

Summer 1959

## Abstracts and Notes

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

Abstracts and Notes, 50 J. Crim. L. & Criminology 160 (1959-1960)

This Note is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

defense of unreasonable search was raised in 4673 of the 6649 cases for the year 1950. Of this number, the court granted motions to suppress in 4593 cases.<sup>151</sup>

Justice Cardozo once stated the substance of the exclusionary rule problem when he said: "On the one side is the social need that crime shall be

<sup>151</sup> Comment, 47 Nw. U.L. REV. 493 (1952).

repressed. On the other, the social need that the law will not be flouted by the insolence of office."<sup>152</sup> As the exclusionary rule is debated in years to come, it is hoped that the courts will face this dichotomy more realistically, and, as a result, will render their decisions in this area with more consistency.

<sup>152</sup> *People v. Defore*, 242 N.Y. 13, 24, 150 N.E. 585, 589 (1926).

## ABSTRACTS AND NOTES

(The following are abstracts of three papers which were read on December 27 and 28 at the fifteenth annual meeting of The American Society of Criminology in Washington, D. C.—Section K of the American Association for the Advancement of Science.)

### PSYCHIATRY AND THE M'NAGHTEN RULE

This paper reviews the sources and the long conflict between two systems of thought and reality evaluation represented respectively by criminal law and medical psychology centered on the subjective element of unlawful acts. In the light of this reference the M'Naghten Rule and the proposed American Law Institute model code are examined.

Since the 13th Century, Anglo-American law has followed the dictum of Bracton, ". . . *furiosus non intellegit quid agit, et animo, et ratione caret; et nonnullum distat a brutis*," that the insane does not know what he is doing, is lacking in mind and reason, and is not far removed from the brute. In this dictum are the lineal ancestors of what have molded the common law into its present form, the folkway notion that an insane person does not *know* what he is doing, that he does not *know* what he is doing because he has *lost mind and reason*. The successors of Bracton reiterated this idea. In the 17th Century Coke laid down no formal test but introduced the principle that no crime could exist without felonious intent and purpose, and that a madman does not *know* what he is doing and, in lacking mind and reason, could not have a felonious intent. Lord Hale followed Coke's dictum in respect to intent and from him we have the earliest test of culpability based upon the partition of the mind, whereby the accused, afflicted only with a "partial" insanity, could not be excused; only

"total" insanity dissipated felonious intent. In subsequent English trials the theme of *knowledge* found development in such expressions as the capacity to "distinguish good from evil," and reached its full flowering in the 1843 M'Naghten formula, in which to establish a defense of insanity, the accused must suffer such defect of reason from disease of the mind as not to know the nature and quality of the act he was doing and not know he was doing what was wrong.

The Hadfield case in 1800 was significant in the development of the rule of law governing the culpability of the insane. Hadfield, a depressed paranoiac, made an attempt on the life of King George III. He hankered for the death penalty, but was, instead, acquitted on the grounds set forth by his counsel, Lord Erskine, that "Delusion . . . is the true character of insanity." It was clear that Hadfield had long brooded a delusional interpretation of his environment and that within his system of beliefs and for relief of the intolerable inner tensions attending them was ineluctably impelled to his acts. This commonplace observation failed to bring judicial adoption of delusion alone as a test in place of the knowledge test of right and wrong, as came to notice in the subsequent trial of the lunatic, John Ballingham in 1812, who was dispatched to his doom in eight days. In the trial of M'Naghten in 1843, the defense did raise the

question of morbid delusions affecting M'Naghten's capability of control, and his capacity to distinguish right from wrong. M'Naghten was acquitted. In the subsequent rule of law, formulated by the Judges of England, emphasis was placed on the moral question of right and wrong; the matter of morbid delusion was left out of the rule.

From the reading of the records of these earlier trials and especially that of M'Naghten, it does not appear that documented observations of the actual behavior of psychotic persons had any influence on the shaping of the M'Naghten Rule. M'Naghten's counsel, Alexander Cockburn, gave convincing demonstration of the compelling force of delusional motivations of the madman, his awareness of his designs and execution of his intentions and of the moral and legal consequences of his acts. The Judges passed over these realities and merely gave reiteration to an ancient maxim. There is no medical content in the M'Naghten Rule beyond the assumption that if medical men can describe and name mental disease, they can also determine from the same descriptions and names when mental disease affects reason so as to impair knowledge of the nature, quality and wrongfulness of an act.

