

THE CONCEPT OF RESPONSIBILITY

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"No man is an island, intire of itselfe; every man is a peece of the Continent, a part of the Maine; if a Clod bee washed away by the Sea, Europe is the lesse, as well as if a Promontorie were, as well as if a Mannor of thy friends or of thine owne were: any mans death diminishes me, because I am involved in Mankinde. And therefore never send to know for whom the bell tolls; it tolls for thee."—JOHN DONNE.

INTRODUCTION

IF "responsibility" has any useful meaning, it is in the sense that we are all responsible for one another. As any man's death diminishes me, so any man's defection diminishes me.

The concept of criminal responsibility in particular (which does not differ in substance from any other kind of responsibility) has long bothered lawyers and psychiatrists who, in their wrangling over this issue, never seem to come to grips with the essence of the problem. This is perhaps to be understood in view of the fact that their training does not encompass much, if anything, in the way of fundamental psychological principles, scientific attitude or philosophical approach; and this matter of responsibility is properly one for the psychologist or philosopher who has had such training (and not all of them have) to treat. The untutored layman frequently gets away with a brash voicing of his opinions on psychology as a result of much psychological terminology being in common currency, although with different meaning, and of every man regarding himself as a psychologist, especially where he is ego-involved. The psychiatrist or lawyer often gets away with his views on psychological and philosophical topics for similar reasons, but more weight is apt to be attached to these opinions by virtue of the prestige enjoyed by his profession. This tendency is nicely illustrated in a recent paper on responsibility (Lowrey, 1953) where the writer disarmingly tells us that the subject matter lies in "conceptual fields quite different" from those which ordinarily concern him and that his training has been in anatomy and pathology. A logician writing about the operative procedures employed in temporal lobectomy would be no more misguided an excursion. This writer cavils at "the roundabout fashion in which determinism [as defined by Webster's Dictionary] may maintain the idea of a free will" but goes on, tripping through non-sequiturs, self-contradictions, a confusion of logical categories and a lack of appreciation of semantics, to embrace both of these himself, commenting: "To find good examples to prove [*sic*] the co-existence of determinism and freedom of choice . . . has not been easy." At least he does put a finger on the point that determinism eliminates responsibility and focusses attention on the paradox that: "If we, as psychiatrists, regard recidivists as being in greater or lesser degree mentally sick, even though not insane or feeble-minded, then we must stand for a concept of limited or qualified responsibility and believe that the framework of determinism is pathologically altered so that freedom of choice is impaired."

Turning from notions of diseased determinism to views of the Royal

Commission on capital punishment, we find that (Wingersky, 1954): "Despite frequency of investigations in these areas and advancement of medical science to its present status, these investigators were still driven back to the recognition that a moral question confronted them whenever they touched the question of responsibility." Yet the Commissioners announced their desire to avoid "philosophical arguments which have led to barren controversy in the past". According to Wingersky: "Whether the current doctrine of responsibility reflects both 'contemporary moral standards' and the latest medical knowledge is the core in the struggle for an opinion on the cardinal issue, viz. retention or abrogation of the M'Naghten Rules." He also quotes Turner that "the courts are not concerned with insanity as such but with criminal responsibility". It is difficult to see how any amount of medical knowledge could in the slightest affect such a problem. The reference to "contemporary moral standards" (which have not been clearly defined or systematically assessed) is manifestly a sop to public opinion, which it would be immoral and irresponsible of any scientist to let influence his conclusions. Whether the Commissioners like it or not, the problem is of the same kind as that discussed in a broadcast series a few years ago under the heading of "The Physical Basis of Mind" (Laslett, 1950), of which Ayer remarked that it was not a scientific but a philosophical problem. It was striking that all of the very distinguished scientists who spoke in this series, with one exception (as was pointed out at the time by Ryle), automatically posed the problem in terms of body-mind dualism (like Ryle's peasants who, seeing an engine for the first time, thought that there must be a ghost-horse inside it)—which was, of course, implied in the very title. Zuckerman it was who said: "If mind is conceived of as something which interacts with body—or as some parallel manifestation to body—the scientist may be misled into trying to solve problems which may prove unreal."

The functions attributed to modern philosophy by Drever (1949) are clarifying concepts and integrating the findings of the various sciences: the first of these concerns us, the second is the more difficult since few can be in a position to know enough about the different sciences even to attempt their integration. Regarding the former, Drever says: "The scientist can examine his own basic concepts, of course, but if he does he is philosophizing, and experience shows that he will philosophize less effectively than those who have been trained to do the job. In particular, our basic concepts—or ways of talking—about human beings are in need of clarification and refinement. In this field, above all others, the scientist must look to the philosopher, forgetting, if he can, that from some philosophers, notably Descartes, he has already had some very misleading suggestions." The (largely Cartesian) legacy of "mind *and* body", states Sinclair (1951), "has been given up by many and perhaps most philosophers, psychologists, and biologists, and by many theologians, but it is still held by other workers in these fields and presumably by most plain men". He goes on to say: "The common-sense theory that there are minds and that there are bodies may be convenient to hold for certain limited purposes, but it is, strictly, untenable, and therefore in any philosophical, psychological, ethical, theological or other discussion of fundamental issues, references to the mind and to the body as distinguished one from the other in the common-sense way ought not to appear . . ." It is from a background of this dualism, together with the archaic faculty psychology recognized in legal discussion or the out-moded Freudo-McDougallian psychology so firmly entrenched in psychiatric circles, that the present-day concepts of responsibility have arisen.

