of Prisons Central Provinces and Punjab, in his recent volume on the *Modern Prison System of India*, to which I am indebted for the above, considers that it is extremely unlikely that transportation will ever be resumed, whether India remains under British rule at the end of the war or becomes completely "independent".

When the penitentiary at Millbank, which had accommodated convicts who were not transported, became inadequate for the purpose, the Government, in 1842, built a large prison at Pentonville on lines which it was intended should serve as a model prison for local authorities to copy, and to see how the so-called Separate System newly introduced, by which each prisoner for the first 15-18 months of his sentence spent his time in separate confinement with hard labour, operated. In six years fifty-four new prisons were built after its model, affording 11,000 separate cells. Further accommodation being required for the convicts, large

cellular type prisons were built at Portland (1848), Dartmoor (1850) and Chatham (1856). In 1850 the control of the Convict Prisons which included the remaining hulks and the Penitentiary at Millbank and Pentonville, and the special prison at Parkhurst for young convicts was placed under a new body corporate of Directors of Convict Prisons appointed by the Secretary of State. By the Prison Act of 1877 the ownership and control of all local prisons, with all the powers and duties of the Justices relative thereto were vested in the Secretary of State, and the cost of their maintenance was transferred to public funds. Their superintendence was vested in a Board of Prison Commissioners, subject to the control of the Home Secretary. A new code of Rules was issued in 1878 and on April 1st all the local prisons came under one central control. The Chairman of the Directors of Convict Prisons was appointed also the first Chairman of the Commissioners, and both convict and local prisons were brought under one administration. A system which continues to the present day.

The Prison Act 1898 was an important step forward. The next important changes, introduced a triple division of prisoners according to the degree and character of the offence; the power to earn a reduction of the sentence not exceeding one-sixth; power, where the sentence is in default of a fine, to obtain his release by part-payment of the fine; provision against excessive or unnecessary exercise of the powers of corporal punishment; power given to the Secretary of State to effect any change in the system by parliamentary rule, without recourse to act of parliament; and the abolition of all forms of so called hard labour, treadwheels, cranks and the like.

The Prevention of Crime Act, 1908, introduced two new and important ideas: (a) A system of preventive detention as a means of protecting society from the dangerous or habitual criminal; (b) the establishment of the Borstal System. It is generally accepted that the former has proved a failure and the latter a success.

Preventive Detention aimed at increasing the deterrent value of punishment in prisoners who had repeatedly committed crimes and could not be restrained by ordinary and repeated sentences, and was also intended to give longer protection to society by the imposition of a sentence not less than five years and not exceeding ten years under special conditions after the determination of a sentence of penal servitude. In 1928, when the Act had been in operation twenty years the Prison Commissioners in their Annual Report published a detailed account of the operation of Preventive Detention, which showed conclusively that it had not had the effect which was intended. By the 31st December 1928, 901 sentences of Preventive Detention were passed, of which 735 were for the minimum period of five years and 34 for the maximum period of ten years. In the later years the average number of sentences of preventive detention per year was 31 for men and for women 0.6, although in the year 1928 there were discharged from the convict prisons 308 recidivists. The Commissioners reported: "Seeing that this sample batch of 308 recidivists represents only a portion of the total number of recidivists who at any one time are at large, or are passing in and out of prison on short sentences interspersed between sentences of penal servitude, it is clear that 31 sentences a year of Preventive Detention can have no appreciable effect on the problem of recidivism."

Not only were the numbers sentenced to this form of detention insignificant

but its deterrent effect was almost negligible. In the seven years, 1920-6, the total number who were released on licence for the first time from detention was 55, of whom four died and one became insane. Of the remaining 50 only three had not reverted to crime by the end of 1928. Of the 26 discharged on the expiration of their sentence three died, of the remainder only four had not reverted to crime by the end of 1928.

These disappointing results were partly due no doubt to the fact that the majority of prisoners had developed through the years an ineradicable habit of committing crime, and a consequential inability to live lawfully for any length of time when at liberty; and partly because some of them, although not insane or mentally defective, belonged to the constitutional psychic inferior group of psychopathic personalities who cannot stand alone, and whose habit of committing crime frequently and returning to prison may be the best adaptation to social life they are able to make.

The Departmental Committee on Persistent Offenders, of 1932, considered the failure of Preventive Detention, and amongst other recommendations advised the repeal of this Part of the Act of 1908 and suggested alternatives.

The establishment of the Borstal system enabled suitable persons of not less than sixteen and not more than twenty-three years of age to receive a sentence of detention in a Borstal institution for a term of not less than two and not more than three years in lieu of a sentence of penal servitude or imprisonment. The Prison Commissioners have power to release on licence at any time after six months in the case of boys, and three months in the case of girls, any person so detained if satisfied that there is a reasonable probability that the offender will abstain from crime and lead a useful and industrious life. In the year 1938 eight Borstal Institutions for boys and young men accommodated a daily average population of 2,100; and different establishments were allocated to different types of offenders. Borstal training, in brief, varies, but always implies a combination of methods of mental, moral, physical, educational and industrial training, adapted according to the needs of different types of lads, and, like other progressive systems, is constantly subjected to change as fresh experiments in training are tried out.

It is an accepted fact that as time passes the likelihood of another offence being repeated diminishes. Of 2,526 lads discharged from Borstal institutions during the years 1934-6 inclusive 63.5 per cent were not reconvicted in 1938, and of 118 girls the figure was 62.8 per cent. If none of these committed further crime, however, it might be fallacious to attribute the entire success to the Borstal system, for happily there is a natural tendency for youth to become stabilised as it reaches adult age, and the number of lads and girls who reach ordinary social behaviour by ordinary means are unknown.

Employment is one of the keystones in the training and treatment of offenders in prisons and Borstal institutions, but although the term hard labour was used in Acts of Parliament from the middle of the eighteenth century, its meaning has never been accurately defined and, as Ruggles-Brise pointed out, there was consequently a great variety in its application. The Prison Act of 1865 attempted to define it, and enacted that hard labour was to be of two classes: First class, mainly the treadmill, shot drill, crank, capstan and stonebreaking to which every male prisoner above the age of sixteen, sentenced to hard labour, was required to be

kept for at least three months and might be kept for the whole of his sentence. Any other approved kind of labour was called second class. Speaking from personal experience throughout the present century the term hard labour in practice has come to mean such hard labour as is placed medically in that category and for which the individual is medically fit. Ruggles-Brise pointed out that prior to 1877: "In some prisons there was a complete idleness; in some unregulated association; in some an active industry conducted with a view to commercial profit; and in some a close and melancholy adherence to the rule of separate confinement with its concomitant hard labour. . . . At Devizes 62 out of 78 prisoners were engaged on the treadmill or at oakum picking. At some other prisons the question of providing remunerative employment received the keenest attention. One prison competed with another in finding a market for its produce . . . the amount of trade profits was taken largely in account by Magistrates in dealing with applications for increase of pay. At Wakefield an extensive mat trade was carried on in which sales averaged £40,000 a year. Steam power was employed. A commercial traveller was appointed to sell the goods. . . ."

Into the many problems associated with prison employment I will not enter, amongst the difficulties are obtaining orders which do not compete with the industrial employment of civil life, and the disposal of the completed work. Present day employment falls into four classes: the domestic service of the prison—cooks, bakers, cleaners, etc.; maintenance of buildings and new construction; manufactures; and farming and land reclamation.

One of the most striking modern advances in prison administration in this country was the formation in 1933 of a camp based on Wakefield Prison, in which, by 1938, some 100 selected male prisoners resided in huts and were employed at cleaning the ground, the breeding of pigs, the keeping of poultry and the cultivation of soft fruits. The huts are not enclosed within walls, and the successful administration of the establishment depends upon the careful selection of the men sent there and upon their good will and intentions.*

ALTERNATIVES TO PUNISHMENT

It will be convenient here to refer briefly to the different views of penologists in this country. In the eighteenth century it was held by many that criminal conduct was chosen by the offender after a careful examination of its perspective advantages and disadvantages, and that no more punishment was necessary to check crime than would render the assumed advantages unattractive. Later, the recognition of varying degrees of moral and legal responsibility as well as of mitigating circumstances was advocated. Later still, Lombroso and his followers, as I have already inferred, believed that the criminal was predestined to a life of crime on account of his inherited traits and that he was wholly irresponsible. To-day we regard the offender as a person who requires training and treatment, and sometimes medical treatment, before he can be restored to social usefulness.

The essence of the Borstal system, as I have said, was to provide an alternative to prison and to prevent further crime. The Probation Act, 1907, had a similar purpose. It greatly extended the powers already existing for releasing on recogni-

* By 1947 the scheme had been extended.

zance, and gave power in any case either to dismiss the case or bind the offender over for a period not exceeding three years, or to place him on probation under the care of a probation officer appointed for the purpose. An important measure in 1925 made it obligatory in all petty sessional courts—of which there were over 1,000 in number—to appoint one or more probation officers.

In addition to the supervision of offenders the probation officer may act successfully as a conciliator in the troubles of married life, and if well qualified for this difficult task may inspire confidence in the unhappy partners. Apart from acting in matrimonial disputes when asked by the court to do so, the probation officer on behalf of the court may act as a social investigator so as to acquaint the justices with first hand information concerning the background of the offender's life—his home surroundings, interests, associations and temperament. The nature and extent of the employment of probation officers vary with the courts. For example when a periodical payment of money is to be enforced, or varied, in connection either with any domestic proceedings, or in any matter of bastardy the court is empowered by Act of Parliament to request a probation officer to conduct an investigation into the means of the parties and make a report to the court. The courts have now the power to place under the supervision of the probation officer an offender of any age who is required to pay a fine, and to use their probation officers in other directions which need not be mentioned here.

The scope of the Probation system becomes apparent when emphasis is laid upon the number of cases in which it is used. In 1938, the last year for which figures are available at the time of writing, the total number of persons found guilty of offences of all kinds in England and Wales was, as I have already stated, 787,482. Of the aggregate number of offenders 81 per cent were fined, 10 per cent were dismissed after the charge had been proved, 6 per cent were bound over—4 per cent being placed under the supervision of a probation officer and 3 per cent were sentenced to imprisonment or penal servitude or to Borstal detention. Summary Courts placed 51 per cent of the offenders under fourteen years of age, and the same proportion aged fourteen and under seventeen years, and 45 per cent aged seventeen to twenty-one, under the supervision of a probation officer. The use made of probation for adults by Summary Courts varies widely in different areas of the country. In the Metropolitan Police District it was 24 per cent, in Liverpool 3 per cent.

The Children's Act, 1908, prohibited except under very exceptional circumstances the imprisonment of any person under the age of 16. It classified young offenders under the age of 14 as "children", and "young persons" those between the ages of 14 and 16. In place of prisons the Act created places of detention which were to be established by the police authority for any period not exceeding a month. This Act with later Acts was revised and consolidated in The Children and Young Persons Act, 1933. It would lead us too far afield to consider it at length. Certain facts however are of general importance. The Act lays down that no child under the age of eight years can be guilty of any offence. Sentence of death is not pronounced on or recorded against a person under the age of eighteen years, but in lieu thereof the court shall sentence him to be detained during His Majesty's Pleasure in such a place and under such conditions as the Secretary of State may direct. Where a child or young person is convicted of attempt to murder,

manslaughter, or of wounding with intent to do grievous bodily harm, and none of the ordinary legal methods of dealing with such a case is suitable, the court may sentence the offender to be detained for the period ordered in such a place and under such conditions as the Secretary of State may direct. A child or young person committed for trial or remanded may not be committed to prison but must be committed to a remand home. But if a young person is of so unruly a character that he cannot safely be so committed, or is of so depraved a character that he is unfit to be so detained, the court may certify to that effect and commit the offender to prison. The Act was intended to materially strengthen the hands of all those who are concerned in finding the best way of restraining those young people who are falling into criminal associations and of helping those who, owing to their circumstances, require care and protection. The Act also gives recognition to the principle that in dealing with this problem the co-operation of many agencies is necessary. The Justices sitting in juvenile courts, education authorities, police authorities, probation officers and other social workers are all concerned.

MEDICAL ADVANCES

It is perhaps significant that scientific attempts to improve the ventilation and sanitation of prisons were, according to C. Singer, instituted by a clergyman, Stephen Hales, in the eighteenth century. In the early part of the last century the duties of the prison surgeon were directed by the Prison Acts to the health of the prisoners, those of the chaplain to their moral instruction.* Even as late as 1843 the New Prison Rules, which were sent out by the Secretary of State to the Chairmen of Quarter Sessions and to the Mayors of the Boroughs, directed the attention of the chaplain "to the peculiar character and state of mind of each prisoner", although the attention of the surgeon was not so directed. The duties of the prison surgeon in this matter at the time appear to have been advisory, for he was instructed to inform the governor of the prison if he had reason to believe that either the mind or body of a prisoner was likely to be injuriously affected by the prison discipline or treatment, together with such directions as he might think proper. He was also instructed to call the attention of the chaplain to any prisoner whose state of mind appeared to require his care.

By the middle of the nineteenth century the importance of the medical aspects of prison administration began to be recognized. In 1842 the newly appointed Commissioners of Pentonville prison included two eminent medical men, Sir Benjamin Brodie, Sergeant Surgeon to the King and Surgeon to St. George's Hospital, and Dr. Robert Ferguson, Accoucheur to the Queen and Physician to the Westminster Lying-in-Hospital. The Commissioners' Reports show that both they and the prison surgeons were actively interested in the mental as well as the physical condition of the prisoners under their care. But generally speaking, a consideration of the early Prison Acts and some writings of the period leave little doubt that the mental condition of the prisoners was looked upon as the immediate concern of the chaplain, and that spiritual and psychological conditions were usually regarded as synonymous.

As time passed the respective spheres of chaplains and surgeons were appro-

* Geo. III, c. xlv, 29 and 31, 1812; Geo. III, c. lxii, 30 and 33, 1816; and Geo. IV, c. lxiv, 30 and 33, 1823.

priately defined, and to-day it is generally recognized that conduct, which formerly was attributed to moral depravity and wickedness is often due to psychological and psychiatric causes. Even now the issue is sometimes obscured in attempts to replace the psychiatric aspect by a philosophical outlook which, however important, has little practical value in the treatment of crime.

When the convict and local prisons came under State administration in 1878 the opportunity was taken to appoint a medical inspector of prisons who was responsible to the commissioners for the medical administration of the establishments and co-ordinated the work of the prison medical officers. Since 1898 one of the commissioners of prisons has been a medical man with the same authority as that of his colleagues.

The general health of offenders in the prisons and Borstal institutions is maintained at a high level. In 1938, which may be taken as an average year, the total number of deaths due to natural causes was 23, the daily average population in the different establishments being 11,086. There can be little doubt that the mortality rate is low because the offenders are under medical supervision, and receive medical treatment at the beginning of an illness instead of later. They have no reason to postpone seeking medical advice, and the considerations which tend to delay treatment in civil patients do not apply. The medical and surgical diseases met with in prisons and Borstal institutions are similar to those met with in patients of the same ages in the outer world.

Prison medical officers are necessarily well informed concerning the association of crime and insanity, mental defectiveness and other minor mental abnormalities. They also have constant opportunities of observing how abnormal the normal person may be. The four-year investigation into the psychological treatment of crime which was carried out and discussed by W. H. de B. Hubert and myself in our Report in 1939 is being continued by others, and there can be little doubt that a certain amount of crime may be prevented by this approach. But in this matter caution is necessary and exaggeration must be carefully avoided.

As I stated in the Annual Report of the Prison Commissioners for the year 1935, every new method of treatment claims its successes. Some may last, others continue until the therapist begins to doubt their value. Every new cult claims advantages, which too often fail to stand the test of time. In the first half of the last century the phrenologists proclaimed that their doctrines could be applied with advantage to form a correct conception of the nature of certain crimes and provide a sound judgment of the punishment necessary to deal with and prevent them. In the latter half of the century their speculations were replaced by the assumptions of the anthropologists. These in turn are effaced to-day by modern psychological conceptions as to the causation and prevention of crime. Looking back it would seem that the threefold method of science—the collection and recording of facts, their classification into series or sequences, and the predication of a formula which will summarize the findings—may have been inaccurately applied in one or other direction by the phrenologists and anthropologists.

Perhaps we can profit by their mistakes. But it is right to be on guard lest specious explanations and repeated exhortations founded upon psychological abstractions turn aside those who would otherwise be prepared to consider that the voluntariness of human conduct may sometimes be overstated.

Finally, the Criminal Justice Bill, 1938, which was under consideration when the World War came upon us, and was necessarily postponed, will be an important milestone of penology when it becomes law.

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XI

CRIME AND PUNISHMENT *

INTRODUCTION

DISCUSSIONS on crime and punishment frequently bring into relief two fundamental facts. One, that everyone is dependent upon his fellows; the other, that the physico-chemical, biological and psychological or spiritual worlds are, as J. S. Haldane pointed out, only the same worlds at different planes of interpretation.

Legal, executive and administrative authorities are constantly concerned with problems relating to the punishment of crime and the treatment of criminals, and frequently consider what modifications and alterations of the authorized penalties are applicable to modern conditions. Others, less directly associated with the administration of the law occasionally apply themselves to the same problems. But the community as a whole is little interested in the subject, and ideas regarding punishment are often ill-advised and presumptuous. They tend, however, to become less arrogant as the observer learns that those who are best informed have no illusions as to the complexity of the subject.

Respect for the law is essential if it is to be effective, and it cannot advance far without the moral support of the society it serves. It often lags behind the anticipation of those who fail to realize that their views must reach the public and become incorporated in civic understanding before action can be taken.

Perhaps the delay is advantageous in a world which is to-day more concerned with its rights than with its duties, for it affords an opportunity to consider fully the possible implications of controversial proposals. Such, for example, as the assertion that a person can only gain self-realization if he is able to exercise his emotional tendencies more freely than society will allow. A view which disregards the fact that the treatment of crime must be considered from the position of those who respect the law as well as of those who break it. Further, a democratic government is not static although by appealing to reason it may appear to operate slowly when compared with the decisions of the dictator who incites his subjects to action or submission by emotional appeals.

It has been said that the savage sentences of former times, and the brutal manner in which they were carried out, were due to the intellectual starvation of the people. But it is also to be remembered that character is not merely a matter of intellect, and may be of outstanding importance in maintaining the law. There can be no doubt that by arousing the public conscience a higher standard of social rectitude can be attained, and this is sometimes more closely related to the emotions than to the intellect. Moreover, in modern society the different classes tend to merge into one another, whereas formerly the transitions were abrupt and understanding between the classes distant.

* A paper read, in abstract, at the Annual Meeting of the Royal Medico-Psychological Association on 18 July 1946, in Edinburgh. Published in the *Journal of Mental Science*, October 1946.

It is a matter for speculation whether an improved attitude on the part of the potential criminal towards society is a more important contribution to social security than the changed attitude of society towards the criminal. At least this can be said, although the criminal fails in his duty to society we are not thereby absolved from carrying out our duty to him.

THE NATURE OF CRIME

Jeremy Bentham seems to have looked upon crime as a prohibited act from which there resulted more of evil than of good. Professor Kenny considered that the definition of crime was "a grave—if not indeed insoluble—difficulty. . . . For it consists of the fundamental problem '*What is Crime?*' Clearly, the criminal law is concerned with crimes alone, and not with illegal acts in general. But how are we to distinguish those breaches of the law which are crimes from those which are merely illegal without being criminal. . . . Crimes are wrongs whose sanction is punitive and is remissible by the Crown *if remissible at all.*" (Italics in original text.)

W. A. Bonger wrote: "Crime is a serious antisocial action to which the State reacts consciously, by inflicting pain (either punishment or correctional measures)." J. Michael and M. J. Adler state: "The most precise and least ambiguous definition of crime is that which defines it as behaviour which is prohibited by the criminal code." They use the word delinquency for the criminal behaviour of a person below some age prescribed by law. B. A. Wortley, still more recently, declares: "A crime is an offence against the law, and it is usually also an offence against morality, against a man's social duty to his fellow members of society: it renders the offender liable to punishment."

In medical literature, as well as elsewhere, crime is often referred to as antisocial conduct. The imperfections of this description are obvious, but it does stress the fact that injurious social consequences follow certain kinds of activity.

Juries are sometimes told that a criminal court is not a court of morals. When this statement has been made during trials in which I was concerned it seemed to me to refer to the quality of virtuousness. Stephen declared that the great difference between the legal and the popular or moral meaning of the word crime is that whereas the only perfectly definite meaning which a lawyer can attach to the word is that of an act or omission punished by law, the popular or moral conception adds to this the notion of moral guilt of a specially deep and degrading kind. He added: "The criminal law must, from the nature of the case, be far narrower than morality. In no age or nation, or at all events, in no age or nation which has any similarity to our own, has the attempt been made to treat every moral defect as a crime. . . . Criminal law, then, must be confined within narrow limits, and can be applied only to overt acts or omissions inflicting definite evils either on specific persons or on the community at large. It is within these limits only that there can be any relation at all between criminal law and morality." He pointed out that this relation is not the same in all cases: "The two may harmonize, there may be a conflict between them, or they may be independent." In our own time, Lord Hewart stated: "It would indeed be a poor and starved morality which depended upon the provisions, positive or negative, of law, and it would probably

be an intolerable law which sought to give legal effect to all the dictates and exhortations of morality."

Morality is so closely interwoven with social conduct and immorality with criminal conduct that it seems desirable to pursue the matter a little further.

In early times the operation of the law between subjects was not so much to punish as to assess the compensation to be paid to the injured individual or to the Crown. J. W. C. Turner points out that: "As time went on the idea gradually developed, probably under ecclesiastical influence, that the infliction of punishment was necessary. The same influence seems to have led to an agreement that liability to punishment should depend upon moral guilt."

In spite of the cruel sentences imposed by the ecclesiastical courts it would appear to their credit that the adoption of moral standards introduced the necessity of taking into account the mental functioning of the offender. As Turner points out, in that way lay the recognition of the doctrine of *mens rea*, as a subjective ingredient in the assessment of criminal responsibility, although moral guilt was measured by strictly objective considerations.

There can be little doubt that the ecclesiastical courts were satisfied that what they considered to be immoral and wrong was so in fact, and it is almost inconceivable that they could do otherwise than attach a religious significance to their assessments. It is perhaps instructive that whatever words they may have used in declaring their awards, the only occasion in which an appeal is made to the Deity by the judge to-day is embodied in the sentence of death.

As I see it, a crime arises if voluntary conduct results in the commission of an unlawful and punishable act (*actus reus*)* or omission, which the offender must have foreseen was likely to cause certain consequences. And here a discrimination must be made between intention, recklessness and negligence. Turner puts the matter clearly: "*Intention* denotes the state of mind of the man who not only foresees but also desires the possible consequences of his conduct. . . . *Recklessness* denotes the state of mind of the man who acts (or omits to act when it is his legal duty to act) foreseeing the possible consequences of his conduct, but with no desire to bring them about. . . . *Negligence* is the state of mind of a man who pursues a course of conduct without adverting at all to the consequences of that conduct; he does not foresee those consequences, much less desire them."

These considerations are commonplaces among lawyers but are not necessarily in our minds when psychiatrists engage in discussions on crime and criminals. We all recognize that in human society prohibitions must be enforced lest harm result to all, and that a degree of intelligence, wisdom and control is required before the fundamental standards of behaviour subserve the basic needs of the individual as well as of the society in which he lives. Taboos and regulations are introduced in order to ensure the preservation of society and the propagation of its members. Hence the manner in which an individual urge is regulated and controlled, will gain approval or disapproval according to its conformity with an authorized code. So it comes about that approval and disapproval are terms which involve morality and immorality and express the possibility of success or failure

* Such result of human conduct as the law seeks to prevent, that is to say, a specific crime (J. W. C. Turner).

in social adaptability. But the presence of the criminal in our midst proves our adaptation to be far from universal.

The criterion of immorality seems to depend upon the fact that the conduct in question is injurious to society when it is generally practised. And because the consequences are usually harmful the term is sometimes applied to activities in which the actor, an accomplice or the public are uninjured.

A criminal act must be considered, if possible, in association with its motive, and E. Mira points out that the highest moral conduct may result from motives which in themselves are immoral. He records the case of a soldier who, in an experiment undertaken at a military hospital, urged that the greatest quantity of blood possible should be taken from him for the benefit of his company commander. But under pressure he told his questioners that he had formerly suffered from syphilis and hated his superior officer, and hoped that he would thus be able to infect him with the disease.

Without entering into the realm of casuistry it may be said that a crime may occasionally be the result of altruism. As when a doctor induces euthanasia at the request of a dying patient, or a parent steals food for his necessitous family. So, too, when an insane husband kills his wife in order to protect her from the vicissitudes and hardships of a world he believes he is about to leave.

Modern society is far from being single minded in passing moral judgments, and the difficulty of establishing precisely a norm of moral behaviour, and the many points of view which may be held on a hypothetical or concrete situation are matters of almost daily experience, and can be demonstrated by suitable tests. Mira found that in ten suggested courses of action to solve a problem of conjugal infidelity 578 married couples gave widely different answers. The preferences also markedly differed in six courses of action offered to 156 trained nurses in a concrete test on the ethics of professional conduct. In fact, in many situations the norm of moral behaviour is undetermined.

To some extent morality depends upon tradition and the potential criminal, like other persons, is required to base his behaviour mainly upon that tradition. All will agree that in ordinary situations we are assisted in this matter as our reasoning capacity and emotional control advance through the prohibitions and penalties of egoistical childhood and credulous adolescence to the controlled activities of understanding maturity. The progress is gradual, but at length prudence is dissatisfied unless social order is maintained in the forefront of our desires.

During this development it becomes important to distinguish, however simply and imperfectly, between sin and crime. The latter has been defined above. Sin may be regarded here as moral evil considered from the point of view of religion and regardless of its relation to civic law and ethics. Sin and crime, however, have certain common features. Both are opposed to the best traditions, both reject the golden rule of doing as you would be done by, and both in different spheres ignore the satisfaction of real or assumed security.

From the psychiatric point of view there is a significant difference between the two, inasmuch as crimes are acts or omissions which are scheduled by law and are ascertainable by the curious, whereas the declaration in the Pauline epistle that "whatsoever is not of faith is sin"* is of much wider import, and carries the

* Romans xiv. 23.

speculator into the realms of mysticism. And here I am reminded that W. R. Inge has said that "the real lesson of anthropology is that religion, science, ethics and aesthetics have all become differentiated out of the confused muddle in which they exist together in the mind of the savage." I am reminded, too, that the Dean feels with others that "since the psychologist has debarred himself from explaining mysticism by philosophy (in the older sense) he is practically obliged to explain it by pathology." At least this will be accepted; it seems useless to attempt to maintain the view that science deals with certainties and metaphysics with uncertainties.

Again, we should avoid confusion when using scientific terms, particularly if we are concerned with others in such practical subjects as crime and punishment. Bernard Hart reminds us that the psychologist like the physicist employs conceptions which cannot be demonstrated to have an actual phenomenal existence. The psychologist uses terms, as does the physicist and others, to explain observed phenomena. Hart refers to an unconscious mental process as "a phenomenal impossibility just as the weightless frictionless ether is a phenomenal impossibility. In both cases the conception justifies its claim to rank as a scientific theory because it serves to resume and explain in a comprehensive and convenient manner the facts of our experience, and because it satisfies the one great criterion of science the test of utility." Unfortunately, in the witness box theory is sometimes presented as fact in circumstances which are detrimental to psychiatry. Nevertheless, when the captious critic censures the psychiatric approach to crime he should bear in mind Hart's statement.

On the other hand, the psychiatrist will often fail if he approaches the subject of criminal behaviour in a monopolist spirit. Even if he accepts the fact that the understanding and treatment of criminals are tasks which require the efforts of different professions, the experts in those professions are also entitled to express their views. Our contributions differ, their values differ and their practical usefulness differs. We cannot doubt that the co-operation of many workers will surely take us further towards successful achievement in these difficult matters than a monopolist approach, however earnest and erudite its exponents may be.

The danger of a monopolist approach is well shown in the eighteenth century *Essays on Physiognomy* by Lavater. No one can doubt his sincerity and industry, but he wrote: "A long, projecting, needle-formed, or a strong curled, harsh, rough hair, springing from a brown mole or spot on the chin or neck, denotes, in a most decisive manner, very great voluptuousness, which is rarely unaccompanied by great imprudence and indiscretion." His contemporary Gall, anatomist and physician, formulated his phrenological doctrine in a similar monopolist spirit, and might have reached other conclusions by a wider approach. Bernard Hart seems to have referred in his Goulstonian Lectures to the same danger. He pointed out that although Charcot and his pupils made their observations on hypnosis in hysterical patients with extreme care and accuracy, they were misapprehended and vitiated by the adoption of too narrow an angle of approach.

To look upon sin in the Pauline sense as behaviour which is mainly injurious to the individual, and crime as behaviour which is essentially injurious to society, stresses the fact that in crime self-regarding behaviour predominates over social behaviour, conscience and moral standards. Moreover conscience—character

developed under moral guidance (W. McDougall)—is not infallible and morality is not static.* Both are acquired in contact with our fellows, and we must remind the uninstructed that our impulses and aptitudes can only be directed towards social behaviour by training and contact with those who are socially mature. In this process reason, aided by knowledge and experience, balances one course of action against another, and the result is to some extent determined, by inherited traits of character. If the impulses and aptitudes are socially acceptable fresh situations will usually be met by appropriate action. And if the natural tendencies are controlled by the will, as well as by social conventions and habits, a satisfactory course of action is likely to be selected and maintained.

Apart from the difficulty arising from the fact that different persons possess different qualities, and that some have more difficulty than others in making social adjustments, is the fact that we have little control over the bio-chemical factors which affect us.

Among the extrinsic factors which are important in this matter is public opinion. The collective approval or disapproval of our associates and of society at large undoubtedly exercises by its strongly pleasant or unpleasant effect an important restraining influence upon the activities of ordinary men, and many potential criminals. So strong is the desire for approval that examples are constantly presented in which the manner of a man's life subserves his desire for posthumous praise. At the same time some criminals willingly incur the disapproval of society if they can by this means gain the approval of their associates. It is clear that social behaviour based upon the fear of disapproval can hardly acquire a high standard if it is only concerned with avoiding wrongful acts. And well-doing for the sake of praise is not entirely commendable. For it is fundamentally selfish and lacks the altruism necessary for social behaviour. This is relevant to my thesis since the majority of criminals are not so much vicious or depraved as intensely selfish. Their self-regarding sentiment is exaggerated and misapplied.

As already stated, the law recognizes the fact that a criminal act involves a certain state of mind. As psychiatrists we often must insist that past events of psychological significance are related to present occurrences. Although a crime cannot be regarded in isolation, or understood unless a history of previous events and a longitudinal section of the offender's ordinary as well as unusual behaviour is studied, it is often necessary to introduce our view with care. In so doing the evidence in favour of determinism often seems opposed to the doctrine of freewill. But since controversy in this matter has been handed down throughout the centuries and the issue is still uncertain, it is unnecessary to pursue it. The psychiatrist can perhaps do no more than insist that a greater degree of determinism should be accepted in some cases. At the same time, if he thereby attempts to relieve an accused person of responsibility it is relevant to regard the fact that in the ordinary affairs of life we are held accountable for our behaviour at home, at business, or in our professions, in spite of our constitutional disabilities and the force of circumstances beyond our control.

Both lawyers and doctors will agree that they exercise the power of selecting their course of action in the important affairs of life, and many will accept the

* Whereas conscience in ordinary so-called moral persons is co-operative, altruistic and questioning, in habitual criminality it is unco-operative, selfish and unaccusing.

view that their choice may be affected by past events which are not apparent at the time their decision is made.

The conduct of our fellows is usually judged on the assumption that they know whether their action is socially correct or incorrect, and exercise, or refuse to exercise, their self-control. An idea of limited liability has become associated with those who are unable to develop or exercise this power, or postpone an immediate gratification for a distant advantage. Unfortunately discussions on self-control are usually obscured by abstruse metaphysical speculations. Nevertheless, the power of controlling our urges and of guiding our desires is very real and of the utmost importance. We all accept this, and the fact that control can be developed by use and weakened by disuse, as well as the fact that one of the earliest lessons taught children is the necessity to compel themselves to do what must be done although they may wish to do otherwise. It is as important for an offender to force himself to submit to social requirements by the exercise of his will power as it is for the patient, suffering from a minor mental abnormality, to assist his recovery by compelling himself to follow the fundamental principles of mental hygiene and control his emotional habits.

This much is certain, the treatment of criminals must be sometimes qualified by taking into consideration events in their lives which may reach far back in their personal history. Among still more distant factors we cannot disregard the inherited traits which influence character and the careers of reputable persons as well as of criminals. Indeed, he would be a poor legal or medical therapist who neglected to do so in his efforts to help the offender towards rehabilitation.

Our inherited antisocial tendencies, like other constitutional qualities, may be modified by training, and it will be agreed that social adaptation depends upon the qualities of the trainer as well as of the trainee. But as children and young persons do not select their monitors they may have reason to protest that their faults are largely attributable to the ineffectiveness of others.

As we faithfully observe our associates, and have opportunities to study their thoughts and dream phantasies and compare them with our own, we are driven to the conclusion that most of us are potential criminals. And just as we have come to realize that prolonged psychological stress produces abnormal mental reactions in persons who have previously been regarded as normal, so must we accept the fact that environmental stress may cause crime in those who are potential criminals. The important thing to remember is that crime may result if the tendencies of the individual and the environmental conditions together outweigh the resistance which can be opposed to them. These factors being variable, and as a rule the environmental factor is the most easily altered, it follows that whether crime results or not often depends upon the degree of variation present in one direction or possible in another. Nevertheless, the primary concern of society, and the first duty of its legal instrument, is the protection of the majority from the misdeeds of the fractional minority, and we simply cannot afford to discriminate always between the variables which go to make up criminal behaviour. Rather must we often deal with results and act upon the assumption that although some dispositions are socially acceptable, and others are antisocially inclined, all must be subservient to the general welfare. Society must be jealous of its rights if it is to survive, and therefore is not always very ready to accept with equanimity the

irresponsibility associated in a criminal court with insanity and some forms of mental defectiveness, or the lessened culpability which is apparent in some forms of minor mental abnormality.

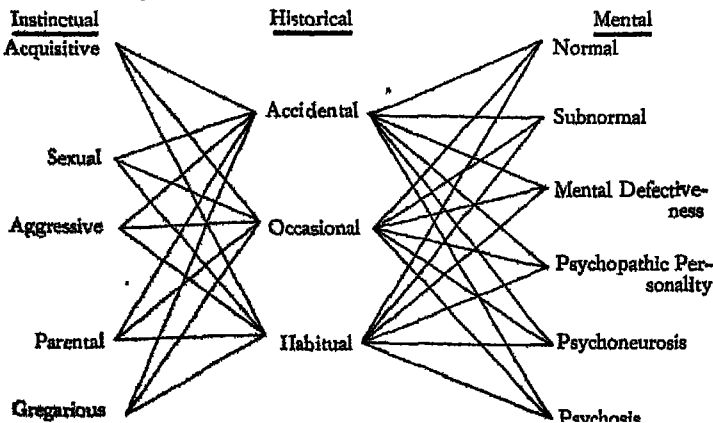
Here I may add that, although I have seen it somewhere stated that we shall not progress in medico-legal understanding as long as we use the term insanity, it seems well to remember that our duty is to present our views in the criminal courts as clearly as we can. The term insanity has a legal significance which is generally understood by juries. Are we satisfied that the terms psychosis or mental disease will be better understood by laymen?

At the same time, when we refer to the association of insanity and mental defectiveness with criminal behaviour we must avoid the tendency to lead others to attach too much importance to the intellectual factors, and too little to the emotional qualities which so profoundly affect human behaviour.

CLASSIFICATION OF CRIMINALS

The legal and executive authorities in the past seem to have been more concerned with the classification of crimes than of criminals, and because of the many difficulties the classifications have met with a considerable amount of criticism. The classification of the administrative authorities has been practical and free from doctrinaire influence. But I am here concerned with the medical aspects of crime and need not delay to present the classification used by the Prison Commissioners for general purposes.

Towards the end of the last century, and during the earlier years of the present, criminals were frequently said to belong to one of three groups: accidental, occasional, and habitual or professional. This classification represents a high, medium or low breaking point and is still useful as a partial assignment. It may be advantageously combined with a reference to the causal instinctual activity at fault in terms of acquisitiveness, aggressiveness, sexuality, and parental or gregarious anomalies of behaviour. The classification is completed by including a reference to the mental condition of the offender. The result enables the psychiatrist to form an idea of the individuality of the person who is described as an accidental aggressive schizophrenic, as an occasional sexual constitutional psychic inferior, as an habitual acquisitive normal, and the like. Briefly, I suggest that the most satisfactory medical classification of offenders is tripartite: historical, instinctual and mental. It may be set out diagrammatically thus:



Hitherto legal and executive, as well as administrative authorities have been chiefly occupied with offenders whose mental condition was normal, mentally defective or insane. Looking back one is impressed by the advances that have been made in the methods of dealing with crime associated in modern times with these conditions. Although the legal method of dealing with accused persons who are insane is criticized by some—usually those least informed—many believe that it is in practice as equitable as is possible in the present state of medical knowledge. There is, however, reason to think that the punitive treatment of some subnormals, psychopathic personalities and psychoneurotic offenders can be carried out more intelligently than is the case at the present time if the public will accept psychiatric guidance in the matter.

THE NATURE OF PUNISHMENT

It is not always remembered that criminals today are sent to prison as a punishment and not to be punished. Punishment is provisionally defined by B. A. Wortley as "the totality of the legal consequences of a conviction for a crime." It seems clear that Jeremy Bentham regarded punishment as an evil, for he said, "the evil of punishment must be made to exceed the advantage of the offence." But he does not say how these variables are to be standardized and measured, though he added, "the proportion between punishment and offences ought not to be so mathematically followed up as to render the laws subtle, complicated and obscure."

Punishment may be looked upon as an evil when it prevents an offender from providing for his dependants, when his work in the outer world is more valuable to society than his occupation in prison, when his family suffer because of his conviction, and when he leaves prison more hostile and embittered than when he entered it. The first three results may be irremediable. It is the duty of society to prevent the fourth whenever possible, not only for the sake of the offender but also for the benefit of society.

Bentham considered that the evils of punishment were: the evil of coercion, that is to say a more or less painful privation; the sufferings caused by the punishment; the evil of apprehension, that is the fear of prosecution; the derivative evil suffered by the offender's parents and friends. It is, however, pertinent to remember that pain, which forms so large a part in the evils described by Bentham, is not necessarily evil. The religious significance of pain has been acclaimed by Churchmen, and has recently been discussed in simple language by C. S. Lewis.

Eighty-five years ago John Hilton, the eminent surgeon of Guy's Hospital and President of the Royal College of Surgeons, taught that pain had a beneficial effect. He shewed that it called attention to the presence of injury or disease and the necessity for rest. In other words pain is valuable if it demonstrates the importance of ascertaining its cause and of applying the appropriate remedy. Even the constant pain of an incurable disease may not be wholly evil if it has a good effect upon those who bear witness to the fortitude of the sufferer. Again, the feeling of guilt and its partner pain is relative to the traditional standards of the offender's associates, and it is hardly necessary to add that the importance of the fear of pain and the desire for pleasure is easily exaggerated where normal people are concerned. Moreover, the intensity of a painful or pleasurable emotion is transient.