We perceive that the M'Naghten Rule of today is essentially a literal restatement of the 13th Century dictum of Bracton. In our present criminal law of insanity we discover in its language reminders of the lag which marks the distance between mid-20th Century reality and the conceptions of Bracton and Hale.

At its 32nd Annual Meeting, the American Law Institute submitted a substitute for M'Naghten as follows:

"MENTAL DISEASE OR DEFECT EXCLUDING  
RESPONSIBILITY"

(1) "A person is not responsible for criminal conduct if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

(2) "The terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct."

This proposal is essentially a restatement of M'Naghten to which is added a second element which recognized impairment of volitional capacity as a defense. In place of the M'Naghten re-

quirement of knowing the wrongfulness of an act, the proposed code requires that the accused lack "substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law." This criterion ignores, as does M'Naghten, the observation of everyday life that mentally ill persons who commit criminal acts are substantially appreciative of the criminality of their conduct. The futility of designing a test of criminal responsibility of the insane is assured as long as we erect test criteria which do not reveal the properties of nature but only the properties of language which more properly describe independent, supernatural and self-contained folk theorems of mental illness.

The author, however, recognizes the essential utility of M'Naghten or the American Law Institute tests as public-centered arbitrary moral testing devices which, as matters of law, need not have necessarily the verification of science. Considered strictly as a matter of arbitrary law and within its own logic, they have a validity of moral testing devices. How well they meet mid-20th Century needs is another matter. The real defect in M'Naghten lies in the fact that in action it does not remain in the realm of law but reaches into the realm of science. It imposes upon the physician questions for which science provides no answers. The expert is left in the ambiguous position of one who, in reporting and interpreting matters, finds himself *used* to supply answers to unpalpable moral questions which are properly matters for the triers of fact. Such questions have no place in opinion medical testimony.

The author proposes that in the trial legal tests of insanity are matters which should be procedurally restricted to the triers of fact. They should not be directed to the expert but only to those charged with making the verdict. The offerings of the expert should be restricted to a report and opinion that the accused was or was not so changed as to be regarded as mentally ill, and *how* such illness at the time related to the offense. This proposal suggests a procedural but no substantive change in jurisprudence, a change in form similar to that of the long standing procedures in European courts, in which psychiatrists do not control the decisions of the courts. This proposal defines more sharply the limitations of psychiatrists in the public drama of the criminal trial, and suggests a wider scope for the introduction of medical in-

formation into the evidence. The recent Durham Rule in the District of Columbia and subsequent decisions in the same jurisdiction point to the way and time in which the limitations of psychiatry as

a science and the scope of psychiatric opinion will be more clearly measured and employed.

PHILIP Q. ROCHE, M.D.

University of Pennsylvania School of Medicine.

### THE DILEMMA OF AMERICA GAMBLING: A SOCIOLOGICAL ANALYSIS

Some conception of the hold which games of chance have exercised upon the American people can be gained from the various estimates which were made at the time of the Kefauver Senatorial Hearings on crime a few years ago and before the current crackdown on organized gambling ventures. It should be recognized that the full extent of gambling is impossible to estimate with any degree of precision, especially if one takes into account such activities as card games played at home, bingo parties of various description, bridge playing among women's groups, and the like. However, the numbers of individuals and amounts of money involved in the various forms of institutionalized gambling, such as horse racing, the "numbers and policy" games, sporting events, and professional card games have provided us with some rough estimates. It was generally assumed at the time of the Kefauver hearings that approximately 50,000,000 adult Americans participated in some form of professional gambling, involving an annual sum of approximately \$30,000,000,000 and yielding an annual profit to the gambling syndicates and entrepreneurs of about \$6,000,000,000.<sup>1</sup> This annual profit was reputed to be greater than the combined annual profits of our largest industrial enterprises, including such organizations as the United States Steel Corporation, General Motors, and the General Electric Corporation. Indeed, one estimate actually placed the annual volume of profits from gambling ventures as greater than the total profits of the hundred largest manufacturing companies in the United States.

