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CURRENT PROBLEMS IN MEDICO-LEGAL TESTIMONY

Gustav Bychowski and Frank J. Curran

Dr. Bychowski is a graduate of the University of Zurich, Switzerland, 1919. After postgraduate training in Zurich and Warsaw, he was Assistant Professor of Psychiatry at Warsaw Medical School; now, practicing psychoanalyst in New York City, and Director of the Department of Mental and Social Adjustment at the Institute for Crippled and Disabled; author of the first Polish textbook on Psychoanalysis. In Warsaw he organized and conducted courses in Psychoanalytic Criminality for judges.

Dr. Curran graduated from the University of Minnesota Medical School in 1928. Staff member of Bellevue Hospital and on the faculty of New York University Medical School since 1932; now Assistant Professor of Psychiatry. For years he was in charge of Women's Prison Service and adolescent ward, Bellevue Hospital. Now Chairman of the Section on Forensic Psychiatry of the American Psychiatric Association. Vice President of the Medical Correctional Association, and Secretary of the New York Society for Clinical Psychiatry. Author of many papers dealing with drugs, alcoholism, juvenile delinquency and female criminality.

This paper was read in May, 1944, before the Section of Forensic Psychiatry of the American Psychiatric Association at its 100th annual meeting.—EDITOR.

Americans pride themselves on being modern, up to date, progressive. They are widely known for their drive and energy in improving and perfecting things. Their world leadership in many fields is unquestioned. However, in one field, we in the United States lag far behind our European contemporaries, and this is in the management of psychiatric medico-legal procedures. This paper is written to point out the current laws dealing with psychiatric problems in the various states of our nation, describing the laws covering similar problems in various European countries and then to offer suggestions for improvements here.

Weihofen^{64*} in 1933 cited the laws in the various States of the United States, pointing out their defects and suggesting reforms. Since that time a few reforms have been made in some states but in general the suggested improvements have met either with resistance or, what is more important, apathy.

As we see it, the chief defects in the laws dealing with these problems in the United States are:

1. The "Right and Wrong" Test—or "M'Naghten Rule."
2. Use of the hypothetical question.
3. Lack of qualifications of so-called "experts."
4. Expert witnesses are engaged by interested parties rather than by the State.

According to Weihofen, the law in this country (except in New Hampshire), can be summarized as follows: A person is

* Superior figures refer to bibliography at the end of this article.

not criminally responsible for an offense if, at the time it is committed, he is so mentally unsound as to lack:

- (1) Knowledge that the act is wrong or
- (2) (in 17 states) will power enough to resist the impulse to commit it.

The first part of this rule states the so-called "right and wrong" test. This is part of the law everywhere; and it is the sole test of irresponsibility in England and in 29 American states.

This right and wrong test is commonly known as the "M'Naghten Rule." Daniel M'Naghten in 1843 had shot and killed Drummond, private secretary to Sir Robert Peel, believing him to be Peel. M'Naghten labored under the delusion he was hounded by his enemies. He was found not guilty on the ground of insanity but later, due to public indignation, a debate was held in the House of Lords and it was determined to take the opinion of the judges on the law governing such cases and questions were submitted to fifteen judges; fourteen of these judges decided on the right and wrong rule. This rule is still in force in all English speaking countries, such as India, Africa, Australia (Brown,⁹ Ellery,¹⁷ Hasanat²⁸ and Parasuram³⁷).

Queen Victoria was shot at in 1840 by a man named Oxford, who also had been found "not guilty by reason of insanity." The M'Naghten case occurred three years later and re-enforced public indignation; it also revealed strongly the fear of regicide and led to the law which persisted to date in England and in the United States.

The use of *hypothetical questions* in criminal cases is another example of the archaic procedure still in force in this country. In our opinion, its sole purpose is to confuse the expert, an attitude which is suggestive of the prejudice shown by some lawyers toward physicians.

The laws in the United States embody the "all or none principle" and fail to take into consideration clinical conditions such as epilepsy, psychopathic personality, high grade mental deficiency, hypomania, etc. For example, we recently had in Bellevue Hospital a mentally defective woman, with an I.Q. of 65, who set several fires at a children's home where she worked as a laundress. She had no family and claimed she wanted to "get even with the world." According to New York laws she was held completely responsible and we returned her to court for trial. In New York, only mental defectives classified as idiots and imbeciles are held irresponsible.

At the present time in most of the United States, expert witnesses are not engaged by the state, but instead by the interested parties. This furnishes a realistic basis for lay people to

doubt the impartiality of the expert's testimony. Moreover, in many states, the opposing lawyer has the right to question the physician as to the amount of money he is receiving for his testimony. This tends to influence the jury to believe there is a close connection between the fee paid and the findings reported by the psychiatrist.