It is important to stress the fact that the subject of punishment is surrounded with difficulties. For example, many considerations modify the turpitude of a crime: the age and previous record of the accused, the motive for the offence, its danger to the community, the amount of premeditation exercised, the provocation and temptation to which the accused has been subjected, and so on. These variables are, for the most part, imponderable and it by no means follows that different judges and juries will assign to them similar values. And although provocation is not taken into account in determining the guilt of the accused, it may be a factor in estimating his degree of turpitude and in modifying the sentence.

The prevention of crime is perhaps more important than its punishment, and prophylactic measures may be direct or indirect. Among the direct may be mentioned the deterrent effect of punishment, police action of a preventive character, the activities of societies such as the Prevention of Cruelty to Children and the Prevention of Cruelty to Animals, and of organizations dealing with the after-care of discharged prisoners. Among the indirect may be added confidence in the integrity of the judicial and police authorities, the maintenance of a high standard of civic responsibility, improvements in social conditions, and the activities of social and religious organizations. Nevertheless, our complex human nature is woven into the fabric of our lives, making a crimeless state a Utopian dream, and discrediting the belief that our choice of action is as simple as that of the amoeba engulfing its prey.

Retribution, deterrence and reformation are the usual aims of punishment to-day, and it is generally accepted that their relative importance varies with circumstances. The armchair critic sometimes appears to support the principle that in dealing with criminals self-regard should be given more freedom. Those with first hand knowledge usually believe that increased self-discipline and not greater licence is necessary if we wish to preserve social security and promote the amenities of communal life.

An eminent American psychiatrist* has stated that in the United States of America only a relatively few persons who commit homicide are ever apprehended, only a relatively small number of those who are apprehended are ever convicted, and of the latter a lesser number—for the most part defenceless youths—are finally executed. How do these facts compare with the position here? In the ten-year period 1929 to 1938 there were known to the police in England and Wales 880 cases of murder of 1,001 persons aged one year and over. In 340 cases the murderer or suspect committed suicide, and 5 died before trial. Of the 504 persons arrested 223 were found to be insane and 154 were sentenced to death. Of the latter 81 were executed and in 81 the sentence was commuted to penal servitude. In addition 2 persons were arrested and dealt with abroad, and 2 youths were sentenced to be detained during His Majesty's Pleasure, being under the age when sentence of death is passed, namely, 18 years. The results do not include those cases in which murder was reduced to manslaughter. In all cases the accused is afforded legal aid, and it is evident that punishments in any country must be considered from the manner in which they are applied.

The armchair critic who opposes the *retributive element* of punishment sometimes seems to forget that it has a deep-seated biological significance. In a cultured

* Dr. W. A. White.

society it may be necessary, and advantageous if it preserves a correct relation between the turpitude of the offence and the severity of the award. At the same time justice must be dispassionate, and stress the need to restrict our abhorrence and disgust to proper proportions as well as oppose pusillanimous sentimentality by vigorous understanding. Moreover, we must not confuse retributive justice with vindictive punishment; revenge may be an evil to the avenger as well as to the object of his vengeance.

In the present context *deterrence* may be regarded as the effect upon potential criminals of the legal treatment of actual criminals. Unfortunately we lack the means of assessing its importance. But it is not merely an intuitive speculation, and its practical value cannot be denied. Mercier's statement still deserves consideration: "If punishment is to deter from crime, it need not be severe, but it must be enough to render the crime unprofitable. It need be no more than this, but it must be certain, and it must be speedy." He added: "... all that is necessary to deter the criminal from committing crime is to deprive him promptly of the fruits of his crime. If this is not done, punishment will be inefficacious. If it is done punishment will be unnecessary." However true this may be where acquisitive offences are concerned, it must surely leave one in a state of pessimistic bewilderment if the crime immediately relieves the emotional tension which was its purpose, as in sexual and many non-sexual aggressive crimes.

Finally, *reformation* may be considered as the result of purposive treatment directed towards the mental, moral and social rehabilitation of actual criminals. Here again is a complicated problem, but unlike that presented by deterrence, it can be measured with some degree of accuracy by appropriate follow-up studies. Reformation may be transient in some cases of mental defectiveness as well as in some cases of psychopathic personality and psychoneurosis. It is probably most enduring when it arises from within the offender, and it cannot be attained by severity on the one hand or sentimentality on the other. It is sometimes suggested that deterrent and reformative aims are opposed to one another. I believe that they can be more truly regarded as supplementary to a common purpose, the prevention of crime.

CLASSIFICATION OF PUNISHMENTS

Punishments may be considered under four heads:

1. *Punishments which cause pecuniary loss to the offender.* In courts of summary jurisdiction fines are a frequent and convenient award. The retributive element is stressed when a substantial fine is added to a sentence of imprisonment.
2. *Punishments which cause loss of prestige.* This is mainly brought about in this country by the publication of criminal proceedings in the press. It may be double-edged if publicity at any cost satisfies the vanity of the offender or that of his relations. In a recent case of murder, with which I was concerned, the mother of the homicide was reported to be mentally defective or very backward. She was delighted when told that her son had been arrested for murder, and said that "she never thought he would be clever enough to get his name in the papers." Curtis H. Clay, Managing Editor, *Daily Post Tribune*, La Salle, Illinois, has stated: "Since crime was banned from our page one offences committed by local residents have been few and of a minor nature." In 1909, Judge H. T. Hulbert, Head of the

Wayne County, Detroit, Juvenile Court, persuaded the editors of four papers to cut out entirely, or tone down, the notices of crimes in which juveniles figured. J. N. Baker reports that delinquency was reduced so much that "the court practically went out of business." Section 49 of the Children and Young Persons Act, 1933, declares that no newspaper shall in future reveal the name, address or school or include any particulars calculated to lead to the identification of any child or young person concerned in proceedings in a juvenile court or to publish any picture of him. Further, all other courts are given discretionary power to prohibit newspapers from publishing similar particulars in regard to Children or Young Persons in any proceedings which arise out of any offence against or any conduct contrary to decency or morality (section 39).

On the other hand whilst formerly all proceedings under The Punishment of Incest Act, 1908, were heard *in camera* (s. 5) this provision was repealed by the Criminal Law Amendment Act, 1922, thereby inviting publicity.

Loss of prestige, the result of publicity may be unjust if it is continued after the legal punishment has been satisfied. No doubt the pillory, the stocks and the public whippings of former times caused loss of prestige, and it is interesting to note that public whippings may still be inflicted in Delaware State, although this method of punishment is said to have declined in recent years.

3. *Punishments which cause physical suffering.* In this category punishments are based upon fear and include death, quartering and corporal punishment. Death is usually restricted to cases of murder and treason, but may be inflicted in certain cases of piracy and arson. The Crown may still order quartering, or the beheading of a traitor (by 54 George III. c. 146). Corporal punishment was considered by a Departmental Committee in 1938. It was decided that the weight of evidence favoured the view that this form of punishment was not essential for the interests of society, except for the prison offences of mutiny, incitement to mutiny or gross personal violence to an officer of the prison. The Criminal Justice Bill, adopted this recommendation.

4. *Punishments which cause social restrictions or loss of liberty.* Although outlawry has not been abolished it is obsolete, and the punishments in this class are limited in practice at the present time to probation, sending the offender to an Approved School, or to a Borstal Institution, or to a sentence of imprisonment, penal servitude, or preventive detention. It is unnecessary to consider them in detail here. It will be remembered that the Criminal Justice Bill proposed certain alterations to the present practice, and that some bear upon the medical diagnosis, prognosis and treatment of offenders. If these modifications are introduced a better understanding of the criminal by extra-mural psychiatrists and a wider conception of punishment as a method of treatment will be required.

PSYCHIATRY AND PUNISHMENT

When a crime is committed the processes of criminal justice should be directed to the fact. But this does not always follow since in some cases, for example occasionally in bigamy and incest, the victim is an accomplice; and in other offences also the crime may not be reported to, or may baffle, the police. The detection of the criminal is the next process and if followed by his arrest and conviction

leads up to considerations which decide whether punitive or non-punitive methods shall follow.

The two great professions of Law and Medicine offer a parallel when the former deals with law-breakers and the latter with patients. The magistrates who adjudicate upon 99 per cent of the offenders and the general medical practitioners who attend the great majority of persons who are ill, frequently see the results of their decisions and if necessary adopt alternatives on future occasions. It may be otherwise in cases of serious crime or illness, as the High Court Judge may never see or hear of a prisoner after the sentence has been declared, nor the medical consultant his patient after he has left the consulting room. The former may remain ignorant concerning the result of the judicial award, and the latter of the medical treatment. But unless a person is informed he may be convinced that the result of his award is satisfactory when it is not so. The medical consultant endeavours to check the correctness of his diagnosis, prognosis and treatment by follow-up studies when possible; and it is rather surprising that no method has been devised to place the judicial authority in a similar position, since it is frequently declared that the determination of the sentence is his most difficult task in a criminal trial. To act upon the assumption that the usual form of punishment will be suitable in an individual case may be unsatisfactory, and almost seems to promote a possibility to the status of a certainty. The practice takes us back to the days when retaliation and deterrence were the only factors considered, and the reformation of the offender was scarcely contemplated. As I have already stated, public safety must take precedence, but justice is concerned with the three aims of punishment, and since reformation benefits society as well as the offender it cannot be denied.

A psychiatrist recently stated that the Law still nourishes certain superstitious beliefs in the virtue of punishment. In this appears the germ of the idea that criminals ought not to be punished by the usual legal measures but should be dealt with in some other way. It disregards the fact that the legal and executive authorities are constantly using methods in which punishment and treatment are associated, and that in the ordinary affairs of life we have to pay for our mistakes. The view usually maintained by prison psychiatrists in this country, that punishment may be a valuable adjunct to treatment in selected cases of criminal behaviour associated with a minor mental abnormality, appears to be gaining ground.

Let us have no illusions. Judges cannot always accept the psychiatric and psychological interpretations of criminal conduct advanced by some enthusiasts. It cannot be denied that psychiatric views are sometimes directly contradicted by the known circumstances of the crime, and that these do not always receive from psychiatrists the consideration which is their due. Above all, let us remember that society rightly refuses to hand over to doctors the powers of the courts to decide the punishment. We must also accept the fact that our punitive measures have been evolved by the wisdom and experience of highly skilled legal and executive authorities and meet with a large measure of success.

We have only to study the practice of the criminal courts to be convinced that the training of a psychiatrist cannot compare with a legal education when the accurate estimation of facts and their correct interpretation in complex situations are concerned. Sir Roland Burrows, Recorder of Cambridge, has stated that "lawyers were sometimes able to appreciate the nature and bearing of evidence

because it was a matter with which they had to deal, and he had occasionally been driven to the conclusion, from what he had seen of medical men, that the appreciation of the significance of facts and of the hearing of the evidence was not yet sufficiently a part of the training of the medical man."

The relation of psychiatry to punishment, as I see it, is concerned with diagnosis, prognosis and treatment.

Diagnosis. The ascertainment of the mental condition of a person who is mentally ill is usually a straightforward application of psychiatric knowledge to the circumstances and indications of normality and abnormality present. If mental abnormality is suspected in criminal cases the position is more complex. The offender has often an undisclosed motive for his criminal behaviour, and secret reasons for the manner in which he presents himself to the psychiatrist for examination. It is clearly necessary for the diagnostician to be well experienced in the more unusual motives of normal persons as well as of psychiatric patients, and to have practical knowledge of the boundaries of normality.

Looking back, say twenty-five years, one recollects that many exhibitionists were said to be moral imbeciles and later moral defectives. Today, they are often assumed to be psychopathic personalities or psychoneurotics without taking into consideration the fact that some are no more abnormal than the greedy man who overeats. Indeed, the term "sexual appetite" may be particularly appropriate in a criminal court if it refers to a man who leaves home to seek a sexual adventure in a country lane, just as another sets out to satisfy his gluttony at his favourite restaurant.

It would lead us too far to recall the many difficulties in diagnosis which may arise in cases of alleged mental abnormality and crime. But highly technical laboratory methods, whose value is at present undetermined, sometimes add obscurity to the problems before the court and confuse the evidence. It must also be admitted that we are often on dubious ground when certain psychoanalytical views are introduced as diagnostic aids, and psychoanalytical terminology, as well as theory, often arouses opposition. This is sometimes because of the manner in which it is presented. A jury may be shocked when told that sexuality is present in infancy. But their hostility may be moderated if they are reminded that we frequently see evidence of acquisitiveness and aggressiveness in infants, and that it would be a strange biological anomaly if so important an urge as sexuality was entirely omitted from some form of infantile expression.

An unfavourable impression is introduced if a satisfactory psychological explanation for a crime is presented in order to excuse the offender, regardless of the fact that it would not absolve him from responsibility for, say, a bankruptcy connected with his business or profession.

There is perhaps an unavoidable tendency for the psychiatric diagnosis in a criminal case to become so involved in the course of a trial that it lacks the precision which the administration of justice requires. The difficulties of presenting a precise diagnosis increase when different types of mental abnormality overlap, and if—as is not uncommon—they are in an initial stage of their development. For the most meticulous accuracy on the part of the expert witness is essential, and in cases where the diagnosis is uncertain it is well to bear in mind that Sir Travers Humphreys, the eminent judge of the High Court, discussing Science

and Justice, said: "The best witness is the one who is not afraid to say upon occasion, 'I do not know'."

The differential diagnosis and classification of the sub-groups in some forms of mental abnormality, for example psychopathic personality, may be matters of opinion when first studied. We must accept the fact that psychiatry, like other branches of medicine, is too dynamic to be often dogmatic. Nevertheless, crisp terms should be our aim in the diagnosis of the mental condition of an offender. The careful exclusion of abnormal mental states will go far to establish normality although circumstances connected with the crime may seem to be unusual.

Prognosis. Lawyers and administrators are intimately concerned with prognosis—that is the chances of an offender's rehabilitation—and psychiatrists may be asked to predict the probable effect of legal and medical treatment. Ordinary assessments may be of little value when either normal or abnormal mental states are related to criminal behaviour, and experience of criminals as well as of psychiatric patients is important even for an approximate forecast. The problem often presents insuperable difficulties, but something is gained when this is recognized, and also the fact that the most reliable medical opinion may be that which is least assured. The psychiatrist, however, is often in a position to unhesitatingly declare that legal punishment alone is hardly likely to effect the desired result.

Hornell Hart, in 1923, appears to have been the first person to suggest the possibility of applying to punitive measures the methods used in the field of insurance for predictability. Since then prediction techniques have been advanced by E. W. Burgess, Sheldon and Eleanor Glueck, G. B. Vold, E. D. Monachesi and others. The Gluecks, in 1930, stated that "legislative prescription of penalties, and judicial sentencing are founded upon considerations almost wholly irrelevant to whether or not a criminal will thereunder ultimately be a success, a partial failure, or a total failure." They constructed a prognostic device based upon the offender's industrial habits preceding sentence, the seriousness and frequency of pre-reformatory crime, arrest for crimes preceding the offence for which sentence to a reformatory was imposed, penal experience preceding reformatory incarceration, economic responsibility preceding sentence to reformatory, and mental abnormality on entrance to reformatory.

In a recent study M. Hakcem using the Glueck method considers that, "it is possible by statistical analysis and an actuarial technique to utilize the experiences of paroled subjects to establish a scheme of predicting future criminality or parole outcome of subjects before their release from penal and correctional institutions." And the Gluecks in a more recent volume state: "The possible value of predictive devices to judges in sentencing offenders cannot be over-emphasized. . . . Prognostic tables, based as they are on the actual results of treatment in hundreds of cases, would induce judges to individualize in terms of *objectified experience*" (italics in original text). It is legitimate to doubt whether objectification might not tend to supplant the individualization which is of such great importance, and for which moderns have striven so hard, in their dealings with criminals.

Treatment. The modern penal policy in the criminal courts as well as of the legislature has gradually brought about in this country changes which are directed towards making punishments more humane and more lenient. Perhaps the most important of the many factors which have forwarded this policy is the absence

of an excess of crimes likely to cause alarm—which Bentham suggested might vary from disquiet to terror—in society, and the infrequency of serious organized criminality. We are here concerned with the medical aspects of punishment, and in passing it need only be mentioned that probation orders have come to play an important part as alternatives to detention, and the tendency has increased for the order to be accompanied by a direction as to supervision. The very short and ineffective sentences of imprisonment in former times have ceased to be regarded as desirable forms of punishment; and prolonged sentences of imprisonment or penal servitude are comparatively infrequent. Moreover, training, education and rehabilitation are primary considerations during the period of detention.

The appropriate punishment for offences committed by mentally normal offenders does not particularly concern the psychiatrist. The awards declared in cases of insanity and mental defectiveness are for the most part established, and there can be little doubt that our most useful contribution to the problem of punishment, at the present time, is in connection with offenders who are subnormal, psychopathic personalities or psychoneurotic.

Since subnormality approximates to mental defectiveness on the one hand and to mental normality on the other the effects of punishment may vary. It may be effective or non-effective. The lower the grade of subnormality the more important generally will be the after care and occupational placement of the offender. That is to say the subnormal offender will be likely to become a recidivist unless he receives more than the usual amount of help and guidance when he is at liberty. For although his constitutional disability will handicap his efforts he may adjust himself to social life if he is emotionally stable and if his occupation is within his capacity.

I believe that psychiatric assistance in the treatment of psychopathic personalities and psychoneurotics who have committed crime is likely to be most impressive if precise views are held concerning the clinical limitations of the groups under consideration. Otherwise the psychiatrist may fail to convince those who have to deal with the offender as a social unit. I have suggested elsewhere that for practical purposes it is convenient to consider the offender who is a psychopathic personality as belonging to one of the following groups: psychic inferior personalities; aggressive egocentric personalities; ethical aberrant personalities; alcohol and drug addicts; sexual perverts; schizoid, cycloid and paranoid personalities. The usual grouping of the psychoneurotic reaction types into neurasthenia, anxiety states, hysteria and compulsive-obsessive states also enables the psychiatric position to be clearly expressed.

Bearing in mind the fact that the moral and emotional abnormalities of psychopathic personalities are largely the result of psychological immaturity, and that the psychoneurotic reaction is regarded as an indication of mental conflict and faulty response to the stresses of life and is more or less associated with a constitutional factor, it is not surprising that the ordinary methods of punishment sometimes fail to rehabilitate offenders who are so affected. The psychiatrist may usefully submit that in these cases punishment may be more effective if accompanied by psychiatric treatment as an alternative, or as an adjunct, to a sentence of imprisonment. At the same time we have to remember that as psychiatrists we are mainly interested in individual offenders and that the judicial authorities

are obliged to consider their awards from a wider point of view. We must also make it abundantly clear that the result of psychiatric treatment even in selected cases may be disappointing. It will be less so when a special penal institution is established and administered on psychiatric as well as disciplinary principles, and as our researches advance.

More generally it may be said that the function of the psychiatrist in relation to subnormals, psychopathic personalities and psychoneurotics who have committed crime is to ascertain the extent to which their behaviour is attributable to unusual psychological causes, and to determine whether psychiatric treatment is likely to be advantageous. It is to be remembered that although psychopathic personalities and psychoneurotic patients may profit by the adoption of such measures, additional difficulties arise if the individual has committed crime. Moreover, the psychiatric treatment of crime is still in its infancy and forecasting is often fallacious. The most that can usually be said is that it is worth a trial in some cases, and ordinary punitive measures may fail. The psychiatrist may also be able to give advice concerning the placement of the offender on release and give suggestions as to the style of life he should aim at.

The subject is too large to consider here. It may be said that prison experience shows certain factors favour medical treatment during a sentence of imprisonment of sufficient length for the purpose. The desire for cure is then more insistent and the offender, perhaps for the first time, is brought face to face with the reality of his position and with the "Black beverage of Remorse". There is also in prison an unusual release from the distractions, cares and temptations of the outer world, there is time to think, and the offender leads a regular life under medical supervision.

Caution is necessary and overstatement harmful. When a psychiatrist declares that "*all* sexual offenders should be psychiatrically examined" (*italics mine*) one can only feel amazed, and wonder why a bigamist, or a man who offends by committing a sexual act with a consenting girl who is under age but looks mature, should be examined. When, too, it is stated that "society is entitled to protect itself against acts of public indecency but is not entitled to punish psychological disorder", we can hardly be surprised if an opinion based upon a monopolist approach antagonizes those whose approval is necessary for our purpose. For even if they are willing to listen to the pronouncements of science these must not be presented as the dictates of a cult.

One is reminded that W. MacNeile Dixon in his Gifford Lectures stated: "We speak, indeed, of weighty opinions, but how many millions of them will depress a balance to the extent of a pennyweight?"

Without doubt many sexual offenders require a psychiatric examination if their activities are to be understood and treated. At the same time we must take into account the fact that this method of treatment requires co-operation and many offenders object to psychotherapeutic intervention. Again, if we are realists, we shall admit the fact that society punishes the insane and mentally defective persons who have committed no crime, by segregating them in institutions which deprive them of their liberty and require them to conform to the rules of the establishment. And we also know that the great majority of offenders resent being regarded as mentally abnormal and prefer detention in prison to segregation in a mental hospital.

In the diagnosis, prognosis and psychiatric treatment of crime there is scope for our best psychiatrists. I am also convinced that if the psychiatric treatment of offenders in suitable cases is made a condition of a probation order only psychiatrists of wide experience and mature judgment should undertake the work.

CONCLUSION

Crime is not a disease. It is sometimes attributable to mental disease and mental defectiveness. It occurs when self-regarding behaviour replaces social behaviour and threatens social security. In our present state of knowledge we cannot assume that character anomalies and mental disease are necessarily identical and co-extensive. The difference between normal and criminal behaviour is for the most part quantitative rather than qualitative.

Punishment—deterrent, retributive and reformatory—is the instrument used by society for its protection. Equal emphasis on its different aims is not always practicable. The punishment of mentally normal offenders is not the special concern of the psychiatrist. He is already engaged in the treatment of insane and mentally defective offenders. He is coming to take a part in the treatment of offenders who are affected by minor mental abnormalities.

Some of these offenders will be suitable for medical treatment without imprisonment, and further provision will be required to carry this out if it is made a legal condition of a probation order. Some are a danger to society and require imprisonment to ensure the protection of the public. To promote the medical treatment during a sentence of imprisonment we must face the fact that short sentences may be insufficient, and that a longer sentence than that usually awarded, but not necessarily the maximum authorized by law, may be required for the purpose.

Our responsibility in these cases is grave. The judicial and executive authorities have to decide whether they can accept the medical view. Theirs is the last word. Psychiatrists have to consider whether the mental abnormality present lessens the culpability—according to medical opinion—of the offender; and if so, they must not encourage him to believe that he is a mental invalid. Our aim is to assist him to carry out his social obligations to others.

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XII

CRIME AND MATURITY*

INTRODUCTION

SIR THOMAS BROWNE, the seventeenth-century physician, wrote: "Confound not the distinctions of thy Life which Nature hath divided, that is Youth, Adolescence, Manhood, and Old Age; nor in these divided Periods, wherein thou art in a manner Four, conceive thyself but One."

An examination of current literature on delinquency and crime reveals the importance of the subject to those who work among children and adolescents, and the amount of study which has been carried out in efforts to elucidate the various problems involved. Many of the factors associated with crime in four thousand adolescents were statistically investigated at Wormwood Scrubs prison and the results were published in book form in 1942. In a more recent investigation I referred to the comparative lack of research concerning elderly offenders and the importance of understanding their intellectual, emotional and environmental background. The present study deals with some of the matters which deserve consideration in a general survey of crime during maturity.

At the outset it is well to remember that, broadly speaking, adolescence is a period of preparation and inexperience, maturity of struggle and accomplishment, whilst resignation and gratitude should be our companions in later years. In truth, each period of life has its proper uses. In the words of Cicero:† "The course of life is fixed, and nature admits of its being run in one way, and only once; and to each part of our life there is something specially seasonable; so that the feebleness of children, as well as the high spirit of youth, the soberness of maturer years, and the ripe wisdom of old age—all have a certain natural advantage which should be secured in its proper season."

Differences of opinion are likely to arise when an attempt is made to establish the boundaries of the various periods of life, and it is sometimes convenient to introduce an adult group between adolescence and maturity and an elderly group between maturity and senescence. But these introductions cannot altogether avoid a measure of arbitrariness however useful they may be.

For convenience, maturity is here assumed to have been attained and retained between the ages of thirty and fifty, and this limit is imposed by the Criminal Statistics which deal with the relevant groups in decennial and not quinquennial periods.

It is reasonable to think that the majority of men and women reach maturity at the age of thirty, for the foundations of character should be firmly established by then although modifications may be made and a superstructure arise in the coming years. Osler pointed out that in the science and art of medicine young or comparatively young men had made every advance in the first rank and he gave as examples, among others, Harvey, Laennec, Virchow, Koch and Lister.

* An extension of a paper read before the Medico-Legal Society 23 May 1946 and published in the *Medico-Legal Journal*, December 1946.

† Old Age.

Harvey formed a clear idea of the circulation of the blood by the time he was thirty-five years of age, although he did not publish his discovery for some thirteen years. Laennec is said to have applied his unitubular stethoscope when he was thirty-eight, and Virchow's *Cellular Pathology* was published when he was thirty-seven. Koch showed, when he was thirty-three, that anthrax bacilli under certain conditions formed spores; and Lister's earliest paper on antiseptic surgery was published when he was forty.

Halv-White has reminded us that Simpson used ether in midwifery for the first time when he was thirty-six, and later in the same year with George Keith and Matthews Duncan discovered the anaesthetising properties of chloroform. The same biographer records the fact that Ross on his forty-second birthday found malarial parasites in the stomach of a mosquito which he had fed on a malarial patient, and that Jenner did not publish his immortal *Inquiry into the Causes and Effects of the Variola Vaccine* until he was forty-nine years of age.

Further afield it may be observed that Charles Darwin was fifty years of age when his *Origin of Species By Means of Natural Selection* was published. Pierre Curie was thirty-nine and Marie Curie thirty-one when they discovered radium.

It is unnecessary to go further in order to emphasize the creativeness of the two decades considered here. But the fact that the greatest leader of all time appears to have commenced His mission when He was "about thirty years of age",* and to have produced almost immediately a profound impression on His followers by His moral supremacy, is noteworthy.

The controversialist may rightly consider the above is unscientific thinking unless it is remembered that the three men who for so long successfully shouldered such heavy responsibility, namely, Churchill, Stalin and Roosevelt, were in 1945 in their seventy-first, sixty-sixth, and sixty-third years. And further, that in the learned professions and elsewhere many men at these ages perform work of the utmost value in their respective spheres.

The age period thirty to fifty is important in relation to studies in crime because it may be accepted that men and women are then usually nearer to their normal selves than at other periods of life. They have shed most of the disabilities of adolescence and are not yet handicapped by the deteriorating effects of later years.

CRIME IN MIDDLE AGE

In a recent paper I set out the size of the problem of crime at different ages over the ten-year period 1929 to 1938 as far as England and Wales were concerned. The total persons convicted of indictable offences, including those against whom charges were proved and orders made without conviction, reached the figure 661,434 and occurred at the ages set out below. It is clear that indictable crime is frequent at the age period under consideration.

Under 14 years	..	..	..	111,536	} 457,781
Aged 14 to 21 years	..	..	..	193,533	
„ 21 to 30 „	..	..	..	152,712	
„ 30 to 40 „	..	..	..	105,620	} 162,483
„ 40 to 50 „	..	..	..	56,863	
„ 50 to 60 „	..	..	..	27,233	
„ 60 and over	..	..	..	13,937	} 41,170

* Luke iii. 23.

The incidence of crime at different ages according to population is shown in Table I, the figures being taken from the Criminal Statistics for 1938. A detailed analysis of the official figures at all ages shows how greatly acquisitive exceed aggressive and sexual offences.

Table I

INCIDENCE OF CRIME AT DIFFERENT AGES ACCORDING TO POPULATION

Age or Age Group	Estimated No. of persons of each age or age group		No. of persons found guilty of indictable offences at all courts		No. of persons found guilty per 100,000 of population of age or age group	
	M.	F.	M.	F.	M.	F.
8 ..	298,700	293,400	657	25	220	9
9 ..	300,200	294,200	1,354	78	451	27
10 ..	300,000	293,900	2,109	108	703	37
11 ..	307,300	302,300	2,862	188	931	62
12 ..	316,200	311,100	3,513	204	1,111	66
13 ..	321,600	315,700	4,229	232	1,315	73
14 ..	330,200	324,000	3,766	271	1,141	84
15 ..	337,500	331,400	3,863	320	1,145	97
16 ..	361,700	354,500	4,016	321	1,110	91
17 ..	382,200	374,300	3,313	369	867	99
18 ..	407,500	398,400	3,015	422	740	106
19 ..	266,500	261,300	2,041	283	766	108
20 ..	264,800	262,000	1,762	246	665	94
21 and under 25	1,273,000	1,296,700	7,118	994	559	77
25 " " 30	1,670,100	1,741,400	7,203	1,077	431	62
30 " " 40	3,213,700	3,395,200	9,852	2,077	307	61
40 " " 50	2,510,500	2,979,500	4,567	1,496	182	50
50 " " 60	2,180,300	2,578,600	2,202	761	101	30
60 and over ..	2,447,300	3,083,600	1,237	312	51	10
Total ..	17,489,300	19,191,500	68,679	9,784	393	51

The figures for the ten-year period 1929 to 1938 show that when persons of both sexes convicted at Assizes and Quarter Sessions, together with those convicted of indictable offences in Courts of Summary Jurisdiction, are considered in age and offence groups a variation in frequency occurs as follows:—

Offence	Age under 21	Age 21 to 30	Age 30 to 50	Age 50 and over
Acquisitive	1	1	1	1
Aggressive	3	2	2	3
Sexual	2	3	3	2

In fact the figures corroborate the view which common experience dictates for the different age groups. Similarly, there are no outstanding anomalies where particular offences are concerned. Bigamy, for example, occupies the first place among indictable sexual offences in the age group thirty to fifty years as might be expected. Indecent assaults on women and girls are two and a half times more frequent in the age group up to thirty years than in the age group thirty to fifty, and three times more frequent than in the group fifty years and over.

Some light might be thrown upon the social significance of crime during maturity if the number of first offenders during the age period thirty to fifty years was ascertained, but the official statistics do not specifically deal in this matter with this age group. The Prison Commissioners' Annual Report for the year 1938, however, sets out the number of persons received into prison during the years 1930-6 inclusive without previous proved offences prior to first reception into prison, and who may be considered for the present purpose as first offenders. The age periods and totals were:

<i>Age period</i>	14-16	16-17	17-21	21-30	30-40	40 and over
Total	2	155	3,866	2,582	9,294	8,606

The figures also show that of the prisoners who were received into prison during the year 1930 without previous proved offences prior to first reception, the percentage of those who were not again received into prison as far as was known before the end of the year 1938 were:

<i>Age period</i>	14-16	16-17	17-21	21-30	30-40	40 and over
Percentage ..	—	27%	71%	78%	82%	91%

It is reasonable to suppose that in spite of the sobering effects of maturity a considerable proportion of first offenders have reached middle age before they become law-breakers, and that a period of imprisonment is likely to have a salutary effect upon the majority of them.

The medico-legal importance of the age-group thirty to fifty is apparent from figures kindly supplied by Dr. H. A. Grierson, senior medical officer of Brixton prison. Of 959 insane adult men admitted on remand or awaiting trial in recent years, 193 were under the age of thirty, 469 were aged thirty and under fifty, and 292 were aged fifty years and over. In 4 cases the age was not recorded.

NORMALITY AND ABNORMALITY

For the purpose of this thesis I have regarded the age period up to 21 as early formative, from 21 to 30 as late formative, from 30 to 50 as the period of maturity, and from 50 onwards as the period of decline.

Before considering some of the associations of crime during the period of middle age it seems well to consider briefly what is meant by the word normal when applied to individuals. Its geometrical origin is recognized, and although it is intended here to refer to qualities of mind, character and personality which square with a generally accepted standard or type it must be accepted as a relative term only, and not as an absolute measurement of human attributes. And, indeed, if a normal mind is the equivalent of a sound mind it is still far from being comparable to the philosophical idea of a perfect mind. This is an abstraction with which the criminologist, as such, is unconcerned.

Observation and experimentation are essential in the study of anthropology. Opportunities for experimental research in man are limited, but we can estimate with some degree of precision the normality of a person by ascertaining, as far as possible, the direction of his thoughts and by observing its effect upon his moods and actions. In particular, by observing the object which appears to be his goal, and the methods he adopts to achieve his purpose. It is, however, to be remembered that we usually live in small social groups, and that the thoughts, moods and

manner of behaviour in one group may be very different from those in another. A failure to allow for these differences sometimes leads to error in estimating the normality and abnormality of criminal conduct. Indeed, not only does one group differ from another but individuals in any one group may widely vary from their associates. For example, the unscrupulous axe-grinder pulling strings furtively behind the scenes in order to further his own advancement may be an object of contempt even to generous minds, of disgust to upright men, of interest to those who in their own time have pursued a similar course, of amusement to those who in the hard school of life have learnt that all is vanity, and of fallibility to those who agree with the Persian Astronomer-Poet that:

"We are no other than a moving row
Of Magic Shadow-shapes that come and go. . . ."

So, too, a man may differ from himself on occasion so immeasurably that he is hardly recognizable. Even if the boisterous philanderer Samson is no more than a hero of Hebrew folk-lore yet, when I follow him in fancy into the house of treacherous Delilah and remember that as he crossed her threshold the last moments of happiness he was ever to know on earth were left behind, I am reminded of the homicide who in a passion of sensuality, jealousy or revenge barter all future happiness, and may be life itself, for a momentary satisfaction. And just as at the end of the story Samson, no longer a roystering libertine, achieves an instant of final grandeur at Gaza as he destroys his oppressors and himself, so may the convicted homicide, no longer a selfish egoist, occasionally display a measure of unaffected courage as he expiates his crime.

The student who is occupied with research concerning crime and criminals is sometimes so interested in his work on abnormal mental states that he tends to neglect the study of normality, and fails to appreciate how unusual the normal person may be.

Craig and Beaton pointed out the difficulty of attempting to conceive a psychologically normal individual. They wrote: "We should discover before we went very far that the character of our synthetic man was becoming so vague that we could scarcely claim to have defined it at all. First of all, in the normal individual the life energy will flow rapidly or slowly according to what is required by his internal and external situation. But no one conforms to this rule. . . . We regard neither the quick man, the slow man nor ourselves as abnormal, but recognize the tremendous range within which normality can vary. . . . The normal individual must have all his simple primitive instinctive mechanisms accurately adjusted to meet circumstances. He must be adaptable, so that the primitive mechanisms may give place to the more complex reactions which are needed as he grows up to adult life. He must have the capacity for acquiring the cognitive disposition (in other words, for learning), and he must be able to recall, by his power of memory, just those experiences that are necessary for the present. He must be able to form ideas corresponding to the realities of his experience. He must be able to feel pleasure and pain, each in its appropriate circumstance and intensity. Finally, he must be able to inhibit or reinforce, by conscious attention, any or all of his activities, so that he may adequately execute the plan he has made to meet each situation." These authorities considered that normal standards differ so widely that it would seem normality could include almost anything.

Wile, discussing what constitutes abnormality, says: "Normality and abnormality appear to be related to function rather than to structure." He quotes Burnham, who writes: "The normal mind is not one that is perfectly integrated and free from defects, arrests of development, or even from attitudes and habits of thought similar to those of pathological conditions, but rather it is a mind that can compensate for its defects and weaknesses, that can correct its own errors and is able to control its pathological tendencies, or, in a single word, a mind that under ordinary conditions can function normally." He considers that whilst Burnham "begs the question by leaving in doubt what he means by 'function normally' the basic concept is one of adjustment. The essential factor in judgment concerning abnormality becomes the degree of non-adjustment of an organ, or an organism, in the light of its capacity and the demands made upon it."

Wile enquires: "Is abnormality merely a variation and if so, variation from what? If it is merely departure from type then progress becomes possible only through abnormality. Is it wide variance from the average? If so, what are the normal limits of variation? Is the deviation from a factual or average type, or from an ideal or normative type? Abnormality, thus considered, means distinctly deviating from a more or less precisely determined norm, standard or type. . . . If one says "a normal person is one who is like the average person" the abnormal person is one who is not like the average person. The average person becomes the norm but what criteria determine the validity of the norm?"

It may be remembered that Clouston declared more than thirty years ago: "The average man . . . does most of the manual labour of trading, manufacturing and fighting of life. He pays most of the taxes, and runs most of the smaller administrations. He is necessarily conservative and wanting in initiative in the philosophical sense, because his action is mostly founded on the experience of his forefathers. The religionists try to make him a saint, the moralists endeavour to reduce the guile and original sin in him to a minimum, the politicians try to teach him the laws of nature and that he should order his life according to them, but fortunately perhaps, for the world's happiness, he continues to do his daily work in his own way, and if of a good race slowly advances, but never makes a leap forward in any direction. He seldom suffers from cataclysms. He is the master of the human situation and now-a-days is coming to know it."

Sadler writes: "The so-called normal individual is only a theoretic postulation. For the purpose of arriving at the average normal human being we run through society and gather up a group of traits which the ordinary healthy, happy and efficient man manifests in his personal experience and in his relation with his fellows; but there probably exist very few men or women who will measure up to one hundred per cent to this theoretic standard; and so, while such a person has no real existence it is nevertheless true that the more nearly normal any man or woman is the more nearly he or she approaches the theoretic standard."

Cantor considers that the test of normality is the capacity to achieve a satisfactory balance between the need for self-expression and the need for self-repression and that no one is normal.

Burt declares that: "In the normal man we may presume all the emotions and instincts would be developed to average strength: none should dominate, and none should be lacking; the aggressive and the inhibitive emotions should counter-

balance each other, and no instinct should be too violent to be governed by whatever intelligence the man possesses. Such a temperament we may describe as well-balanced or stable: the impulses are not so much repressed as well-controlled."

I have not hesitated to quote at length from these writers for there is much truth in McDougall's statement that "the study of normal mental life on the one hand, and of the disorders of mental life on the other, have been pursued by groups of workers who have but little contact with one another." Also there is an ever present danger that we shall accept as standards of normality the group of persons with whom we are constantly associated in our daily life. If, too, the habits, customs and activities of the group with which we are individually concerned remain static we are apt to look askance at the dynamic changes which occur in other groups, and perhaps go so far as to consider them abnormal because they do not conform to the stereotyped patterns we are best acquainted with.

When considering normal and abnormal people there is, perhaps, a tendency to regard the former as socially acceptable, and the latter as socially disruptive. This view is, of course, too limited since abnormality may be not merely benign but on occasion advantageous to the community. On the other hand we have seen in our own time the disadvantages which attend the placement of average and normal men in positions of power. Can there be any doubt that in the complicated government of modern people in different parts of the world, and in international relations, only supernormal men are capable of successfully dealing with the stupendous and intricate situations which constantly arise in a contracting world?