Although it is difficult to determine at this time how much of this gambling is still going on, because of variations in state and local regulations and varying degrees of stringency in law enforcement, there is little direct evidence to indicate that the preoccupation of the public with gambling has altered substantially for the country as a whole.

<sup>1</sup> See, for example, some of these disclosures in the *Second Interim Report* of the Kefauver Committee. Washington, D. C. : U. S. Government Printing Office, 1951.

Although fluctuations in the volume of gambling may be seen in relation to crisis periods and periodic tightening of legal restrictions brought about by a temporarily aroused citizenry, the general volume of gambling has remained at a relatively high level during the entire century. Sociological studies of widely varying problem-conditions have shown that gambling tends to increase during periods of war, post-war years, and during periods of rising prosperity.<sup>2</sup> Certainly, an examination of the record during this century would afford little evidence of the fact that the American public's interest in gambling as a form of diversion or as a means of sudden wealth has revealed any indication of a declining trend. Indeed, a sober reading of the record would tend to indicate the very contrary.

Unlike excessive drinking, drug addiction, or sex demoralization, gambling produces no directly deteriorating effects upon the human organism or the social group. Its danger lies in the fact that it interferes with the normal assumption of responsibility which organized society compels. Second, gambling, as any other form of widely accepted and extensively practised, although tabooed form of social behavior, may become a social problem because of its intimate association with unscrupulous and lawless elements. Despite public strictures against it, particularly in the United States, gambling in its various institutionalized forms, ranging from card games for low or high stakes, horse-racing, bingo, betting on the outcome of various forms of athletic competition, and pinball and other mechanical gambling contrivances to the vast "numbers and policy" games which prey upon small-income groups in our large cities, has become a significant element in modern recreational life.

Further, the social motivations to gamble are so powerfully rooted in the American social structure that it becomes virtually impossible to curb such

<sup>2</sup> Cf. ERNEST R. MOWRER, *Social Crises and Social Disorganization*, AMER. SOCIOLOGICAL REV., XV (February 1950), p. 64.

tendencies. This, the present writer has examined with considerable detail elsewhere.<sup>3</sup> Certain social and cultural systems seem to foster and exploit the chance element in human life, particularly those societies where status largely depends upon competitive pecuniary standards. This is notably true in the United States, where rapid commercial expansion and industrial development conspire to spur the individual to economic success through sharp competitive practise, and where industrial expansion has upon occasion depended to a considerable degree upon precarious and speculative enterprise. In the United States, for example, the distinction between certain forms of approved and legitimate stock-market speculation and the cultivation of the gambling interest is largely a matter of degree, yet one is approved and the other condemned. An illustration of this may be seen in the sharp rise of speculation among basic commodities, at perilous expense to the American economic structure and the national security, which occurred at the beginning of the Korean crisis early in the summer of 1950. According to an analysis by the Commodity Exchange Authority of the United States Department of Agriculture, up to 85 or 90 percent of the dealings in soybeans for July 21, 1950, was pure speculation—betting that the market would go up as a result of the crisis.<sup>4</sup>

The practice and organization of gambling seems to follow a well-defined cycle in the United States. So well entrenched is it as a form of recreation, and so propitious are the various cultural

<sup>3</sup> See, for example, the writer's *DISORGANIZATION: PERSONAL AND SOCIAL*, Alfred A. Knopf, Inc., 1952, pp. 467-77.

<sup>4</sup> See, for example, U. S. Department of Agriculture, *Report of the Commodity Exchange Authority*, Washington, D. C., August 1950.

elements in modern society which promote it, that, as in the case of the prohibition of alcohol, legislative and other forms of arbitrary social control are frequently considered an infringement upon personal prerogative and privilege. When control is attempted, it is virtually impossible to maintain because of the secure place which gambling enjoys in the institutional patterns and folkways. As a result, legislation and other controls can at best, in the long run, be only partially successful. The public outcry and consternation in the wake of such disclosures as those of the Kefauver and other legislative committees tend to usher in what prove to be temporary pressures for partial control of gambling in its more egregious and extreme forms. Such measures do not deter but actually provide an incentive toward the opening-up of forms of gambling still proscribed, paving the way once more toward eventual irresponsible control by lawless and corrupt elements. As the cycle gains momentum, this invites further legal control, again difficult or impossible to enforce and leading to further corruption, with the result that eventually considerable popular pressure is exerted to legalize all forms of gambling. When this occurs, the dangers of widespread legalized gambling invite hazards for the entire society, reintroducing the need for partial control; and the cycle begins again. An examination of attempts to impose legislative curbs upon gambling in the United States suggests very strongly that the cycle described occurs with impressive regularity in relation to restrictive legislation.