In most states no standards have been set up for the qualifications of experts although some steps have been taken in New York, Colorado, Rhode Island, Vermont, Wisconsin, California, Indiana, Ohio and Michigan.

As far back as September, 1937 the "Uniform Expert Testimony Act"⁶² was prepared and circulated by the National Conference of Commissioners on Uniform State Laws—an official body appointed by the respective states—in order to unify as well as improve the standards of medical testimony. The Act was approved by the American Bar Association on July 21, 1938.

According to the annual yearbook of the Commission on Uniform State Laws the Act has been adopted and established as law in the state of South Dakota and its substance has been incorporated in the law of Vermont.

Since the publication of Weihofen's book some improvements have been made in the procedure of handling prisoners who are believed to be mentally sick. Apfelberg¹ read a paper before this section in 1941 describing the procedure in New York State. This procedure has been modified in 1943, simplifying it greatly. (See Code of Criminal Procedure, New York State, 1943.) Patterson⁵² in 1941 has described the appointment of a commission of qualified psychiatrists to examine murderers and sex offenders in Michigan. Overholser^{44, 50} has written extensively about the Briggs Law, which has been in operation in Massachusetts since 1921. According to this law, all persons accused of first degree murder and all persons indicted for a felony who have been previously convicted of a felony or who have been indicted for other offenses more than once, are reported at once to the Department of Mental Hygiene and this Department assigns two psychiatrists to examine the prisoner to determine his mental state. Overholser (1939) described the passage of a law in Illinois in 1938 dealing with sexual psychopaths.

It is quite obvious that medico-legal procedure lags far behind the advancement of psychiatric knowledge. What are the psychological difficulties which prevent us from applying our knowledge in this very important field?

In our opinion, these difficulties may be summarized as follows:

1. The legislator has to take into consideration the general pub-

lic's demand for what it considers justice. He shares public apprehension that psychiatrists tend to pamper or excuse the criminal and help him to evade justice.

2. The public fears criminals and believes that very severe measures are necessary to protect society from the threat of criminality.

While both above-mentioned factors are conscious, the following two have their roots deep in the unconscious. They are:

3. Members of the social group fear their own criminal impulses which they suppress and which the criminal openly expresses. Thus, they both fear and envy him and therefore cannot refrain from being vindictive. (A similarity may be seen in the aging sexually frustrated female teacher who persecutes severely any impulses of awakening sexuality in her pupils.)
4. The deeply inrooted primitive desire for retaliation makes the social group look upon the criminal as an object of revenge. The death penalty used in various states clearly demonstrates this mechanism, as pointed out by Zilboorg,^{68, 69} Cushman¹⁴ and other writers.

Each of the above enumerated factors has its special ramifications and each creates a source of resistance against any serious medico-legal reform. All of these factors are largely responsible for the general distrust toward the psychiatrist dealing with the criminal. At times even the culprit himself resents the psychiatrist and prefers to be labeled as a criminal rather than being branded as "psychopathic" or "bug."

In view of such deeply rooted general resistances, our attitude should, of course, be very cautious. We cannot simply disregard them as unimportant. Society and the legal profession have to be carefully educated to reach an understanding of the psychiatric viewpoint, which, we believe, is the most rational approach toward these problems. We fully agree with the opinion of Liszt³³ (the great classicist of European criminology, who was largely responsible for modernization of German criminal law and for the introduction of the so-called "psychiatric criterion"), who said: "The legal conscience of the people should be educated and not pushed aside by the legislator."

In preparing this paper we believed that if we studied the philosophies and practices of handling criminals in various European centers, we could profit from their experiences. In the early part of this century several conferences and discussions were held among prominent European lawyers and psychiatrists and, as a result, many important issues were clarified. Space will not permit us to present a complete review of the European scene.

The classical concept of crime and punishment is based on the fallacy of free will. In 1902 Bleuler⁸ pointed out that it is not possible to prove convincingly in most cases that the criminal acted under an irresistible impulse and was incapa-

ble of any other action. According to this principle, even a psychotic individual might be held legally responsible for his acts. On the other hand, even if we adhere to the theory of complete determinism of action — and as psychiatrists, we can hardly advocate the concept of free will — we still are confronted with the criminal action as a social threat, a dangerous phenomenon. Let us remember in this connection that Spinoza in his introduction to the study of effects in Ethics proclaims his fully deterministic point of view. "The evil man," he says, "is as little responsible for his being evil as the snake for his venom. However, we destroy the snake not because of his free will but because of his danger." Obviously we do not need the concept of free will in order to deal adequately with the criminal.

The concept of reasonable planning is closely connected with the "right and wrong" rule. According to Bleuler,⁵ the application of this rule as the sole criterion for criminal responsibility *per se* is proof of "an unforgiveable short-sightedness and of the absolute blindness toward human psychology by which some legislators are afflicted."