The answer does not solely concern talent which may result in temporary success, for continuous accomplishment in a modern world exacts qualities of character which all those who temporarily gain high position may not possess. The merely capable man, who in human relations sits on the fence or moves forward frequently looking over his shoulder, may accomplish no more than the man who hid his talent in the earth. For he lacks the attributes which the forcing of events demands. He stagnates, and usually sooner than later comes down on the wrong side of the fence, or stumbles in his path beyond recovery as he anxiously glances back.

In the ordinary affairs of life men differ from each other in a variety of more or less easily recognized ways. The most significant differences in connection with criminal conduct concern varieties of intelligence and wisdom, of perceptive ability and the capacity for reasoning acutely and judging accurately, of beliefs and doubts, of aims and aversions, of the strength and persistency of the instinctive activities, of the value of pleasure and pain associated with the fulfilment or frustration of desire, of the ability to exercise self-control, of temperament and mood, and generally of the manner in which impacts affect behaviour.

Not only are differences of behaviour observed among groups and individuals but in sub-groups also. For example, in any group of men and women there will be some who are extraverted and others who are introverted. Their methods of behaviour in given circumstances may widely vary and this may be noticeable in connection with criminal as well as other situations. Thus, the solution of the extravert dealing with his sexual difficulties may be found in activities outside

himself. The introvert may deal with a similar situation by phantasies which surround the sexual object with artificial emotions and unreal values.

Although Jung worked out in detail the differences between the extravert and the introvert the types appear to have been long recognized. More than two and a quarter centuries ago Sir Thomas Browne wrote: "Unthinking Heads, who have not learn'd to be alone, are in a Prison to themselves, if they be not also with others; whereas on the contrary, they whose thoughts are in a fair and hurry within, are sometimes fain to retire into Company, to be out of the crowd of themselves. He who must needs have Company, must needs have sometimes bad Company. Be able to be alone. Loose not the advantage of Solitude, and the Society of thyself, nor be only content, but delight to be alone and single with Omnipresency. He who is thus prepared, the Day is not uneasy nor the Night black unto him. Darkness may bound his Eyes, not his Imagination. In his Bed he may ly, like Pompey and his Sons, in all quarters of the Earth, may speculate the Universe, and enjoy the whole World in the Hermitage of himself."

Discussing the importance of normality in dealing with the dilemmas which society so often presents Wilfred Trotter wrote: "The solutions by indifference and by rationalization or by a mixture of these two processes are characteristic of the great class of normal, sensible, reliable middle-age, with its definite views, its resiliency to the depressing influence of facts, and its gift for forming the backbone of the State. In them herd suggestion shows its capacity to triumph over experience, to delay the evolution of altruism and to obscure the existence and falsify the results of the contest between personal and social desires." In the present context the individual must be considered in his relation to society, rather than as an individual in isolation. Further, I would add that the resilience of youth is mainly related to optimism and expectancy, that of middle-age to reason and experience.

The criminologist may find himself in difficulty if he accepts the view that abnormality is necessarily evidence of a pathological condition. He will not, of course, hold this view merely to ease his deliberations, for as a scientist he must accept the control which organized knowledge demands of its followers. He is concerned with ascertaining the truth, as far as this is possible at the time of his investigation, knowing that any departure from sincere accuracy may be not only deceptive and compromising, but also likely to hinder future progress.

He will find in dealing with those who are mentally ill that various kinds of mental abnormality differ in intensity as well as in character, and often shade into one another. He will also find in dealing with criminals, as well as in his observations on many persons who are not mentally ill, that there are various kinds of normality, and that they also pass imperceptibly into neighbouring variations from the ordinary standards accepted by ordinary men. He will conclude that truth requires us to be satisfied with a view of normality which is seldom clearly outlined; rather is it inevitably and delicately graded into the surrounding shadows.

Hence, we do not consider that the different values, outlooks on life and activities associated with the work of the lawyer, churchman, doctor, artist, business man or manual worker are evidences of abnormality; although they may vary from one another to a greater degree than does the person who is mentally well and normal from the man who is mentally ill and abnormal.

The abnormality associated with cases of frank subnormality, mental defective-

ness, states of psychopathic personality, psychoneurotic and psychotic disorders is usually clear in criminal cases, and the criteria required in their diagnosis well established. When a mental condition is ill-defined, and seems to be compatible with a state which lies somewhere between normality and one or other of the above conditions, it is important to have rather precise ideas, founded on experience, regarding the standards of behaviour usual in different classes of society. To ensure this the range of reactions which constitute normal as well as abnormal behaviour must be constantly studied in order to maintain contact with the changing values of conditions which are themselves constantly changing.

I am not concerned here with the clinical manifestations of mental disorders, but with the transient deviations which occur from time to time unaccompanied by any of the usually recognized forms of mental abnormality. I have in mind, for example, a man who forced his hand into his wife's body and tore out her uterus as a return for her infidelity. There was no reason to suppose that he was insane at the time of the crime. He was under my observation for some years and was a quiet well-behaved, even-tempered man. He showed no evidence of minor mental abnormality. But his response to jealousy and alcoholic intoxication resulted in ferocity so different from the ordinary that it might be fairly regarded as abnormal.

Similarly, in the case of a man who after a quarrel with his wife satisfied his desire for revenge by cutting off both of his daughter's hands when she arrived home from school. He then displayed them on the kitchen table for his wife to see on her return from work. Alcohol played no part in the commission of this crime. The man was not suffering from mental disease or defectiveness or any recognized form of minor mental abnormality at the time of the crime. His mental condition was unchanged during the many years I was able to observe him. Yet it is hard to believe that the basic constitution of a man who carries out a pre-meditated act of cruelty of this kind is similar to that of ordinary men. At the same time it must be remembered that aggressive brutality, as we all know too well, may be encouraged by authority and inflamed by instruction.

The abnormal behaviour considered here can usually be related to emotional causes or failures of inhibition. It is, perhaps, most likely to be confused with the assertiveness of the aggressive egocentric psychopathic personality, but differs in that it often appears to be alien to the offender and sometimes is an isolated episode. The instincts in such persons may be more forcible than usual and self-control less adequate. But constantly one returns to the conclusion that there is no sharp dividing line between normality and abnormality.

The criminologist is also constantly reminded of the fact that instinctive activity in man and animals has much in common. As Aveling states: "Like other animals we often act instinctively, driven by an impulse unleashed by some biologically significant stimulus." The patriarch of the animal herd who fights if necessary to the death a younger rival, and does not scruple to tear to pieces a female from his harem in order to prevent her passing to another suitor,* came to mind when an elderly man marked down his stepdaughter to replace his aged wife at her death, and killed the younger woman because he suspected that she was receiving advances from a younger lover.

* *Vide*, W. P. Pycraft, *Courtship of Animals*, pp. 88, 89.

In our present state of knowledge abnormality, so-called, may be clinically regarded as no more than a deviation from normality if there is no evidence of mental subnormality or mental defectiveness, or any of the usually recognized forms of psychopathic personality, psychoneurosis or psychosis.

The normal offender may be regarded as one in whom these conditions are absent; whose memory, attention and perceptive ability, as well as his reasoning and power of judgment, are able to deal with his requirements as an individual member of the society in which he lives; whose instincts and emotions are controllable; whose motives and intentions are able to be organized along socially acceptable channels; who is able to adjust himself to social requirements in spite of difficulties and changing values, and correct as well as perceive his faults so that he is integrated with his fellows. In short, one who is free from the usually recognized forms of mental defectiveness and mental disorder and is socially adjustable.

CLINICAL OBSERVATIONS

During the year 1938 the number of larcenies known to the police was 199,951, of frauds and false pretences, 16,097, and of receiving stolen goods, 3,433. A total of 219,481 offences at all ages. During the same period 5,018 sexual offences and 2,721 cases of violence were reported. To these must be added the unknown number of similar offences which are not brought to the notice of the authorities. The Criminal Statistics point out that, as regards frauds and false pretences, receiving, sexual offences and crimes of violence against the person, the police figures are less liable to be affected by methods of recording, since in few of the cases reported is there any doubt whether a crime has or has not been committed.

The enormous excess of acquisitive offences—theft, embezzlement, forgery, fraud, burglary, housebreaking, shop-breaking and the like—over all other offences combined in any age group stresses the importance of possession, and often seems to be the normal biological expression of the desire for social security. At the same time the majority of middle-aged persons in our modern civilization not only spend most of their time in gainful occupations, but devote much of their thoughts to the same end. For them acts of aggressive violence or sexual assaults are usually no more than occasional incidents.

Whilst many will agree with McDougall that some men are content with few possessions, but guard them most jealously, and others seem to find their chief satisfaction in the perpetual acquisition of new gains and are indifferent to retaining them, many will also agree that the ordinary man usually endeavours to obtain a surplus to his requirements, not only as a measure of security and comfort but as an aid to advancement and sometimes aggrandizement.

Again, when McDougall suggests that perhaps the born gambler is the man in whom the garnering instinct is strong, and the hoarding instinct weak, and in whom the satisfaction of winning far outweighs the pain of losing, one is reminded of the more daring types of persistent criminals and some fraudulent company promoters who seem attracted to crime as fishermen to a trout stream.

Some twenty-seven centuries ago Agur who, according to D. C. Simpson, was a religious obscurantist rather than a pious agnostic, referred to the association

of poverty and theft.* But among those whose lives are generally regarded as reputable, and who often walk in pleasant places, are many who habitually steal from others their share of the imponderables of life. They rob their companions of happiness, affection, peace of mind, truth and other valued possessions. They refuse to share in the burdens and responsibilities of those near to them. They are self-pitying, self-excusing, and selfish. They pay their moral debts with false coin—insincere avowals, disingenuous compliments and empty protestations of love or friendship. They do not hesitate to wilfully mislead others if it serves their own purpose and are adepts in the art of subterfuge. Moreover, as the criminologist looks out upon the world, and sees men and women in important positions making false and often unscrupulous assertions in order to secure personal advantage, he can hardly fail to compare their moral turpitude with that of those who break the law. And when a writer on serious subjects indites passages which convey a false meaning to the textualist as well as others it may appear that, although his intention is praiseworthy, his carelessness is not less free from blame than is that of the reckless motorist who injures others as he speeds upon his way. Indeed, if we look closer, how many of us are willing to follow a leader, and how few stop to think of what we owe to his toil and anxiety as he blazes the trail!

Acquisitiveness, aggressiveness and sexuality are often closely associated, and it is not without reason that monitors exhort juveniles to divert the psychical energy subserving their instincts from one activity to another. For example, attempts are made to divert sexual difficulties into acquisitive channels such as stamp collecting, or into aggressive accomplishments in competitive sports; in prisons and Borstal institutions from criminal into non-criminal pursuits.

When, however, maturity is reached the dominant reaction pattern of the personality is so firmly established that a change over from one activity to another is less easy of accomplishment, and instinctive activity is often less versatile. But since the incidence of crime in relation to the population is less in the older age groups, and the recovery rate is higher among first offenders as they grow older, the above disadvantage is perhaps offset in part by the fact that self-direction and self-control are exercised with greater ease and efficiency in maturity.

In an interesting follow-up study the Gluecks came to the conclusion that the tendency to become less aggressive in antisocial behaviour is not attributable to the arrival of any particular chronological age period, but that something occurs with the passage of time in addition to mere ageing of the offenders that accounts for improvement. It was not achievement of any particular age, but rather the achievement of adequate maturation regardless of the chronological age at which it occurred that was the significant influence in the behaviour changes of the criminals investigated.

MacMurray states: "The maturity of man is a conscious maturity. Human life cannot be mature until it is conscious of its own maturity, that is to say until it has become fully conscious of its real nature, and begins to live in that consciousness." However this may be, the significance of maturity depends not only upon the manner in which instinct and emotion are directed by knowledge, experience and reason, but in the manner in which the potentialities for creative improvement inherent in the individual are directed.

* Proverbs xxx. 9.

Disregarding chronological age, maturity indicates a more or less satisfactory solution of the immediate problems of life which are for the most part related to subsistence, security, sex and human relationships in general. Acquisitiveness is frequently more persistent than aggressiveness or sexuality, but the onset of old age is often post-dated in our modern world and all these activities may remain operative longer than is expected. Here again we have no norm to guide us, and the assessment of conduct shifts from the academic standard of a central value to the practical standard of what is tolerable.

Not the least of the many difficulties of the criminologist is the fact that he is constantly dealing with imponderables. Our activities are purposive and creative. On the lower level they are prompted by realistic indulgences, on the higher by idealistic aspirations, and neither can be adequately expressed in terms of neat mathematical formulae. Indeed, we often grope blindly in an effort to find a common denominator to assist us. We are liable to become lost even when we attempt to assess the imponderables which are related to essentials. For example, few things are more vital than a correct management of domestic and international affairs in our national life, but we can hardly talk about a science of government which, to many observers on the touch line, seems an odd tangle of assorted shibboleths and traditional experimentations in the method of trial and error. Even in the sphere of spiritual affairs we still, in a so-called enlightened age, find disagreement within and without scientific circles. McDougall, discussing Freud's book, *The Future of an Illusion*, in which it is claimed that all religion is illusory, wrote: "What is his argument? Merely this, that the nature of man is such that the race inevitably acquires religious beliefs. Strange argument! The same fact has frequently been used as the surest evidence of the truth of religion as when Descartes held the idea of God is innate in the race and that, therefore, theism is true."

Outside scientific circles disagreements concerning spiritual ideals and values are matters of common knowledge and, perhaps, one of the great hindrances to a more universal agreement regarding the application of religious principles in daily life has been the departmentalism which the official representatives of religion seem to encourage.

Social conduct varies with time and place, and the man who finds adjustment difficult to attain at one period of life may find it easy or impossible at another, according to the direction in which his values alter. Those of maturity are different from those in the formative or declining periods of life, and success as well as happiness depends upon their cultivation in approved directions.

Frustration holds an important place as a causative factor of criminal conduct, but sometimes exercises a beneficial effect on the individual who faces it steadfastly. On the other hand we all recognize that repeated successes, or success too easily gained, often have disadvantageous effects upon character and personality. Self-depreciation on the one hand and self-regard on the other are, of course, disabling if excessive. The self-regarding sentiment with its far reaching effects is little subject to change when maturity is established, and moral approval and censure are only effective guiding reins when self-assertion and submission are carefully adjusted.

In passing, mention may be made of the fact that sexual perversions causing

criminal conduct may persist in middle age, and also may be seen in later years. Conduct referable to a perversion of the acquisitive or aggressive instincts usually receives scant attention in civil life. But there is room for research in both cases. An insatiable desire to accumulate wealth—to hoard or spend—and an inordinate craving for power sometimes demand investigation in middle-aged offenders.

Among the personal factors which discourage criminal behaviour are insight and self-criticism, moral character or conscience, and will power. Insight and self-criticism are stabilizing factors but are not necessarily associated with high intellectual endowment. Conscience in different people assesses the motivation of behaviour at different levels, much as different tribunals—courts of assize, quarter sessions or courts of summary jurisdiction—assess different levels of criminal behaviour. Will power, that is to say perseverance directed towards the maintenance of a deliberate decision, may be exercised for good or ill and may be developed to some degree, it is said, by moral exercises in self-discipline.

Each period of life is subjected to its own stresses. But whereas our early years are easily and extensively adjustable, in middle age a single-minded purpose, by which alone perhaps success has been gained, may cause a mature man to experience difficulty in carrying out alterations which may affect the entire course of his remaining years. And so, if a chance circumstance violently collides with his purpose and shakes it to its foundations he may be left without the means to recover his objective within the time at his disposal, and may descend to unlawful methods of doing so. This, of course, is a frequent occurrence and it is mentioned here merely as an illustration of the fact that in our lives character is constantly opposed to circumstance, and that victory sometimes lies with one and sometimes with the other.

The members of the War Cabinet in Mr. Churchill's Coalition Government, 1940 to 1945, knew how near we were to catastrophe, but they did not falter as they might have done had they not been aware that the people were firm, and would refuse to listen to wishful thinking or counsels of weak compromise and vain expectation. I mention this obvious fact as it is a forcible illustration from our own time of the dependency which necessarily exists in modern society between each one of us and his fellows. And if the criminal forgets this, and often in maturity has less cause for doing so than before or after, yet society cannot forget its duty to the criminal; a duty that can only be implemented by understanding.

A modern scientific writer, Dr. D. W. Hill, states: "Science and religion share with each other the distinction of being the two fundamental intellectual activities of mankind. . . . Unfortunately it is difficult for them to find a common ground. The more arrogant claims of science have prevented religiously inclined men from considering it calmly and dispassionately. They have hastened to the defence of their religion and, securely barricaded behind its infallibilities, they have condemned science out of hand. Scientists on the other hand, find it difficult to accept any sort of infallibility or finality and so have been contemptuous of the apparently flimsy barricade."

One can sometimes also detect a measure of critical intolerance among scientists who express dissatisfaction with the legal approach to crime and the usual methods of treating criminals. But those who look back over many years may conclude

that if the law advances when the light is green, and the enthusiastic scientist attempts to do so on the amber, the surer method has often proved to be less encumbered with the wreckage of abandoned hopes.

The figures for crime as well as the facts of life leave us in no doubt that offenders against the law rub shoulders with us all. And surprise is sometimes expressed because the satisfaction of dishonestly acquiring a possession with comparative ease, or of committing an aggressive or sexual offence is so often ineffectively opposed by its legal consequence. Bentham wrote: "The whole system of morals, the whole system of legislation, rests upon a single basis, and that basis is, the knowledge of pains and pleasures."

Even as late as 1918 Mercier wrote: "The purposes for which punishment is inflicted upon criminals are retaliation, deterrence, and reform. That is to say, we punish the offender, first and most, in order that he may suffer pain in return for the pain he has inflicted; second, as a subsidiary but still important purpose to deter him from repeating his offence, and to deter others from emulating it; and third, as a minor and much less important purpose, an after-thought, to reform him—that is, to alter his mental constitution or temperament so that he may no longer wish to commit crime."

Since this was written modern practice has largely shifted the emphasis. The earlier view, that the punishment for a crime should be sufficiently severe to obliterate the satisfaction of accomplishment, seems to have regarded pleasure and pain, satisfaction and dissatisfaction as cancelling out each other. But when studying human reactions we frequently find polar antitheses present, and see ordinary people deliberately make a choice which inevitably embodies both pleasure and pain. As when a career is adopted because it seems worth while in spite of the fact that laborious days and constant self-denial are required in order to obtain effective results. Or when a woman marries a seaman knowing that he will often be separated from her for long periods. The close connection of opposites was referred to by Shakespeare when he caused Juliet to declare:

". . . Parting is such sweet sorrow,
That I shall say good night till it be morrow."

So, too, in the mind of the criminal opposites are often blended, satisfaction and accomplishment join hands with dissatisfaction and failure.

If in middle age character and personality are more sober and more stabilized than during the formative period of life, and more resilient than in the declining years, it would seem that disappointments may be then accepted with some degree of equanimity. But many may agree with Rosenzweig that frustrating situations expressed in terms of privation, deprivation and conflict seem to be psychologically exhaustive.

Many of us suffer from social, occupational and sexual privations and deprivations, and it often happens that frustration tolerance is greater in middle age than in the formative and later periods of life. Nonetheless in the latter special compensations may appear so that the wise man can declare with the ancient Roman orator:* "Just as apples when unripe are torn from trees, but when ripe and mellow drop down, so it is violence that takes life from young men, ripeness from old. This

* Cicero: *Old Age*.

ripeness is so delightful to me, that as I approach nearer death I seem as it were to be sighting land, and to be coming to port at last after a long voyage."

If, however, frustration tolerance is insufficient to meet a situation which affects the major purpose of life in a middle-aged man, the result may be more far reaching than in the formative period of life, when purpose is often more out-fanned than in later years.

Resilience is characteristic of the formative period of life when the disappointments of today are counter-balanced by the anticipations of tomorrow. In middle age the individual may be less resilient than formerly but often offsets this by a more realistic appreciation of the essentials of life. In early middle age a career is still in the making and if the individual fails to realize his abilities as well as his limitations may impair his chances of success. However, by the time the ordinary man has reached the age of forty he has generally formed a more or less shrewd idea as to how far he is likely to gain success. Usually by this time domestic and other social obligations have produced their steadying effect, but it is often observed that many persons are less ready to accept risks when they are married and become responsible for the welfare and maintenance of others.

If we accept the view that resilience is usually reduced in the later periods of middle age, and becomes still less as age advances, we may believe that this very fact influences the man who is convicted of a crime late in life. For he is more likely then to experience alarm at the discrepancy between his criminal act and his ambition, and more ready to utilize the character traits which have hitherto carried him through life reputably so that he is enabled once more to readjust himself to social requirements.

Excluding psychoneurotics and psychotics a proportion of offenders who reach middle age continue in their chosen criminal career, and some are unable to free-themselves from a firmly established criminal habit. Some at this age commit crime as the result of a minor mental abnormality of a recognized type, for example, constitutional psychic inferiority or other recognized type of psychopathic personality which is irremediable or unrectified. Others because their frustration tolerance is unequal to the stresses which press upon them. There are still others who break the law because their egocentricity distracts their attention from essentials and distorts their point of view.

Egocentricity is common to the psychoneurotic and the criminal. In the former it is accompanied by an over-sensitivity which is usually absent in the latter. And whereas the psychoneurotic retains much the same outlook upon the world of reality as the ordinary man the persistent criminal resolutely shuts his eyes to many important facts if they are opposed to his design for quick returns.

We now recognize perhaps more clearly than formerly that it is not necessary to be highly intelligent to possess a good character, and everyday experience demonstrates the fact that highly intelligent people may own most undesirable qualities. We also know that unusual types of character may be associated with clinically recognizable forms of mental disorder. But from the cases of violence outlined above, and from many others known to every prison psychiatrist it is clear that, excluding frank illustrations of mental abnormality, we occasionally meet with behaviour that can only be explained on the assumption that an idiosyncratic character trait is occasionally operative. Mental analysis may afford an

explanation of many unconventional activities. But apart from this, and disregarding for the moment the gradual process of casually or deliberately building character upon the foundation of carefully selected qualities, is the fact that character and personality are conditioned by social conventions, chance circumstances and unconnected episodes which may only be effective in an appropriate setting.

In *Civilization and Its Discontents*, Freud wrote: "Human life in communities only becomes possible when a number of men unite together in strength superior to any individual and remain united against all single individuals. This substitution of the power of a united number for the power of a single man is the decisive step towards civilization. The essence of it lies in the circumstance that the members of the community have restricted their possibilities of gratification, whereas the individual recognized no such restrictions." It may be added that the persistent criminal refuses to recognize the restrictions which demand the renunciation of his desires which are often permanent, and sometimes pregnant with possibilities of future antisocial activity.

CONCLUSION

We rightly look upon the criminal as a person who breaks the law, but it is also sometimes useful to remember that he may be broken by the law. Particularly if circumstances inflict upon him difficulties with which he is unable to compete. An important step forward was introduced when the modern individualistic approach to accused persons embraced both points of view.

Apart from studies in juvenile and adolescent crime, investigations on a large scale appear to be lacking in regard to the distinctive features of crime in particular age periods. It is the purpose of these remarks to stimulate interest in the study of the middle-aged offender. For at this time of life special problems arise and responsibilities remain particularly heavy, until, in later years, the baton in the relay race for security is handed over to a younger competitor.

Studies of the kind indicated inevitably partake something of the nature of an art as well as of science, and an observation of Wilfred Trotter comes to mind: "A practical art which pretends to be applied science does not thereby show itself to be progressive, it only shows itself to be quackery." Tenuous speculations, therefore, must be correctly assessed. Trotter declared: "Experience has shown time and again that as soon as science leaves immediate contact with the facts it begins to lose direction and reality, and must constantly return to them for orientation."

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XIII

THE EXPERT'S OATH: A MEDICO-LEGAL ANOMALY*

INTRODUCTION

A PRICELESS treasure was bequeathed to medical men by the ancient Greek physicians in the fourth century B.C., when they put together the earliest and best Greek medical writings known to us as the Hippocratic Collection. C. Singer states that no particular work can be confidently attributed to the Father of Medicine. But no better passage reflects the spirit of the Hippocratic physicians than the Hippocratic Oath, an exhortation which established a standard of behaviour for the medical profession so wise, so sincere, and so entirely right that it has come to be regarded as our ethical ideal. For a long time it was taken at some universities by graduates in medicine whereby they undertook not to divulge confidential information.

According to Singer the Oath is as follows:

"I swear by Apollo, the healer, invoking all the gods and goddesses to be my witnesses, that I will fulfil this Oath and this written Covenant to the best of my ability and judgment. I will look upon him who shall have taught me this Art even as one of my own parents. I will share my substance with him, and I will supply his necessities, if he be in need. I will regard his offspring even as my own brethren, and I will teach them this Art if they would learn it, without fee or covenant. I will impart this Art by precept, by lecture and by every mode of teaching, not only to my own sons but to the sons of him who has taught me, and to his disciples bound by covenant and oath, according to the Law of Medicine. The regimen I adopt shall be for the benefit of the patients according to my ability and judgment, and not for their hurt or any wrong. I will give no deadly drug to any, though it be asked of me, nor will I counsel such, and especially I will not aid a woman to procure abortion. Whatsoever house I enter, there will I go for the benefit of the sick refraining from all wrong doing or corruption, and especially from any seduction of male or female, of bond or free. Whatsoever things I see or hear concerning the life of men, in my attendance on the sick or even apart therefrom, which ought not to be noised abroad, I will keep silence thereon, counting such things to be as sacred secrets. Pure and holy will I keep my Life and my Art. If I fulfil this Oath and confound it not, be it mine to enjoy Life and Art alike, with good repute among all men at all times. If I transgress and violate my oath may the reverse be my lot."

Addressing the Medico-Legal Society in 1927, Lord Riddell said:

"The Legal position in England may be stated thus, although in some respects not altogether free from doubt:

1. A doctor being in a fiduciary capacity must preserve his patients' confidences unless relieved from the obligation by some lawful excuse.
2. Legal compulsion or the patient's consent are lawful excuses and the performance of a moral or social duty may also be a justification. Protection of the doctor's interests may also justify disclosure.
3. There is no legal privilege for medical confidences. If called as a witness a doctor must answer such questions as may be put to him by the Court.

* Read at a meeting of the Manchester and District Medico-Legal Society, 9 December, 1946.

4. A doctor shares with other citizens the duty to assist in the detection and arrest of a person who has committed a serious crime."

The medical witness in a criminal court sometimes finds the covenant of silence irksome if he is called upon to divulge information which he has received in his professional capacity. But if English Law, having regard to the wider interests of society, considers that the silence ought to be broken there appears to be nothing in the Hippocratic Oath to prevent him from doing so with a clear conscience.

Nevertheless, there are occasions when the medical witness feels ill used if he is forced to expose the secrets of his patient. Although he is assured of the law on the subject he may perhaps doubt whether the view of the public in this matter is very different from his own. And those who are acquainted with Aldous Huxley's story, *The Gioconda Smile*, will remember that the doctor's dilemma is left unsolved.

However this may be, my chief purpose in these remarks is to refer to another kind of embarrassment which doctors, and one may assume other experts, sometimes experience when called upon to testify in a court of law.

Temple Grey points out that the law's routine relations are rather with medicine as an art than with medicine as a science. A fact which is sometimes lost sight of when the expert is extolled at the expense of the general practitioner whose very name denotes that he deals with the realities of life rather than with theories. Grey also refers to the fact that in this country we have no panel of experts. Indeed, many of us have seen medical men questioned by counsel on a branch of medicine in which they have no special knowledge.

A modern American writer not long since declared that the required qualifications of experts in the American courts are very limited, and practically anyone is accepted as an expert who claims to be one or whose lawyer claims that he is one. The writer of the paper—W. Eliasberg—considers that justice would be promoted if at least half of the proposed experts were not allowed to testify.

Rule 402 of the "Model Code of Evidence", American Law Institute, defines the expert witness in the following terms: "A witness is an expert and is qualified to give expert testimony if the judge finds to perceive, know or understand the matter concerning which the witness is to testify requires special knowledge, skill, experience or training, and that the witness has the requisite special knowledge, skill, experience or training" (Eliasberg).

I suggest that, for the present purpose, an expert is a person selected by a court, or by a party to a cause, to give his opinion in some matter which is not within common knowledge and with which he is particularly well acquainted as the result of special training and experience. These observations are intimately concerned with the medical witness, and it is recognized that modern medicine has become so vast a subject that the specialist and consultant have greater knowledge in their particular spheres of the science than the general practitioner, whose activities and knowledge are more personal and less canalized.

LEGAL CONSIDERATIONS

In his chapter on Early English Criminal Law, Sir James Stephen referred to the fact that the oaths of people of different ranks and professions among the Anglo-Saxons had different values. He quoted Thorpe (1.183), who wrote: "A

mass priest's oath and a secular thane's are in English law reckoned as of equal value, and by reason of the seven church degrees that the mass priest, through the Grace of God, has acquired, he is worthy of thane right." Bentham, discussing the value of the oath stated in an illuminating passage: "There are cases in which oaths have a very great power; those, namely, in which they act in concert with public opinion, or have the support of popular sanction. There are other cases in which their power is small; those, namely, in which they are in opposition to public opinion, or are merely unsupported by it. . . . The power of oaths is necessarily enfeebled when they are made to bear upon belief, upon opinion. Why? Because, in such cases, it is impossible to detect perjury, and because human reason, always afloat, always subject to variations, cannot bind itself for the future. Can I be certain that my belief to-day will be my belief ten years hence? These oaths are an advantage given to unscrupulous men over those who have a greater sensibility of conscience."

It is clear from the context that in the above passage Stephen referred to criminal trials, and the same is true of the excerpt from Bentham's chapter on the Principles of the Penal Code. Many will agree that it is straining credulity too far to attach the same measure of truth to all the witnesses who give evidence in the criminal courts, or to believe that they take the oath with equal sincerity or regard for its importance.

Something of this seems to have been in Shakespeare's mind when Phrynia and Timandra, the mistresses of Alcibiades, ask Timon of Athens to give them gold and ask for more. It will be remembered that Timon refers to their immoralities in scathing language, and tells them that they "are not oathable".

Stephen, referring to the fact that in very early times perjury appears to have been not so much a lie told about a specific matter of fact in a witness box, as a false oath taken in a case in which the matter at issue was decided by the oaths of the persons interested and their compurgators, refers to a provision in the laws of King Edward the Elder, quoted by Thorpe (1.161 Edward the Elder 3): "Also we have ordained concerning those men who were perjurers if that were made evident or an oath failed them" (i.e., if they failed to produce the legal number of compurgators; or when one of the persons produced refused to join the oath) "that they afterwards should not be oath-worthy but ordeal-worthy."

Although we learn that the oath played an important part in legal procedure in Anglo-Saxon times and later, it will be remembered that it was not until 1613 that the Star Chamber declared perjury by a witness to be punishable at common law. And since perjury consists in the fact that a witness, to whom an oath has been administered in a judicial proceeding gives, upon some point material to the proceedings, testimony which he does not believe to be true, it would seem that the importance of the oath to-day is twofold: it calls attention to the religious significance of the declaration, and to the fact that if abused it may be a prerequisite to an indictment for perjury.

The Oaths Act, 1888, permitted any person to make a solemn affirmation if he had no religious belief, or if taking an oath was contrary to his religious belief. It is also well known that the Oaths Act, 1909, made general the method of administering the oath provided that in the case of a person who is neither a Christian nor a Jew it is administered in any manner already lawful.

Moreover, if it is reasonable to believe, as I have already suggested, that the oath administered in a court of law, apart from any idea of perjury, does not necessarily and similarly impress the consciences of all witnesses, and if we mean by conscience the moral sense of right and wrong which the individual accepts as the result of instruction, exhortation and experience, it seems clear that this quality may be differently developed in the different jurymen and women who are sworn.

Mannheim states that, "The modern science of criminal procedure has, even in the case of adults, become more and more sceptical of the value of an oath as an instrument for securing reliable evidence. In former years certain countries, in particular Germany, suffered from an intolerable excess of this form of solemn confirmation of a deposition. The result was a veritable epidemic of perjury in Germany with a corresponding average of more than two thousand convictions for this crime, which finally led to an attempt to stamp out this evil, at least partly, by decreasing the opportunities for taking the oath."

During the ten-year period, 1929 to 1938, the average number of convictions in England and Wales for perjury was forty-two per annum. The highest figure was sixty and the lowest thirty-three. Those who are engaged in the criminal courts will probably agree that the oath is not a reliable substitute for cross-examination as a method whereby truth can be separated from falsehood. At the same time there can be little doubt that the effect of cross-examination largely depends upon the personality and skill of the cross-examiner. But since counsel are differently skilled in this art, since also in the nature of things counsel for the defence is biased in favour of his client, the method of ascertaining the truth in a court of law differs to some extent from that of the scientist in his laboratory.

We cannot doubt in contested cases that it is constantly necessary to take into account the human factor, and that the report of an expert may quite unwittingly reflect partisanship if his emotions are materially disturbed by the facts connected with the crime. To accept a written report instead of verbal evidence which can be subjected to the well tested technique of cross-examination may present serious disadvantages where opinions are concerned. For these are often more elusive and more personal than statements of fact.

I do not, of course, intend to convey the impression that I have an exaggerated idea of the importance of cross-examination where expert witnesses are concerned. In a fatal case of criminal abortion some years ago a pathologist successfully maintained his opinion under cross-examination that the death of the victim was the result of certain means which he alleged the accused had taken in order to procure the abortion. But after conviction the abortionist gave a very different account to the prison medical officer of the manner in which death had come about. He had no object then in stating an untruth, and he added that it would not have helped him to attempt to disprove the evidence of the pathologist called by the prosecution by declaring the facts, as the reality would have seemed more culpable than the supposition presented to the jury.

There appears to be a divergence of opinion in civil cases concerning the value of, and the necessity for, the personal attendance of medical witnesses. This is apparent from an abstract from the *British Medical Journal* and quoted in the *Medico-Legal Review*, April 1942: "Three doctors had been called to give evidence in a case heard before Mr. Justice Lewis at Leeds. The learned judge criticized

the giving of personal evidence by doctors, and stated that every effort should first be made to obtain a written report agreed to by doctors on both sides. Mr. Justice Macnaghten is credited with saying 'that he had never yet come across an accident case where the evidence of a doctor in person was of any assistance at all, though doctors' reports were generally most helpful.' On the other hand the opinions expressed by two Lord Justices of the Court of Appeal are instructive. "At the first hearing of the case the judge had refused to allow an injured workman the costs of a medical witness, and had stated that a medical report agreed by both parties should have been submitted. At the hearing before the Court of Appeal Lord Justice Mackinnon thought it unfortunate that people should be discouraged from calling doctors as witnesses and should substitute written reports; he considered it of the greatest possible advantage to call a doctor. Lord Justice du Parcq concurred, and said that sometimes, especially when prognosis was an important factor, it was most desirable for a doctor or doctors to be available to answer questions."

I am not competent to make any observations regarding civil cases. But for a period of more than twenty years I was constantly being cross-examined on the official reports I had submitted to the courts, and in later years have had to consider the effect of cross-examination at Assize Courts on the medical reports of others. I believe that prison medical officers who frequently give evidence in the criminal courts will agree with me that a judge, or counsel for the prosecution, or the defence, may put questions which clarify or emphasize a point in a report, and thereby serve the interests of truth.

MEDICAL CONSIDERATIONS

Although the oath administered to witnesses before a jury, a magistrate, or a coroner slightly differ, their essential features are the same. The witness, whether he be ordinary or expert, swears by Almighty God that his evidence shall be the truth, the whole truth and nothing but the truth. In my view the oath of the expert witness should differ from that of the ordinary witness.

The Oxford English Dictionary defines truth as "conformity with fact, agreement with reality, accuracy". In short, truth is an abstract conception which has provided the sages throughout the centuries with material for argument.

Cassirer refers to the traditional definition of truth, namely, that it is "the agreement of knowledge with its subject". He points out that the intimate connection of the problem of truth with the problem of God, which is characteristic of medieval epistemology, developed in course of time a more and more pronounced tendency to separate the problem of truth from all entanglements with theological questions, and to give it logical sequence.

It generally seems that the precise mind of the lawyer in a criminal court tends to avoid abstract ideas. But the expert witness, in particular, is harassed by another abstract conception when he is called upon to state the whole truth. And mark the fact that there is no door through which he can properly escape from this requirement, although it must be admitted that scientific judgments are not always able to arrive at completeness in our present state of knowledge, and that this is most frequently the case in the sciences which are constantly extending their range of learning and interpretation of experience.

As I understand the matter an ordinary witness speaks as to facts within his memory and not to his reasoning. The expert forms judgment within his speciality on matters which are in dispute, and in the criminal courts his opinion may affect the accused as well as bear upon the crime itself. In some cases expert evidence is more direct than in others, and to that extent may be more easily assessed. For example, when a particular firearm is shown to have caused an identifying mark upon the bullet which killed or injured a man, when poison is detected in a dead body or in the excretions of the living, or when violence has resulted in death or injury. The firearm expert, the toxicologist and the pathologist associate or dissociate their findings with the presentations of the prosecution or the defence, and base their opinions upon a specialist interpretation. Moreover, the jury are usually ready to admit ignorance concerning the disputed matter and are usually willing to accept the view of the expert.

As I pointed out in my Presidential Address to the Medico-Legal Society the evidence of the forensic psychiatrist may be less direct. It is the result of opinions formed upon certain deductions which in turn result from observations he has made himself, sometimes supplemented by observations which others are said to have made. But the ordinary facts of everyday life constantly remind us that observation is difficult, and often incomplete, unless the faculties of the observer are specially trained. Moreover, the informer may be biased and self-serving, and his statements to the expert before trial are not controlled by any oath. Note also, that in psychiatric cases the ordinary citizen, represented on the jury, has usually no hesitation in declaring that his acquaintances are sane or insane.

This may go a long way. In a case of murder, which had received much publicity in the press, I was satisfied after I had been in the witness-box for a few minutes that no evidence of insanity that I could put before the jury would be accepted by them. My impression persisted during the four-and-a-half hours during which I was giving evidence. It proved correct, and the jury also refused to accept the evidence of insanity given by three other psychiatrists in spite of the fact that the prosecution called no evidence in rebuttal. The accused was sentenced to death and was transferred to Broadmoor as a criminal lunatic after a statutory inquiry under the Criminal Lunatics Act, 1884, had declared him to be insane. But it seems extremely unlikely that a jury would ignore the uncontested evidence of, say, four ophthalmologists who agreed that the defendant to a charge of murder was so blind that he could not have committed the murder in the circumstances presented by the prosecution.

And here I may quote an American writer, Ralph M. Patterson: "The legal profession and the public accuse the psychiatrist of extravagant claims, unreliability of diagnosis, fantastic testimony, disagreements among themselves, etc., but the attorneys in making such accusations seem rather blind to the nature and quality of the questions asked." Another American writer, H. S. Hulbert, states: "Psychiatrists should not ask immunity for themselves from explaining and defending their thesis in open court. Since every examination must in the nature of things be incomplete, and since no one person can be assumed to be perfectly correct in his weighting of data, it is not discreditable that there be some confusion and contradiction of testimony of experts."