HERBERT A. BLOCH

Professor of Sociology,  
Brooklyn College,

---

## THE CRIMINAL PSYCHOTIC IN AN INSTITUTIONAL SETTING

The first part of this paper is concerned with the development of the care of the criminal psychotic in the State of Indiana, over a period of 67 years since 1891 when the Prison Board at Michigan City first recognized that there were some inmates who required special care. As they related, the actions and behavior were not considered normal for that time. The Board further recommended in 1891 that "hopelessly insane" convicts should be removed to a state hospital, then called "Insane Asylum".

Details of the decade by decade progress are recorded. The article gives many facts which would otherwise be buried permanently in prison files. The author has noticed that as he went through the various yearly reports, there was an increasing pressure both within the institution of the prison and from the civic groups then forming, regarding what should be done with the criminal psychotic.

These efforts led to the recommendation of a program in 1912, as a result of which a hospital of sorts was established within the prison walls.

Almost immediately increase of immigration to the prison hospital became so great that local improvements were made and the so-called IHIC (Indiana Hospital for Insane Criminals) came into being.

From almost the opening day, IHIC was full and over-crowded. The hospital had been originally planned for a total of 132 men, but on the day it opened, 149 men were waiting for admission.

The article describes how funds for any personnel other than the doctor in charge and a few trusted guards were vetoed. In 1944 the concern of the present warden reached such a degree that he published an extremely informative article stating that he no longer wished to have the supervision and care of the mentally ill patients within his prison grounds. A few years later, state planning committees made funds available and plans were made for the present Maximum Security Hospital which was opened on February 22, 1954. There were many adjustments in policy year by year as the new hospital faced its challenges and responsibilities. A leveling course ensued and an accounting ending with the hospital's fiscal year of February 22, 1959 finds that in five years, the hospital has grown to a census which very closely approximates 400 patients. On various tables it has been worked out that there will be a constant 30 to 40 patient increment each year and these estimates, made several years ago, have proven to be almost exactly correct.

The shifting of commitment to the Maximum Security unit has changed considerably so that now 50 percent of the last 155 patients came to the hospital from the penal institutions—prison, penitentiary, state farm or boys school; 31 percent have been committed as lacking sufficient comprehension to stand trial; the remainder, 19 percent, are the difficult patients in the various other civil mental hospitals throughout the State of Indiana who must come to Maximum Security for the more selective treatment that they receive there.

Recidivism is quite low. Only two or three percent of the present discharges of more than 500 over the past five years have been failures. These failures include the cases sent to court where the hospital's recommendations are not followed. In addition, they represent the results of rather clever patients who invoked every possible clause in the law in order to be released from the hospital and then almost immediately found themselves in trouble again.

Many types of therapies have been utilized in the treatment of various widely separated types of patients. Electric shock treatment, group psychotherapy and tranquilizing drugs have been used in order to make the patient receptive to what is commonly referred to as the interpersonal relationship of the therapist.

To this end, nine different groups have been set up by various trusted Social Service Workers, Psychologists, Chaplains and Supervising Aides. If it is felt by the medical staff that intensive drug or shock treatment is necessary, this has been administered and the patient has been fitted into the proper niche as he has progressed.

#### PRESENT AIMS OF THERAPY

1.—As a bulwark for these rather basic forms of therapy, there have been established in this institution rather special observation by the aide who, on his shift and on each other shift, comments graphically in the nursing program as to how the patient is getting along. Anything that is aberrant or unusual is presented to the Medical Director in writing. Plus this, the aide is required to submit a progress report at not less than one week intervals. These are reviewed by the Chief Nurse and made a part of the record with the aide initialing his own comments.