Bleuler proposes instead the psychiatric criterion, based on psychiatric knowledge and applied only by highly trained experts. Inasmuch as a mental disease brings something new into the existence of the human being, so must his actions be judged in an entirely different way. Following this principle there is established the purely psychiatric concept of responsibility. Bleuler,⁶ in discussing the concept of guilt and responsibility in 1904, claimed that in our modern society the idea of revenge (declared wrong by Christ) is superfluous, harmful and an unworthy remnant of old epochs that still connect us with savages and animals. We should not inflict unnecessary suffering on any one.

When we accept this principle and discard the idea of guilt and retaliation, we inevitably reach a point where our chief aim will be the most adequate treatment of the criminal. As in every practical science, this can be based only on the adequate study and understanding of the offender.

We become aware of the progress accomplished when we compare various formulations of responsibility. We find psychological formulations based on the old concepts of scholastic psychology such, for instance, in "*Codex juris canonici. Delicti sunt incapaces qui actu carent usu rationis*,"³⁹ or, a similar formulation of the Austrian code: "There is no crime if the culprit is completely deprived of the use of reason." In some of the clinical biological formulations such as the French and Belgian, the only prerequisite of irresponsibility is the state of dementia. Practically speaking, this term may be ex-

tended almost indefinitely and may include all sorts of mental disturbances. It is not surprising, therefore, that the eminent French legal psychiatrist, Rogues de Fursac,²² finds it necessary to comment as follows: "One should not pronounce irresponsibility except in cases when protection of society can be assured by measures of medical order. One should not pronounce diminished responsibility except in cases when our indulgence would not have the effect of increasing the danger of the individual."

Formulations which are modeled on the M'Naghten Rule are found in various European codes and we shall refrain from quoting and analyzing the often unessential modifications. Since one of us (G.B.) has had personal experience with one of the concepts, we would like to dwell on it at some length.

The Polish penal code of 1932²¹ had disregarded the concept of guilt and introduced the principle that penal responsibility falls only on a person who commits an action forbidden by law under menace of punishment. An intentional crime is a crime which the criminal commits under the condition that he "foresees the possibility of criminal consequence or criminality of action itself and agrees to them."

In logical consequence of this formulation, article 17, paragraph one, states:

"A person should not be punished who at the time of the criminal action, because of mental retardation, mental sickness or other disturbance of mental function, could not recognize the nature of his action nor could he control his activity."

Paragraph two of this article contains the limitation:

"Paragraph one does not hold in a case when the culprit puts himself deliberately in such a mental condition as to be able to commit the crime"

(such as the man who takes several drinks in order to get enough courage to commit a robbery).

In analyzing these paragraphs, we become aware of the combination of biological and psychological criteria of irresponsibility. These paragraphs embrace various borderline cases as well as outstanding pathological conditions. It is in the borderline cases that justice could not have been done according to the classical legal codes. According to the classical school of law, the expert is asked whether the mental condition of the culprit was such as to warrant the existence of the evil intention or not. Inasmuch as this question of alternative character cannot be expressed in a fraction, the expert was expected to answer only "Yes" or "No." Such an alternative is obviously fallacious and artificial to the modern psychiatrist.

The Polish law always takes into consideration the much disputed concept of diminished responsibility. It says: (Paragraph One):

"If in the moment of committing a crime the faculty to recognize the

nature of the action or to direct the activity was limited to a great extent, the court may apply an extraordinary mitigation of punishment."

Paragraph Two adds a limitation similar to the paragraph of the preceding article:

"Paragraph One does not hold when the limitation of recognition was a result of intoxication caused by the fault of the criminal."

Discussion of the problem of diminished responsibility in European psychiatry is highly instructive and linked up with the most decisive problem of criminology, that is, the treatment of the criminal. Let us recall here one of the principal sources of resistance mentioned at the onset of our considerations, namely, the distrust of the psychiatrist and the suspicion that his dealing with the criminal may help the prisoner to evade justice. Thus, the development and proper status of the concept of diminished responsibility was hampered by fear that its sole result would be creating new difficulties for the authorities and a new threat for society. It was feared that some of the most dangerous criminals would benefit by escaping the punishing hand of justice and by being subjected to the too lenient judgment of the psychiatrist.

It is not surprising that from the very onset the concept of diminished responsibility was almost as strongly fought against (Williams,⁶⁷ Luniewski^{34, 35} and others) as it was advocated (Bleuler,^{5, 6} Forel, Aschaffenburg,^{2, 3} Liszt,³³ Bychowski,^{17, 12} etc.). A decisive reform was initiated in 1904-1905 by Liszt in his project of the new German penal code. He counteracted the general apprehension concerning the treatment of psychopathic criminals by emphasizing that a person with diminished responsibility does not deserve a mitigated punishment but instead rather a different treatment. Society has to be protected in a more efficient way and this could be accomplished by collaboration of a special magistrate and the criminal judge.² The latter could order an immediate temporary imprisonment whereas the former would have to remand the criminal to a hospital.