Even if the facts in a psychiatric case are accurately observed, and the deduc-

tions wisely made, the resulting opinion is often based upon material which is more elusive than may be the case where the ordinary witness is concerned, and it may lack the accuracy and completeness which the light of later research may supply. Further, the law is not strictly concerned with insanity as such unless the factual relationship is of a particular and limited kind.

Observation, ascertainment and interpretation are matters of priority among experts. Accurate ascertainment and interpretation may be as difficult as accurate observation. The forensic psychiatrist, like experts in some other spheres, in spite of his knowledge and experience, and notwithstanding an entire sincerity of purpose, may fail to observe accurately all the available material or fully ascertain its implications. Not because he is careless or unskilled, but because scientific knowledge has not sufficiently advanced to enable him to do so, and it must be accepted that he is not always able to achieve the degree of omniscience required to elucidate the whole truth. For indeed, "Truth is a thorny rose".

Consider with MacNeile Dixon that, "a certain aspect of our existence of things as they now are, cannot be explained, or even coherently imagined in any physical terms at all—that aspect which includes consciousness, thought, will, meanings and purposes. These cannot by any gymnastic be reduced to such terms, or conceived as material in origin or nature."

If this be so, and there can hardly be any dispute about the matter, is it right to demand that the expert shall swear without equivocation that he will do something that he may not be able to carry out? If it be also true, as Bentham asserted and few will deny, that the power of oaths is necessarily enfeebled when they bear upon belief and opinion, the question arises whether it is right to demand of the expert witness the same assurance as that which is appropriate to the ordinary witness? Is not the answer to both questions the same?

I yield to none in my admiration for the lawyer's tidy mind, but I do not disregard Bentham's statement that, "the importance of truth is so great that the least violation of its laws, even in frivolous matters is always attended with a certain degree of danger." There may be also some danger, I suggest, in accepting abstract ideas with too much confidence. Consider for a moment two common words "then" and "now", audaciously used by everyone in daily conversation as if they represented concrete facts instead of being merely abstract concepts. Who, indeed, shall decide when the past is no longer present? Listen to MacNeile Dixon: "Past, present and future are most unfriendly and avoid each other, save for a nodding acquaintance during the period described by philosophers as 'the specious present', a peculiar feature of our perception. During this span of perception, estimated to last a few seconds, which intervenes between past and future, and varies in duration with different individuals the flow of time is, as it were, arrested." He quotes Maeterlinck who said: "What would happen if time stopped? Nothing, we should have no suspicion that it had stopped. There *is* no time; there are only imaginary measurements of a thing existing in our imagination" (*italics in original text*). In short, our clocks do not tell the time; like our sundials they only register a shadow. For some, perhaps, the most important distinction between "then" and "now" is emotional: we do not fear the past we know, we often fear the unknown future.

Consider space. We are told that, "When we speak of places as near or far away

we mean points which it will take a shorter or longer time to reach. We estimate space, that is, by the passage of time. . . ." By something that is not. Space and time are the concern of scientists and of metaphysicians whose mental equipment prompts them to grapple with difficulties which do not deter them from advancing into jungle territory where I, for one, have not the wit to follow. But it seems useful to remind ourselves that the confidence of the ordinary witness in discussing time and space may not be as warranted as he assumes. He may not be aware of the niceties over which scientists and philosophers dispute among themselves, but the expert witness cannot have the assurance of the ignorant. If not, and if such everyday matters are really so complex, is it desirable to demand of him the whole truth on all occasions?

Perhaps lawyers would not complacently swear to speak the whole truth on every question put to them if frequently called upon to give evidence in the courts as expert witnesses. Indeed as I read the judgments delivered in the Courts of Appeal I find that on occasion the learned Judges differ among themselves. And this is clearly inevitable, as it is a mathematical certainty that no one is always right. My imaginary legal expert giving evidence, like the medical expert, would be unable to postpone his decision or declare with the late Lord Alverstone, C.J. in the Court of Criminal Appeal in *Victor Jones*: "A grave responsibility will lie upon this court whenever it shall become necessary to decide those large and important questions which have been raised in the argument of appellant's counsel. When that day comes the court will not shrink from the duty of deciding those matters of controversy and of declaring the law." (16, Cr. App. R., p. 169.)

Mark again the pronouncement of a Lord Chief Justice in more recent years: "It was not the duty of a judge to deal with every fantastic suggestion which occurred to the mind of counsel for the defence. The appeal was a waste of time, and must be dismissed." But the expert witness cannot escape from irrelevant questioning. Personally, I have found it much less disconcerting to undergo a searching cross-examination by a master of the art than to be obliged to attempt to follow the meanderings of an inconsequential questioner.

If it is suggested that I am unduly meticulous when I criticize the oath administered to an expert witness, I would ask the censurer to consider for a moment the trial of a determined, tall and muscular man aged twenty-nine, who was convicted of murder in the year 1911, after a hearing which lasted nine days. The sentence of death was commuted to penal servitude for life. The victim, a man, was found dead with severe injuries to the head, cuts on the face, and three wounds in the body, two passing through the chest wall into the abdomen, wounding the liver and stomach. There was a pool of blood on the ground where the deceased had been struck down. Only a few small spots and streaks of blood were found on the accused man's clothing. Dr. W. R. Smith, Professor of Forensic Medicine and Toxicology at Kings College Medical School examined the clothing for the prosecution, and declared that he had no doubt that the spots and marks on different articles were stains of human blood, or of blood of the higher apes. Dr. (later Sir) William H. Willcox also testified that he found spots of human blood on the same articles. At that time blood grouping was not used in forensic cases although Jansky, in 1907, added a fourth blood group to the three classified by Landsteiner in 1901.

Had blood grouping been used it might have confirmed whether the blood on the prisoner's clothing was the same as his own and different from that of the deceased, and we cannot to-day accept the view that the expert evidence represented the whole truth unless we add "as far as was applicable at the time". But the oath was taken without any reservation of this kind, and there is no reason to think that the witnesses had any tacit qualification in mind.

Again, when insanity is raised as a defence in cases of murder the medical witness is frequently questioned as to the significance of insanity occurring in the family of the defendant. But no one may know how many relatives have been lost sight of, or whether they were sane or insane. Neither does the witness know how many relatives there would have been if chance circumstances had not prevented their birth, and he may be unable to compare the known facts connected with the defendant's family with the figures showing the proportion of insanity in families in the general population.

Still further, the medical witness will almost certainly have no reliable estimate of the amount of minor mental abnormality among the relatives of the defendant or in the general population. And although it is known that some pedigrees are more heavily tainted than others, it is also true that the tendency to mental illness may remain undeveloped. In brief, the witness may be asked to give an opinion upon incomplete data, and some of the most important may be absent. His answer may not embody the whole truth. He frequently qualifies his opinion but, as I have said, the oath he has taken does not provide for reservations.

The forensic psychiatrist is placed in a difficult position by his oath if his opinion regarding the insanity of the accused is influenced by intimate and painful episodes which have been disclosed to him by the wife or a near relative of the accused. And also if there is reason to believe that to publicly refer in a court of law to something connected with the insane thoughts of the accused may act adversely on his mental condition. The psychiatrist will avoid introducing these matters if possible, but he can hardly claim then that his testimony is the whole truth.

Touching upon this matter and writing as a lawyer Mannheim states: "One can easily imagine the harm that may be done, for instance, to a person of unstable mentality when he has to listen to a detailed psychiatric account of the state of his mind, etc., and it is mainly for this reason that some legal systems have, though reluctantly, admitted certain exceptions from the general rule. The more that modern criminal procedure, at least in the sentencing stage, becomes concerned with the task of searching the most intimate corners in the prisoner's life-history and mentality, the more difficult must it often be to do justice both to the fundamental rule of a legal combat that it should be fought in the open and to the psychological or even simply humanitarian requirement of hiding certain brutal facts from the offender."

The criteria of insanity usually accepted as of most significance in a court of law are related to the incorrigibility of erroneous beliefs and irrational conduct. That is to say, of faulty beliefs and actions which persist in spite of efforts at correction applied under appropriate conditions. In ordinary conversation a man is said to be under a delusion if he is merely mistaken. An insane delusion has been described as a belief of a fact, or facts, which no rational person would believe. But who, or what, is a rational person? And what are the limits of rational belief? Our

usual means of judging the rationality of the thoughts and behaviour of others are restricted. For the things about which people think and feel most deeply are the very things they often refuse to discuss with others. And note that it is in the innermost recesses of the mind that irrational thoughts germinate and give birth to unreasonable activities.

Charles Mercier quoted Lord Brougham who put forward the view that a delusion was "the belief of things as realities which exist only in the imagination". But sane people imagine things to exist which have no reality in the physical, mental or moral spheres. In fact we have no standard of mental normality. Each one of us judges his fellows in the light of his own standard of thought and behaviour, and to talk of a common standard is surely very much like talking of "then" and "now". In short, our judgment may be faulty when we deal with borderline states.

For example, some years ago I addressed a meeting of psychiatrists on the medico-legal aspects of suicide and was surprised to hear an eminent alienist express the view that any person who committed suicide was insane. There can be very few psychiatrists to-day who retain this opinion. Henderson and Gillespie, the authors of the most read British *Textbook of Psychiatry*, say: "Suicide is not necessarily an indication that a person is mentally ill; but a large proportion of those who commit suicide have been so affected."

In a recently published book on *Suicide and Attempted Suicide* K. G. Dahlgren considers that deliberately attempted suicide in mentally sound individuals certainly exists and in cases of suicide, too, probably with an even higher relative frequency.

A long experience of offenders who have attempted suicide leaves me in no doubt that a considerable proportion of serious as well as minor attempts are the result of temporary emotional disturbances which are far removed from mental disease.

It may be remembered that the Departmental Committee on Coroners, with Lord Wright as Chairman, published their Report in 1935. They found, *inter alia*, that: "The evidence of eminent medical authorities has shown how little real justification there is in the great majority of cases of suicide for a verdict that the deceased was of unsound mind. . . . The verdict was rightly described as being almost in the nature of a dishonest verdict."

In a paper read before the Medico-Legal Society in 1933, Albert Crew stated that, "having regard to the eminence and ability of the medical witnesses for the Crown, they are regarded as rather assisting the Court than as witnesses for the prosecution, which, however, should not prevent their evidence being rigorously and searchingly tested by cross-examination". Those who for many years give evidence frequently at the Central Criminal Court and elsewhere in an official capacity can testify to the fact that if the expert witness always adhered to the strict terms of the oath he would sometimes find himself in a difficult and invidious position. In a case of murder I was called to rebut evidence which alleged that the crime was due to epileptic automatism. The feature relied upon to support this view was, in effect, that the accused stated that he had no recollection of the events connected with the crime. I disbelieved this and counsel for the defence insisted on being fully informed of the reasons which caused me to oppose the

evidence of the doctor called by him. I was obliged to reply that after I had cautioned the prisoner he said that whilst he was choking the girl with his hands as she lay on the bed she struggled with wide opened eyes to release herself. The whole truth assisted the jury to assess the medical evidence put forward on both sides at its correct value. But if I had voluntarily disclosed the whole truth known to me, without being forced to do so, the jury might have regarded me more as an executioner than as a doctor and been prejudiced accordingly.

Reference may be made here to the fact that the previous history of a defendant, including evidence of former offences committed by him of a similar nature to the present charge, may be important factors in arriving at a decision concerning his mental condition. The expert may not be allowed to refer to them. And although he is absolved thereby it can hardly be said that he has declared the whole truth in the matter.

Take the case of a man who was convicted of a sadistic murder the result of manic-depressive disease. He refused to allow a defence of insanity to be raised on his behalf. It was known that he had committed a previous sadistic murder and mutilated his victim, and had carried out two sadistic attempts to murder. These facts were of material importance in arriving at a correct opinion regarding his mental condition. If a defence of insanity had been offered, and a psychiatrist had been called upon to give his reasons for considering that the defendant was insane at the time of the crime, he might not have been given an opportunity to refer to the crimes of which the defendant had not been charged, and could not have answered his questioner with the whole truth.

SUMMARY AND CONCLUSIONS

The ordinary witness speaks of facts that he has perceived, and it must be admitted that the assumption that the evidence of his senses is always reliable is fallacious. The difficulties of the expert witness are still greater. He endeavours not merely to perceive but also interpret facts, and assess the value of other facts presented to him by other observers. He forms his opinion by the special knowledge he has gained of his subject, and his judgment is affected by the present state of research in his speciality. Is it right to use a form of oath which disregards the fact that the perception, knowledge and judgment of the expert are not always infallible?

Again, is it always right to tell the whole truth in open court if it involves making a statement which may adversely affect the mental condition of the accused, or injure innocent relatives?

I am not now concerned with the expert who frankly states that he cannot answer a question because he does not know. But I am interested in the position of the expert who can only answer the questioner by expressing his personal views which, however honest they may be, are not necessarily accepted by others learned in the same science. I maintain also that there is a real cause of complaint when the expert is sworn to tell the whole truth when it is impossible to do so.

Dr. W. B. Purchase reminds me that the juror's oath in a Coroner's Court differs from that in an ordinary criminal court and includes the words "... and a true verdict give according to the evidence and *to the best of my skill and knowledge*".

(Italics mine.) G. Aschaffenburg states that in Germany the expert's oath differs from the oath of witnesses. The expert states: "I swear that I will give my testimony impartially and conscientiously and according to my knowledge (of the facts and my science). May God help me."

I suggest that the expert's oath in this country be taken in some such form. Moreover, I submit that, thereby, the sensibility of conscience to which I have referred would be relieved, a medico-legal anomaly removed, and the importance of the oath enhanced.

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XIV

THE NON-SANE NON-INSANE OFFENDER*

THE invitation to deliver the Galton Lecture is an honour which I sincerely appreciate, and I am happy to believe that it is a recognition of the social importance of the branch of medicine in which I have been engaged for many years.

I have selected for my subject the Non-Sane Non-Insane Offender because I believe that the scientific approach to crime has sufficiently advanced in this direction to enable a more appropriate method of treatment to be applied to this class of law-breaker. I also realize that associations like the Eugenic Society can advance medico-sociological affairs, and forward changes which are overdue, by their readiness to informally discuss with others problems which many people are disinclined to listen to in a set address, however important the subject may be in promoting social welfare.

It will be remembered that Sir Francis Galton introduced his method of composite portraiture to the Anthropological Institute in 1878, and selected for his first trials portraits of criminals from English prisons who had been convicted of murder and other crimes of violence. He considered the connection between criminality and insanity, and studied the possibility of a criminal class being perpetuated by heredity. At the same time he recognized the difficulties involved in forming a correct judgment upon so elusive a problem. I like to think that he would have approved the subject of this lecture which deals with a group of offenders who often fail to make a success of marriage or provide a happy and healthy home, and may be considered therefore dysgenic apart from the possibility of transmitting character traits which result in criminality.

It is not my purpose to consider here the above matters as they presented themselves to investigators in the last quarter of the last century. I may add that personal experience leads me to believe that the facial appearances of those inside a prison are indistinguishable from those outside, that the connection between criminality and insanity is infrequent in England and Wales, and that crime, *per se*, is not inherited.

In the year 1938, when life in Great Britain was more or less normal, more than three quarters of a million persons in England and Wales were found guilty of offences of all kinds. According to law children under the age of eight years cannot commit crime, and it is an established fact that persons over the age of sixty-five seldom do. The above total therefore was mainly made up of persons between these age limits, but the number of our associates who have offended against the criminal law is usually unsuspected and largely a matter of conjecture. As individuals they are so much like ourselves that we fail to detect anything criminal or unusual about them. This fact, together with others more forcible, goes to disprove the facile assumption of the uninformed who would have us believe that crime is a disease.

* The Galton Lecture delivered before the Eugenics Society, 17 Feb. 1947, and published in *The Eugenics Review*, April 1947.

In the present context non-sane non-insane offenders comprise subnormals, psychopathic personalities and psychoneurotics. The subnormals range from near normal to near mental deficiency, the psychopathic personalities and psychoneurotics from near normal to near insanity. It will be convenient to consider them from the points of view of causation, ascertainment, responsibility and treatment.

CAUSATION

Criminal behaviour like other forms of human activity is the result of the interaction of various factors, individual and environmental. The former include the constitutional framework, physical and mental, inherited and acquired. The latter comprise the social, economic, material and spiritual backgrounds. The earlier investigators erred when they attempted to attribute crime to a single factor or to a particular personal quality. To ascertain the cause of any criminal act it is necessary to collect and analyse all the available information regarding the circumstances of the crime, the personality of the offender, and the manner in which environmental circumstances have affected him. This is sometimes so complicated a task that it is only possible to approximately assess the relative importance of the interacting forces. Fortunately in many cases a rough estimate is all that is required for practical purposes.

In 1913 Goring showed that there was no such thing as a physical criminal type among 3,000 males in English Convict Prisons. In 1942 an official investigation into the physical condition of 4,000 male offenders between the ages of sixteen and twenty from the London area showed little evidence of physical inferiority. At the same time it must be conceded that some observers consider that there is at least some physical basis for crime, and there is no doubt that occasionally crime is a direct consequence of a physical illness. It may also be noted that physical inferiority is sometimes associated with marked social and professional ability.

Inherited mental qualities and those acquired as a result of psychological experiences are of great importance in determining criminal behaviour. In 1941 Bagot found that backwardness rather than mental defectiveness influenced the incidence of offences among juveniles from the Liverpool area. Among the 4,000 adolescents in the London area mental defectiveness was present in nearly 4 per cent, a proportion appreciably higher than in the general population. Other mental abnormalities were present in about 4 per cent also. In the general prison population in England and Wales, 1 per cent are certifiable as insane and half of 1 per cent as mentally defective. There are no reliable figures in this country regarding the number of offenders in the non-sane non-insane group. It will probably be found somewhere between 5 and 20 per cent.

I am aware that at first experienced observers overestimated the proportion of mentally defective prisoners. But whatever the size of the non-sane non-insane group mere numbers are less important than the fact that offenders in the group are likely to repeat their offences. And generally, it may be accepted that repeated offences by adults, and to a less extent adolescents, indicate a fundamental difference between the mental make-up of the habitual and the first offender.

One of the most important causes of persistent criminality is habit, the stereotyped form of response to environmental circumstances and subjective conditions

acquired by repetition. Habits enable many persons to face difficulties and conserve energy, but they may impose upon a less tough-minded person action which takes the line of least resistance and a vicious circle may result: a particular situation arises, the consequential difficulty is repeatedly avoided and a crime is repeatedly committed. It sometimes happens that the only way to break up this sequence is to forcibly detain the offender for a considerable period so that he is guarded from the situations which give rise to it.

Few will doubt that one of the most important causes of criminal behaviour is an imperfect development of character, using this term for the inherited and acquired qualities which to some extent depend upon intelligence, but also are related to temperament as well as national and social traditions, and which affect and should direct the control of voluntary and involuntary behaviour. The character of many offenders in the non-sane non-insane group appears to be incompletely developed. It fails to reach the adult level and is incapable of further progress. So it comes about that whereas some offenders in the group have their place among the non-sane, others are found among the non-insane. Still others are found between these extremes.

In passing, reference must be made to the fact that crime is most frequent among those with least economic security. This does not mean that persons in comfortable circumstances are inherently more law-abiding than those on or near the poverty line. But it does mean that the latter are subjected to many temptations and stresses which the more favoured avoid. In consequence of mental and environmental stress social values are altered. Moreover we must not forget that a certain number of persons below the poverty line remain there because their mental equipment is insufficient to raise them to a higher status or appreciate the importance of socially acceptable behaviour.

A causal factor which receives scant attention to-day is the lack of religious education. Frank selfishness is the rule. Children are frequently brought up without proper care or attention and home life is disappearing. Cupidity is the modern goal, short term expediency supplants old fashioned honesty. Many irresponsible persons marry for amusement or greed, and look upon the Divorce Court as an office where a new licence is obtained to legalize a fresh adventure. The search for pleasure grows apace, and hard work is no longer regarded as a Christian tenet or as an invigorating friend, but as an opponent to be avoided.

This brief survey of some of the matters which require consideration in any attempt to introduce the facts associated with criminal behaviour among the normal group of offenders is necessarily incomplete. But it serves as a background to the more remote problems which arise when offenders in the non-sane non-insane group are under review.

ASCERTAINMENT

The allocation of the individual offender to his appropriate mental group usually presents little difficulty, but it may be otherwise if the characteristics of one group overlap or become superimposed upon those of another. Always at the centre are typical examples of their kind. Outside this nucleus other offenders are neither black or white but different shades of grey and they tend to infiltrate into the outskirts of adjacent groups. For example, the boundary line between

normal and subnormal people, or between the psychoneurotic and insane is sometimes ill-defined. Further, insanity may be imposed upon an offender in any group.

An approximate idea of the meanings of the words mental defectiveness and insanity is usual among educated people, who realize that their knowledge on these subjects is necessarily imperfect. The conception of normality requires further consideration because it is often more inexact than many believe.

For the most part we judge the behaviour of others by our own, and estimate the motives and intentions which govern their behaviour by comparing them with our own instinctual urges. Herein lie certain fallacies if we are ignorant of the secret projects and temptations of others, and underrate the difficulties of understanding oneself. The matter is more complicated when criminal behaviour is assessed and the offender is determined to hide or disguise the reason for his activity or, as sometimes happens, is at a loss to understand it. Further, the ordinary person is often more potentially criminal than he is willing to believe, and sometimes unconsciously maintains his self-regard by exaggerating the culpability of those who break the law.

In the ordinary affairs of life behaviour follows efforts directed towards satisfying the emotions associated with the innate urges, acquisitive, aggressive, sexual, parental, gregarious and the like. It is influenced by the psychological mechanisms of conflict, repression, dissociation, projection and others. It is controlled as a result of education and convention, of morality and religion, of a sense of social responsibility and fear of opprobrium, and by penalties.

Abnormal behaviour may arise if some of the innate tendencies are more and others less imperative than in the ordinary variations of ordinary men and women; if social adjustment is impeded by any of the above psychological phenomena; and if self-control is insufficiently exercised or is misused. We have no yardstick to measure the strength of an instinctual urge in ourselves or in others, and it sometimes appears excessive because adequate control is lacking. At other times the urge appears weak because it is controlled by a strong will.

Crime results if normal or abnormal behaviour is prohibited by law. But note the fact that the law does not cause the prohibited act, it attaches to it the quality of criminality.

A too narrow view of normality leads to error. In the ordinary affairs of life we consider normal behaviour is synonymous with average behaviour. But this standard may be misleading if we believe that our own thoughts and activities necessarily conform to those of others, and that any deviation therefrom is evidence of abnormality. A single man, capable, intelligent, temperate and a skilled craftsman fell in love with a married woman of his own age during the absence of her husband overseas. From time to time intimacy occurred between them until the man discovered that she had resumed relations with a former lover. He thereupon hid himself on his rival's premises, and when the latter returned stealthily attacked him from behind and struck into his brain with an axe and killed him. The homicide was not mentally defective or insane, neither was he suffering from any minor mental abnormality unless the word is used so freely that it has no real significance. His conduct might appear to be abnormal to those who are unaware of the fact that many murders are manifestations of the possessiveness which is a

biological urge and is also seen in the lower animals, particularly during the mating season. And here note the fact that murder is usually committed during a state of intense emotional disturbance which is not necessarily related to insanity or other mental abnormality.

Some may consider that civilization has advanced our behaviour far beyond the activities of the animal world. But the thinness of the veneer may be exposed, as someone wrote many years ago, if a waiter at a dinner party upsets a plate of hot soup over the nicely starched shirt-front of one of the guests. Indeed, recent world events have not only demonstrated the great heights to which men and women can rise, but have also exposed the depths to which others can descend. The poor quality of much of our veneer has been unmasked beyond a peradventure, and many thoughtful minds view with alarm the defects apparent in the underlying structure.

Normal behaviour may occur in the insane, and abnormal behaviour in those who are mentally normal if the emotions are too violently disturbed by chance circumstances. Moreover, a crime committed by a person who is mentally abnormal is not necessarily associated with his aberration. For practical purposes we accept as normal a considerable degree of variation in matters concerning intelligence and wisdom, temperament, ethics, will-power and other personal qualities. In other words, in some people behaviour is represented by an almost even horizontal line, in others the line is wavy. The oscillations are due to transient constitutional and environmental causes.

As we look out on the world today and consider the lessons of history, it becomes abundantly clear that for practical purposes a good deal of latitude must be allowed to instinctual behaviour before we regard it as abnormal. We have seen Nazism attain its climax by the aid of an aggressiveness far surpassing the ordinary. We see men going to the extreme of normality in their lust for power in different spheres, and we meet others who, although within the limits of normality, destroy an honourable career by nauseating behaviour. And here let me add that as a psychiatrist I claim no more authority to decide when normal behaviour becomes abnormal than any other well informed person, unless mental disorder or defectiveness is present. If so it must be accepted that special knowledge and experience are required, not only to diagnose the mental condition but also to determine whether it has caused the behaviour in question.

I believe that although our knowledge is incomplete the different sub-groups of the group with which we are concerned can be sufficiently differentiated to enable the psychiatrist to state his reasons for placing the offender in the appropriate setting. Having done this he can go no further than propose and carry out the course of treatment which appears to him to offer the greatest chance of rehabilitating the offender. But it is clearly a matter for others to decide whether the advice can be accepted in the interests of justice and the security of society.

We cannot disregard the fact that when mental abnormality is suggested as an explanation for a crime legislators as well as the public show some apprehension, believing that psychiatrists too often introduce this plea in an attempt to excuse the offender.

The fact that the behaviour and opinions of another seem extravagant is not

necessarily evidence of mental abnormality. Neither is the fact that the reason for an act or decision is not understood by the person immediately concerned. Indeed the subconscious mind influences our activities perhaps more often than is recognized. The second Marquess of Reading writes of his father when Rufus Isaacs, Q.C., "He was perfectly refreshed by five hours sleep, and even these hours were not wasted. Some subconscious faculty was at work while he slept and he would awake to find a complete set of facts, the proper arrangement of which had given him so much thought on the previous night, neatly sorted out and pigeon-holed in his mind the following morning."

Turn to more humble folk. To the man who falls in love with a woman without realizing that she first attracted him because of some feature or quality which characterized the girl of his choice in an earlier and intense emotional situation. Or to those who commit crime as the result of a forgotten experience in their early years which was associated with severe emotional disturbance.

Although constitutional and environmental causes of behaviour are always present, there is some reason to believe that in a general way their relative importance has some connection with the different periods of life. In juvenile and senile crime the constitutional factor is often more important than the environmental. In adulthood and maturity the environmental factor may predominate. But the differences are seldom exact enough to allow the normal to be clearly separated on these grounds alone from the abnormal. When mental defectiveness, insanity or the non-sane non-insane mental conditions are related to crime the constitutional factor is generally of first importance. At least this may be said, normal behaviour usually requires the constitutional and environmental factors to be fairly balanced. It may be added that physical, mental and social maturity which influence the desires, opportunities and ability to commit crime do not necessarily develop at the same rate in the same person, neither do they necessarily equally deteriorate as age advances.

In a recent article Fritz Schmidl declares that although psychiatrists have adequate conceptions of psychosis, neurosis and organic brain disease they have not yet developed any satisfactory classification of the personalities who do not fall into these categories. If some of the latter show deviations from socially acceptable behaviour such as delinquency some of the psychiatrists call them "normal", holding the view that these deviations should be explained in other than psychiatric terms, whereas other psychiatrists label them "psychopathic personalities". He also states that in most cases the latter term adds nothing to our understanding of these subjects nor does it give much help for treatment. To this criticism I would reply that the clinical types included in the non-sane non-insane group of offenders are more definite and precise as a result of modern investigations than the legal mind of Schmidl seems to allow, that experience affords ample proof that the ordinary methods of treatment are usually here inadequate, and that there is reason to believe that they can be improved upon if they are replaced or supplemented by more enlightened measures. I entirely agree with the view that there is much loose talk upon this subject among the uninformed, and that merely to affix a label to an offender is valueless, and indeed worse if it suggests knowledge where there is ignorance. Moreover, I have consistently refused to accept the view that the delinquent or criminal is necessarily different from the law-abiding citizen. At

the same time I am ready to believe that as our knowledge increases the conception of the non-sane non-insane offender will become more complete.

Only a brief reference is necessary to the subnormals and psychoneurotics as both classes are fully recognized. Subnormals are found in all classes of society, and the majority are able to float in the general population without breaking the law. But they are handicapped in that they frequently fail to gain promotion in their occupations in the face of competition, and are accident prone at their work. If they commit crime they tend to repeat their offences because of their limitations, and because occupational placement is difficult in a competitive world.

Psychoneurotic symptoms are an indication of mental conflict, and the four generally accepted types need not be considered here. I may, however, mention the anxiety type in order to emphasize the wide range of emotion which may occur in normal persons.

The term anxiety is used in this connection for a morbid fear of danger of some kind and usually arises from within. It is necessary to stress the word *morbid* as few persons are free from all fear. Normal fears tend to vary with different periods of life, but the degree of fear is relative to the danger and need not be morbid to cause a crime. Thus, a young man working for a modest salary may embezzle his employer's money because he is afraid that he will lose the girl of his choice unless he spends more money on her than he can afford. On the other hand a morbid fear may be the reason for a crime: the offence of attempting to commit suicide may result from an unreasonable fear that the ordinary aches and pains which are common to many people are due to a fatal disease which cannot be faced. And note the fact that if we attempt to escape from the things we fear we become more afraid. If we defy them they weaken and may entirely disappear.

Moreover, we know from personal experience, or as a result of observation on others, how extensive the range of fear may be. At one time a slight uneasiness of mind, at another an overwhelming panic. In the latter our psychological reactions may be as unreasoning as some of those due to the morbid fears which belong to the realm of insanity. And in our fears we have an everyday illustration of the transition from the normal to the abnormal in the spheres of emotion and behaviour. It is with transitions of emotion and behaviour from normal to abnormal that we are mainly concerned in the non-sane non-insane offender.

Elsewhere, I have recently classified psychopathic personalities into nine categories: psychic inferior personalities, aggressive egocentric personalities, ethical aberrant personalities, alcohol and drug addicts, sexual perverts, schizoid, cycloid and paranoid personalities. A brief reference to them is necessary as we seem here to enter the borderland between character deviations and mental abnormalities.

Many have first hand acquaintance with psychic inferior personalities in whom inherited and environmental causal factors have varying significance. Individuals in this class do not lack intelligence like the subnormals, but their negative qualities of character are so conspicuous and compromising that any positive attributes they possess are cancelled out. They lack initiative, self-confidence, resource, the capacity for sustained effort, ambition and will-power. They avoid making decisions and shun responsibility, and are unable to occupy with credit any position of authority. They rely upon a married partner or a friend to shelter them from the

difficulties which the average person faces alone in the ordinary affairs of life. They are recipients rather than donors, but are frequently pleasant and equable companions. They are often industrious, well-meaning, contented and affectionate. But they take the line of least resistance and cultivate the habits which bring them the greatest amount of ease irrespective of the subsequent disadvantages. If disturbed from their ordinary routine they find it difficult to adjust themselves to a novel situation. The ordinary person going about his lawful occasions usually has powers in reserve which enable him to deal effectively with the common difficulties of life, but the psychic inferior has not enough reserve to deal with a crisis or, if unaided, prevent it from becoming a catastrophe. In short, psychic inferiors fail in situations where what we call strength of character is required, and if they commit crime are likely to repeat their offences on many occasions. In one case, to which I have referred elsewhere, fifty offences were recorded with the probability that more would follow. The offences are usually attributable to negative qualities of character, and are for the most part of minor social importance—petty thefts, minor sexual offences, drunkenness, prostitution and the like.

On the other hand offences committed by aggressive egocentric and ethical aberrant personalities are positive and of major importance where social security is concerned. They include some cases of murder and crimes of sexual or non-sexual violence, burglary, housebreaking, conspiracy, large scale fraud and some larcenies. There is much overlapping in the two categories and future research may show that the difference is chiefly one of emphasis—persistent aggressiveness being the outstanding feature in one, and a marked as well as persistent divergence from moral standards in the other. An important difference between the two lies in the fact that in ethical aberrant personalities the various instinctual urges, acquisitive, aggressive, assertive, sexual, parental, gregarious and others are at fault together.

In both the condition seems to be primarily due to factors which are inherent in many cases, but are influenced by previous psychological or immediate environmental factors. In both the offender is over-concerned with himself, extreme selfishness dominates his thoughts and actions. He is unscrupulous, and those who oppose him are destroyed or injured as mere pawns in the adventure of life. He is assertive, impulsive, amoral, undisciplined and unreliable. He is uncritical of himself and self-confident in spite of the fact that his record often shows a succession of failures. He meets opposition with immediate aggression, and his response to the ordinary obstacles of every day life is mainly the result of excessive egoism which is unfettered by discretion or the least regard for the feelings of others. His will-power is forcible but distorted, and applied to self-indulgencies which are harmful to others and often illegal. He is unable to see the world from a general point of view and his intolerance of the rights of others prevents him from understanding or exercising the reasonableness of compromise. His intelligence is often good and may be superior but various combinations of antisocial behaviour are carried to extremes. He is lacking in wisdom and is unable to profit by experience, partly it seems from an inherent deep seated defect, and partly because less remote factors cause him to disregard a long term advantage for a short term gain.

I have published typical examples of their kind elsewhere. A brief description of an aggressive egocentric personality will illustrate this type of case. A powerful

well built, healthy mechanic aged twenty-three years, was convicted of larceny and shopbreaking. An employer described him as a good worker but violent tempered. The police also noted that he was violent. He was hostile, insubordinate, assertive and persistently aggressive. His emotional tension caused excessive and explosive outbursts of violence in situations which would not arouse a similar trigger-like response in ordinary persons. He assaulted other prisoners and attempted to assault the prison staff on the slightest provocation. He was callous, insincere, unscrupulous and untruthful. He was unable to appreciate the rights of others if they were opposed to his own desires. His egocentricity was overwhelming. He had no moral sense and no appreciation of his social responsibility. He showed no remorse for his behaviour, and whilst he unjustly criticized others was uncritical of himself. His will-power was strongly directed towards the anti-social activities which were his sole purpose in life. He was unable to profit by experience, and disciplinary awards for his violence in prison and sentences of imprisonment for his offences were ineffective. He was of average intelligence, and there can be no doubt that further crimes of serious violence would have been committed had he not been killed as the result of an accident when at liberty. It will be noted that there was no evidence of any sexual abnormality and he had not been convicted of any sexual crime.

In the ordinary affairs of life we meet men and women who are within the range of normality and are particularly aggressive, many who are unscrupulous, and others who combine both these qualities. Some gain so called success, others fail. But their aggressive and unscrupulous qualities, although extreme, are part of a long term purpose and modified according to circumstances. And although the fear of detection may not alter the manner of their lives, it enables them to profit by their mistakes and direct their activities into more carefully selected methods of behaviour. There is no hard and fast line between the more extreme varieties of such persons and the aggressive egocentric and ethical aberrant personalities. At the other end of the scale psychopathic personalities belonging to these categories sometimes project their faults on to others and develop an intense suspiciousness which oversteps the border line between sanity and insanity.

It is unnecessary to consider at length the alcohol and drug addicts. There can be few who have not personal knowledge of the former and are unaware of the different gradations which occur between the normal drinker on the one hand and on the other those who approach the outskirts of alcoholic insanity. Excessive indulgence in alcohol may be itself an indication of other mental disorder and, as I have already indicated, is sometimes due to psychic inferiority. But for practical purposes it seems desirable to limit the alcoholists in this group to those whose addiction is independent of other mental or character deviations and is itself the essential abnormality.

Addicts who indulge in narcotic drugs occasionally appear in the criminal courts. Some are insane and many traverse the high road which leads to insane crime. But when we sit in judgment upon them it is well to remember the great number of people who are addicted to aperients and other non-narcotic drugs as a matter of habit, and to the innumerable tea and tobacco addicts.

Sexual offenders form a large and important group, in which a wide range of positive and negative qualities are within the limits of normality. Many sexual

offenders are not psychopathic personalities, and only some forms of unusual sexual behaviour can be regarded as sexually perverse. Crimes due to these conditions are usually repeated, they create alarm, and often are unaffected by the usual sentences of imprisonment. A man aged thirty-nine years received sentences of imprisonment totalling thirteen years nine months for sexual offences committed during a period of seventeen years.

Among our personal acquaintances are usually a few schizoids: shy, solitary, retiring persons who show little interest in the external affairs of life and live for the most part in a little world of their own mentally detached from their associates as far as circumstances allow. Others are cycloids: their mood swings make them variable but often likable companions. At one time, and for no apparent reason, they are sociable, gay, elated and full of the joy of life. At another they are fearful and depressed. Still others are paranoids: suspicious, unfriendly, irritable and ready to take offence. They exhibit varying degrees of quarrelsomeness, and often abruptly terminate a friendship on account of a fancied grievance.

We recognize persons belonging to these types to be different from ourselves, and if the condition is severe regard them as abnormal although in varying degree. Their lives whether schizoid, cycloid or paranoid are often more difficult than is the case with more evenly balanced persons, and if they commit crime it may be related to their mental peculiarity. The administration of a closed security prison may be ill adapted to the detention of some offenders of this type.

It will be convenient to recapitulate the most outstanding characteristics of psychopathic personalities in general. Their offences are likely to be repeated many times and usually show a degree of impulsiveness and sometimes explosiveness which may be significant in a particular setting. They may be below, of average or superior intelligence, but they fail to profit by experience. Their purpose is short-term and often trivial, but they strive to accomplish it and reject a long-term and more substantial advantage. Although the offences are sometimes little more than a nuisance others are a menace to social security. If only slightly tainted psychopathic personalities may hardly be distinguished from normal persons. Those who are severely affected may be indistinguishable from the insane.

RESPONSIBILITY

The many questions which arise in connection with criminal responsibility need be mentioned in brief outline only. Excepting infancy, some cases of coercion, privileged occasions and the absence of jurisdiction, an offender is presumed to be responsible for the crime he has committed unless he was at the material time insane according to law. When a defence of insanity is raised in a criminal trial it is customary to support it by expert medical evidence, and for the purpose of this thesis it is important to note that the psychiatrist is not called upon to declare that the accused is irresponsible. That is a matter for the citizen qualified as a member of a jury to decide under the direction of the judge.

The thoughts and behaviour of the insane are to some extent related to the mental diseases from which they suffer, and at first sight it may appear that a psychiatrist is the best person to decide whether an insane offender is responsible or irresponsible for the crime he has committed. But in many cases the psychiatric opinion is challenged and the insanity of the accused disputed by an opposing

psychiatrist. Moreover, the issue is not only a question of insanity, but whether the insanity has resulted in irresponsibility. Note also the fact that the Law does not use the word responsibility in the dictionary sense of the word. It insists that responsibility means more than being answerable for wrong doing, and at the same time restricts the word to express a state of mind which *exposes the offender to legal punishment* unless certain tests are satisfactorily answered by the jury in his favour. These tests are direct and simple and are uncomplicated by psychiatric or psychological diversions. The jury are required to consider whether a defect of reason due to disease of the mind prevented the accused from knowing the nature and quality of his act, or that it was wrong. The Court of Criminal Appeal in 1916* further simplified the tests by declaring that "the nature and quality" of an act refers only to its physical character, and that "wrong" means contrary to and punishable by law. As long as these tests are applied there can be no doubt that a jury is competent to understand them. Moreover, few will dispute the fact that the independent character of the British citizen is satisfied with the age-old procedure of trial by jury, and accepts the view that a democracy should make full use of experts and refuse to be governed by them.