2.—Certain clubs have been organized and sponsored by staff members to appeal to the talent in the individual which might not be apparent in a routine hospital day. There is the Press Club which publishes the monthly newspaper and a Hobby Club which permits patients to make nicknacks for their relatives.

3.—Intramural teams of baseball, basketball, volley ball, track and general sports events displaying ability and weight lifting, bag punching, etc. were developed.

4.—The school was expanded to meet both the needs of the mental defectives admitted to the institution and those whose education had been interrupted by their criminal career.

5.—Music Therapy has been helpful for certain talented patients, and according to plans recently submitted, may well be utilized to provide both a soothing type of influence before and after shock treatments and as a means to make the holidays a bit less painful.

6.—A basic relationship exists from the first minute the patient is in this institution until he leaves in that the patient is no longer a number

nor a "hey you", but rather a person who has some reason to expect normal social interplay and this idea is carried on throughout the entire hospital. No patients are referred to by number, but rather he becomes "Mr. So and So" and the aide on the ward in turn is entitled to this respect. This seemingly trivial point has brought about many bits of information as to why the so-called criminal psychotic rebels against penal authority, but responds to the warmth of the psychiatric institution. He will learn in due course that this

is a means to an end. It is hoped that, through his experience of learning how to address other fellow men and react with them in their hour by hour contact, he may well adjust his operating philosophy to the point where he will become again not only mentally well but a worth while citizen.

DEAN C. TASHER, M.D.

Director, Maximum Security Section,  
Norman Beatty Memorial Hospital  
Westville, Indiana.

---

### ANNUAL INSTITUTE OF THE ILLINOIS ACADEMY

On April 17 and 18, 1959, the Illinois Academy of Criminology held its Ninth Annual Institute at the University of Chicago. Lloyd E. Ohlin, Professor of Sociology in the New York School of Social Work, Columbia University, and Director of the Comparative Study of Juvenile Correctional Institutions, was the speaker at the annual dinner. His subject—"The Theory of Individualization in Treatment and Institutional Placement."

The following officers were elected at the business meeting on the 18th:

*President:* Hans W. Mattick, Sociologist, former Assistant Warden, Cook County Jail (Chicago, Illinois), 1955-58.

*Vice-Presidents:* Francis A. Allen, Professor of Law, University of Chicago; Daniel Glaser, Professor of Sociology, University of Illinois; and Solomon Kobrin, Sociologist, Institute for Juvenile Research, Chicago.

*Secretary:* Bertram B. Moss, M.D., Medical

Consultant, U. S. Probation Service, Northern District of Illinois.

*Treasurer:* Harvey Treger, U. S. Probation Service.

*Archivist:* G. Lewis Penner, Juvenile Protective Association.

*Executive Committee:* A. Gilmore DuVal, Illinois Humane Society; Harold Finestone, Institute for Juvenile Research; Arthur Huffman, Illinois State Penitentiary, Joliet-Stateville; Rev. James G. Jones, St. Leonard's House, Chicago, Charles H. Z. Meyer, U. S. Probation Service; Bernard Robinson, Illinois State Reformatory for Women, Dwight; Sarah B. Schaar, Illinois Society for Mental Health; S. Kirson Weinberg, Department of Sociology, Roosevelt University; and Morris J. Wexler, Attorney at Law, Chicago.

BERTRAM B. MOSS, M.D.

Secretary

---

### THE UNITED NATIONS SOCIAL COMMISSION

The United Nations Social Commission, having reconvened after an interval of two years, has held a three weeks session which opened on April 27, 1959. It had before it, among other things a report of an international survey which traces social developments since 1953.

It is of particular interest to readers of this JOURNAL that the Commission considered the future scope of UN activities in the field of social defense—the prevention of crime and the treatment of offenders.

An ad hoc advisory committee of experts met

in May 1958 to examine this question and has submitted a report<sup>1</sup> which finds that "the evidence of an alarming growth of crime, particularly among young people in many parts of the world, constitutes a challenge to the United Nations to intensify rather than to reduce its activity in this field.

The advisory committee has suggested a series of projects for the next two years with continued emphasis on measures to prevent crime, and particularly juvenile delinquency. The Secretary-

<sup>1</sup> Document E/CN. 5/329