Liszt proposed a rather elaborated classification of criminals with diminished responsibility into the following groups:

1. The individual is not dangerous to the public: He is given a milder punishment.
2. The individual is dangerous to the public: He gets milder punishment and is also hospitalized.
 - a. He is able to stand punishment: he gets first his punishment, his hospitalization being postponed.
 - b. He is unable to stand punishment. He begins by being hospitalized and gets his punishment afterwards.

It is interesting to note that this project in not liberating even a severe psychopath satisfied the general public's de-

² The special magistrate we refer to is linked up with the fact that in certain European countries there are procedures as a result of which a person is deprived of his civil rights and a guardian is appointed to administer his affairs.

mands for punishment. To this point of view, Bleuler objected with his characteristic ardor. Sarcastically, he contended that "public feeling" was "just falsified by lawyers and representatives of 'religion of love.'" For the rest, he gave a high praise to Liszt's project since it finally broke with the impossible principles of repentance.

"All its real points have the purpose of protecting society . . . Individuals with diminished responsibility are sick, therefore, we treat them as such. We protect society from them and we renounce the penitence. They are sufficiently punished by constant hospitalization or supervision."

It might be pointed out that even Aristotle described criminals with tendency to recidivism and complained about the lack of sufficient measures of prevention.

In Belgium, a country where particular attention has been devoted to the subject, statistics reveal:

1. That no more than one third of prisoners are healthy of mind and body and in control of their free will.
2. 90% of recidivists are classified as "degenerates," that is, psychopaths.

It seems logical that individuals with psychopathic features are particularly compelled to repeat their illegal or anti-social actions. On the other hand, penal practice shows, as pointed out already by Liszt, that "every punishment is a contributing factor toward criminality." As long as the criminal policy toward individuals with diminished responsibility remained uncertain and the intervention of the psychiatrist was supposed simply to mean a mitigation if not an abolition of punishment, opposition rose, not only from the ranks of lawyers but even from those of psychiatrists. Its main representative was Willmans,⁶⁷ whose standard work on diminished responsibility published in 1927, played a great role in the development of medico-legal opinions. His point of view can be summarized substantially as follows:

"The concept, itself, is too extensible, inexact, difficult to grasp and likely to be misused by subjective interpretation on the part of psychiatrists, judges and attorneys. The decision of responsibility and irresponsibility would become even more difficult than hitherto. The judge accustomed to the classic concept of the necessary relationship between crime and punishment would consider that the individual with less responsibility is less guilty and, as such, should get less punishment. From the educational and preventive point of view, this would be entirely incorrect."

Another author,³⁷ calls it even "monstrous." The education of the criminal cannot start with the declaration that he is less responsible than anybody else and on that basis receive a lesser punishment.

However, aside from those more theoretical difficulties, Willmans raises the practical point which to him seems even more harassing. Dangerous psychopaths could not be handled in the existing psychiatric institutions since it would be detrimental to the institutions. Therefore, special institutions

would have to be constructed. Previous to this, psychopathic criminals were submitted to the usual prison regimen. The hospitalization of the psychopathic criminal would meet with various other social difficulties. In our opinion, despite his great authority, Willmans was too cautious and some of his objections proved to be groundless.

Finally, the principle of diminished responsibility was recognized in such European countries as Belgium and Netherlands, all Scandinavian countries, Switzerland, Yugoslavia, Austria and Germany (before Hitler), Poland and Czechoslovakia.

What are the main principles of modern practice in dealing with criminal psychopaths who have been recognized as such by the existing criminal procedure? The further one withdraws from the classic law of guilt and repentance, the more the practical point of view prevails. This practical point of view has a double purpose: The best protection of society and the most efficient treatment of the criminal. The pursuit of the former purpose depends largely on an effective pursuit of the latter. The most adequate treatment of the criminal, however, must be based, like any treatment, on a careful study of his individuality. Only such a study can determine both the prognosis and the choice of an appropriate method of treatment. This principle probably finds its most radical expression in the Russian code. The principle of the Soviet criminal policy can be expressed as follows: "Use of the most effective measures of social protection or of education of socially dangerous individuals."

We must ask what is the use of inflicting punishment on an individual whose mental condition or personality is such that this punishment will not change anything in his personality and consequently in his criminal behavior? In such a case, we should rather suggest hospitalization in an appropriate institution. If possible, this institution should use methods which promise effective improvement of the criminal. On the other hand, it may be that, despite his deficient personality, the criminal is likely to change under the impact of punishment; then and then only, should punishment be applied.

From what we have said, it becomes apparent that the whole procedure in use depends on two elements, hospitalization or imprisonment. The interplay of those two main devices determines various methods in use in different countries. Let us mention the Swiss and the Polish procedures as two specific examples.