I repeat, in a criminal trial the psychiatrist is required to satisfy the court and jury that the accused is insane. The jury are required to decide whether the insanity has made him irresponsible in law.

There can be no doubt that modern advances in psychiatry and psychology whilst crystallizing medical thought in some directions have added difficulties in others. And whereas the majority of psychiatrists would probably regard anyone suffering from a major mental disorder sufficiently pronounced to require certification under the Lunacy Acts to be irresponsible in the dictionary sense of non-accountability, there can be little doubt that the majority would also agree that the degree of irresponsibility varies in different cases, according to the character of the mental disease present, the motive and intention of the accused, and all the circumstances connected with the crime. Mark also the fact that within the experience of living prison officials criminals were formerly made worse because they were treated as bad men, and that unless care is exercised we may go to the other extreme and encourage those with abnormal desires to gratify them on the misunderstanding that a theoretical explanation is necessarily a valid excuse for a crime. For although science teaches us that many human activities are due to inherited and environmental factors over which we have little or no control, society cannot submit to the law of the jungle or accept an indeterminate view of the concept irresponsibility.

Nevertheless, in practice in certain situations degrees of culpability, that is to say blameworthiness, seem to be accepted. During recent years the word delinquency has come to be used for minor offences committed by juveniles, and is sometimes used for offences committed by adults as if it was synonymous with the word crime. But an ugly thing is not made attractive by a mere change of name, and although the Children and Young Persons Act, 1933, refers to "Youthful delinquents" (S, 59; s.s. 1), I am not aware that any adult is described as a delinquent by law. The point is of some importance as the term delinquency suggests something less criminal than crime. In other words less culpable.

* D.P.P. v. Codere. 12 Cr. App. R. 21. 1916.

Again, the Mental Deficiency Act, 1913, provided that mentally defective offenders might be sent, on conviction, to an institution for defectives as an alternative to imprisonment. Where drunkenness is not a defence it may be according to the facts a mitigating circumstance. And the Infanticide Act, 1922, enables the crime of murder to be reduced to manslaughter in the case of a woman who kills her newly born child if she has not recovered from the effects of giving birth to the child and the balance of her mind is disturbed in consequence.* Further, in some cases of murder the jury add a recommendation to mercy to their verdict of guilty and thereby express their belief that the offender is less culpable than the ordinary homicide. There is nothing to suggest that the offender in any of these situations is irresponsible according to law.

When it is considered that the non-sane non-insane offender closely resembles the ordinary offender at one extreme, and may approach insanity at the other, there can be little doubt that culpability will differ in degree in individuals of the group. Judged in this light the more abnormal the offender the less culpable will he usually be, and judged by medical standards the less punishment should he receive. At the same time the more likely he is to repeat his offence, the less likely is ordinary punishment to be effective, and the longer should the public be protected from him.

TREATMENT

In this dilemma it is important to bear in mind certain other matters. Severe penal measures are seldom necessary in the absence of an excess of crime likely to cause public alarm, or of organized criminality. Although crime is an unimportant social problem when compared with poverty and unemployment it would soon become a menace to social security if it escaped control. To avoid this punishment must be certain, expeditious and adaptable.

As I see it the duty of the psychiatrist here is to inform the court of the mental abnormality present, its effect upon culpability, and, as I have already stated, to suggest and if possible carry out appropriate measures for the rehabilitation of the offender. I repeat this seems as far as the psychiatrist can go. Whether his advice is accepted will depend not only upon its possible effect upon the offender, but upon public security if medical treatment is adopted in lieu of, and not as an adjunct to, a sentence of imprisonment.

The retributive purpose of punishment may be anachronistic, the reformatory and deterrent demophylactic. To counter crime by detaining the offender in an ordinary prison surrounds him with artificial restrictions which are often unadapted to the individual peculiarities of many non-sane non-insane offenders. It is true that recent years have seen many improvements introduced into prison administration, and that prisons of minimum, medium and maximum security have been established. But this is not enough. A special penal institution is required, combining the features of a prison and a mental hospital, where the non-sane non-insane offender can receive training and specialized medical treatment if he does not accept medical treatment whilst on probation, or is too dangerous

* The Infanticide Act, 1922 (1 and 2 Geo. VI. c. 36) substitutes "a child under the age of 12 months for a 'newly born child'". It also takes into consideration "the effect of lactation consequent upon the birth of the child" as a disturbing factor of the mental balance of the mother.

to be allowed his liberty. An annex to the institution administered on colony lines will give elasticity to the therapeutic and demoplylactic purposes of the scheme, and enable all the resources of mental treatment and character building to be given an opportunity to assist the offenders in the group. And since so much of the material—for instance the psychic inferiors—is of poor quality, exceptional care on discharge will still be necessary.

For this method of treatment the short sentences usually given—say in cases of exhibitionism and sexual assaults on young children—are useless. Sentences approximating the legal maximum may be required for the benefit of the offender and for public safety. I maintain that for these reasons we should not shrink from the imposition of longer sentences if necessary in order to ensure special treatment. Incidentally such sentences will tend to restrict fertility and have some eugenic value.

SUMMARY

To many people crime is an unpleasant and remote subject. But so short-sighted a view fails to appreciate the fact that anyone of us at any time may be the victim of violence, burglary, theft, fraud and the like. It is therefore the concern of all, even the most sheltered and exclusive, to assist progress in the prevention of crime and the treatment of criminals.

My thesis outlines a group of dysgenic, and for the most part recidivistic, offenders, and deals with different degrees of mental abnormality and culpability. It does not disguise the difficulties of the subject or the dilemma arising from the fact that the more abnormal the offender the less culpable will he generally be, and usually the more in need of specialized and sometimes prolonged treatment. Many observers are disturbed when non-sane non-insane offenders, if unsuited for probationary treatment, are committed to prison for short and ineffective periods. Others are unwilling to impose upon them longer sentences within the legal limits for the purpose of obtaining social security. There is reason to believe that a solution to the problem on progressive lines may be attained in many cases if modern psychiatric, psychotherapeutic and educative measures are applied for a sufficient time in a special penal institution. We are here dealing with quantitative anomalies, and need courage, clear minds and clear consciences if we are to deal with them practically, effectively and humanely.

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XV

PROSTITUTION *

PROSTITUTION has been defined as promiscuous unchastity for gain. In adolescents or adults of either sex the gain is essentially financial, the client unselected, and psychological—as distinct from physiological—satisfaction is wanting. It is to be distinguished from concubinage, the cohabitation of a woman with a man to whom she is not legally married; from adultery, the voluntary sexual intercourse of a married person with a member of the opposite sex, whether single or married; and from other sexual relationships motivated by passion.

LEGAL ASPECTS

Modern civilization has failed to eliminate prostitution. Modern thought advocates its restriction on moral and hygienic grounds, but the relative evils of clandestine or organized prostitution remain matters of opinion. In Britain there is no registration or compulsory periodical examination of prostitutes, and brothels are not licensed.

Under different Acts offences related to prostitution in England and Wales fall into two categories:

1. *Offences by prostitutes.*

(a) Common prostitute behaving in a riotous and indecent manner in a public place. (Vagrancy Act, 1824, sect. 3 and sect. 4, so far as it relates to this offence when committed by a person who has been convicted as an idle and disorderly person.)

(b) Common prostitute or night-walker loitering and importuning passengers for the purpose of prostitution. (Town Police Clauses Act, 1847, sect. 28 (16).)

(c) Common prostitute or night-walker loitering or being in any public place for the purpose of prostitution or soliciting to the annoyance of passengers, etc. (Metropolitan Police Act, 1839, sect. 54 (11).)

(d) Offences under all similar provisions in Local Acts.

2. *Persons aiding, abetting, counselling, or procuring the commission of offences enumerated above.*

From time to time legislation relating to prostitution has been introduced for special purposes. The Mental Deficiency Act, 1913, for example, made punishable the procuration of, or attempts to procure, women and girls who are mentally defective (sect. 56 (1 b, c)).

The Children and Young Persons Act, 1933, made it a penal offence to encourage the prostitution of a girl under the age of sixteen (sect. 2 (1)) or allow a child or young person under the age of sixteen to reside in or frequent a brothel (sect. 3 (1)). Sections 61 and 62 further protect a child or young person—i.e. all young people under the age of seventeen—from the danger of prostitution.

* An expansion of an article which appeared in a Special Number of *The Practitioner*, April 1947.

The first part of section 61 states: (1) For the purpose of this Act a child or young person in need of care and protection means a person who is,

(a) A child or young person who having no parent or guardian or a parent or guardian unfit to exercise care and guardianship or not exercising proper care and guardianship, is either falling into bad associations, or exposed to moral danger, or beyond control.

(b) A child or young person who:

(i) being a person in respect of whom any of the offences mentioned in the First Schedule to this Act has been committed; or

(ii) being a member of the same household as a child or young person in respect of whom such an offence has been committed; or

(iii) being a member of the same household as a person who has been convicted of such an offence in respect of a child or young person; or

(iv) being a female member of a household whereof a member has committed an offence under the Punishment of Incest Act, 1908, in respect of another female member of that household; requires care or protection, or

(c) A child in respect of whom an offence has been committed under section 10 of this Act (which relates to the punishment of vagrants preventing children from receiving education).

Section 62 provides that where any of these are found to be in need of care and protection, the court may order the young person to be sent to an approved school; or to the care of a fit person; or order the parent or guardian to enter into a recognizance to exercise proper care and guardianship; or make an order placing the young person under the supervision of a probation officer or some suitable person.

The problem of juvenile prostitution cannot be solved by the old methods unless they fit into the general plan of modern life. For this demands a greater strength of character than was previously required. The Act made no fundamental change of principle, but it embodied the results of experience in order to materially strengthen the hands of those who are concerned in finding the best way of restraining young people who are falling into criminal associations, and of helping those who through force of circumstances require care and protection.

The legal protection of persons in institutions has been the subject of special legislation in Switzerland. Article 193 of the Swiss Federal Criminal Code of 1937 authorizes the punishment of "Whoever copulates with a person in the care of a hospital, of an institution by official order (or) with a prisoner, an arrested or accused person".

Special precautions and efforts have been adopted in war time to check the spread of venereal disease by prostitutes among members of the Fighting Services. In World War I, there was a Defence Regulation which enabled convicted prostitutes, brothel-keepers, etc., to be removed from camp areas by order of the competent Military or Naval Authorities. The regulation, however, proved to be of little value and for this reason similar powers were not taken in World War II. At the same time the United States authorities did their best to assist in the matter by issuing orders that active measures should be taken to prevent trespassing on United States post, camp or station areas.

In World War I, D.O.R.A. 40 D, was introduced to bring under medical treatment girls and women who were responsible for much inefficiency through infection of service men. It proved to be unsatisfactory in practice. In World War II the matter was further discussed at a conference in October 1940, and eventually resulted in the enactment in November 1942 of Defence Regulation 33B. This broadly provides that any person who has been reported by one or more special practitioners (recognized as specialists in venereal diseases) as being suspected of having infected two or more of their patients may be compelled to undergo examination by a special practitioner and to remain under the direction of the latter in respect of examination and any necessary treatment until pronounced free from venereal disease "in a communicable form". The requirement of two reports before legal action can be taken is to guard against blackmail and against compulsory examination of persons who have been mistakenly reported by patients as the sources of their infections.

Whilst Regulation 33B could be expected to deal effectively with the person who infected large numbers of service men, it could not be expected to be a means of applying compulsion to more than a small proportion of the sources of infection. Nevertheless, it has stimulated considerably the work of contact tracing, and a large number of local authorities have engaged social workers not merely to find and persuade voluntary patients to induce their contacts to submit to examination. The workers also follow up patients who have discontinued attendance prematurely, and expend much effort removing social difficulties which are often responsible for premature discontinuance of attendance.

Before the League of Nations was established international action on traffic in women had been limited to the making of two international instruments, an Agreement of 1904, which provided for setting up Central Authorities in each of the Contracting States and for other minor administrative measures, and the Convention of 1910, under which Contracting States undertook to punish the procurement of women under twenty.

One of the first steps taken by the League was to convene an International Conference in 1921 to make a new Convention raising the age of protection to twenty-one for persons of either sex. At the same time, an Advisory Committee on Traffic in Women and Children was set up by the Council of the League. This Advisory Committee instituted a system of annual reports from Governments on the extent of the traffic and the measures being taken to deal with it. In 1937 a draft Convention was prepared, designed to secure the prosecution and punishment of any person keeping or managing a brothel or exploiting the prostitution of another person. Such a Convention would have greatly strengthened the international measures hitherto undertaken, but unfortunately further work on this draft was brought to an end by World War II.

In a Report submitted by the Temporary Social Commission to the Second Session of the Economic and Social Council of the United Nations (dated 12 June, 1946) the Temporary Commission states that, as regards traffic in women and children, it is "satisfied that the functions undertaken by the League should be assumed by the United Nations, and that all measures designed to prevent the traffic in women should be actively pursued". It therefore recommended that the subject be referred to the Permanent Social Commission (which has since been

established) to consider how to achieve this object and, in particular, the view was expressed that the system of annual reports from Governments should continue.

STATISTICAL DATA

The annual average number of persons dealt with for prostitution at courts of summary jurisdiction in England and Wales during the period 1910 to 1914 was 10,682. In 1928 the number had fallen to 2,992. From 1931 there was a gradual rise except in 1937, and in 1938 offences by prostitutes numbered 3,192. During the period 1929 to 1938 the annual average of persons found guilty of offences aiding and abetting prostitutes was 118, of living on the earnings of prostitution 176, and of brothel-keeping 210.

Of persons received into prison for brothel-keeping and living on the earnings of prostitution during the seven years 1937 to 1943, 776 were men and 603 were women. The majority of both sexes being in the age groups 21-30 (539), and 30-40 (432). The number of prostitutes convicted and received into prison for that offence was 24 men and 662 women. The ages of the men were, under 21 (1); 21-30 (7); 30-40 (6); 40-50 (3); 50-60 (5); above 60 (2). The ages of the women were, under 21 (24); 21-30 (235); 30-40 (205); 40-50 (137); 50-60 (47); above 60 (14).

The official figures are no indication of the size of the problem. For example, the figures above for the age group under 21 are affected by the fact that other methods than imprisonment are applied in the case of young offenders. Again, the same person may commit more than one offence during the year. The arrests tend to reflect the state of public opinion at the time, and may be influenced by periods of economic depression and police practice. Regarding the latter, the Report of the Commissioner of the Metropolitan Police, 1928, states:

"Another effect of the critical attitude of the Press and public has been a general reduction in the number of charges brought. For this there may be other contributing causes, but there is good reason to believe that the Constable's confidence in the public and in himself was for a time slightly shaken, and that the efficiency of the force suffered in consequence."^{*}

It is also significant that the prostitute's client is an accomplice, and a stranger who is annoyed by her solicitation may be unwilling to lodge a complaint with the police. Apart from official figures there is general agreement among social workers, voluntary social agencies, and those connected with the administration of schemes for combating venereal diseases, as well as among other observers, that the number of professional prostitutes has decreased in recent years whilst non-professional sexual promiscuity has increased.

Since there are many forms of secret prostitution, for example, massage and manicure prostitution, prostitution by advertisement and the like, it is clear that no assessment of the number of prostitutes can approach accuracy.

The figures for procuration, etc., must also understate the facts, since women are usually unwilling to reveal the identity of those who aid and abet them and the nature of their relations with those who live on their immoral earnings, unless unforgivable duplicity or grossly wanton behaviour outrages them.

^{*} As the result of a case which came before a Metropolitan Court that year and in which the police evidence was not accepted.

For various reasons the association of crime and prostitution is also beyond accurate assessment. My own experience suggests that in England and Wales it is seldom related to the murder of a decoyed client by a *souteneur* for the purpose of robbery or other reason. It is sometimes, in unexpected situations, associated with blackmail. It is frequently associated with theft and drunkenness.

The relation between prostitution and drug addiction is insignificant in England probably because drug addiction itself is infrequent. American observers have been impressed by the association in the United States. P. O. Wolff refers to the relation between addiction, disorderly conduct, vagrancy and prostitution. A. R. Lindesmith contends that the proportion of addicts who are vicious criminals is relatively small, but on the average the addict is a petty thief, a prostitute, or a drug peddler. We may generally accept the view that the prostitute, the petty thief, the alcoholic and the drug addict show a marked tendency to combine in themselves various forms of antisocial behaviour and to repeat their offences.

And here it may be noted that prostitution and crime may result from the impact of unusual circumstances upon a usual individual, or from usual circumstances upon an unusual individual. In the former case the prevention or curative remedy may lie in magisterial action. In the latter in medical treatment, alone, or as an adjunct to magisterial action.

Sullenger analysed the occupations of 9,277 women arrested for offences by the Omaha police from 1930 to 1934, and set out the following main results: Housewives, 3,551 (38.2 per cent); domestics, 2,795 (30.1 per cent); prostitutes, 1,815 (19.5 per cent); waitresses, 327 (3.5 per cent); students, 41 (0.4 per cent); teachers 15 (0.1 per cent).

During the years 1931 to 1935, Tage Kemp examined 530 prostitutes in Copenhagen who had been questioned by the morality police. He found 81.2 per cent were domestic workers; 6.9 per cent factory hands; 3.2 per cent seamstresses; 2.6 per cent saleswomen; 0.6 per cent waitresses; 0.4 per cent office clerks; and 5.1 per cent belonged to other occupations.

Mannheim investigated the occupations of 224 prostitutes appearing in English courts over a period of eight years ending in 1935. Of this number 85 stated that they were employed as dressmakers; 41 as waitresses; 23 as married women; 21 as chorus girls; 17 as domestic servants; 11 as unemployed; 8 as clerical workers; 2 as shop assistants; 2 as prostitutes, and 13 gave miscellaneous occupations. But, as Mannheim points out, the figures were apparently based upon the unchecked statements of the women themselves. Moreover, the figures may vary from time to time in the same city as the result of incidental circumstances.

SOCIAL ASPECTS

Female Prostitution. Promiscuity among modern women may be conveniently assessed from the point of view of financial interest, personal selection and emotional satisfaction. The woman who refuses financial reward, and selects a temporary partner to gratify her sexual desires and emotional needs may do so occasionally or habitually. But she is not a prostitute according to the above definition, and she is usually not despised or censured to the same extent. The prostitute has been generally condemned throughout the ages, not only on religi-

ous and aesthetic grounds, but because she often robs others of their fundamental possession and tends to disrupt the integrity of social life. Nevertheless, the woman who pays for the sexual services of others, whether male or female, is generally disparaged by those who are acquainted with the facts. And this because her activities denote a grave departure from moral and social uprightness affecting herself, and debauch her male or female associate. She also infects the initiate with an avoidable moral and psychological malaise.

Even flirts of either sex who have no desire to possess or belong to another are often condemned for their insincerity although their sexual urge may be weak or undeveloped. Flirtatiousness may be an expression of emotional and sexual immaturity. It is opposed to the natural desire of women to attain security in their sexual life, and the enduring companionship afforded by marriage. On the other hand it must be recognized that some flirts are degraded persons and are then usually incorrigible. But the institution of marriage is to some extent accepted by both men and women as a means whereby the latter are protected from sexual brigandage.

The factors which determine the modern woman to adopt prostitution as a part or whole-time occupation are environmental and constitutional. And since the foundations of human action are complex different emphasis will be placed by different observers on particular factors.

Part-time prostitution. The modern part-time prostitute must be differentiated from the whole-time professional. Her mental, educational, and social contacts may be unrestricted. She is usually less artificial, more attractive, exciting and seductive. Her promiscuity may be unknown to her friends and she accepts most of the social conventions. Her home may be satisfactory and she is often engaged in a gainful and congenial occupation. She has an anchorage, and can secure reliable help and advice in dealing with the major difficulties of life. She is independent of her commercialized sexuality and uses it mainly to enjoy the luxuries and not to obtain the necessities of her social position. She carefully selects her partners and meets them on terms of social equality. Her promiscuity is more discreet and on the whole less degraded. She experiences less difficulty in changing her mode of life and is more likely to settle down and marry. The environmental and constitutional factors associated with part-time prostitution appear to be generally less profound than in the case of the whole-time professional and need not be considered here.

Whole-time prostitution. Among the *environmental factors* may be noted maladjustment at home, economic stress, lack of religious education and religious enthusiasm, promiscuous and indecent living due to overcrowding, the demoralization of young people by their elders, the example of luxury, self-indulgence, loose thinking, loose habits and customs in some classes of society, corrupting amusements and literature, seduction by profligate men and women, and alcoholism.

Sybil N. Rolfe considered the biological aspects of prostitution. She concluded that poverty was not the major factor in the adoption of prostitution as a profession. She referred to Burt's investigation into the causes of sex delinquency in girls; to a special investigation into the family histories of women prostitutes condemned to forced labour as vagrants in Sweden during the years 1916 to 1924; and to Kurt Schneider's survey of German prostitutes who during the year 1913

to 1914 had offended against the regulations. All went to confirm the opinion that girls are found practising prostitution who come from all kinds of homes varying from well-to-do to the very poor.

In the aforementioned investigation Tage Kemp surveyed the immediate cause of prostitution in Copenhagen. Poverty or dire economic need was found in 24.2 per cent, fondness for dancing and restaurant life 22.8 per cent, influence of sisters or women friends 13.2 per cent, influence of pimp 8.3 per cent, tendency to vagabondage 3.4 per cent, other causes or cause unknown 28.1 per cent.

The *constitutional factors* of prostitution have been considered by Gladys M. Hall. She believes that there are at least three classes of girls or women possessing tendencies which make them particularly liable to turn to prostitution in the absence of strong social or personal inhibitions: (a) individuals possessing a certain combination of characteristics which appear to make promiscuity probable unless some counter influence appears; (b) individuals temporarily possessed of precocious or abnormally developed sex impulses; (c) individuals who because of inheritance or glandular development are over-sexed.

It is sometimes suggested that the personality of the prostitute is a result of her occupation rather than a reason for selecting it as a mode of life. But the first departure from chastity appears usually to be emotional, selective and irrespective of financial gain. And those who, like the writer, have had many prostitutes under medical observation for substantial periods are likely to agree that the underlying constitution of the majority is largely accountable for their commercialized promiscuity. Indeed, it is difficult to think otherwise, having regard to the fact that many of them are either mentally subnormal, high grade feeble-minded persons, psychic inferiors, ethical aberrant personalities, aggressive egocentrics, cycloid or psycho-neurotic persons.

The ease with which some girls take up a life of prostitution, and the tenacity which prevents them from giving it up also suggest that prostitution depends upon personality rather than personality upon prostitution. It is true that we find the personality of, say, a professional or business man affected to some extent by his occupation, and it would be rather surprising if the experience, aims, and habits of the prostitute were not sooner or later reflected in her character. But there seems to be little doubt that the majority of women who become prostitutes do so because their character traits override other considerations.

Nevertheless, environmental and constitutional factors are frequently inextricably blended and the prostitute who has been segregated for some weeks (e.g. in prison) deprived of alcohol and physical and moral debauchery, often temporarily becomes a very different person to her former self. So much so that undue stress may be laid upon the effect of her occupation when at liberty, and insufficient regard may be given to the constitutional factor which prevents her from selecting and securing some other means of livelihood when given the opportunity to do so.

Homosexual practices among prostitutes whose clients are men appear to be frequent. Writing in 1921 Havelock Ellis quoted authorities to show that the phenomenon was more frequent in some continental cities than in Britain. There seems to be much in favour of Ellis's explanation of Lesbianism in this group of women. He stresses the fact that their relations with men are essentially commer-

cial, there is an absence of the feeling which accompanies social equality, and they are for the most part deprived of the feeling of possession and scope for the exercise of genuine affection. The prostitute may be forced to find these in the man who lives on her earnings, or alternatively in Lesbianism.

There still remains in some quarters a tendency to exaggerate the connection between mental defectiveness and prostitution. Dr. Letitia Fairfield discussing women mental defectives and crime before the Medico-Legal Society in 1930, said: "In view of the statement frequently made that 50 per cent of prostitutes are feeble-minded it is important to note that only nineteen of fifty-eight defective women (appearing before the London magistrates) had been promiscuous or gravely immoral." She quoted a senior probation officer of London who had recently told her that "the feeble-minded prostitute has practically vanished off the streets of London, a very different state of affairs from thirty years ago".

Insufficient importance is sometimes attributed to the fact that the social and emotional immaturity of many prostitutes is shown by an inability to adjust themselves to authority. Hostility to authority is a normal reaction of healthy adults. It is expressed by an antipathy to prohibitions and regimentation, and is sometimes actively expressed by ignoring unpopular decrees. Most individuals compromise on the matter and adjust themselves for their own and the common good. But some, prostitutes and others, fail to do so. There is reason to think that inappropriately expressed authority occasionally originates in adolescents a negativistic attitude and a perverse refusal to accept command and counsel, which gives rise to various forms of antisocial behaviour including prostitution.

This appears as one of the reasons why so many of these women remain unconcerned by the fact that they are ostracised by society. They also see the hollowness of much so-called respectability and despise it. They are unaffected by convention and moral values, and they live in a small social group and are satisfied if they conform to its less exacting standards.

The change in moral and social values to-day must be taken into account. An adolescent girl in a Borstal institution recently stated quite dispassionately that she thought she would be a prostitute. She seemed inclined to reconsider the matter when reminded of her rather indifferent health and that it would probably break down as a result of constantly being out late at night in all weathers looking for customers.

Jeremy Bentham stated:

"The infamy of prostitution is not solely the work of the law. There would always be a degree of shame attached to that condition, even though the political sanction remained neuter. The condition of a courtesan is a condition of dependence and servitude, her resources are precarious, and indigence and famine always threaten to overwhelm her. Her very name is associated with evils distressing to the imagination, for courtesans are unjustly considered as the causes of disorders of which they are only the victims. There is no need to say with what sentiments they are regarded by *honest* women. The most virtuous may lament their miseries, but all agree in despising them ..." (*Italics in original.*)

The prostitute appears to many as lazy, shiftless, avaricious, dishonest, untruthful, selfish and faithless. But the absence of virtues we are accustomed to regard as essential does not necessarily exclude others which are estimable. Some courtesans are charitable, kindly, sympathetic and affectionate. If a man lives on

her earnings and is utterly despicable, he may be the only person for whom she has any tender feeling and her only anchor. She may be blind to his faults and dissociates him from the men who are her clients. In his company she can relax and be her natural self and throw aside the arts and devices of her calling. He acts as her champion in a dispute and her protector in a scene of violence. He forms a bridge which unites what she is with what she might have been. He supports her artificial self-reliance and the weakness of her position. He satisfies her inherent desire to be owned, and although he may exploit her cruelly and callously satisfies her masochistic cravings. Hence it may be particularly difficult to influence her in other directions as long as her masochistic submissions afford her emotional gratification.

Discussing delinquency among Jews Liebmann Hersh points out that in both ex-Russian and ex-Austrian Poland, during the period 1924 to 1925, offences against sexual immorality and the family were much less frequent among Jews than the rest of the population. Souteneurs formed a striking exception. In ex-Russian Poland they were twice as numerous among Jews as among non-Jews. There were no data for Galicia. Further 40 per cent of the Jews condemned for offences against sexual morality and the family were souteneurs against barely 5 per cent of non-Jewish condemned prisoners.

Hersh points out that this crime is a form of "traffic" and that among Jews merchants were twenty times more numerous than among the rest of the population. He suggests that a larger number of those offending against morality will associate business with their criminal activities. The "business" in question is generally concentrated in the towns, and as the urban population of Jews is four times larger than of non-Jews it is not very surprising that there should be twice as many souteneurs among the Jews as among non-Jews. The absolute numbers were, however, small; 17 Jews and 48 non-Jews.

The prostitute is particularly liable to be forced into a situation of great physical peril. Of the last 114 women murdered, by men who were psychiatrically examined by me, fifteen were prostitutes. The murder frequently occurred when the woman was unclothed and recumbent. She was sometimes asleep. The crime was usually a prelude to robbery and the woman was generally throttled. Her position was particularly vulnerable to attack unless she was exceptionally resourceful and had an unusual degree of awareness.

Much has been written about the sexuality of the prostitute. But this seems less significant than formerly, when the sexuality of women was less understood. The literature affords examples of hypersexuality, hyposexuality and homosexuality among prostitutes as well as among non-promiscuous women.

The result of prostitution may seriously affect the lives of other women. Some observers consider that the largest number of a prostitute's clients are married men who turn to her because of the indifference or aversion of their wives to the intimate relations of marriage, or for other reasons. Katherine B. Davis found that of 1,006 unmarried women only 2.9 per cent considered that it was necessary. The majority were opposed to it.

Whatever the relation between prostitutes and other women may be, few will doubt that the former should be reclaimed if possible. The segregation of mentally deficient women and girls in appropriate institutions, the early treatment of those

suffering from other predisposing mental states, religious teaching, education in citizenship and efforts combating the associated environmental factors have preventive effect, and supplement the rescue work undertaken by official, religious and social organizations.

Perhaps here, as in some other forms of antisocial behaviour, the best results are due to reclamation from within. The social worker often has reason to be discouraged in her efforts to rehabilitate the adolescent prostitute. A recent report on Problem Families states: "There appears to be no successful approach to the problem of the girl who has left home for a life of squalor and voluntary prostitution in the cosmopolitan quarters of cities. The birth of an illegitimate child does not restore these girls to any sense of responsibility and they ignore the dangers of untreated venereal disease."

It may be that better results will be obtained if a pharisaical attitude towards the problem is discarded, and the fact accepted that the prostitute often has more excuse for her occupation than her client has for his libertinism.

Male Prostitution is closely, but not entirely, related to the phenomenon of homosexuality. There is no doubt that some male prostitutes are not themselves homosexuals but accept this occupation, often temporarily, as an easy means of earning a living in gay and exciting surroundings. Their number must be a matter of conjecture. Experience among delinquent adolescents suggests that many male prostitutes discontinue their occupation more readily than is the case with some girls. Not because they are more repentant, but because the girls often believe that they cannot regain their lost honour. The fact that during adolescence girls usually retain their phantasy life longer than youths and more inflexibly spiritualize their sexual instinct seems in many cases to lead them to emphasize the importance of their lost chastity, and make rehabilitation more difficult when this has been wilfully thrown aside.

On the other hand some adolescent male prostitutes appear to regard their activities as a form of mutual masturbation lacking the significance of intersexual relations.

The male prostitute may be active and masculine or passive and effeminate. Intermediate types arise. It is fairly certain that some good-looking youths are predisposed to become prostitutes because their appearance attracts a particular type of homosexual. The client usually has as his object a man or boy who conforms to a special type. But all clients are not necessarily homosexual if the term is used to indicate a sexual activity in which complete satisfaction is sought and obtained at all times in preference to heterosexual intercourse. Occasionally the client is afraid of becoming infected with venereal disease from intercourse with women, not realizing that he may be similarly infected by men. A libertine sometimes turns to homosexual intercourse when satiated by the pleasures derived from women.

Thoinot and Weyse refer to male prostitution as "a frightful social evil, an evil existing in all civilized countries and one that seems to extend its ravages every day". However this may be, it seems to be less practised than female prostitution, perhaps because the demand is less and the number of heterosexual men is greater than that of homosexuals. Personal experience suggests that more female prostitutes are murdered by their ostensible customers than men. The reason is

not far to seek if robbery is the motive for the attack, since the male prostitute is more likely to successfully defend himself than the female.

There appears to be no reason to think that there is any considerable number of men in this country who hire themselves out to women for sexual purposes.

The treatment of male prostitution is closely related to that of homosexuality and the public attitude towards it. At the present time there are two main schools of thought. One favours the abolition of penalties. The other believes that the homosexual should not be punished unless he debauches a young person, or exploits a person dependent upon him, or offends against public decency, or habitually carries out his activities for financial gain. To these may be added being in any public place for the purpose of prostitution or soliciting to the annoyance of passengers. It is sometimes said that a change in the law regarding homosexuality would facilitate the prosecution of a certain class of blackmailer. But the effect upon the incidence of homosexuality and male prostitution seems doubtful.

MEDICAL ASPECTS

Apart from the treatment of venereal disease among prostitutes and their clients, and the prevention of its communication to others, medical men may be concerned with the effects of prostitution in medico-legal situations; for example, suicide, murder and divorce.

A medical assessment of the personality of the individual prostitute may be necessary in order to determine whether her mode of life is the result of a retarded state of sexual development, mental defectiveness, psychopathic state, psycho-neurotic or psychotic disorder.

A grave situation arises when a man seeks medical advice because he is overburdened with the idea that his sexual urge is so dominating that his health will suffer if he remains continent. One school of thought censures masturbation as a relief but is inclined to tolerate prostitution. Another proclaims the physical and moral dangers of prostitution and clarifies the position regarding the alleged harmfulness of occasional masturbation. Some may agree with Forel, who regarded both practices on the same level, prostitution with a stranger being a variety of compensatory masturbation and not normal intercourse. There seems much in favour of this view if phantasy is an important feature during both activities.

Many may believe that patients will receive most help if they are reminded that eminent medical men as well as others have no doubt that continence is consistent with full health and efficiency. McDougall wrote: "A strong man can live, and live well, without love and without indulgence of the sex tendency. The latter may cause him some inconvenience at times, but not to a serious degree unless he becomes afraid of it."

In every case it seems desirable to put the medical, social and moral issues before the patient. The doctor can advise, the patient must decide. And in doing so he may profitably bear in mind the fact that the chief cause of the prostitution of women is the demand made and maintained by men.

CONCLUSION

To the usual difficulties of preventing part or whole-time prostitution must be added two modern evils. First, the ignorance which proclaims the absurd belief

that one opinion is as good as another. Second, the doctrine which challenges inhibitions and encourages moral irresponsibility. The theorists who declare that there would be no neurosis if a maximum instinctual gratification was allowed have done much harm. It is satisfactory to know that the majority of psychoanalysts today are sceptical both of the theory and of its implication.

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XVI

PSYCHIATRY AND DEGREES OF MURDER*

INTRODUCTION

DISCUSSIONS on homicide sometimes elicit the statement that courts and juries in this country should recognize degrees of murder, and it is frequently suggested that these should be three in number. There can be no doubt that criminality in murder widely varies according to circumstances and personalities. It is the purpose of the following observations to show that legal stereotyping and a doctrinaire approach would destroy the elasticity which today enables not three but many degrees of murder to be recognized, and many death sentences to be commuted, and also to suggest that the proposal would sometimes defeat the intentions of those who support it.

It will be remembered that Lord Coke defined murder as "where a person of sound memory and discretion unlawfully killeth any reasonable creature in being and under the King's Peace, with malice aforethought, either express or implied." But insufficient data may make it difficult and sometimes impracticable to appraise the degree of malice aforethought in a particular case or compare it with that in another. The possible differentiations are sufficiently numerous to suggest that a jury, without previous experience, may be incompetent adequately to assess different grades of homicidal criminality which depend upon variations of emotion, temperament, intelligence and character.

Indeed, although intentional killing under serious provocation is treated as "voluntary manslaughter", the question is not whether the wrong-doer himself regarded the provocation as excessive, but whether an average man in similar circumstances would, in the opinion of the judge and jury have so regarded it.

It may be doubted whether the estimation is always equitable. A man robbed and killed a young prostitute in her bedroom by manual strangulation. He alleged that the girl outraged his sense of decency by committing the act of fellatio against his wish and thereon the jury returned a verdict of manslaughter. Medical interviews before and after trial, and observation of his character and conduct over many years, made it hard to believe that the man's feelings were disturbed, even if the allegation—of which there was no confirmation—was true.

STATISTICAL DATA

A few figures will give an overall view of the matter. For 50 years, 1880-1929, there were 713 persons executed and 564 reprieved, the executions being at the rate of 14.26 per annum. For 30 years, 1900-29, 423 persons were executed and 327 reprieved, the executions being at the rate of 14.13 per annum. For 10 years, 1920-9, there were 138 persons executed and 91 reprieved, the number executed being at the rate of 13.8 per annum.

* Read before the Medico-Legal Society, 26 June 1947, and published in *The Medico-Legal Journal*, December 1947.

A more detailed examination of the figures for the 10 years, 1929-38, shows that there were 880 cases of murder known to the police involving the murder of 1,001 persons over the age of one year, an average of 88 cases per annum. The murderer or suspect committed suicide in 340 cases and 5 died from other causes before trial. The number of persons arrested was 504, and 50 persons escaped arrest. Of those coming before the courts 19 were discharged at the police court, 86 were acquitted. The number found insane was 223, of whom 75 were insane on arraignment, 139 guilty but insane, 1 was certified before trial and 8 were found to be insane after trial at a Statutory Enquiry (Criminal Lunatics Act, 1884, section 2 (4)). The death sentence was passed on 175 persons, of whom 81 were executed and in 81 the sentence was commuted to penal servitude for life. The sentence was quashed by the Court of Criminal Appeal in 4 cases and in 1 by the House of Lords. Two persons were dealt with abroad and 2 were sentenced to be detained during His Majesty's Pleasure under the Children and Young Persons Act, 1933.

Note the fact that the figures for later years show a proportionate increase of men relieved, thus:

<i>Years</i>	<i>Executed</i>	<i>Relieved</i>
1880-1929	713	564
1920-1929	138	91
1929-1938	81	81

HISTORICAL DATA

The arguments for and against Capital Punishment are beyond the scope of these observations. But certain statements by eminent authorities are relevant. In the introduction to the Criminal Statistics for 1924 the following passage occurs:

"In consequence of the strong proofs of guilt necessary for conviction of crimes punishable by death, the proportion of acquittals for murder is higher than for most other crimes, and an acquittal in such a case does not necessarily imply failure to detect the perpetrator of the crime."

In fact the jury in a crime of such gravity examine the evidence with scrupulous care. At the same time it must be noted that Sir John Anderson in his evidence before the Select Committee on Capital Punishment, 1930, stated:

"It is sometimes said that juries, because of their aversion from Capital Punishment more often acquit persons charged with murder than they acquit persons charged with other crimes of extreme gravity. And the argument is even advanced that if penal servitude were substituted for the capital sentence it would be easier to get convictions for murder. So far as the Home Office is concerned, there is no foundation for such an argument."

Before the same Committee Sir Archibald Bodkin said:

"That is certainly not my experience that juries are very loth to convict. . . . They demand, and rightly demand, a very high standard of proof, and if the proof does not come up to the standard, then they acquit, but I do not think that that acquittal is due to their being afraid of what the result of their verdict may be."

Sir Ernly Blackwell of the Home Office showed that during the period 1901-16, 61 per cent of the men sentenced to death were not recommended to mercy, and during the period 1916-29 the figure was 71 per cent.

It will be known that before trial the police have made enquiries and satisfied themselves that there is a *prima facie* case against the accused, and at the first hearing are required to convince the magistrate that they have reasonable grounds for their suspicion. The Director of Public Prosecutions then takes charge of the case and makes numerous and careful enquiries. Whilst awaiting trial the accused is kept under special supervision by the prison medical officer, who frequently makes enquiries concerning the medical history of the accused. Almost invariably the defence is in the hands of solicitor and counsel who make such enquiries as appear necessary to them. If the trial results in a conviction leave to appeal may be granted by the Court of Criminal Appeal against the conviction on a question of law or fact, or mixed law and fact.

In special circumstances an appeal may be made to the House of Lords on any point of law which the Attorney General certifies to be of such importance that it is desirable to have the highest decision on it. Further, the Home Office considers the case with meticulous care and a medical enquiry under the Criminal Lunatics Act, 1884, section 2 (4) is ordered by the Home Secretary if there is any doubt about the mental condition of the prisoner. At this enquiry the standard of insanity is not limited to the legal standard applied in the criminal courts but is the ordinary standard accepted by medical men in arriving at a diagnosis of insanity. The same applies in cases of mental defectiveness. Lesser degrees of mental abnormality are also considered and assessed. Moreover, an after trial enquiry is not restricted by the laws of evidence, and it is therefore possible to consider many matters which could not be presented to the court of trial.

GRADING

A Royal Commission in 1866 favoured the grading of murder.* The recommendation was made that the punishment of death should be retained for all murders committed with express malice aforethought, and for all murders in connection with the perpetration, or attempted perpetration of certain grave offences including rape, burglary or robbery, and that in all other cases of murder the punishment should be penal servitude for life, or for any period not less than seven years at the discretion of the court. It seems that the Commission recognized three degrees of murder. A Government measure restricting the definition of murder passed its Third Reading in the House of Lords on 13th July 1866, but the Government went out of office before it could be carried through the Commons.

In 1867 a Bill was introduced with the object of grading murder by enumerating the types which should be punished by death. It provided that in all other cases the punishment should be penal servitude for life. The Bill was withdrawn. Similar Bills passed the second reading in 1872 and 1874. In the three years 1876-8 Bills were introduced to grade murder into first and second degrees, and to reach a simpler form of gradation whereby all convictions for murder would be punishable as manslaughter unless the jury added to their verdict "with premeditation". The Bills were withdrawn. Again in 1882 a Bill was introduced which provided for the gradation of murder into two degrees, the punishment of death being reserved for the first degree and for the second penal servitude, or imprisonment

* For this and much that follows I am indebted to the Report from the Select Committee on Capital Punishment, 1930.

for any term permitted by law. Since then many Motions and Bills for the grading of murder have appeared but no change has been made.

Grading by definition is said to present extreme difficulty when drawing an arbitrary line between one degree and another. Indeed, it could hardly be otherwise since the definitions must necessarily consider many obscure and complicated matters concerning character, the regulating and co-ordinating force, and intelligence, the directing force of conduct.

Grading by indictment also introduces difficulties. Sir Archibald Bodkin in his evidence before the Select Committee said:

"If he is charged, say, with murder of the second class, how many cases are there in which, during the course of the trial, facts emerge to show that it was not murder of the second or third class but one of the most deliberate and brutal murders of the first class, and is that then to be changed?"

Grading by the Judge was not accepted by the Select Committee since it would depend "too much on the temperament and general attitude of the Judge" and would also empower him to give what "would substantially be the final decision, without his being able to take into account those considerations which often emerge afterwards in a full and general review of the whole case on the part of the Home Secretary." (Italics mine.)

Grading by the Jury was not acceptable to the Committee since the evidence before the Court is restricted to what is directly relevant to the proof of guilt, and excludes many important matters which are taken into account in exercising the prerogative of mercy. The Committee stated that such an innovation "would impose upon the jury in addition to a finding of innocence or guilt also that of blame and punishment."

Mark the fact that our actions usually follow the general pattern of our behaviour, and an offence may appear more criminal in this event, and less criminal if it is the reaction to an unusual experience which finds the offender unprepared to meet it. The professional burglar who kills to avoid arrest will usually appear more criminal than the immature lover who kills his sweetheart in a tempest of jealousy and despair.

It is also well to remind ourselves that our motives may be influenced by unconscious as well as conscious experiences, present and past. And although we have no statistical data to enable the unconscious element of criminal activity to be assessed we can hardly avoid the conclusion that it is sometimes due to the difficulty many persons find in adjusting themselves emotionally to their inner conflicts. It would be too much to believe that in such matters an anxious, and perhaps overburdened, as well as inexperienced jury could replace the practical experience and accumulated wisdom of the Executive.

Since juries are concerned with facts, and for the most part are inexperienced in assessing the imponderables which may be important in grading murder, it is difficult to believe that their findings would pass unchallenged. For example, in the not uncommon case of a man who has had intimate relations with a girl younger than himself and kills her as the result of jealousy, or some other reason, it is likely that at least some of the jury will believe that the man, being older than the girl, is more experienced in sexual affairs and worldly knowledge and has led the girl astray. But cases of murder of young women occur in which it becomes

clear that the girl is highly sophisticated, and her experience in sexual matters and general affairs so far in advance of her chronological age, that she is older and more practised in these directions than the man. The jury may be unaware of this, but many persons will consider that it may be sometimes right to add a marked discrepancy of this kind to other factors which make for clemency. But could a jury decide?

Could a jury equitably exercise a grading discretion even when the facts are clear? Would, for example, the usual prejudice against homosexual conduct prevent a jury from assessing without bias the degree of guilt of the man who kills his male paramour in an outburst of jealousy? Again, consider the well-known case of the Mignonette, in 1884, where *necessity* was introduced as a defence and failed. Three men and a boy escaped in an open boat from a shipwrecked yacht. After eight days without food the men killed the boy in order to eat his flesh. They were rescued by a passing ship four days later. On reaching England two of them were tried and convicted of murder. The jury considered that the impending starvation of the three men was probable and not inevitable. The death sentences were commuted and both men were shortly released.

In this connection it should be noted that juries sometimes add to their verdict of guilty a recommendation to mercy without knowing the previous criminal history of the offender. Past offences may throw a very different light upon the heinousness of the crime they have considered. There can be little doubt that grading by definition, indictment, judge or jury would replace modern elasticity by inequitable rigidity, and as the Committee state "limit the province of the Home Secretary and seriously invade the domain of the Royal Prerogative".

Grading by the Home Secretary. The Committee points out that the Home Secretary's exercise of the Prerogative is itself an elastic form of grading. They quote Sir George Grey, who had long experience as Home Secretary, and stated before the Commission of 1866:

"The power which there is now of reviewing all cases with reference to the circumstances, and communicating fully with the Judge who has tried the case and taking into consideration any representation or recommendation to mercy which can be made upon reasonable grounds, in practice reduces the number of executions and, generally speaking, supplies the want of classification."

LEGAL ASPECTS

Professor Kenny referred to the phrase malice aforethought as now "a mere arbitrary symbol". But he regarded it as "a convenient comprehensive term for including all the very various forms of murder which are so heinous that a homicide produced by any of them will be a murder." J. C. W. Turner recently discussing the "present obscurities and absurdities" of the phrase suggests that it should be substituted by "a clear and simple definition of the mental element required".

In a recent trial the jury were informed that:

"*Murder is unlawful killing with malice. What is meant by malice is an intention either to kill or to do grievous bodily harm. If, for example, a person strikes another upon the head with some heavy object, intending to do him grievous bodily harm, that is to say, seriously to interfere with his health and comfort, and in doing that dangerous act with*

that intent he causes the death of that person, he cannot be heard to say, 'I did not intend to kill' because if he intended to do grievous bodily harm and death results from that act done with that intent he is guilty of murder. That is what is meant by malice." (*Italics mine.*)

The chief medical interest in the archaic term malice aforethought lies in the fact that it directs attention to the state of mind of the homicide at the time of committing the crime.

It may be added that when reforms are proposed by learned societies, experts and others which require legislation to implement them, Parliament is assumed to represent the public who may be uninformed and uninterested in the matter. And different classes in society, as well as individuals in any class, may disagree among themselves as to the desirability of introducing special legislation to meet a particular situation. Although minorities may be sometimes right the fact that gradations of murder are not authorized by definition, indictment, judge, or jury appears to cause no anxiety or desire for change in the public mind.

A recent statement by Professor Hubert Winston Smith of Illinois University is relevant:

"The challenge of our times is to secure maximum illumination in advance of action; to strengthen fact finding mechanisms and to protect the purity of truth; to bridge the old gulf between illuminator and prime mover; to lay the ghosts of antipathy and aloofness which separate men and estrange them."

SOCIAL ASPECTS

As I see the matter Law is concerned with the ascertainment and interpretation of facts and with justice. Albert Harno writes: "The quest for truth and the quest for justice are prime motivations in law. Truth is the foundation, justice the superstructure." Medicine, always seeking after facts and their correct interpretation, is sometimes forced to act upon assumptions in the interest of a patient's health, and a tendency arises to overestimate their value. The limitations of this two-way diagnostic method may be misleading in a criminal trial unless the medical witness clearly differentiates between opinions based on facts and those which are assumed.

We frequently hear that we live in a mass age. Hermann Mannheim, writing as a lawyer, recently declared: "Criminal law has not yet become sufficiently aware of the fact that we are living not in an individualistic but in a mass age when everything has to be adapted to the use of mass methods." And one wonders whether this *ex cathedra* statement is wholly correct.

If it be true, and if "everything" includes the practice of medicine, we must be prepared to face the evils which will ensue when doctors are denied an individualistic approach to the diseases and difficulties of their patients. The assertion cuts across the time tested truth that it is important to treat the patient as well as his disease. It obstructs the doctor who is primarily concerned with individuals who are ill and whose outer contacts are limited by their illness. It belittles patient and doctor.

Indeed, the assertion goes further. It attempts to suppress the work and experience of lawyers, the executive, doctors, sociologists, and others who are

concerned with the individualistic treatment of delinquents and criminals. It also disregards the consequential social wastage.

And here Christianity and Medicine join hands. The Bishop of London has recently enquired, "... Where shall we find such tremendous emphasis upon the importance of the individual as in Christianity?" Is it not probable that the denial of a religious valuation of this kind will have sinister effects? For practical experience confirms the view that a high moral standard, and a sincere religious education, are weighty factors in the formation of character and in the prevention of crime.

The findings of clinicians, toxicologists, pathologists and psychiatrists may assist in grading murder. The psychiatrist, with whom these observations are immediately concerned, notes the effect on behaviour of various degrees of intelligence and will-power, of emotion and temperament; of character and personality and of abnormal mental states. And since everyone of us differs from his fellows the psychiatrist should be interested and well informed generally, and able to secure the co-operation of others by virtue of his ability, sincerity and clear judgment.

This demands a wide angle of approach, and disturbing situations arise if social, ethical, economic and other factors are disregarded.

In this connection consider euthanasia, suicide and infanticide. Cases arise where a relative suffering from an incurable and painful disease is destroyed by a kinsman in order to prevent further misery. Even if euthanasia is legalized at some future date, and even if the crisis in moral values continues, we cannot doubt that this method of relieving distress should be optional.

Significant differences of opinion arise in cases of suicide. The Bishop of London quotes Canon Peter Green, who discusses the right to commit suicide in the case of a person who is aware that he is afflicted with a painful and incurable disease. The Canon states:

"In such circumstances might not both Church and State allow a man, under due safeguards and precautions, to end his life painlessly? Many men every year commit suicide to escape lingering agony. But they do it in a spirit of angry revolt against God; they die without the consolation of religion, they lose the whole of any insurance they have made for their wife and children; they shock their loved ones, and outrage public opinion."

He suggests that in such a case a man might be permitted to make a sworn declaration that he desires to end his life at once in some painless manner. He would be enabled to settle his affairs, to say farewell and receive the last rites of the Church. On the other hand Dr. Wand considers that:

"In Canon Green's presentation of the matter the individual is expected to take the initiative, and that would appear to me to be far too great a responsibility for anyone to lay on his own shoulders. In adopting such an attitude it is probable that Canon Green does not represent more than a small proportion of Anglican opinion. . . ."

Dr. Wand compares the Canon's view with the opinion of a standard Roman Catholic authority and quotes from the *Handbook of Moral Theology*, in which Antony Koch and Arthur Preuss express judgment as follows:

"To hasten death artificially by the employment of anaesthetics when all hope of recovery is gone can be regarded as permissible only if the drugs employed for the

purpose do not entirely deprive the sufferer of consciousness. No man should be robbed of the capacity of acquiring merit in the hour of death."

This statement may be unconvincing to some and Dr. Wand comments:

"The notion of acquiring merit is not one that is very familiar to Anglican theologians, nor am I quite at home with the idea that such critical importance should be attached to a person's last moments on earth."

He recognizes cases in which a man has not only the right but the duty to endanger his own life for the sake of others, or for an even greater purpose. If personal experience fails, history provides many examples of this kind. Indeed, can there be any doubt that the degree of heinousness varies considerably in crimes of self-murder?

Until comparatively recent years there were still some who were unable to appreciate the full effect of normal emotional states, and insisted that suicide was always the result of insanity. But severe emotional tension is not necessarily abnormal, and their view was liquidated time and again in the criminal courts when the medical evidence was scrutinized in cases of attempted suicide following murder. Many grades of mental depression influence behaviour and can be differentiated without entering the realm of diagnostic casuistry, and many grades of excitement and other emotional states affecting behaviour can be demonstrated apart from mental disease: for example, love and hate, jealousy and revenge.

The general as well as the psychiatric position may be more complex when the survivor of a suicide pact is on trial for murder. For this highly emotional offence is likely to be influenced by the disturbed mental state of the partner, and by suggestibility—itsself the result of various subjective and objective factors. It is significant that the Penal Codes of some countries reduce this offence to manslaughter.

The fact that in certain circumstances the killing of a newly-born child by the mother is reduced to manslaughter by the Infanticide Acts, 1922 and 1938, is also noteworthy.

Suicide, suicide-pacts and infanticide, as well as many other homicidal crimes, are associated, as already indicated, with emotional stress. The prevalent psychological atmosphere at the trial of the survivor of a suicide-pact, or of a deserted woman who has committed infanticide, may cause those taking part to temper their judgment with sympathy and leniency. This may be all to the good. It exemplifies the importance of treating the individual offender.

PSYCHIATRIC ASPECTS

It is unnecessary to consider in detail the criteria required to establish a verdict that the accused is "guilty but insane", or that he is insane on arraignment and "unfit to plead". Although the latter applies to the mental condition of the accused at the time of the trial it frequently represents a more profound degree of insanity at the time of the crime than the former. Other cases arise in which the standard of insanity present satisfies the psychiatrist that the homicide is certifiable under the ordinary Lunacy Law. And early mental disease may be accountable for, and throw light upon, the crime and require consideration.

In consequence at least four degrees of murder associated with insanity emerge.

Three gradations appear when the crime is associated with mental defectiveness—imbecility, feeble-mindedness, and moral defectiveness. Further the psychoneuroses and various states of psychopathic personality introduce degrees of culpability not amounting to legal irresponsibility but apparent to the psychiatrist.

The defence may consider it necessary to disclose the minor forms of mental abnormality at the trial. Not only because they influence conduct, but because without this information the jury may not have a complete picture of all the facts which tend to favour the accused. In this event a better understanding between lawyers and doctors will be promoted in the criminal courts if the medical witness, without equivocation, distinguishes between the conceptions of medical culpability and legal irresponsibility, and refuses to accept the view that they are necessarily coextensive.

The jury are concerned with insanity, and are not sufficiently equipped to assess minor degrees of mental abnormality. The matter, however, may be important to the Executive when considering the effect of the sentence. But obviously the heinousness of a murder, and the exercise of clemency may depend upon other matters which may coexist or be independent of psychiatric factors. For example, the evil of a man who carefully and deliberately plans to murder another in order to obtain his possessions may be very different from that of the lover who kills his rival in a moment of intense provocation.

The many features which may require assessment when grading murder are not considered in detail here. Unless the offender is suffering from insanity or other mental disorder there seems to be no reason to think that a psychiatrist, without special and long experience of homicidal crime, has any particular contribution to make in the matter. Certain facts, supported by the clinical histories of homicides I have examined are of general application.

Viewed broadly murder is usually the result of reasoning or emotion or a combination of both. The reasoned murder is seen when a man calmly and deliberately kills his victim for gain and carefully plans to avoid detection. A man in a comfortable position, with a good home, wife and children, took an elderly woman into his house as a paying guest. She had rather unpleasant habits but had accumulated money and property which he coveted. In return for the promise of an annuity the man obtained all her possessions, and in order to cancel his liability coldly and deliberately planned her painful death by poison administered over several days.

Shortly before, another poisoner came under observation, charged also with murder. He was a hardworking, rather introverted, professional man whose extravagant wife occupied much of her time in gaiety, neglecting him and spending more money than he could afford. He turned to his secretary, a quiet and younger woman, for sympathy and affection and poisoned his wife painlessly with a narcotic drug.

In this country political murder is almost unknown, and poisoning is regarded as a particularly malignant form of murder. But even here there may be gradations, and some of us who were acquainted with both of these men were agreed that the callous premeditation and cruelty of the former were more evil than the fortuitous response to emotional frustration of the latter.

If it is agreed that the reasoned murder generally is the most criminal, it may also be accepted that gradations of unpremeditated murder will to some extent depend upon whether the accompanying emotional factor is usually praiseworthy or detestable. Love and unselfishness, possessiveness and protectiveness, anxiety and fear, having survival value and being within the personal experience of the majority are generally esteemed. Jealousy and selfishness, avariciousness and cruelty, hatred and revenge, being socially destructive and only experienced in minor degree, if at all, by the average man are censured. If a tense emotional situation connected with an estimable factor result in murder it may be more easily condoned than crime the result of a factor which is in itself blameworthy.

Many emotional factors such as provocation operating with various degrees of force, and in different combinations, may present different degrees of heinousness, and illustrate the importance of ascertaining the details connected with the crime.

Apart from the above, and other personal matters, such as age, degrees of murder may be affected by objective factors. Events which occur before, at the time of, or after the crime may have grading significance.

Before the crime. Consider the case of a married man, aged 32, who left regular employment in order to avoid arrest for forgery and theft. He accompanied a prostitute to her flat and strangled her to obtain her money. A mean and cruel murder appeared in a worse light when it became known that he had previously killed another prostitute some years before, for the same reason, and escaped conviction.

Or take the case of a single man, aged 22, who was in regular and well paid employment. He had previously delivered goods over a considerable period of time to a man who lived alone in an isolated house and was known to carry about large sums of money. Determined to obtain some of this the homicide gave a false but circumstantial account of his proposed movements to his landlady and associates in order to mislead them if enquiries were afterwards made about his absence. He left his lodgings early one morning taking with him a revolver and ammunition. After a journey of some hours he reached his victim's house, shot him dead and robbed him.

Contrast with the above the following: a sober, industrious mechanic, aged 31, divorced his wife and later met a woman who lodged in the same house. They became lovers and lived together for two years. She then left him and for several weeks cohabited with another man. Afterwards she lived first with one and then the other, and there was some reason to believe that she also had relations with other men. For three months before the murder the couple lived together. During a more than usually violent quarrel the man cut her throat and killed her, and at once told the police what he had done.

At the time of the crime, one of the commonest factors in operation and leading to grading is provocation, usually involving physical assault if a reduction from murder to manslaughter is justified. Degrees of provocation less than this may be apparent and not only influence a jury to add a recommendation of mercy to a verdict of guilty of murder, but also arouse a considerable amount of public sympathy for the prisoner. It is clear that the degree of provocation, and the grading, may be affected by the length of time elapsing between the provocation and the retaliation. But without making fine distinctions, in this matter alone, at

least three gradations appear in association with gross, medium or less significant degrees of provocation.

The decisions of the Court of Criminal Appeal and of the House of Lords in Beard's case, together with the subsequent criticism thereon need no medical comment here. But Meade's case will be remembered in connection with the effect of alcohol upon intent. And if the jury decide that at the material time the accused was so drunk that he was incapable of forming the intent required by law to establish the crime of murder and find him guilty of manslaughter, they are in fact, and within a narrow limit, recognizing degrees of murder.

The combined effect of different degrees of provocation and of drunkenness operating at the same time may overwhelm control and different degrees of heinousness result.

When the motive for murder is two-fold, a crime may seem to be particularly evil, and some observers may think that there is a difference between, say, the man who rapes a woman and at the same time kills her in overcoming her resistance, and the man who robs as well as rapes the woman he kills.

The fact that the murder was committed in the presence of others, excluding accomplices, in 17 cases (2 being insane) in a series of 150 sane and insane murderers examined by me, seemed to have no distinctive bearing upon the malignity of the crime except a determination to carry out the intent regardless of consequences. The crimes were usually the result of passion and lacked the calm deliberation of some gainful murders.

Insanity may be suggested if death results from a multiplicity of wounds or from the application of successive methods any one of which would effect its purpose. But, in fact, it is almost equally probable that in either case the accused will present no other mental abnormality than an intense emotional disturbance. As the result of a quarrel a man killed his nagging wife by striking her over the head with a hammer, by manual strangulation, and finally by tying a stocking tightly round her throat. He showed no evidence of mental disease or defect before trial, or after during the many years I observed him.

Many wounds may be inflicted or several methods applied in quick succession and may afford no evidence that the causal emotional condition was more prolonged than usual. But they do suggest a high degree of determination on the part of the attacker which is sometimes increased by the courageous resistance of the person attacked.

After the crime callous and cautious conduct or unusual sequelae may indicate degrees of criminality. Two men with bad criminal records murdered an old man who owned a small general shop. After referring to the method by which they made a preliminary investigation of the premises from outside, one of them described the manner in which they entered and beat the man to death. He added that he "wished it had been a bigger job; it was not worth doing for the small amount of money" they obtained.

A middle-aged man had served several sentences of imprisonment for failing to pay the maintenance due to his wife under an order of the court. He killed her, and took elaborate precautions to suggest that she had left the district. He also dismembered the limbs and decapitated the body and buried the whole with lime in the cellar of the ruins of a bombed building in the area which was under

his supervision as a fire-watcher. Four days after the deceased was last seen alive a fire occurred in the ruins during the night. It was not due to enemy action, and it was not reported by the husband, who was on duty there as a fire-guard, until it had been alight for about two hours, although there was ample opportunity to detect it at an early stage. The burnt remains of the wife were accidentally discovered several months later and identified after a patient police and medical investigation, which led to the arrest, trial and execution of her husband.

Combinations of abnormal mental states occur and require assessment. A hawker, aged 33, left school in Standard VI but followed no regular employment afterwards. He had been convicted several times for shopbreaking, theft and other offences. There were no convictions for violence or any sexual offence. He was found by an experienced medical officer to be mentally subnormal and a psychopathic personality. During one sentence of imprisonment psychotic symptoms appeared. He was unnecessarily anxious about his health and there was some reason to believe that he suffered from transient aural hallucinations. The symptoms disappeared under treatment. He rather obstinately believed, however, that the police were unfair to him. But this is not an uncommon belief among persistent offenders and is an easily understood explanation for their failure in life. It is often no more than a self-protecting device enabling the offender to project his wrongdoings on to the official representatives of social order, thereby raising himself from the position of an enemy of society to that of a victim. It is not necessarily an indication of insanity.

He was married but frequently quarrelled with his wife and left her on many occasions. He served in the Army at home for about 18 months during World War II and was discharged on medical grounds. The army psychiatrist diagnosed mental subnormality and psychopathic personality.

He later entered a small shop in a large city during the business hours of the day, and twice struck on the head with a jemmy when her back was turned to him, the elderly woman who was serving him. He then bolted and barricaded the shop door against entry. As the woman was groaning he struck her two savage blows on the face with the jemmy and killed her. He washed his hands and left the weapon behind, taking with him the small sum of money he found on searching the shop. After visiting a public house he attended a dog race meeting. He was interviewed by the police a few days later but gave them an untrue account of his movements at the time of the crime. A few weeks afterwards he broke into a warehouse twice, and on the second occasion was arrested and charged with doing so. He was allowed bail and again broke into the same warehouse, and was arrested on the premises. He was detained in custody to await trial on these charges and then confessed to the murder. His statement left no doubt about his guilt. A defence of insanity was not raised at the trial for murder and he was sentenced to death. The crime was unprovoked, he was not in want of money; it was committed with ferocity and some amount of premeditation. Facts connected with the crime together with his subsequent conduct, and the result of the Statutory Enquiry ordered by the Home Secretary, left no doubt that his mental condition had deteriorated and that he was insane. The diagnosis was confirmed by prolonged observation, following the respite.

Other considerations. In a paper read before the Medico-Legal Society in 1935,

I stated that in a recent series of 200 murderers who were examined by me, and were not insane or mentally defective, 48 per cent confessed to the crime before or shortly after arrest. A personal study of the men and their histories led to the conclusion that occasionally the confession was an act of atonement, and this was also sometimes the reason why the accused pleaded guilty at the trial. The atonement as a praiseworthy gesture was apparent in the following cases.

Although defended by eminent counsel, a man insisted on pleading guilty to the murder of his drunken and nagging wife. The plea was not accepted by the judge, and on the facts being presented to the jury a verdict of manslaughter was returned and the accused was sentenced to a short term of penal servitude.

A homicide wrote to his wife after being sentenced to death suggesting that it would be a handicap to her if the sentence was commuted as otherwise she might find someone else to make her happy and look after the children. In passing sentence the judge observed: "It may be you think that by taking the course you are taking (i.e. pleading guilty to murder) you are making some sort of expiation; that you may have in your mind some idea that what you have done will enable you to have mercy hereafter."

The difference between premeditated murder due to reasoning and deliberation, and unpremeditated murder the result of intense emotional response to a particular situation varies with individuals, and, of course, emotion differs in degree at different times in the same individual. Moreover, this may depend upon the manner in which he is affected at the material time by chance circumstances. Society rightly insists that although we may be unable to control these factors, we must control the consequential reactions as well as our dispositions and temperaments.

Pedantic disputes between the supporters of the doctrines of determinism and free-will have no place in the practical problem of grading. At the same time the importance of the inherited causal factors of disposition and temperament cannot be denied. Neither can the importance of the early years of life in the formation of character be neglected. Experience takes us further, and establishes the fact that even in later years we may be profoundly influenced for good or ill by our associates, and often fail to realize what is happening. It also reminds us that the development of character is progressive and should be continuous.

It is frequently said that the mental condition of the man who commits murder is abnormal at the time. In cases of insanity, mental defectiveness, or minor mental disorder the abnormality is a pathological deviation from the mental condition of the so called normal man. In many other cases it is no more than a transient deviation from the man's usual self, and is associated with excessive instinctual activity, excessive emotional tension, lessened control, and disregard for social and ethical values. In a few cases the crime expresses the character of the criminal, and is neither the result of a pathological deviation from the normal nor a temporary deviation from himself. Perhaps we may go further and suggest that, other things being equal, these criteria represent a rising scale of culpability.

SUMMARY

Informed opinion has generally been opposed to the view that the crime of murder should be graded by definition, indictment, judge or jury. It has been

for the most part content to leave the assessment to the Executive with its power to order enquiries to be made in regard to matters which may favour clemency. The degrees of murder which emerge from a study of the general factors are outside the scope of this paper. But the manner in which clemency is exercised is shown by the fact that during the years 1929 to 1938 the number of men reprieved equalled the total executed.

In cases of insanity executive action depends upon the psychiatric assessment. In cases of minor mental abnormality, ranging from near normal to near insanity, different degrees of culpability as judged by medical standards appear, but the departure from the normal may be insufficient to justify executive action. This is not a medical matter. As cases approach normality the public welfare becomes increasingly important. Only the Executive can decide when it becomes paramount.

Important advances have been made in recent years in the psychiatric grading of murder due to mental abnormality. But it seems unlikely that the near future will provide a scientific and standardized grading of the many general and psychiatric imponderables involved, applicable to all cases and capable of maintaining the present equitable balance between public safety and humanely directed clemency.

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XVII

THE SIGNIFICANCE OF PERSONALITY IN MALE MURDERERS

INTRODUCTION

IN a paper read before the Medico-Legal Society in June 1947 I stated:

"It is frequently said that the mental condition of the man who commits murder is abnormal at the time. In cases of insanity and mental defectiveness, or minor mental disease, the abnormality is a pathological deviation from the mental condition of the so called normal man. In many other cases it is no more than a transient deviation from the man's normal self, and is associated with excessive emotional tension, lessened control and temporary disregard for social and ethical values. In a few cases the crime expresses the character of the criminal, and is neither the result of a pathological deviation from the normal nor a temporary deviation from himself. Perhaps we may go further and suggest that, other things being equal, these criteria represent a rising scale of culpability."

The observations of some modern writers lead to the conclusion that discussion on these matters is overdue. To be profitable the discussion must be limited, and this essay is deliberately restricted to male murderers. For the Infanticide Acts, 1922 and 1938, reduced the number of women convicted of murder and made their separate consideration unnecessary here. Manslaughter is also excluded because the offences widely differ and range from near murder to near accident.

The importance of the subject is evident. In the five-year period, 1915 to 1919, the annual average of murders of persons aged one year and over known to the police was 90. The figure was 150 in the five-year period, 1941 to 1945. It is difficult to believe that the increase is unrelated to the mental, moral and social upheaval caused by World War II. For the present social and spiritual chaos is a formidable factor in producing crime in many directions.

Consider an extract from the report of a Governor of a Borstal institution published in the Annual Report of the Prison Commissioners, 1946:

"I believe that the generation with which we are dealing and will have to deal in the next years has but the faintest conception of what is meant by honesty, truth and uprightness. Honesty is regarded as outmoded, truth is a virtue only when it cannot be denied, and uprightness a form of stupidity preached by those who clearly suffer from a narrow-minded conception of life. . . . As family life becomes slacker, education pays less and less attention to the verities, and work becomes a necessary evil rather than a main ingredient of a happy life. . . ."

At the same time the Chaplain of another Borstal institution reported:

"... religion appears to them (i.e. the lads) to be an entirely irrelevant subject. They cannot conceive that it has any important and necessary part to play in their lives. As a consequence they are devoid in the main of any real moral sense. Their upbringing and domestic surroundings, their companions and mode of life seem to have produced an entirely selfish philosophy."

The Bench, the Bar and the Public may only see a cross-section of an offender in a criminal court. The above extracts are the considered opinions of observers

who have opportunity to study adolescents in longitudinal section. The fact that the cross and longitudinal sections have so much in common is significant. Some of these lads will commit future offences, and it may be noted that of the last seventy-five male murderers examined by me thirty-one (41 per cent) had previous offences proved against them.

GENERAL OBSERVATIONS

The word personality is variously used by different writers. Eysenck quotes Allport who distinguishes fifty meanings. In general the definitions emphasize the superficial objective and apparent aspects, or the deeper subjective and less tangible qualities. Personality here may be regarded as the integration of the various inherent qualities and environmental experiences which make up the individual as a whole and cause him to think and act in a particular manner. Sir Cyril Burt defines it as "The entire system of relatively permanent tendencies, both physical and mental, that are distinctive of a given individual, and determine his characteristic adjustments to his material and social surroundings." These adjustments or behaviour patterns are determined by intelligence, character, temperament and constitution.

The complexity of well integrated normal personalities as well as those who are malintegrated and abnormal is obvious. Normal patterns of behaviour are primarily subjects for study by the psychologist. Patterns associated with abnormal mental states are subjects for psychiatric investigation. The technique of the psychologist with his battery of tests may seem remote and ineffective in forensic situations. For he is mainly occupied with collecting and recording qualities under carefully planned conditions and with making generalizations. The psychiatrist, mainly occupied in carrying out an intimate clinical investigation, may be also at a disadvantage. For as Maberley, quoted by Thomson, points out: "Personality can only be judged subjectively by another personality, and the personality of the observer forms an essential and integral part of both the relationships and the judgment." Indeed, the opposing views of psychiatrists in the criminal courts often seem to be due to their personalities rather than to any difference in their ability to ascertain and interpret facts.

Academic abstractions may be misleading when used to interpret human activities, and in making their assessments psychologists as well as psychiatrists utilize intuitive methods in addition to their separate techniques. The intuitive approach is far from being casual if it is based upon wide experience and prudent judgment. And although we may be familiar with many factors which enter into the personality of the offender, we are necessarily forced to accept the intuitive approach when relating behaviour to the emotional tension which produced it. In the criminal courts we are not solely concerned with the defendant's response to a controlled laboratory test or series of tests, or even with the particular label attached to the disorder affecting him. These matters are important, but we are also concerned with ascertaining and assessing the relevant factors in the defendant's history, as well as the immeasurable impacts which singly or collectively affect him at the time he committed the crime.

Clark-Kennedy recently stated: "As a Science medicine deals with the physical

aspects of disease. As an Art it handles all the complexities of the human mind and the many shades of human personality. Medicine cannot wait until Science catches up and again and again it is necessary to act on empirical knowledge and experience destitute of scientific backing."

Lord Hewart referred to the Science of Law in the words of Edmund Burke: "Law is, in my opinion, one of the first and noblest of human sciences—a science which does more to quicken and invigorate the understanding than all the other kinds of learning put together." The Art of Advocacy frequently relieves the somewhat drab proceedings in a criminal court, and when practised by the Olympians is fascinating and instructive.

The significance of personality in male murderers is here studied from the clinical aspect, and no excuse is offered for a presentation which is related to the art of psychiatry. For it is clear that evidence is often more reliable when based upon ascertained facts than upon novel theories. It is also common knowledge that the facts disclosed in a criminal trial are occasionally in danger of being strangled by hypotheses which the theorists dispute among themselves.

MURDER AND MENTAL DISEASE

Murder by sane offenders occurs most frequently in the age group 21 to 30 years, being 44.8 per cent in 250 cases. Among 325 insane murderers 31.6 per cent occurred in the age group 21 to 30, and 31.0 per cent in the age group 31 to 40.

			<i>Sane</i>		<i>Insane</i>	
Age			Number		Number	
16-20	..	..	28	(11.2%)	21	(6.4%)
21-30	..	..	112	(44.8%)	103	(31.6%)
31-40	..	..	65	(26.0%)	101	(31.0%)
41-50	..	..	24	(9.6%)	47	(14.4%)
51-60	..	..	16	(6.4%)	33	(10.1%)
60 plus	..	..	5	(2.0%)	20	(6.1%)
			250		325	

The number of insane persons who commit murder is high. The most recent figures show that during the seven years 1939 to 1945 the number of persons tried for murder was 474. Of these 209 (44 per cent) were insane.

Sane as well as insane personalities can be classified into groups with a considerable degree of accuracy. Nevertheless, the individual offender must be considered as a unit, and special attention must be paid to his characteristic qualities and permanent tendencies, particularly those which conspicuously differ from the attributes of his associates.

We are not so much concerned with the peculiar tendencies of a certain group of sane or insane offenders as with the force and direction of the individual's emotional reactions. Consequently, generalizations which may be true of a particular group of mental diseases may be misleading when applied to a man who has committed murder. Limitations of space enable only a few generalizations to be considered here.

It has been rightly said that *the diagnosis of insanity in a case of murder is simplified*

if the accused has shown previous signs of mental disorder. But usually no reliable history of insanity or abnormal behaviour is obtained from the offender's family or companions. Evidence may have been unnoticed or carefully hidden from others by the man himself.

Case 1. Aged sixty-five. Single. A quiet, temperate, industrious introvert cut the throat of his landlady with a back-handed blow from a blade razor, and she immediately died. He at once attempted to cut his own throat before a mirror, but the razor edge was so blunted by impact with the woman's spine that he recovered. The deceased and her husband had befriended the prisoner and accepted him as a lodger when he was without accommodation. After a few months he became depressed and deluded. He believed that his landlady kept him in bed for two days when he was ill and nursed him because she was jealous and wanted to get his wages reduced. He believed that she gave him "a three-grade egg" to make him ill and that he had previously contracted scabies from eating a bad egg. He believed, apparently without reason, that she changed his underclothes for those belonging to someone else. He was only slightly disturbed at being sentenced to death, or at having killed his benefactress. But he sobbed and became intensely emotional when he referred to his only love affair with a woman he had not seen or heard of for forty years. There was no doubt that the mental depression and delusions had been present for a considerable time before the murder, but they were not recognized or their significance was not appreciated.

Case 2. A man aged twenty-three committed two murders. He had previously served a sentence of detention in a Borstal institution for a series of thefts, and had suffered from an attack of manic-depressive disease lasting for a few days during a sentence of imprisonment. He worked well in the Borstal institution but his future seemed uncertain. On being released he sadistically assaulted several women but evaded arrest. He was later charged with theft and was examined by an experienced psychiatrist. He was extremely reticent, but no evidence of insanity was obtained. He thereafter killed a young woman and before long a little girl. Both crimes were admittedly sadistic. He refused to allow a defence of insanity to be raised at the trial and he was sentenced to death. At the after trial medical inquiry ordered by the Secretary of State, he was persuaded with much difficulty to talk more freely about himself and his sadistic impulses. He wished to be executed as he said he was unable to control himself always. It became clear that he was unable to do so during a manic-depressive phase. It was also clear that the prisoner as well as his relations failed to appreciate the importance of his mood-swings. He was transferred to Broadmoor where over a period of years manic-depressive attacks were observed.

Some writers emphasize the fact that *the so-called "typically insane murder" shows a pattern in which an innocent victim is killed in a crude ill-planned manner for no rational or intelligible motive.* But many murders by insane persons are anything but typical, even if this word is rather loosely used. Often the motive is intelligible if ill founded, and the manner in which it is carried out may be carefully elaborated.

Case 3. An elderly company promoter who had been through the bankruptcy court a few years before the murder, as well as being the unsuccessful defendant in a libel action, believed that an elderly woman who had been his mistress at one

time had sexual relations with the man who was murdered, but had only once spoken to her for three minutes in the presence of a third person. He also believed that she indulged in a sexual orgy with her son-in-law, as well as having sexual relations with another man who knew nothing about her. He alleged that they were conspiring to blackmail him. These beliefs were undoubtedly insane delusions. They obtruded so insistently on his daily affairs that he used to break off when dictating a business letter to his secretary and discuss them with her. He carefully designed a cunning scheme to obtain evidence which he believed would make it appear that the murdered man was corresponding with the woman. He bribed with large sums of money some disreputable confederates to decoy the victim to the prisoner's house. As soon as the man arrived he was attacked and killed. Two days later his body was taken by car and deposited in the country several miles from the scene of the crime. The prisoner was suspicious, aggressive, dominating, plausible and persuasive. He was confident, determined, unscrupulous and ruthless in his dealings with others. He firmly believed in his own sanity, and refused to allow his mental condition to be raised as a defence at his trial. He was found guilty and was sentenced to death with one of his accomplices. The interest of the case lay in the elaborate planning of the murder which might have enabled the prisoner to escape arrest had it not been for an entirely fortuitous circumstance. There was no reason to think that the prisoner failed to realize the fact that he was placing himself in danger of being blackmailed by his accomplices. He appeared to be confident that he could deal with any later developments as they arose. This view was also supported by his past history. He was certified to be insane at the after trial medical inquiry and remained deluded until he died.