The Polish general code discusses in detail the means of prevention as applied to various categories of criminals. We quote the main articles: Article 80: paragraph one

"If the criminal has been recognized as possessing a diminished faculty of discernment and of conducting his activity and his being at liberty threatens the legal order, the court can order his internment in a psychiatric institution."

Paragraph two:

"If such a criminal were condemned to imprisonment, then the court has to decide after he has been released from the prison whether he should then be hospitalized."

Article 81:

"The duration of the stay in a psychiatric institution is not determined beforehand. The court cannot order a release prior to one year."

Article 82: paragraph one.

"If the criminal action is connected with misuse of alcohol or other narcotics, the court can order that the criminal after having served the penalty should be placed in a corresponding curative institution for the duration of two years."

Paragraph two:

"An early release from the institution can be decided by the court."

The code discusses also the means of crime prevention in cases of vagrants, recidivists, etc. The principle of education and re-socialization through work is largely applied. It is quite natural that the application of this principle requires not only a large staff of psychiatrists and psychiatrically minded judges and lawyers, but also an adequate number of appropriate institutions. Therefore, it is not surprising that the best reports available come from small and socially minded progressive countries which had the opportunity to organize their psychiatric penal work. For that reason, we should like to mention Switzerland and Belgium.

A quite recent report by Manser³⁶ deals with the experience of the Department of Psychiatry at the University of Zurich over the period of twenty-five years. Diminished responsibility was found in twenty-five per cent of all cases of criminals examined by the psychiatrists. The principle of diminished responsibility was found useful both from the point of view of legal testimony and treatment. The psychiatrist does not ask for an obligatory mitigation of punishment in all cases of diminished responsibility. In connection with Switzerland it is important to mention that the principle of open care, largely developed in that country, plays an important role in the treatment of paroled criminal psychopaths.

Belgium is a small country but its contribution to the advancement of social problems is of great importance. The Belgian criminal school headed by Verwaeck⁶³ has made an extensive study of the psychopathic criminal, and made and put into practice valuable suggestions and ideas. Every criminal is subject to psychiatric examination. Moreover, psychiatrists and anthropologists are on the staff of most prisons. The principle of individualization is thus applied from the very onset and continued throughout the whole treatment so that the handling of the criminal becomes a treatment in its

real medical sense. This, of course, is possible only on a basis of penal repression backed, not by the idea of presumed moral guilt, but on the potential danger toward society. If the criminal is considered abnormal, he may, but need not be, hospitalized by the court. The hospitalization does not necessarily preclude eventual imprisonment. Both hospitalization and imprisonment are for an indeterminate period. They can be prolonged or shortened according to the progress made by the psychopathic criminal. The hospitalization is pronounced by a commission of social defense consisting of a magistrate, an attorney, and a psychiatrist. The hospitalization by this commission is not a punishment. Its maximal term can vary from between five to fifteen years according to the gravity of the offense. However, and this seems very important, the criminal so interned may request his liberation every six months. This request may be granted according to the progress he has made in the meantime. The liberation on parole is subject to both psychiatric and social contact. Thus, it can be invalidated if the hospitalized individual proves not to be socially cured and remains socially dangerous.

Naturally, a procedure thus constituted requires for its efficient functioning a system of social organization taking care of the liberated prisoner. There are committees of patronage and offices of social readaptation. Thus, the criminal is an object of legal, social and psychiatric care from the very onset of his "career" throughout all the stages of his eventual social rehabilitation. Principles of this system as expounded by Verwaeck have been generally adopted by the International Convention of Criminologists, London, 1925.

It seems pertinent to illustrate our discussion by a few clinical examples. The individual study, not only of the criminal, but also of the intrinsic mechanism of his criminal action should determine the prognosis (both mental and social) and the treatment. Careful psychiatric examination, enriched if possible by psychoanalytic approach (a psychoanalytic study of some cases at least may be considered as a difficult yet highly desirable ideal), will determine a few types in which a classic punishment will be not only ineffective, but even detrimental both to the individual and to society.

We need not expound on such obviously clinical examples as an early slowly progressing schizophrenic process. We know very well that anti-social change of behavior may for years precede any other manifest striking clinical symptoms. Therefore, only an experienced clinician will be able to diagnose the case on time and spare both the individual and society a needless trial, detention, prison psychosis, etc.

What is much less obvious is the type of criminal described

by Freud²⁰ as the so-called criminal because of feeling of guilt. Unconsciously he is craving for punishment and he deliberately breaks laws in order to be punished. He therefore is doomed to repeat his crimes indefinitely since the need for punishment is appeased only temporarily and the criminal constantly seeks new punishment. Merely punishing him would be just as meaningless as punishing a child who is naughty because it wants to provoke the adults. It is obvious that such an individual should benefit from the principle of diminished responsibility. His conscious ego plays a minimal part in his offense. Thus, not only can he not be considered as fully responsible but also it is obvious that punishment would not produce any decided change in his psychic economy and, accordingly, in his behavior.