The fact that a crime is premeditated, the motive intelligible and sequential to premises which appear to be true until closely investigated, is not unusual in cases of murder associated with paranoia.

The close relation between personality and behaviour is a matter of common observation in daily life and may throw light upon the motive for murder. The psychiatrist endeavours to assess the motive for a crime in order to assist in determining whether the accused was sane or insane at the time he committed the act or made the omission. Although the insane murderer sometimes appears to be ignorant of the motive which actuated him, many normal persons also are unaware of the factors which sometimes cause them to act in a particular manner. Even if they pause to consider the matter they may discover that they can appreciate the emotion which aroused the act but fail to ascertain the reason which prompted it.

It is here, perhaps, that the science and art of psychiatry are particularly useful in combination in criminal situations, and when accompanied by practical experience and an unbiased approach. But however erudite the psychiatrist may be he dare not neglect to weigh every known fact and circumstance connected with the offence, and if dissatisfied diligently look for others. For example, the motive for the murder of a prostitute in the bedroom of a hotel by her associate was unexplained until it was learnt that she was strangled early in the morning when attempting to prevent him from stealing her purse which she had hidden under the mattress on her side of the bed. Another man in quick succession murdered

three prostitutes in their flats and robbed them. The bodies were mutilated and insulted in an ostentatious manner in order to lead the police to attribute the crimes to an insane sadist.

Mistakes may occur if the reason for a murder is assumed to be immediate. It may be the end result of a long series of events and be precipitated by an unexpected circumstance.

The suggestion that the insane murderer shows little evidence of any desire to avoid the consequences of his act has little diagnostic value. The same can be said of many murderers who are not insane. The behaviour of the insane as well as that of the sane offender immediately before and after the crime often fails to arouse any suspicion of mental disease or unusual mental stress. My case records show that in a series of 250 sane murderers in more recent years 125, or 50 per cent, confessed to the crime. Of 325 insane murderers the number was 215, or 66 per cent.

The fact that about 38 per cent of those suspected of murder commit suicide is no evidence for or against insanity. The view formerly held by many that suicide was inevitably due to mental disease is no longer so generally accepted. Henderson and Gillespie were impressed by the large proportion of cases of attempted suicide admitted to the Royal Infirmary, Edinburgh, and Guys Hospital, London, that had never previously seemed to require psychiatric guidance and control. In an analysis of 1,000 consecutive cases of attempted suicide who were under my care whilst on remand at Brixton prison for mental observation, only about one-fifth were certifiable as insane.

Many murderers who attempt to commit suicide shortly after the crime cannot be considered insane. This is not merely a matter of terminology. In some circumstances suicide may be preferable to the indignity of judicial execution, or the suffering involved in serving a life imprisonment. In cases of murder medical evidence should differentiate between an attempt at suicide due to mental disease and that due to a temporary emotional disturbance unaccompanied by any other indication of unsoundness of mind.

It has been said that *the details of a murder may afford a criterion for evaluating the sanity of the accused and establishing the desirability for expert psychiatric examination*. In this country the details of a murder are carefully scrutinized by the police, the prison medical officer, counsel for the prosecution and for the defence as well as by the judge and jury, and if conviction follows by the Secretary of State and his advisers, as well as by the Court of Criminal Appeal if an appeal is made. If the accused or his legal advisers do not call in a psychiatrist and the prison medical officer considers a second opinion is necessary before the trial arrangements are made and an examination and consultation follow. In this country the mental condition of the man accused of murder is most carefully assessed.

MURDER AS A TRANSIENT DEVIATION OF THE NORMAL MAN

A broad view of normality must be accepted before murder can be usefully considered from a practical point of view, or as a transient deviation of the normal man. At the present time when social life is becoming increasingly complex, some observers maintain the view that maladjustment itself is evidence of mental illness. They draw a rigid line between the adjusted and the maladjusted, and would have

us believe that any deviation from the former is enough to diagnose the individual as a pathological case requiring social workers, psychologists, psychiatrists and the rest to examine and pronounce their several opinions upon him. If this be so we cannot doubt that another group of scientists will be required to examine those who are so busy inquiring into the minor deviations of normal persons. Before long the second group of scientists may perhaps find major deviations of adjustment among their colleagues in the first group. Sooner or later it will become a delicate matter to decide who shall be the psychologists and psychiatrists to look after the other psychologists and psychiatrists.

This is not mere persiflage and in discussions on criminal responsibility, or legal responsibility in the wider sense, we must recognize with Burt the division between those who regard unusual behaviour in itself sufficient proof of a pathological and diseased or defective state of mind, and the more orthodox who recognize that although unusual behaviour may suggest the possibility it is not necessarily correct to assume that this is always the case unless the diagnosis is supported by direct and additional evidence.

It frequently happens that evidence which is based upon the assumption that all anomalous behaviour is due to mental disease travels in a circle. The behaviour of the accused was abnormal therefore he was insane; he was insane because the act was abnormal. It is hardly to be wondered that evidence on these lines receives unfavourable comment and that juries often refuse to accept it. For the gaps which occur in the reasoning tend to become filled with arrogations which are opposed to the known facts and do not require professional knowledge to assess them. It cannot be disputed that the careless evidence of some journeymen psychiatrists brings psychiatry in general into disrepute. It is also certain that the remedy lies with the psychiatrists.

I am here referring to medical evidence which is directed at the trial to excuse the crime. It may be advantageous to society as well as to the criminal to accept a wider view of abnormality when the treatment of the individual is considered. But even then caution is necessary before unsupported assumptions are accepted, lest the neurotic learns to rely still more upon his neurosis, and the psychopathic personality upon his antisocial disposition. The difficulty of deciding in borderline cases who is abnormal is constantly present. Fortunately in these matters others are called upon to balance the interests of society and the offender.

Look for a moment upon the discordant world about us. Reference is frequently made to the fact that owing to restrictive regulations and shortages in all directions almost everyone today is a law-breaker. If crime is evidence of abnormality as the extremists hold, there can hardly be anyone who is normal at the present time. But we are the same individuals as before with the same potentialities. We have not changed although circumstances have altered, and much crime today is not the result of the conflict between immature aims and natural standards of life, but between mature aims and confused standards. The frustrating organization of our lives today provokes emotional responses which appear as crime, and seem likely to persist until the frustrations are removed or our emotions dulled.

World War I demonstrated the truth that sexuality was less important, and aggressiveness and acquisitiveness more important than some believed. World

War II has taught us that maladjustment to social requirements frequently appears in normal persons.

Before we designate behaviour as normal or abnormal we must assess two variables, environment and personality. The former may be abnormal and the latter normal. The former may be normal and the latter abnormal. Moreover, how many of us gain a truer knowledge of ourselves by self-criticism which may be the most reliable method of obtaining accurate knowledge of the working of other minds? The psychologist may refer us to the mental mechanisms which affect our daily life, but the surest method for many of assessing what is in the minds of others may be the experiences of their own minds. For man is often more truly judged by his ambitions, desires and friends than by his occasional behaviour.

In recent years we have made considerable progress towards accuracy in estimating the personality of the individual offender and his relation to normality and abnormality. At the beginning of the century we were mainly preoccupied with his sanity or insanity. Today the scientific point of view embraces not only the offender's physical and mental condition and his freedom from or enslavement by disease, but also assesses his intelligence and educational abilities with a considerable degree of accuracy, and more generally his social surroundings and habits, his occupational capacity, and his eugenic, moral and spiritual dispositions. In the result we find the causes of crime are much more complex than was formerly supposed. And although we are far from solving many problems presented by crime and criminals we are no longer obliged to study them in a dark room.

Frankel observes: "To completely fathom the secret processes of the mind of a man which impels him to kill another human being has not yet been vouchsafed to even the most profound student of the mainsprings of human action." He quotes Dublin and Bonnzell, who state: "... the complexities of the problem are especially great, because we know that people do not act according to preconceived patterns. Deeds are not the result of rational processes, but are determined instead by all kinds of jumbled instincts, impulses and desires—conscious and unconscious—breaking through the inhibitions imposed by the individual upon himself or the external pressures exerted by the group of which he forms a part."

Murder is rather frequently due to an intensely emotional situation operating suddenly upon a man who has always behaved in a perfectly normal manner except for the few seconds in his life when the murder is committed, and whose conduct, closely observed for many years after the death sentence has been commuted to imprisonment for life, shows no deviation from normality.

Case 4. A mechanic, aged twenty-five, with an exemplary character lodged with a family living near his work. He fell in love with the daughter, a shop assistant, and they became engaged to be married with the consent of the girl's parents. As a result of the war she found other employment near home which brought her into close contact with the men employed by the same authority. The prisoner became rather jealous. The couple had a slight quarrel a few days before the crime but it passed over. The prisoner went twice on the evening of the murder to meet the girl and bring her home from work as it was a stormy evening. He did not find her and she did not arrive home until nearly midnight. Her explanations were unsatisfactory and he realized that there was something wrong.

He said that after a time the girl made advances to him and that intercourse took place. Later that night she told him that there was another man with whom she was friendly and that she intended to go out with him. She gave the prisoner no reason for encouraging him to have connection with her in those circumstances and they quarrelled. The girl, who slept with her mother, then went to bed, and the prisoner remained downstairs thinking over the situation. After an interval he called the girl down and a further discussion took place. The conversation became acrimonious, and rightly or wrongly he concluded that she had spent much of the evening with the other man, and had intercourse with him and invited the prisoner to have relations with her so that if she became pregnant the paternity of the child could be fixed upon him. As the quarrel reached a climax he went into the adjacent scullery and returned to the room with a chopper. After further conversation he struck her over the head with the weapon inflicting a fatal injury. He then struck himself on the head with it, one blow flaking off a portion of his skull. As soon as a doctor arrived to attend to the girl the homicide left the house and gave himself up to the police.

This man not only had an exemplary character but was affectionate, loyal, kind, thoughtful, upright and generous. His character seemed to be free from the little streaks of meanness which sometimes appear in the most ardent lover. He was liked and respected by all who knew him. He made no excuses for his crime and was sincerely grieved at the girl's death. His statements at the after trial medical inquiry amplified the facts disclosed at the trial. He was reprieved and remained well behaved, industrious and rational in conduct and conversation. He showed no evidence of psychosis, psychoneurosis or psychopathic personality. The crime was a transient deviation from his normal self and was due to excessive emotional tension, temporary loss of control, and an almost momentary disregard for social and ethical values.

In the following example, still within this group, the inciting cause was prolonged.

Case 5. A man, aged twenty-five, with a bad family history of mental disease left the Army on demobilization with a good character and non-commissioned rank. His parents were dead and he lived with his married sister and her husband. His relations and neighbours spoke highly of him. He became attached to a young girl but her father refused his consent to a formal engagement on account of her youth. The couple, however, saw each other frequently and were devoted to one another. They never quarrelled, and sexual intercourse occasionally took place, the man believing that if the girl became pregnant her father might feel it his duty to consent to the marriage. As time passed they became distressed at his continued refusal, and a few weeks before the murder the man attempted to strangle the girl. They spent the day of the crime happily together and in the evening returned to his lodgings. They sat in his room listening to the wireless and talked about their difficulties. When the girl got up to go home he put his hands round her neck and strangled her. She died almost immediately. His sister and her husband who had been to the cinema returned home shortly afterwards. He came downstairs and drank a cup of tea with them and appeared to be quite calm. He went to a brother who lived nearby and told him what he had done. They went back to the sister's house and awaited the police. He was sentenced to death and at the

Statutory Enquiry stated that he was afraid of losing the girl, and his attitude appeared to have been as much protective as possessive. He showed no evidence of insanity or minor mental abnormality. The crime was the result of prolonged frustration acting upon a man whose emotional balance was rather easily disturbed. His behaviour in after years was consistently good.

MURDER AS AN EXPRESSION OF PERSONALITY

The scientific study of criminals is based upon their personalities, but we lack information concerning the considerable number of offenders who evade arrest. We may believe that preventive measures often enable the personality to develop along new lines if the impacts which tend to produce antisocial behaviour can be directed to socially useful purposes. The probability that murder will be committed by personalities with certain predominant characteristics can be occasionally assumed with some degree of accuracy. Particularly in early schizophrenia and aggressive psychopathic personalities; less commonly in cases of ethical aberrant personalities and obsessive-compulsive states.

At the time of committing a murder of passion emotional tension reaches its peak, and immediate relief follows. The murderer for the moment does not apprehend the material consequences which result from the crime. But it is easy to exaggerate their importance. Medical men will attach some significance to the fact that in the great majority of cases a substantial gain in the prisoner's weight is noted between the date of arrest and the date of execution.

Society as well as the Law and the Executive are obliged to accept the view that self-control is a very real and important factor in suppressing our inherent tendencies. And whilst we recognize the fact that an analysis of this force involves subtle, complex and difficult questions we are generally content, for practical purposes, to leave the metaphysicians to speculate about its essential nature. Society like Medicine, cannot wait until Science catches up with its requirements.

Cicero quoted a passage from a speech by Archytas of Tarentum which is relevant. "... For when appetite is our master, there is no place for self-control; nor where pleasure reigns supreme can virtue hold its ground. To see this more vividly, imagine a man excited by the highest conceivable pitch of sensual pleasure. It can be doubtful to no one that such a person, so long as he is under the influence of such excitation of the senses, will be unable to use to any purpose either intellect, reason or thought. Therefore nothing can be so execrable and so fatal as pleasure; since, when more than ordinarily violent and lasting, it darkens all the light of the soul."

Some of the more critical and less suggestible among us, who throughout the years have been immediately concerned with crime and criminals, have taken exception to the dangerous doctrine that is sometimes dictated to parents by those who regard the so called freedom of children as necessary for mature development. We are asked to believe that the instinctual tendencies must be allowed free expression in order to avoid future social maladjustment. But the ordinary sensible parent intuitively learns with the aid of custom and tradition to what extent the instincts can be allowed to operate, and when to check their activity, so that the child can develop an appreciation of the rights of others and his own

duties to society. Ignorant, lazy and foolish parents who allow their children full freedom of expression at all times and in all directions deserve the punishment which falls upon their law-breaking offspring in later years. Self-expression must be controlled before self-adjustment is attained. Practical parents and teachers are generally more shrewd instructors than the exponents of a particular cult. The lesson must be learned during childhood and adolescence. For sooner or later the untaught pupil finds the force of circumstances a harsh and even cruel preceptor.

It is generally agreed that our emotional tendencies, like physical and other mental qualities, require trained exercise for their full development. But individual growth is restricted by inherent factors, and education however well conceived and carried out cannot force development beyond the limits which nature allots to each one of us. This conclusion is occasionally suggested in murder trials by juries who add to their verdict of guilty a recommendation to mercy. It is more appropriately recognized by the Home Office when the sentence of death is commuted to penal servitude for life.

Exaggerated aggressiveness and acquisitiveness; jealousy, whether the result of a more or less subjective tendency to unfaithfulness, or a sense of weakness and inferiority; and hatred, the combination of anger, fear and repulsion, when operating at the same time with exaggerated self-regard, are frequent causes of murder. But we have no reliable measurement of emotional responses which enter into personality and can only estimate broadly the degree of emotion present in an individual in a particular situation. And just as some cases of major and minor mental disorder give rise to homicide so do we frequently find exaggerated emotional reactions and extreme selfishness operate as immediate causes of murder.

Case 6. A middle-aged man murdered his wife who was several years older than himself. At the time of their marriage she was a widow with two children and a certain sum of money. She was described by those who knew her as a clean, honest, sober and industrious woman. The prisoner on the other hand was intemperate and spent his money in public houses and on other women. He sold articles belonging to his wife, clothing, jewellery and the like to obtain money for his debauched pleasures and struck her when she complained. Soon after the marriage he stole a considerable sum of her money, and was charged with the offence and bound over at the magistrate's court. His stepdaughter who lived in the district found her mother unconscious on one occasion as the result of a blow from the prisoner. On the day before the murder he sold some of his wife's clothing, and again on the morning of the murder. A quarrel resulted in the evening and he strangled her. Later that night he was drinking with women in public houses, and on the following day was spending money freely until arrested in the evening. He at once admitted that he had committed the crime and had lost his temper. He was selfish, cunning, untruthful and violent. He showed no evidence of mental disease or defect or minor mental abnormality. At home he was a quarrelsome bully, outside the home a debauched spendthrift. The murder was an expression of his personality.

Case 7. A middle-aged married man was reported to be a good and reliable worker, sober, conscientious and intelligent. But he had a violent temper and had lost one position on account of this. On the present occasion he was under the direction of a man younger than himself. After an altercation between them which

was followed by an inquiry he received a mild penalty and deliberately killed his accuser before several witnesses. The dispute was entirely the prisoner's fault and he used insults to further his purpose. Here, too, the crime was not due to mental disorder or a transient deviation of the man's normal self. It was the outcome of his personality.

INTERMEDIATE PERSONALITIES

If the three broad groups of personalities outlined above are diagrammatically placed at the angles of a triangle the intervening spaces can be filled with cases which shade away from one angle to another.

Case 8. A middle-aged single man with a bad family history of mental disease was in financial difficulty. There was some reason to believe that this was partly due to the fact that he had been blackmailed by a man who became aware of his association with a married woman in the past. He had been engaged for many years to marry a woman older than himself. She occupied a trusted position with a business firm and looked after her invalid mother. She had saved a considerable sum of money and was not aware that the prisoner was insolvent and was being forced to give up his house. She was said to have been a calm, happy, contented, unselfish, domesticated and faithful woman, and they appeared to others to be a quietly devoted couple. They had agreed that the marriage should not be consummated, and she probably served the prisoner as a mother substitute. When the woman's mother died there was no obvious reason to delay the marriage and the date was fixed. The prisoner was seeing her almost daily and told her and those concerned that he had made all the arrangements for the wedding. This was untrue, and on the evening before the wedding day he suddenly attacked and strangled the woman when they were alone in his house. He immediately made a determined attempt at suicide and received severe injuries. The prisoner was a kindly, well disposed and temperate man with a rather academic turn of mind. But his personality was inadequate. He constantly showed a persistent inability to face adverse realities, or make decisions and take appropriate action in difficult situations. He followed the line of least resistance hoping that his difficulties would somehow and at some time solve themselves. There was no reason to think that there had been any quarrel, or that the crime was due to any fear of impotency. As the wedding day approached he became more harassed and his judgment became impaired. He saw only two alternatives. Either to confess to the woman that he was in debt and had deceived her and might be turned out of his house at any moment, or end both their lives. In his confusion he was unable to face the former alternative and was obliged to fall back upon the latter. It was not surprising to find that he was able to regard the murder and subsequent trial with an unusual degree of detachment. He repressed the worst details of the crime because he was unable to face reality.

This crime was partly the result of a temporary deviation from the man's normal self. It was also the result of his inadequate personality. Different observers might fairly place him differently on the line joining those two angles.

SUMMARY

The mentally disordered person may be unable to control his behaviour or alter his personality. A man within the bounds of normality suddenly confronted with

an intense emotional situation may be overwhelmed by its unexpected novelty. Many men have time and opportunity to amend their antisocial tendencies and prefer not to do so. If the male murderer is considered on these lines a preliminary view of his personality emerges, and some knowledge of his culpability. But a diagnosis alone cannot determine the criteria of legal responsibility or the degree of culpability as it appears to the psychiatrist.

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XVIII

JURIDICO-LEGAL ASPECTS OF ALCOHOLISM*

OFFENCES committed by alcoholists may be considered under three main headings:

I. *Offences against Intoxicating Liquor Laws.*

- (a) *Simple drunkenness:* Being found drunk in a highway or other public place whether a building or not, or on licensed premises; Licensing Act, 1872, and similar provisions in Local Acts.
- (b) *Drunkenness with Aggravations:* Refusing or failing when drunk to quit any premises or place licensed under the Refreshment Houses Act, 1860, when requested. Being guilty while drunk of riotous or disorderly behaviour in a highway or other public place whether a building or not; Licensing Act, 1872. Refusing or failing when drunk to quit licensed premises when requested; Licensing (Consolidation) Act, 1910. Similar offences under the Metropolitan Police Act, 1839; the Town Police Clauses Act, 1847; the Merchant Shipping Act, 1894; and many others.

II. *Offences against the Highways Acts.*

III. *Offences in which alcohol is a contributory factor.*

In the first two main groups the defence may be directed to disprove the fact of drunkenness. In the third group the defence may attempt to prove that the accused was so much under the influence of alcohol at the material time as to prevent him from knowing what he was doing or forming the intent to commit the crime of which he is charged.

STATISTICS

From 1920 to 1932 there was a continuous decline in the number of persons found guilty of drunkenness—simple or aggravated. The figure for the year 1932 was 33,100. From 1932 there was a continuous increase and the figure for 1938 was 52,661. From 1938 onwards there has been a continuous decrease and in 1945 only 19,368 persons were found guilty. No figures are available to show the number of offences against the Highways Act which are due to alcohol, or the number in which it contributed to the commission of other crimes. The Criminal Statistics show that during the last thirty years the number of cases of simple drunkenness dealt with by the Courts of Summary Jurisdiction has always been less than the number of cases of drunkenness with aggravations. In the year 1945 the figures were, simple drunkenness, 8,396; drunkenness with aggravations, 11,256.

I. OFFENCES AGAINST INTOXICATING LIQUOR LAWS

It is probably true to say that the diagnosis of simple drunkenness is less often contested in a court of law than in cases of drunkenness with aggravations. Indeed,

* Read before the Society for the Study of Addiction, 20 April 1948.

the evidence of simple drunkenness is frequently demonstrably clear to the lay^y and even more so to the trained police officer. But in disputed cases m^d evidence may be important and confirm or rebut the police opinion. Com^y experience leaves one in no doubt that simple drunkenness is more a nuis^a than a menace to society, and many individuals so affected arrive home af^c convivial evening without requiring the attention of the police.

Any of the usual physical signs or symptoms of drunkenness may be du other causes. The medical evidence, therefore, becomes more important furred tongue, odour of alcohol in the breath, hiccup, full pulse, suffused c^a conjunctivae, dilated and sluggish pupils, muddled speech, unsteady gait, muscu. incoordination of the upper extremities, together with defects of memory, reaso and judgment, loquaciousness, aggressiveness or sullenness are present at the same time. Unusual, offensive or grotesque behaviour may be particularly important since it can be corroborated by others present at the time of examination, and may be compared by the magistrate with the ordinary behaviour of the ordinary man in similar circumstances.

Those who are occasionally arrested for drunkenness, as well as the hard core of those who are frequently arrested, present personality abnormalities which have been more or less recognized throughout the ages. The fact that the alcoholic does not cease drinking after the degradation of appearing in a police court shows an emotional deviation from the normal. For no healthy individual wishes to injure himself physically, mentally or socially. The alcoholic often does not know, or refuses to know, the harmfulness of his addiction. If he has some insight into his condition he may be, nevertheless, unable to adopt any constructive measure of rehabilitation. The problem is complicated by the economic, racial, ethical and personal factors which may be difficult to assess and adjust.

Legal, social and administrative measures in our own time have reduced the number of alcoholic offenders. And perhaps the residue, because they are unaffected by these benefits, are more difficult to return to emotional maturity and mental stability. Although the alcoholic disregards the fact that social rights demand in return from all the acceptance of social responsibilities, the time has long since passed when drunkenness was regarded simply as a vice. Some may think with Hyde and his colleagues that heavy drinking, as an emotional outlet and form of enjoyment, is acceptable among the poorest classes, and makes outlets such as neurosis less necessary, with the result that the poorest group are no more affected by neurosis than the well to do.

It seems well to bear this in mind if the social tension and disruptive chaos of to-day increase the amount of future drunkenness. This may happen, for no one can say to what extent our present and unusual sobriety is voluntary or the result of enforced austerity. We see about us, at home and abroad, formerly law-abiding citizens reacting to the violent changes of our time with antisocial and often illegal activities. This light hearted refusal to accept individual or group responsibility seems to be due largely to the fact that so many people consider their rights are unnecessarily restricted. If this is so, and there can be little doubt in the matter, let us remember that emotional frustration and alcoholic narcotization are age-long allies.

II. OFFENCES AGAINST THE HIGHWAYS ACTS

A former Metropolitan magistrate, Everard Dickson, stated in a paper read before the Medico-Legal Society in 1935 on the Medico-Legal Aspects of Drunkenness:

"It is the evidence of what is at the time observed that is the best evidence as to the defendant's condition and the evidence as to what happened that is the best evidence as to the defendant's ability to exercise proper control of his car."

Many examples might be offered to support these views. At the Perth Sheriff's Court in 1941 a man was charged with driving a motor-car while under the influence of drink to such an extent that he was incapable of having proper control. He was seen about 8.15 p.m. to enter his car being under the influence of alcohol and to proceed to drive along a main thoroughfare. He had only gone a short distance when he collided with a dyke at the side of the road. The police were called and prevented the man re-entering his car. At the police station he spat out his artificial teeth and tried to replace them pushing the lower denture in the upper jaw and vice versa. Although he was unable to close his mouth he insisted that that was the proper way for the dentures to fit, and these facts were submitted to prove that the defendant was much under the influence of drink. It is not surprising that the evidence of two doctors who examined the man confirmed the police diagnosis.

Under the Road Traffic Act, 1930, an offence is committed by "any person who, when driving or attempting to drive or when in charge of a motor vehicle on a road or other public place, is under the influence of drink or drug to such an extent as to be incapable of exercising proper control of the vehicle." It is for the prosecution to prove not only the influence of the drink or drug but that the defendant was thereby rendered incapable of the proper control of the vehicle. The problem is very different here to that presented in cases of simple drunkenness. A Committee of the British Medical Association has defined intoxication in the following terms: "The word 'Drunk' should always be taken to mean that the person concerned was so much under the influence of alcohol that he had lost control of his faculties to such an extent as to render him unable to execute safely the task in which he was engaged at the material time."

This definition, although appropriate, for example, in motoring offences or in the case of a letter-carrier who while in possession of a mailbag or a postal packet, or whilst employed as a letter-carrier, may be convicted under the Post Office Act, 1908, of what is there described as "an act of drunkenness" seems inappropriate in many other offences. The term "under the influence of drink" introduced in the Road Traffic Act, 1930, has perhaps done little towards simplifying the problem of diagnosis in the less marked degrees of intoxication. The declaration by Greer, L.J. in *R. v. Preslee* (20 Crim. Appeals, 95) that "Drunk" is what an ordinary reasonable person would consider as such has much to commend it in many cases that come before a court of law, but is not necessarily satisfying in some running down cases.

A. Baldie has conveniently summarized the effects of alcohol on driving efficiency as follows: (1) Diminished powers of attention and judgment; (2) Faulty recognition and definition of moving and stationary objects and signals; (3) Im-

paired power to estimate speed, position, direction, and relation to other traffic; (4) Inaccuracy and slowness or absence of response to emergency stimuli; (5) Diminished power and inco-ordination of motor performance; (6) Impaired capacity for steadiness and safe control in emergency.

It may be fairly claimed that, apart from the immediate facts associated with a charge of drunkenness, medical opinion is important if it is based upon the history of the defendant and a series of carefully observed signs and symptoms, together with scientifically applied chemical tests showing the amount of alcohol in the breath, saliva, urine or blood.

This is not the occasion to survey at length the extensive literature on the subject. A brief reference to some of the work done is however necessary. R. N. Harger, E. B. Lamb, and H. R. Hulpieu described a quick chemical test of expired air for the determination of alcohol. It is claimed that the test shows good correlation between the concentration of alcohol in the blood and the amount of *alcohol accompanying 190 mg of carbon dioxide in the breath*. R. Fabre and E. Kahane carried out investigations to test the alcohol content of the saliva and to compare it with that of the blood. They found that normal saliva of individuals who have taken no alcohol for 48 hours contains only insignificant traces. The curve of disappearance of the alcohol from the saliva is about equal to that in the blood. Perhaps both tests have more scientific interest than practical value or general applicability in forensic situations.

H. W. Haggard, L. A. Greenberg, R. P. Carroll and D. P. Miller, as well as others, find that the concentration of alcohol in the urine is an accurate index of the blood alcohol concentration at the time the sample is collected for examination. A close correlation of the blood and urine concentration is shown when the blood is measured directly and the urine half-hourly. But a considerable error may be introduced when the urine has been retained for longer than an hour. H. Blothner found that slightly higher blood and urine curves were present in persons with diabetes insipidus than in normal persons. A marked decrease in blood and urine alcohol levels was noted when patients took food before drinking alcohol. It may be added that Harger, Lamb and Hulpieu agree with Southgate and Carter that intoxicated subjects frequently cannot, or will not, produce a specimen of urine when asked to do so.

In 1932 Heise and Halporn found that persons whose blood contained 0.10 per cent of alcohol required half as long again to stop or signal as they did before taking alcohol. Writing in 1936 Sir William Willcox stated: "When the percentage of alcohol in the blood is above 0.1 per cent the decision as to whether a person is drunk according to the definition of the British Medical Association Committee must rest on evidence regarding the special tests applied. It can be safely said that if there is no alcohol in the blood the accused is not under its influence. It can also be said that if the percentage of alcohol in the blood is under 0.1 per cent the person accused is probably not under its influence to such a degree that his faculties are impaired in any way."

In 1938 the National Safety Council of Chicago decided that a standard of 0.15 gram of alcohol per 100 c.c. of blood, or of 0.02 gram per 100 c.c. of urine is inconsistent with the safe driving of a car. It recommended that prosecutions should be undertaken when that proportion was reached. At about the same

time W. Jetter pointed out that the incidence of acute clinical intoxication in so called normal individuals at low alcohol concentrations in the blood was much higher than was the incidence at similar concentrations in a larger group consisting primarily of alcoholists.

Sydney Selesnick states that blood, as the medium for analysis, appears to offer the best opportunity for giving the alcoholic suspect as fair an appraisal as possible of his degree of alcoholism, in that the amount of non-alcoholic oxidizable material in the blood is negligibly small, the blood alcohol concentration always reflects the degree of alcohol saturation at the moment the blood sample is obtained, blood is always available, and its extraction does not necessitate the active participation of the subject.

Against the general use of establishing a blood alcohol standard relating to the term "under the influence of drink" is the degree of tolerance acquired by the chronic drinker. Moreover, even with low concentrations of alcohol in the blood the liability to make mistakes may be increased and the speed of reaction to mechanical tests reduced.

Gilbert Forbes has recently stated: "Although there is a close correlation between the concentration of alcohol in the tissues and the clinical condition, the fact of individual susceptibility is so important that it is highly improper to establish a fixed level of blood or urinary alcohol above which an individual should be judged unfit to drive. . . . If any blood alcohol concentration is to be accepted as absolute proof of intoxication in the legal sense, it is essential that it be one at which experience has shown that no man, regardless of his inherent or acquired tolerance, would be judged clinically fit to drive a car. Such a figure would have to be so high that many grossly intoxicated individuals would escape detection if the clinical tests alone were used." He has devised a method of recording the reaction times to visual and auditory stimuli which he suggests may be used as additional tests to support the conclusions of the clinical examination.

Careful observers have considered that an individual suspected of being under the influence of alcohol is in reality always more drunk than he appears. Under the stress of violent emotion a drunken individual may for a time at least appear sober. It is also said that after emotional stress such as may result from a road accident, the taking of a moderate degree of alcohol may cause an individual suddenly to appear drunk.

The importance of a negative blood alcohol test is evident. The *Sunday Times*, 6th November, 1938, reported the case of a defendant who was charged at Cambridge with driving a car whilst under the influence of alcohol. He was unable to perform the usual tests for drunkenness and was arrogant and argumentative. A subsequent blood test for alcohol proved negative and the defendant was discharged as it was concluded that he was suffering from carbon monoxide poisoning and was not under the influence of drink.

Although the effect of certain drugs on the blood alcohol curve is clinically important it need not be considered here. But since many diabetic patients give themselves insulin, it may be noted that in large doses it has been found to cause a reduction in the rate of absorption and is followed later by an unusual rise in the blood alcohol curve.

It is a principle of English Law that an accused person cannot be compelled

to produce evidence which would convict him, and he cannot be compelled to submit to breath, saliva, urine or blood tests undertaken for this purpose. It may be noted also that the Criminal Evidence Act, 1898, made a person charged with an offence a competent but not compellable witness for the defence. But the failure of an accused person to give evidence may not be the subject of comment by the prosecution although the judge, in his discretion, may comment upon such failure (*R. v. Rhodes*. L.R. (1899) 1 Q.B. 77).

Bernard M. Mamet, in 1945, stated that no legislation had been passed in the United States of America providing for the compulsory taking of specimens for alcohol concentration estimation. But a Bill had been prepared for presentation to the United States Congress to require motorists in the District of Columbia charged with operating a vehicle while under the influence of any intoxicating liquor to submit to a chemical test to determine intoxication. Many will agree with Mamet that wide publicity of such legislation would have a marked prophylactic effect on those who drink and drive. The enforcement of the statutes and the prosecution of violators would be expedited, and scientific evidence would be accessible. In Sweden the police are entitled to take a blood test if they suspect a motor driver is under the influence of alcohol. Should the test show a percentage of 0.15 in the blood the driver is considered to be in such a state as not to be able to drive a motor vehicle without endangering the public, the maximum punishment for which is imprisonment for a year.

The Criminal Justice Bill now before Parliament does not propose any action on these lines. It seems clear that many individuals accused of being under the influence of alcohol will not submit to a chemical test if they know that they are not required to do so. Further, if consent is necessary the question arises at what stage of intoxication can it be obtained? For at a certain point the accused will be too mentally confused to know and understand what is implied by his consent.

Early estimations of the blood alcohol content in a dead body may be valuable. But with the onset of putrefaction are said to become less reliable. If, therefore, a man is charged with murder or manslaughter and declares that he was defending himself from an attack or was provoked by the accused when intoxicated, a blood concentration examination of the dead body, like the post-mortem findings, may be important for the defence or the prosecution. An interesting case (*Commonwealth v. Capalbo*) was decided by the High Court of Massachusetts in 1941. A man went into a saloon where he met another. Both had been drinking considerable quantities of beer, and an argument ensued. The daughter of Capalbo heard the argument and told her father. He took a loaded revolver and went to the men. The defence contended that when Capalbo told them to go home one became abusive, drew a knife and lunged at him. In consequence Capalbo shot and killed the man. The State affirmed that the contention of the accused that he acted in self defence was a fabrication, and introduced evidence to show that the deceased was in such a state of intoxication that he could not have committed the threatening acts alleged. A chemist of the Boston Police Department was allowed to testify that he had taken chemical tests of the blood of the deceased and had determined the percentage of alcohol present. He considered that the amount of alcohol would cause an average man of the deceased's

age to be definitely under the influence of liquor and "that in all probability the deceased was unsteady on his feet." The High Court held admission of such evidence was not error.

In forensic situations the patient's blood must be identified as it passes from the man to be tested to the laboratory and through the test until the last stage of the oxidation process is completed, in order that no dispute thereafter arises as to the authenticity of the blood examined.

III. OFFENCES IN WHICH ALCOHOL IS A CONTRIBUTORY FACTOR

Alcohol is occasionally taken deliberately by criminals to enable them to commit crime by releasing their emotions from the restraint of reason and judgment. They disregard the fact that the alcohol may not only impair their deftness but also make them unduly reckless. Obviously no figures can show how many criminals drink for this purpose. Personal experience leads me to think that the number is inconsiderable.

Although no large scale figures are available to show the number of offences which are directly or indirectly due to alcohol, or to what extent it varies from time to time, there is no doubt that alcoholism is frequently associated with sexual and aggressive offences. In an analysis of 150 cases of indecent exposure examined by me twenty-three years ago 9 were attributed to alcohol, and an alcoholic element seemed probable in a few others. Of 1,000 cases of attempted suicide examined during the years 1907 to 1910, 360 were associated with alcohol. Other observers have also found a high proportion. In a recent important psychiatric and statistical study Dahlgren found that nearly half of the male patients (44 of 94) who had committed attempted suicide at Lund and Malmo abused alcohol.

In recent years I have been impressed by the fact that alcohol is less frequently related to murder among the offenders found guilty of this offence and psychiatrically examined by me than in the early years of the century. I am not here referring to manslaughter. But Matheson found only three cases in which alcohol was a direct causative factor among 55 women received into Holloway prison charged with homicide between the years 1935 and 1939.

Many offences are assumed to be due to alcohol on insufficient grounds. There is often no evidence to show that the accused would not have committed the act had he been sober. By paralysing self-control alcohol reveals the true nature of man. The primitive instincts and impulses which are ordinarily inhibited by social conventions and other influences are among the first to be released, and drunkenness was referred to formerly in courts of law as acquired madness. It was not accepted as an excuse for the commission of any crime, and an offender under the influence of intoxication could derive no benefit from a madness which was voluntarily contracted. Later, legal opinion altered and certain results emerged.

It may be noted here that to be criminally responsible for his acts a person must be of competent age and sane, and possess some degree of freedom from coercion. In England a child under the age of 8 years cannot be guilty of any offence, and under the age of 14 he is presumed not to have such knowledge and discretion as to make him liable unless the contrary is proved by the prosecution. On the

other hand it is for the defence to put forward and substantiate a plea of insanity.

In cases of insanity, when the law is strictly applied, it must be proved that the accused was at the time of the crime suffering from a defect of reason due to disease of the mind which prevented him from knowing the nature and quality of his act, or from knowing that it was wrong. In less serious crime the law may be satisfied with evidence to show that the accused is certifiably insane. A person is not excused the consequences of his crime or rendered unfit to plead at the time of the trial merely because he does not remember committing the illegal act. In the Nuremberg trial of the German war criminals in 1946 counsel for Rudolf Hess put forward the plea that his client's alleged loss of memory made him unfit to be tried. But Sir David Maxwell-Fyfe pointed out that in charges of manslaughter due to a motor-car accident the accused is not unfit for trial because he can say, as a result of the accident, that his memory fails as to the exact charge. Hess abstained from alcohol but the same principle is applied in cases of loss of memory due to drunkenness.

Instances occasionally arise when no moral blame is attached to drunkenness. For example, if it has been brought about by malicious companions, or by the administration of alcohol for supposedly adequate medicinal reasons. Kenny pointed out that in these cases an offence committed by the intoxicated man may involve him in no punishment since it has been preceded by no intention to do something that was illegal.

Even the ordinary culpable drunkenness may have the effect of diminishing criminal responsibility in that it may disprove the ordinary inference which otherwise would be attributed to the conduct in question. Thus it may produce such a mistake of fact as will in itself excuse an otherwise unlawful act. For instance, a man's drunken confusion of mind may lead him to think that others are threatening to assault him and he may attack them in supposed self-defence (*Reg. v. Gamlen*. 1.F. and F. 90 (K.S.C. 54)).

On occasion the intoxication of the defendant may be taken into consideration as a circumstance to show that the act was not premeditated. And as in murder the killing must be committed with malice aforethought—that is to say, with a deliberate mind and formed design—the intoxication may disprove the act was premeditated and intended, and suffice to reduce the crime to manslaughter. It may also disprove an intent to cause grievous bodily harm or the intent to commit a felony, and show that a man who has broken into a house had no felonious intent and so has not committed burglary.