The same holds true for any deeply neurotic criminal whose transgressions of law have a character of compulsion and therefore are likely to repeat themselves indefinitely. We would not derive any benefit, for instance, from imprisoning an epileptoid arsonist or a compulsory kleptomaniac. Thus, in such cases, only a careful study will allow us to outline an individual treatment. Hospitalization combined with psychotherapy and occupational therapy may prove efficient. In other cases, however, our observation and tentative therapy may convince us that there may be such an amount of aggressive asocial drives that their sublimation (or education) proves to be impossible in the present state of our knowledge. Now, in such cases, even if we agree to diminished responsibility our concern for social security will determine the application of hospitalization under conditions which would allow as much rehabilitation as possible.

Occupational therapy seems to offer here the greatest chances, as shown in particular by the famous colonies for criminals in Russia.

Let us take up now the type of psychopathic criminal with abnormally undeveloped superego, so-called "moral insanity" or "social agnosia." Whatever our theoretic approach may be, practically we know that simply by declaring him irresponsible or less responsible and mitigating his punishment, we shall not achieve any social benefit. Therefore, in each case, we have to determine what the chances may be for social rehabilitation by the combined use of reeducation and penal intimidation. We know that some of those individuals, even if they are seemingly unable to acquire a real superego, are likely to benefit from training. Consequently, they may change their behavior as a result of sheer knowledge and unpleasant experience just as a child of Watson experiments learns to avoid the burning candle.

Finally, and this shall be our last example, let us consider the so-called "accidental" criminal. We may study his personality and the crime in question and determine that he had acted with a pathological effect. In this offense, his conscious ego was overwhelmed by the flow of emotions originating in the unconscious. We, therefore, may consider him as irresponsible or less responsible, and, since the conditions which have resulted in his offense were exceptional and are not likely to repeat themselves, we may not impose on him either a prolonged imprisonment or hospitalization. The detention may appear rather as a symbolic expiation more for the benefit of the social sense of justice than for the real benefit of society.

On the other hand, our individual study may show us that the mental condition and psychological mechanism of the crime are such that it is likely to repeat itself as for instance, in the case of an epileptoid individual with alcoholic tendencies. In such cases, a prolonged hospitalization with supervision after liberation or parole may prove necessary.

We offer here case records of two women prisoners seen at Bellevue Psychiatric Hospital. According to the existing laws in New York, both of these women were considered by the court to be "legally sane" and "able to stand trial" although in our opinion both were such severe deviates that they should be in a hospital rather than in a prison.

Case One

A white, unmarried Italian Catholic female, age 20, was committed to the hospital from the court of General Sessions after conviction of Second Degree Larceny. She had stolen a fur coat from a department store. In court she had dismissed her attorney, pleaded her own case. During the trial it was reported she had burnt newspapers in her cell "to drive out evil spirits." After conviction she became agitated and said to the judge: "You'll get your just deserts in Hell." Mental observation was ordered.

According to the court records she had been arrested for grand larceny three years earlier under another name, and after conviction was given three years probation. She was arrested again eighteen months later under another name, convicted of Petit Larceny in the Court of Special Sessions and committed to the House of Good Shepherd.

She had three previous admissions to Bellevue Psychiatric Hospital. Four years before she was sent to us from one of the Magistrates Courts charged with stealing a fur jacket in a department store. At that time she gave many false statements about herself, said she was away from her home in Cleveland, that her father was dead, that she was an only child. We later learned that she had never lived away from New York, that both parents were alive, that she was one of seven children, and that for years she had had difficulty in school, community and home. We reported to the court she was an individual of psychopathic personality but legally sane. She was again committed to Bellevue three years later charged with Petit Larceny. At that time we reported to the court she was emo-

tionally unstable, that she had suicidal impulses at times but that according to the New York laws she was legally sane. Following her conviction on this charge she was committed to the House of Good Shepherd. The authorities there returned her to Bellevue six months later with a statement she had not adjusted well, that she was seclusive, uncooperative. She was again discharged from Bellevue with the diagnosis of "Psychopathic Personality, without psychosis."

The family history was said to be negative. Physical examination and laboratory studies were normal. The mother and one sister described the patient as a person who was always seclusive, irritable, emotionally unstable. The patient admitted that since she was five years of age she quarrelled frequently, destroyed property when angry, stole money from relatives and others.

During her last period of observation she showed fluctuations in her mood and behavior. At times she was friendly and cooperative, at other times she was sullen, irritable, sarcastic. She stated she felt harassed by evil spirits and that she wore a cross and set fires to ward off this danger. She said she kept a knife under her pillow at home and set fires at home as well as in jail to drive out evil spirits. We were unable to elicit any definite hallucinations or any other content of delusional nature. She mixed well with other patients during her hospital stay. Psychometric tests indicated she was of low average intelligence with an I.Q. on the Bellevue-Wechsler test of 88.

It was the opinion of some of our staff that she was an early Schizophrenic while others felt she was a Schizoid Psychopath. Our report to the court stated that according to the current law she was "not in such a state of insanity as to be incapable of understanding the nature of the charges against her or the proceedings or to advise with attorneys in her own defense" and she was returned to court to have sentence pronounced.

Case Two

A white female, age sixteen, Catholic, Irish descent, waitress, was committed to Bellevue Hospital from the Court of General Sessions charged with Burglary and Grand Larceny. This patient has had two previous admissions to Bellevue Psychiatric Hospital. She was sent to us at the age of thirteen from the Children's Court. At that time we learned that she had been running away from home, had been committed by the Children's Court to a correctional institution. She adjusted poorly in the reformatory and was sent home; she ran away from home, was found, taken to Children's Court and sent to Bellevue. She was diagnosed in Bellevue at that time as being a behavior problem and, on her return to court, we recommended that she be sent to a correctional institution again.

Two years later she was sent to the prison ward of Bellevue Hospital from the Felony Court; she was charged with robbery. She was in the Felony Court as she had stated she was twenty-three years old. When we discovered her real age to be fifteen, we returned her to the Felony Court. We reported that she was a severe behavior problem but that she was not legally insane. One year later she was sent to us from the Court of General Sessions. She stated that on her return to the Felony Court one year earlier she had been committed to a training school for girls and had escaped from that institution.

In describing her family history, the patient claimed that she has had difficulty with her father since early childhood, that he was very cruel to her, that she has not spoken to him since she was ten years of age. She stated that one of her older brothers sexually assaulted her when she was a child. When she was in Children's Court two years earlier she claimed that both of her parents were alcoholics and that they both were very cruel to her. When she came to Bellevue she denied these accusations, but said that she had told lies about her parents because she wished that they would be punished.

We interviewed both parents and they stated that they are unwilling to take the girl home and felt that she should take the full responsibility for her acts; the father stated that he did not wish to see her again because of the difficulties she has brought on the family. They denied that any other members of the family had shown mental symptoms or delinquency.

The mother stated that the patient told her repeatedly she would return home and cease her antisocial conduct if the mother would no longer live with her husband.

The patient stated she had a skull fracture at the age of two and she had frequent headaches. Skull X-rays, electro-encephalogram studies (studies of electric phenomena that accompany brain action) and neurological examinations were negative. The parents refused to give permission for a pneumo-encephalogram (a procedure that involves injection of air into the brain after withdrawal of spinal fluid by puncture). A report was received from the hospital where she was sent at the time of her accident and it indicated she did not have a skull fracture and she had been released within a few hours.

According to the information supplied us from the court and from the patient's parents, the girl had shown marked emotional instability since very early childhood. The patient herself stated that when she was angry she would break dishes and furniture and would assault others. She gave a history of other delinquencies, including stealing, running away and sexual promiscuity for many years.

During the patient's third period of observation in Bellevue she showed fluctuations in her mood and behavior. At times she was friendly and cooperative, while at other times she was sullen, quarrelsome, defiant and threatening. She quarreled with matrons and with patients and on one occasion when smoking privileges were taken away from her because of her behavior she broke dishes and threatened to kill the matron.

The patient talked very freely about her sexual delinquencies and antisocial activities. She stated that she has been one of the group of people who preyed on service men. She and other girls lured these men up into Harlem and then the colored men who worked with her would rob the victims at the points of knives or loaded guns. She stated that frequently she carried a loaded gun and a knife but denied that she has ever shot at or stabbed any one. She stated that after she ran away from a reformatory she married a colored man because she heard that he had some property; she said she expected that he would be drafted and she hoped in this way to get control of his property. She stated that her husband was sent to Federal Prison because of failing to report to his draft board. The patient said that she had been having sex relations with both white and colored men but preferred colored men be-

cause they were more friendly to her. She said she served a prison sentence in another state a year earlier after she escaped from a training school. She said she preferred using guns rather than knives when she assisted in robberies as she didn't think she would shoot anyone but felt she might easily stab any one who was silly enough to resist robbery.

At no time during the patient's stay in the hospital were we able to elicit from her any definite evidence of delusions, hallucinations, ideas of influence, reference or persecution or suicidal tendencies.

This patient was reported to be psychopathic but legally sane and was returned to court to face the charges against her. In this case, too, we believe this girl to be mentally abnormal and more suitable for hospitalization than imprisonment.