The law on the subject was ultimately defined by the House of Lords in 1920 in the case of the Director of Public Prosecutions *v.* Beard (1920. A.C. 479) when earlier decisions were reviewed. Beard in furtherance of rape on a young girl killed her by having his hand over her mouth and his thumb on her throat. He was found guilty of murder and the House of Lords upheld the decision as the murder arose in the course of what was in itself a felony, viz., the rape, and there was no evidence of a state of drunkenness sufficient to negative the intent to commit rape. The House of Lords declared that: (1) Insanity, whether produced by alcohol or otherwise, is a defence to the crime charged; (2) Evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into consideration with the other facts

proved in order to determine whether or not he had this intent; (3) Evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mind was affected by drink so that he more readily gave way to such violent passion does not rebut the presumption that a man intends the natural consequences of his act; (4) The test of criminal responsibility is not the same in cases of drunkenness as in the case of insanity, and upon a plea of drunkenness where insanity is not pleaded, the jury should not be asked to consider whether, if the accused knew what he was doing, he also knew that he was doing wrong.

Drunkenness may be a symptom or a cause of insanity. Dr. Norman and I read papers before this Society in 1936 showing the relation of drunkenness and manic-depressive disorder. And my case books contain examples of crime due to delirium tremens, hallucinatory alcoholic insanity and alcoholic dementia.

It may be added that if an accused person becomes drunk at a time subsequent to that when the offence was committed, it may occasionally help towards his acquittal by rebutting some supposed evidence of his having committed the act with which he stands charged. For, as Kenny pointed out, it may explain acts subsequent to the crime which are such as would raise suspicions of guilt if they had been done by a sober man. As when on being arrested he has made confused or contradictory statements, or has refused to make any statement at all. The converse occasionally arises. A man suffering from alcoholic hallucinations gave himself up to the police for incest as he heard imaginary voices in the streets and in cinemas accusing him of this crime. His daughter, aged 13, was seen and admitted the incestuous relations. The man was brought to trial and convicted.

If an accused person is insane and refuses to give any reasons for his offence the action of alcohol may remove the higher control which has enabled him to disguise his insanity when sober and also disclose the reason for his action. The late Dr. James Scott, an astute and experienced observer, used to refer to the case of a man who came under his observation charged with firing a loaded revolver in circumstances which strongly suggested insanity. This, however, careful observation and examination failed to disclose. The man was convicted and sentenced to a term of imprisonment, during which he did not appear to be insane. Shortly after his release from prison he entered a theatre and fired several shots indiscriminately at the audience. He was arrested and had been drinking, and was so much under the influence of alcohol when he again came before Dr. Scott as to enable him to expose the man's delusions which had caused the shots to be fired on both occasions.

A somewhat similar case came under my observation. A man was sentenced to a term of imprisonment for smashing a large plate-glass shopwindow. On release from prison he promptly smashed the same window again, and came under my observation for the first time. His behaviour whilst awaiting trial was normal, and apart from a certain reserve, his demeanour and conversation showed no evidence of insanity although this was suspected. He was again convicted and sentenced and later was reported to have behaved normally throughout his detention. On being released he took alcohol and smashed the same window for the third time. When he came under my observation on this occasion the effect of the alcohol had not passed off. He was depressed and confiding, and I was able

to ascertain the delusions which caused the offence. I considered they had been present for some years and I reported to the court that he was insane and irresponsible.

A brief attack of insanity, whether due to alcohol or other cause, intervening after the crime is no excuse in a court of law if it is recovered from before the trial. A married man and a single woman fell in love with each other. They decided to live riotously together until the man's capital was spent in drinking and gaiety and then die together. After several weeks they went to a lonely place by mutual agreement and when the woman was drunk her lover shot her through the head and killed her. He took more drink and before he could shoot himself became unconscious some distance from the dead woman. He was found by the police and was arrested for being drunk. On regaining consciousness he informed the police of the murder and took them to the body. He was arrested and came under my observation. He went through an acute attack of delirium tremens and had entirely recovered before his trial at the Assizes. He was found guilty of murder.

CRIMINAL SANCTIONS

Criminal punishment inflicts loss or suffering without enriching any individual, although in cases of fines and confiscations it may cause a payment to be made to the State. The English law advances in the direction of recognizing the necessity of adapting the punishment to the individual criminal, or category of criminals, rather than to a particular category of crime. Thus different sanctions are adopted for children, adolescents and adults; for first offenders and recidivists; for the sane, insane and mentally defective. The Criminal Justice Bill, introduces sanctions which can be applied to the non-sane non-insane offender.

The Inebriates Act, 1898, gave courts power where an habitual drunkard is convicted on indictment for an offence to which drunkenness is a contributory cause, to order detention in an inebriate reformatory. It also gave the courts power to detain in an inebriate reformatory an habitual drunkard four times convicted of drunkenness. The Act fell into disuse owing to its failure to effect any more useful purpose than the segregation of a group of inebriates who were a nuisance to society.

It may be noted in passing that the Swiss Penal Code of 1937 provides that an habitual drunkard whose offence is related thereto may be committed by the court to an institution for inebriates after the sentence. The court may also suspend the sentence and order his commitment to an institution for inebriates if the convicted person requires it. The habitual drunkard shall be treated in an institution exclusively designed for this purpose or connected with a house of correction.

Our courts deal with offenders found guilty of drunkenness, simple or aggravated, by a sentence involving punishment—fines, or imprisonment without the option of a fine; by a sentence involving mitigated punishment—the offender being released on entering into a recognisance with or without a probation order to come up for judgment if called upon; and by a sentence of dismissal which involves no punishment at all. In the year 1938, the last for which figures dealing with this matter are available, the sentences in order of frequency were: fined

(42,481), dismissed (7,119), imprisonment without the option of a fine (2,076), recognisances without probation (330), recognisances with probation (239).

Fines are a comparatively minor method of punishment. They are necessarily discretionary as to the amount, but a maximum is generally fixed when the penalty is imposed by Statute and it must not be unreasonable. It may be doubted to what extent fines are useful in reforming the alcoholicist—other than by impressing him with the fact that drunkenness is disapproved. It is likely to be ineffective if the offender remembers that private drunkenness is no offence. However, fines may have a limited use in non-punitive directions.

Imprisonment in 1938 was imposed in both sexes up to a month. The sentences exceeding a month were numbered on the fingers of one hand.

Probation is seldom used for either simple drunkenness or drunkenness with aggravations. The great differences which occur in the general use of probation in cities and towns for adult offenders is surprising. In the Metropolitan Police District in 1938 the proportion was 24 per cent; in Liverpool, 3 per cent. In Wakefield the proportion was 42 per cent; in Rotherham, 2 per cent. The proportion of cases in which use is made by Courts of Summary Jurisdiction of probation decreases continuously for every age group after the age of 17 years.

The Departmental Committee on the Social Services in Courts of Summary Jurisdiction stated: "Probation is still sometimes regarded as a method of treatment applicable only or mainly to young offenders. Reference to the statistics will show that many courts rarely use probation for adult offenders. While it is true that probation is especially appropriate for young offenders, particularly where removal from home is not found necessary, practical experience has shown beyond doubt that it can be applied successfully to adult offenders of all ages and under suitable conditions."

It is generally agreed that the success of the probation system depends upon the selection of the cases placed under supervision. Many alcoholists belong to the psychic inferior group of psychopathic personalities and are to be differentiated from the alcohol addict proper. They are distinguished from their fellows by mental inferiority which may, or may not, be accompanied by intellectual inferiority, and is mainly shown by defects of character which are persistent and adversely affect their social adjustments. In many cases the condition appears to be essentially constitutional in origin, but at times the environmental factor may have particular significance. These alcoholists lack will-power and resourcefulness, they avoid making decisions and refuse to accept responsibility. They follow the line of least resistance and if unaided are incapable of dealing with situations which require sustained effort. They lack the force of character which enables the ordinary individual to deal with the ordinary difficulties of life. They are unable to stand alone and turn to others for assistance and advice. But they are suggestible and often ill-advised in selecting their friends and associates. Their personalities are negative and lack the positive attributes which ensure success and social adjustment. Those who do not become alcoholists may become petty offenders, some join the ranks of the socially inefficient, many float in their surroundings provided they have someone constantly at hand to assist them. I believe that alcoholists of this group may be helped by an understanding probation officer as well as by medical, religious and other forms of treatment.

On the other hand the abnormality of the alcohol addict proper of the psychopathic personality group appears to be more causal than casual. Addicts of this type may be forceful, aggressive, capable and successful leaders of men. Many are eager for responsibility and the limelight, they are independent and confident. Some take alcohol in order to raise their affective tone to the normal level, others to raise it from the normal to a euphoric height. And if in course of time their resistance to control their intake is reduced crime may result. But their independence and aggressiveness remain and make them less suitable for probation than the psychic inferior group.

We are here dealing with a non-sane non-insane offender and the Criminal Justice Bill, provides that if a court of law considers it is expedient to make a probation order, and is satisfied on medical evidence that the mental condition of the offender requires and may be susceptible to treatment but is not such as to justify his being certified as a person of unsound mind under the Lunacy Act, 1890, or as a defective under the Mental Deficiency Act, 1913, the court shall have power to include in the order a requirement that the offender shall submit for a period not exceeding 12 months to treatment by or under the direction of a duly qualified medical practitioner. The treatment may be as a voluntary patient under section 1 of the Mental Treatment Act, 1930; or as a resident patient in an institution or place approved for the purpose of the section by the Minister of Health; as a non-resident patient at such institution or place as may be specified in the order; or under the direction of such duly qualified medical practitioner as may be specified.

In a personal communication Dr. A. E. Carver stresses the importance of medical treatment in conjunction with probation. He informs me that formerly the Court Missionaries, especially those attached to the London Courts, made great use of Caldecote Hall as a place of residence under a probation order. Many men were thereby saved from the unnecessary disgrace of receiving a punitive sentence.

Professor G. Dahlberg examined statistically the records of alcoholists referred to the Official Temperance Boards in the town of Malmo between 1929 and 1938. Apart from the Swedish setting it is noteworthy that those alcoholists who were sent to an institution when first reported to the Temperance Board have done better than those who were warned or put on probation. This is all the more important since these may be assumed to have been the most recalcitrant cases. Dahlberg considers that vigorous rather than lenient measures should be adopted whenever possible, and that a special institution for short term treatment gives the best results. He does not favour long periods of inpatient treatment—in his view two months is sufficient. The special penal institution recommended by Hubert and myself for the treatment of non-sane non-insane offenders would seem to be an appropriate institution in this country for the more criminally minded of this class.

Courts frequently remand or postpone sentence in order that an offender may be examined and reported upon by the Prison Medical Officer. The Criminal Justice Bill provides for the examination of an offender on bail and making a condition of the recognisance that he shall undergo medical examination. At the same time the court shall send a statement of the reasons for which the court is

of opinion that an inquiry ought to be made into his physical or mental condition, and of any information before the court about his physical and mental condition.

We are entitled to believe that an advance in the treatment of alcoholists who break the law, as well as other offenders will result from the provisions of the Bill.

CIVIL CAPACITY

This paper is intentionally limited to the law-breaking alcoholist. But important medico-legal questions arise in the civil courts in connection with the alcoholist's civil capacity and the conjugal rights of the married partner. It is only necessary to say here that in spite of intoxication an individual may enter into a valid marriage or make a valid will, or bind himself by a contract, if he is sober enough to know what he is doing and no improper advantage is taken of his condition.

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XIX

"THE END IS FORBIDDEN....." *

INTRODUCTION

THE passing years almost inevitably cause us to consider from time to time the progress made in the particular branch of work that has claimed our attention and endeavour. The retrospect may recall to some the aged leader who viewed the Promised Land from the summit of Mount Nebo, knowing that he was denied entry and the final consummation of laborious years. And many may accept the words which head these observations, and admit their significance for those whose labours are necessarily unfinished at their journey's end.

Only a little reflection is required to confirm their frequent truth. For we see in medicine, natural science, the exact sciences, law, religion and elsewhere, men controlling affairs, directing thought, conducting operations or occupied in research, striving towards ends which, when reached, are only the beginnings of the next advance.

Here one may pause for a moment to recall the difference between disappointment, the unfulfilment of a purpose, and discontent, the sacrifice of happiness upon the altar of desire; between the moralist who with detachment construes the values of life and calmly deliberates upon its hazards, and the unenlightened egoist who learns with bitterness the emptiness of his sacrifice and the fact that he leaves the world as naked as when he entered it. And whereas none can avoid the disappointments which challenge all of us from time to time, only a weakling will submit to the companionship of a persistent discontent.

MEDICINE

But there is more, work may be forgotten. The anatomical illustrations of Bartholomeus Eustachius reposed in the Vatican for a hundred and thirty-eight years before they were discovered. We owe their publication to Lancisi, physician to Pope Clement XI.

The history of appendicitis is relevant. Hale-White records the fact that in 1839 Richard Bright and Thomas Addison published the *Elements of Practical Medicine*. Under the head of Inflammation of the Caecum and Appendix Vermiformis is given a clinical description of the disease which concludes with these words . . . "A hardness or tumefaction are soon very evident to the hand in the part first affected; this continuing, general symptoms of peritonitis take place and terminate fatally, but under careful treatment the inflammation remains circumscribed, and becomes even less extensive assuming the form of a local deep-seated abscess. The threatening symptoms of peritonitis subside; the tumefaction just above the

* When I was a King and a Mason—in the open noon of my pride,
They sent me word from the darkness—They whispered and called me aside.
They said—"The end is forbidden." They said—"Thy use is fulfilled,"
"Thy Palace shall stand as that others—The spoil of a King who shall build."
The Palace, R. KIPLING.

crest of the ileum on the right side is more and more obvious to the touch, and gradually shows a tendency to point, the constitution still suffering severely. In process of time it either opens of its own accord, or is assisted by the lancet, and a discharge of ill-conditioned pus follows which . . . continues for many weeks and the patient often sinks at length from exhaustion." A naked eye description of the post-mortem appearances follows. Writing in 1935, Hale-White stated: "About forty years ago the profession thought that some of its members had discovered appendicitis and discussed whether it was a new disease although the *Elements of Practical Medicine* had given a perfect description of it before most of the supposed discoverers were born."

Work may be separated in the minds of others from its origin, and priority may be given to a later investigator who has lighted upon the same facts. The sequel is not always as inspiring as that recorded by Hale-White concerning the systematic investigation of the lymphatic glands by Sir Samuel Wilks. It will be remembered that Wilks found a more or less generalized chronic enlargement of the spleen in which were white masses, and occasionally also smaller white masses in the liver. He believed that this was a hitherto unrecognized disease, and the Medical Journals of the time agreed with him when he showed specimens at the Pathological Society. But when he came across a statement by Bright that Hodgkin had described enlargement of the lymphatic glands and studied the original paper, he considered that Hodgkin's priority in discovering the condition was established and called it Hodgkin's disease, by which name it is known to all of us to-day.

Consider the neglect which is sometimes opposed to research by uninspired contemporaries, and the manner in which discoveries have been ignored because the thought of the time was not sufficiently advanced to appreciate the value of new facts or ideas. The well known story of scurvy is illuminating and will bear repetition in this connection. Sir George Newman quotes Admiral Hawkins, whose death is said to have taken place in 1595, and who declared that he had lost 10,000 men from scurvy in twenty years. In 1617 John Woodall, surgeon to St. Bartholomew's Hospital and surgeon-general in the East India Company, supplied the answer in his book *Surgeons Mate*, and recommended "two or three spoonfuls of lime juice and fast after it two hours." In 1753, that is 136 years later, Dr. Antony Addington, one of the physicians to King George III, wrote an *Essay On The Scurvy*, and in 1823 Sir Gilbert Blane, the eminent physician to the Fleet, referred to the pamphlet and said it appeared that Addington "had not the least knowledge of this specific for it, so slow is the practical knowledge upon any subject." Blane referred to the fact that in the year 1730 and 1740, and again in 1750 and 1760, the College of Physicians were asked to recommend a remedy for sea-scurvy, and "in neither case did they recommend lemon juice so obscure was the knowledge of it." James Lind, physician to the Royal Naval Hospital at Haslar, in 1754 declared that the prevention of scurvy "consisted of putting the seamen into warm, dry, clean and well ventilated surroundings, and giving them . . . oranges or lemons or their juices." It was not until 1796, that is 179 years after Woodall's discovery, that lemon juice was prescribed for all naval ratings by Admiralty regulation. The loss of life caused by the delay was enormous.

Mark another striking delay in accepting a new idea. In 1637 the College of Physicians reported to the Government on the health of the people, and suggested

the provision of a commission or office of health. But it was not until 1919, nearly three hundred years later, that the Ministry of Health was established.*

Sir Humphrey Davy discovered the anaesthetic property of laughing-gas in 1799, and Faraday that of ether inhalation in 1818. The latter was also demonstrated by J. D. Cameron in 1822, by J. Jackson in 1833, and by Wood and Bache in 1834. Nevertheless their observations remained scientific curiosities until 1842, when C. D. Long at Jefferson performed an operation under ether. This neglect occurred in spite of the work of Henry Hill Hickman, who produced unconsciousness in animals by the exclusion of air with the inhalation of carbon dioxide gas and later nitrous oxide. In 1824 he suggested in his famous pamphlet *A Letter On Suspended Animation* that the value of his method should be ascertained in surgical operations on human beings. Hale-White states: "No one in England paid any attention to him, so he went to Paris in 1828, and tried to get his methods investigated by the Académie de Médecine but failed; he returned to England and died a disappointed man in 1829."

Account must be taken of the fact that a research worker may be unable to follow up his discovery. The eminent former President of the Royal College of Surgeons, John Hilton, affords an illustrious example. Hilton's Law was enunciated by him in his seventh lecture on *The Therapeutic Influence of Rest And The Diagnostic Value Of Pain* delivered before the College some eighty-six years ago. He said: "The same trunks of nerves, whose branches supply the groups of muscles moving a joint, furnishes also a distribution of nerves to the skin over the insertion of the same muscles and—what at this moment more especially merits our attention—the interior of the joint receives its nerves from the same source."

The late C. Hilton Fagge, the younger, and surgeon in our own time at Guy's Hospital, in an address to the Royal College of Surgeons in 1936, said: "Hilton does not appear to have thought of pursuing the idea, or to have been alive to the obvious deductions arising out of his discovery—for it is not until 1876 that Ferrier's work on monkeys established the presence of cortical centres. This led ultimately to the conception that the association of motor and sensory tracts could be carried much further back to the cerebral cortex where it has been shown that the centres for associated functions are in close anatomical relationship."

And now, F. L. Golla, discussing prefrontal leucotomy, writes: "Until such time as we realize the almost infinite lability of the central nervous system we shall find ourselves at fault. So long as we continue to make classifications of functions, to localize functions, to try to think what will happen here or there in consequence of a lesion, we shall always be liable to find ourselves outwitted by the recuperative powers of the damaged nervous system."

NATURAL SCIENCE

Turn from medicine, and look for a moment towards the monastery garden at Brünn, and in fancy accompany Abbé Mendel in his experiments with edible peas and other plants. His work was published in 1865, and represented eight years' study in hybridization. It lay hidden in the *Proceedings of the Brünn Society*

* Lord Moran, at the Harvey Dinner, 1945.

for the *Study of Natural Science* for thirty-five years. Mendel died in 1884, and it was not until 1900 that his paper came to light and was at once recognized to be of outstanding importance to the science of heredity. Wilfred Trotter said that it was not noisy prejudice that caused the work of Mendel to lie dead for all those years but the sheer inability of contemporary opinion to distinguish between a new idea and nonsense.

It is, however, suggested that at the time men's minds were held captive by Darwin's recently published *Origin of Species*, and were too preoccupied with it to attend to other novel ideas.

How did Mendel respond to this neglect? By disappointment, unconcern or cynicism? Did he, in the quiet seclusion of the monastery reflect, as others less detached and less unworldly have reflected, that the search for truth is often its own reward, and that public applause is a short-lived stimulus?

Others have given the answer. In 1878 C. W. Eichling visited Mendel who was then prelate of the Augustinian monastery. It would seem that his obvious reticence regarding his hybridization experiments—after a direct invitation from Eichling to talk about what must have been a very important episode in his life—would have been eagerly laid aside had it not been due to the complete neglect of his work. Writing in 1942, Eichling states: "Actually to have found the key to the riddle of heredity, and to have his discovery completely ignored both by his friends and the scientific public must have been a tragic blow." In 1924, Itis wrote: "Above all was he a solitary during the closing years of his life, when he was overshadowed with gloom. At the time of his death it had occurred to no one—least of all in the monastery—that he was a man of mark; and naturally enough, the few documents he left behind him were heedlessly torn up or committed to the flames."

Mendel's prophetic remark to Niessl has tragic significance. He said: "My time will come." It came, but not until he had been dead for sixteen years.

G. Dance, writing in 1943, states: "Mendel himself was depressed by the fact that his discovery was ignored." It seems right to add that Mendel's last years were embittered by his struggle with the government regarding the recently introduced taxation on the monastery. According to Itis the controversy almost monopolized his attention during the last ten years of his life. It was continued down to the moment of his last illness.

EXACT SCIENCE

Trotter refers to an account of Waterston, given in the *Life of Lord Rayleigh*.* "J. J. Waterston was an engineer who interested himself in mathematical physics, and in 1845 wrote a paper on the molecular theory of gases which was ten or fifteen years in advance of his time and anticipated much of the work of physicists no less eminent than Joule, Claudius, and even Clerk Maxwell. The only contemporary judgment on this paper that survives is that of the referee of the Royal Society to whom it was submitted. He said, 'The paper is nothing but nonsense.' What Waterston might have accomplished if he had had the recognition and

* *Life of Lord Rayleigh*, 1924, p. 169 et seq.

encouragement upon which this genius seems to have been unusually dependant is beyond conjecture. He did not get them. His work lay in utter oblivion for forty-five years until it was exhumed by the pious efforts of Rayleigh. He himself lived on disappointed and obscure for many years, and then was overtaken by a deeper obscurity, for as the result of some strange accident or a long gathering impulse of despair he disappeared and left no sign."

We all know men who become dispirited by neglect and ineffective by opposition. Happily there are others like Sir James Simpson whose experiments on chloroform inhalation led to its use as a general anaesthetic, and whose fighting qualities were aroused by opposition. So too, Harvey. James Collier in his *Harveian Oration* in 1934, referred to the discoverer of the circulation of the blood in these words: "In England his conquest was by surrender without a battle. Abroad his doctrines met with considerable opposition . . . which did stimulate him to write his second work on the heart." Munk wrote of Harvey: "The many antagonists whom his renown and the novelty of his opinions excited were in general treated by him with modest and temperate language, frequently very different from their own, and while he refuted their arguments he decorated them with due praise."

Apart from the failure to achieve a long term purpose many ambitious men have suffered from the belief that it is "better to reign in hell than serve in heaven." In the end some have re-echoed the bitter words of Wolsey, immortalized by the historians, and have found themselves answering to the Shakespearian description of the fallen Prelate who was left naked to his enemies.

LAW

Look further afield. In 1842 the First Report of the Children's Employment Commission dealing with the conditions of labour of children and young persons working in the coal mines was published. From the Report it appears that children of seven or eight years of age were almost universally employed in the coal mines. "Those who drew the trucks were harnessed like dogs in a go-cart and crouched on all fours down passages in some places only eighteen inches high. Other children worked at the pumps in the under-bottom pits standing ankle deep in water for twelve hours. One was cited, only six years of age, who carried or dragged half a hundredweight every day up to a distance equivalent to the height of St. Paul's Cathedral."

Bryant just quoted, continues: "What struck the conscience of early Victorian England with especial horror was the fact that girls as well as boys were employed in these tasks. Naked to the waist and with chains drawn between their legs the future mothers of Englishmen crawled on all fours down tunnels under the earth drawing Egyptian burdens."

At this time also children of six and seven years of age were employed in factories sometimes for sixteen hours a day whilst "harassed parents, with their eye on the family budget, accepted all this as inevitable and even desirable: many fathers acted as sub-contractors for the employment of their own children."

Two facts stand out prominently. First, as Bryant points out, the humanitarians of the time, who were so busy abolishing slavery in the Dominions, accepted the

appalling child slavery at home because they believed it was inevitable.* Second, although in 1844 a Factory Bill became law limiting the hours of children under sixteen to six and a half a day, in 1890 an international conference at Berlin found it impossible to agree on the prohibition of the employment of children under twelve in the countries of Southern Europe. In 1920 the Women, Young Persons and Children (Employment) Act provided that no person under the age of fourteen should be employed in any industrial undertaking or on board ship, with certain exceptions.

Penal legislation regarding children and young persons is instructive. In 1814 there were during the month of April fourteen boys and girls detained in Newgate Jail. In 1833 sentence of death was passed, but not executed, on a child aged nine who pushed a stick through a patched up shop window and stole some paint worth twopence. In 1844, there were in prison 11,348 persons between the ages of ten and twenty, or 1 in 304 of the total population of that age. The Prison Act of 1877, which placed the prisons in England and Wales under the control of the Home Office came into operation on the 1st of April 1878. There were at that time 24 prisons in which plank beds without mattresses were used for children. In 1908 juvenile courts were established to deal with persons under 16, and in 1920 the Juvenile Courts (Metropolis) Act introduced a new principle by which magistrates for the juvenile courts were specially selected. The Children and Young Persons Act, 1933, raised the age of criminal responsibility from seven years to eight. It prohibited the imprisonment of any person under 14 years of age, and only in special circumstances did it permit imprisonment for offences committed by young persons under the age of 17. It also prohibited sentence of death being pronounced on or recorded against a person under the age of eighteen. Further improvements are introduced by the Criminal Justice Bill now before Parliament, for both adolescents and adults. Even so we may rest assured that the changing years will enforce additional improvements in the administration of criminal justice.

Not infrequently important changes occur without the trend of events being recognized. It is a well-known fact that some lawyers and doctors from time to time express their disapproval of the so called McNaghen Rules in cases where criminal responsibility is contested. It is alleged that the law in this matter is antiquated and unfair. But one is sometimes forced to wonder how much first hand acquaintance the critics have in the matter. For their proposals are sometimes highly controversial, and fail to provide for a practical, reliable and effective alternative. It must be remembered that the Rules are retained because no one has improved upon them in a manner which leaves the issue still clear to the jury. Some critics seem to be unaware of the way in which the law operates, or of the significance of the oft repeated reference in the Court of Criminal Appeal to the powers frequently exercised by the Secretary of State under the Criminal Lunatics Act, 1884. Thus, in a recent case of murder Sir Travers Humphreys declared in the Court of Criminal Appeal: "The dismissal of the Appeal, however, was by

* Discussing this period in our history Lord Elton writes: "Other centuries have been more courageous, more chaste, more faithful or more just, but in none had men been so ready to be kind. . . . The Benthamites who were so eager to sweep away aristocratic privileges and antiquated survivals were most of them equally eager to preserve the liberty of children of six to work eleven hours in the mines and children of twelve eighteen hours in the factories."

no means the end of the enquiry. There was a practice by which those who had to advise His Majesty as to carrying out of the capital sentence had power to hold, and the Court thought that the present case was eminently one in which they would hold, an independent enquiry into the state of appellant's mind."*

At such an enquiry the standard of insanity applied is irrespective of the McNaghten Rules. Moreover, it is clear that in suitable cases Courts tend to take into consideration the possible effect on criminal behaviour of minor forms of mental abnormality. The position is by no means static, and these bald facts are recalled in order to stress the reality of unfinished tasks.

The criminal policy of today is undergoing important and extensive changes. Humanitarian principles are being employed in the interests of the offender, and are balanced against the security of society. This can be carried out only gradually so that the reaction of the criminal population can be assessed. Experience suggests that severe measures are often less necessary than was formerly supposed. Nevertheless they must be available for use on fitting occasions. Sir Alexander Maxwell pointed out in his Sidney Ball Lecture at Oxford that "... more thought ought to be given to theories and principles ... more information ought to be compiled about practices and results." The picture is changing all the time. Before long new methods require alteration and expansion. Still newer ideas demand consideration, and if advantageous must be accepted in order to counteract our kaleidoscopic changes of behaviour.

The apparent inevitability of child labour in the mines and factories which alarmed the Victorian humanitarians reminds one of the deplorable conditions in the prisons at the time. When Secretary of State at the Home Office in 1936 Sir John (now Lord) Simon wrote: "We are to-day horrified by conditions which a previous generation tolerated because they seemed inevitable. So long as an evil is thought to be inevitable it is borne with comparative indifference. When the remedy has been found, the next generation has difficulty in understanding how the old conditions could ever have been allowed."

Frequently, one finds a time lag between the acceptance of a new proposal and its practical application, mainly due, perhaps, to the easy going British character, and to the general dislike for regimentation and governmental interference in our personal affairs. Those who are irritated by delay, and the failure to apply new remedies which appear to be progressive, may bear in mind the fact that although in the emotional crises of life individuals remain true to type and may not change, alterations of character wax and wane.

Not only is our modern world constantly changing, but we are expected to adapt our behaviour to the alterations and substitutions we call progress. But as the foundations of human nature are more static than our dynamic environment, it is almost inevitable that inherently obstinate and unadaptable persons will find difficulty in harmonizing their motives and activities with the novel circumstances confronting them. Even if painstaking efforts enable them to reach the required standard of adaptation, the picture again changes and a fresh remodelling of behaviour is necessary.

Let it be thought that this conclusion is exaggerated we may remind ourselves that only a great physical, mental and moral effort enabled us to win the First

* R. v. Cowle. *Times Law Report*, 24 July 1944.

World War, and that in the Second World War our uttermost strength was necessary to protect our freedoms. We emerged exhausted on both occasions and approached material and moral bankruptcy. As a result suggestibility, sometimes closely resembling mass hysteria, together with disillusion and doubt, frustration and fear, have introduced into material and moral affairs a vicious circle which must be broken before we regain our pre-war standards of normality.

Many may agree that one of the great evils of to-day is the disregard for truth so maliciously preached by Nazism and which affected the suggestibility of millions. The matter seems sufficiently important to recall something of Hitler's declaration in *Mein Kampf*:

"In the big lie there is always a certain force of credulity, because the broad masses of a nation . . . in the primitive simplicity of their minds more readily fall victims to the big lie than the small lie, since they themselves often tell small lies in little matters but would be ashamed to resort to large-scale falsehood. It would never come into their heads to fabricate colossal untruths, and they would not believe that others could have the same impudence to distort the truth so infamously. Even though the facts which prove this to be so may be brought clearly to their minds, they will still doubt and waver and will continue to think that there may be some other explanation. For the grossly impudent lie always leaves traces behind it even after it has been nailed down, a fact which is known to all expert liars in this world and to all who conspire together in the art of lying."

Discussing the Gestapo in Paris during the German occupation Moorhead writes: "You could not believe your radio. You could not believe your newspaper. You could not believe the ordinary gossip at the fishmonger's. People found themselves going crazy. What in the name of God could you believe in? The whole fabric of normal society which in the end is based on trust began to give way."

It was not without reason that Shakespeare's Antony declared: "The evil that men do lives after them." And since evil is infectious the altered values caused by war produce antisocial results which are only gradually extinguished. It would seem today that in many directions smartness rather than sincerity is the quality which individuals too often employ when transacting affairs with others. We are left wondering whether man is so puny-minded that in an ever contracting world he will always put self-interest before mutual benefit. Commerce, law and science compress nations together today. As a result understanding and agreement by compromise are more essential than ever if we are to survive. The Second World War has taught us that a nation is not likely to avoid difficulties by putting itself into quarantine.

In the ordinary affairs of life we frequently see unusual responses to usual stimuli; and much post-war crime is due to the material changes in the post-war world, which legal and executive action will check and time will cure. For many today who commit crime were formerly citizens with a sense of their responsibility for social well-being. They are now purchasers in the black-market and accomplices of the criminal racketeers. We can hardly discriminate between the turpitude of the two groups. But we are left in no doubt that there is a large amount of potential criminality in society, and that it finds expression in unlikely places when social values are challenged and disorganized. We are, once again,

impressed by the fact that construction and achievement are gradual processes, destruction and failure rapid.

Moreover, we must recognize our limitations, and realize the fact that governments are only at the beginning of the journey which must be accomplished before they achieve the aims of government—justice between man and man, between the citizen and the State, between nation and nation. And as governments come and go one is reminded of the fact that for them, as for others, the end is forbidden.

Writing in 1939, Zimmern said: "Men find it hard today to apply moral standards to politics because they are so often not sure of their own moral standards." And since morality is to some extent dependent upon public opinion the optimist may hope that in this matter ordinary citizens throughout the world will learn that their affairs may be world affairs, and that their political morality must equal that of others if they are to be trusted companions. Indeed, it almost seems that we have reached a point in history when we must discard a narrow view of nationalism. Is it too much to hope that the modern world may be guided by the injunction of Sir Thomas Browne and "Live by old Ethicks and the Classical Rules of Honesty"?

It is sometimes forgotten that we judge what is in the minds of others by what goes on in our own minds. We are inclined to judge others by our own standards, and too often disregard the important fact that no one, including ourselves, is easily understood. Given inherent possibilities, the development of mind much depends upon its psychological environment. This in turn affects the personal bias which exercises an important, if often unconsidered, influence on our manner of thought and action. The fallacies of intuition often appear to be attributable to bias, and the cautious man recognizes its distorting possibilities.

Mistakes are more likely to occur when the situation is accompanied by unusual anxiety. Hence in cases of serious illness in his family, or in himself, it is generally recognized that the doctor may be unable to exercise the degree of calm judgment which the occasion demands. And I sometimes wonder whether the lawyer who faultily draws up his own will is similarly affected.

RELIGION

Considerations of human behaviour introduce questions regarding the comparative significance of the fundamental and elusive doctrines of determinism and voluntarism. That is to say, the effect on behaviour of previously existing mental, physical and environmental factors on the one hand, and the exercise of freedom of choice—the so called free-will—on the other.

The observant person sometimes finds that his action is difficult to explain unless he accepts the view that it is to some extent related to a past experience—remembered or forgotten—and is in a measure determined. But the physical and mental exhaustion which follow upon making a difficult decision, and the phenomenon of remorse which follows a faulty choice are not readily explained if there is no such thing as free-will. It may seem to some medical psychologists that men of the Church help us little in this subject. But Dean Inge reminds us that, "Psychology is a limited science dealing with states of mind as such, it cannot, without stepping outside its province discuss the relation of our mental states to ultimate reality."

The doctrine of free-will does not appear to be incompatible with the acceptance of an omnipresent, omniscient, and omnipotent Deity. The Bible usually assumes the freedom of the human will, witness the Parable of the Talents. Indeed, the doctrine of sin and repentance seems without meaning unless this view is accepted.

Keeping our feet firmly on the ground for practical purposes, it may be said that behaviour, whether legal or criminal, may be regarded as the result of genetic endowment, psychological experiences, religious teaching, accidental and environmental causes, together with companionships and other factors which may be determined, the result of free-will, or as many think a combination of both.

Religious and moral values appear to have changed in our modern world. Character is in constant danger of being subverted to base ends in a particularly insidious manner. The common good is imperilled by false dogma. Too often reason is put aside, and we are left wondering whether an altar is being built before which we shall be expected to bend and worship the false god Self-expression. The optimist looking out upon the world, and reflecting upon the worlds of the past, may believe that reason and judgment will reassert themselves. The pessimist turning over in his mind the attempts of Governments to govern, and their hitherto inability to avoid the evils of war and unemployment, may see no escape from the dangerous state of our civilization. Others, it seems, who are neither optimists or pessimists, wonder whether we shall survive the world chaos of to-day.

Apart from the hysterical neurosis to which I have referred, we are faced to-day—as the Bishop of Southwell points out*—with a spiritual neurosis. Both are detrimental to the individual and society. We may believe, perhaps, that the Bishop used the term spiritual neurosis to indicate a mental conflict, and the change in personality of those who are aware of their discontent and of the objectivity of the facts of life, but who fail to realize that they are frustrated because material desires and spiritual values conflict, and because judgment is distorted in matters concerning the essentials of life and right living.

Perhaps the conflict between material and spiritual values has never been witnessed before on so vast a scale as that between the German and Japanese doctrines of force and brutality and the Christian doctrines of unselfishness and understanding. And just as the psychoneurotic patient is susceptible of cure if he has the necessary anxiety to be restored to mental health, so may we believe that a spiritual neurosis may be surrendered as the result of sincere co-operation with the spiritual therapist.

Mark MacNeile Dixon in his Gifford Lectures: "We know more than was ever known, and are convinced that we know nothing of what we most wish to know. We distrust more utterly than has ever been mistrusted the very intellect which has achieved so many and so signal triumphs. While our control over nature's energies approaches the miraculous, anarchy reigns in the moral and aesthetic as well as in the intellectual sphere. One opinion is as good as another opinion. God and the soul are set aside as outworn superstitions, and the denial of any future rings the passing bell of Christianity."

Following much else Dixon continued: "How is this situation to be accounted for? In respect of religion we need not travel far to obtain the answer. The decay of religious faith is due to the increase of our positive knowledge. It cannot be

* "Faith and Frustration," *The Sunday Times*, 25 November 1945.

ascribed to any degeneration in human nature, or to any change in human hearts. Men's hearts are where they always have been, nor are they now more inclined than formerly to vice rather than virtue. But in respect of the world in which we live we are vastly better informed than our predecessors. The new wine has burst the old bottles."

Further on Dixon added: "The principles of man's religion should be in the most intimate relation with his secular occupations and undertakings, and these principles so clearly defined as to assist and support all his judgments."

ELSEWHERE

As we watch the scroll of human endeavour in other fields unrolled before our eyes, does it not seem that here also we often take for granted the toil of the labourers who have gone before? And if we refuse to believe that the problem of human life is incomprehensible and look around for additional weapons with which to attack our present discontent, may we not find some measure of understanding in the fact that nations, and the classes within nations, have failed to develop at the same rate? As a result those in front call "halt" to those who press upon them from behind, whilst those behind call "forward" to those in front who seem to block the way. Can we doubt that in many spheres the different rates of growth of experience, knowledge and understanding among different peoples encourage that bias of outlook to which I have referred, and which makes reason so unreasoning?

Dixon pointed out that to many our almost constant interest in the future "appears inexplicable were we not possessed of an intuition which tells us that we shall have a part in it." Here, too, the end is forbidden.

CONCLUSION

A last word. I believe that in human affairs few can give of their best if they advance by dead reckoning, or view their work in a monopolist spirit. I believe, too, that in order to attain a correct perspective of human behaviour it is sometimes desirable to let one's thoughts wander far afield as mine have done here. I have, therefore, not hesitated to enrich my text with material from the writings of many authors, for the telescope as well as the microscope is an instrument of precision adding depth of vision to detailed information. These observations contain nothing new to those of my own generation: we have accepted our disappointments and their disabling limitations. But, perhaps, we may say to those who follow: Be enterprising, and avoid the ashes of desire; be zealous, and avoid the easy chair which fosters melancholy; be faithful to scientific standards, and earn the regard of your colleagues.

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