Suggestions for Reform

Reforms from several sources are indicated. The present laws dealing with the "right" and "wrong" rule and the "irresistible impulse" should, in our opinion, be abolished. The present concept of legal *versus* medical insanity should be discarded; this concept is as archaic as would be the use of kerosene lamps in the Waldorf Astoria Hotel in 1944. The laws should take into consideration the concept of diminished responsibility and not hold psychopaths, epileptics, some alcoholics, morons, and mildly psychotic persons completely responsible for their acts. We are not advocating the "coddling" of criminals but feel that such persons listed above, when convicted of crimes, should be sent to special hospitals for treatment. Each case should be decided on its own merits.

We believe that the "Uniform Expert Testimony Act" should be publicized more widely and reintroduced into various state legislatures with the backing of local and national psychiatric societies. We believe that all persons to be qualified to testify as "experts" should be certified as experts in psychiatry by the American Board of Psychiatry and Neurology.

We believe with Smith that the physician in the past has not been given adequate opportunity on the witness stand to explain his position, his findings and the reasons for his opinions, and we believe, not only that experts should be permitted to speak freely and fully but that they should not be subjected to the "hypothetical questions," still used in many states.

We would advocate that in medico-legal cases experts be appointed by the court, as provided by the Act, rather than by the interested parties, the expert acting in an advisory capacity to the jury, judge and counsel. We would advocate that the experts submit their reports in writing as is now done in New York State. These recommendations, we realize, are not new and have been advocated for over twenty years by many writers including Weihofen,⁶⁴ H. W. Smith,⁵⁸ E. M. Morgan,⁴² Sheldon Glueck,²⁷ J. S. Turner,⁶¹ Overholser,^{44, 50} Kennedy,³² T.

Crice,¹³ W. Nelson,⁴³ Bernard Glueck,²⁵ W. A. White,^{65, 66} J. E. Hughes,³¹ Jess Spirer,⁶⁰ J. P. Gilbert,²⁴ H. B. Brackin,⁷ W. P. Butler,¹⁰ and B. W. Black.⁴

We believe that much of the present antagonism between members of the legal and medical profession can be overcome once each knows the contributions and the limitations of the other. We would advocate that psychiatrists be appointed in each law school to give courses on psychopathology. Wherever it is possible we believe law students who are interested in criminal law should be taken to the wards of psychopathic or state hospitals and attend clinics where psychiatric cases can be presented.

On May 8th, 1944, George H. Dession, Professor of Law in Yale University, wrote in a personal communication to one of us (F. J. C.), that at the Yale Law School there is a voluntary course in which the law students have an opportunity to interview mental patients, but this course is normally taken by only twenty-five to thirty students from the Law School.

In a follow-up letter on May 17th, 1944, Professor Dession wrote:

"Since last writing you I have checked over my files on the other schools and find that in 1941 we made a survey of the curriculum of seventy-nine law schools in this country, including all of the major ones. According to that survey, a course in legal psychiatry apparently rather similar to our own was being given at the University of Iowa College of Law. Three other schools, including Chicago and Minnesota, listed courses in psychology."

We believe also that special courses in medico-legal psychiatry should be given to members of the judiciary — especially, of course, to judges of criminal courts. They should not only be taught general psychopathology, mental mechanisms, etc., but should be taught about the role of the unconscious in criminal cases (Erickson¹⁸), the mechanisms of crime and the prejudice they themselves have for or against a criminal because of their own unconscious mental mechanisms. Freud in 1906 and later Jerome Frank¹⁹ have pointed out the need of such instruction. Moir⁴¹ has advocated the establishment of professorships in criminology by leading universities.

Roche has advocated special training for physicians who are interested in the field of forensic psychiatry. Recently Dr. S. Bernard Wortis, the Director of the Division of Psychiatry at Bellevue Hospital, has announced that a research project in forensic psychiatry will soon be undertaken at the New York University Medical School.

Conclusions

In this paper we have attempted to point out that at the present time our handling of psychiatric problems in criminal courts lags far behind our knowledge of psychiatry and also lags far behind the procedures being followed in various Euro-

pean countries in dealing with such problems. We believe that the "right and wrong" rule, known as the M'Naghten Rule, which constitutes the sole test of responsibility in England and in the majority of American states, should be abolished. We have cited two case records of patients recently seen at Bellevue Hospital which clearly point out the flaws in our laws in handling such problems. We believe that there should be uniform standards for designation of experts as the National Conference of Commissioners on Uniform State Laws has proposed, and that these experts should be hired and paid for by the courts, *not by interested parties*. Finally we advocate the further education not only of lawyers and judges but also of psychiatrists. Until these measures are carried out, we are not doing justice either to the legal profession, the medical profession, or to the public at large whom we are obligated to serve.

Thus, with our present day knowledge of human nature, we should try to treat the culprit as an individual, with constant concern for his own benefit and for social good. In doing so, we will also contribute to further advancement of our knowledge and help develop a better method of preventing criminality. This achievement — as in any medical treatment — should be our main goal.

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