Misunderstanding of the nature of the problem is well illustrated in the correspondence (particularly that of 16 October) ensuing upon the publication of Slater's (1954) article on "The M'Naghten Rules and Modern Concepts of Responsibility"; even so obvious a statement as "No theory of mental medicine could develop without the working hypothesis of determinism" is an alien thought to some of these writers and frequently fires off an emotional charge. To err is philosophical, as well as human, however. Some philosophers do not appear to have negotiated their way past the clicking billiard balls of Hume, or the idea that determinism is somehow tied to the particular laws of classical mechanics instead of being a principle basic to all the sciences (cf. Bergmann, 1951)—and not, we might add, a mere assumption, for it has the whole body of scientific knowledge to support it. Smith (1954) writes in terms of a faculty psychology divorced from modern psychological knowledge relevant to his subject and unappreciative of the status and use of words and theoretical constructs; apparently unable to escape a hypostatization of concepts such as "desires" and other "forces", he ends up in the same philosophical naïvety as Lowrey (1953) and in agreement with Campbell (1951) that: "Action, although free, will be limited to those courses of action which the interests, guided by the intelligence, of the agent suggest to him as possible modes of self-satisfaction", and that "freedom exists only within this prescribed area".

Another facet of this matter of appropriateness is strangely perceived by East (1949), who asserts 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", and that since 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", these would best be served by "refusing to accept the opinions of non-medical psychologists and psychotherapists". He also states: "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." In other words, assuming that criminals include both psychologically normal and psychologically abnormal persons, psychiatrists are entitled to pass opinions on both the normal and the abnormal while psychologists are not entitled to pass opinions on either. It is not evident which species East was criticizing: when this essay was written, both non-medical psychotherapists and clinical psychologists were few and far between, their appearance in the courts (if indeed they were admitted as expert witnesses) even fewer and farther between. As to the divergence of views, it could be no more than that between different psychiatrists.

IDEAS ABOUT RESPONSIBILITY

In the ancient Common Law, the function of the law was to regulate the compensation to be paid for harm done rather than to punish the doer and mental processes were taken into account very little if at all. Nowadays, in some crimes it has only to be established that the accused was physically responsible for the crime, i.e. that he has brought about a state of things which the law prohibits (*actus reus*); in others, it has also to be established that a certain culpable state of mind must have inspired or accompanied the conduct of the accused (*mens rea*), allowance being made for the subjective element of excuse in some cases. When this subjective element was introduced, under the influence of the mediaeval church, it brought with it the idea of punishment. "Ecclesiasti-

cal laws and the penitentiaries looked primarily at the mental processes of the individual sinner and aimed at saving his soul. It was largely under ecclesiastical influence that the notion of wickedness became prominent and the idea was advanced that the wrongdoer should be *punished* for his wickedness in cases where wickedness could be established." (Radzinowicz and Turner, 1944.) The test of moral blame which came to be applied was, of course, one which made use of an absolute moral standard as understood by the judges and not the wrongdoer's attitude—and we have not moved far beyond this stage today.

Legal authorities, some quoted by Henderson and Gillespie (1950), generally regard the mentally diseased and defective as impaired in a power of "controlling" their conduct, which all normal people are supposed to possess. This way of thinking about the matter is common among psychiatrists also. East (1949) avers that "the faculty of self-control is impaired in most cases of insanity"; and of the normal, subnormal, mentally defective, psychopathic, psychoneurotic and psychotic that: "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." He attempts to distinguish between "criminal responsibility", which he alleges to be a legal concept both understood and approved by the public, and "culpability", recognized by medical men. His view that "the thoughts and behaviour of the insane are to some extent related to the mental diseases from which they suffer" contrasts with the more positive and universal statement of Henderson and Gillespie that: "Medicine has come to recognize that the mind is a whole, one and indivisible. There is no mental disorder, however partial in appearance, that does not have its reverberations throughout the rest of the affected mind." MacNiven (1944) emphasizes that "there is no sharp dividing line between normal and abnormal mental functioning", that the difference is "quantitative, not qualitative", the same mechanisms being operative, albeit in exaggerated or distorted fashion; the mind functions as a whole and therefore when a mentally ill person commits a criminal act it is wrong to suppose that his conduct was uninfluenced by his illness. He comes to the conclusion that "the only logical solution to the problem of criminal responsibility is to abolish the legal concept of responsibility and to regard everyone, whether sane or insane, who commits an offence as responsible but not necessarily punishable. Strauss (1954) states: "It is clearly impossible to establish moral responsibility in the case of an insane person, for an insane person is held in law to be irresponsible."

Karpman (1949) expresses the viewpoint that criminality is a disease and criminals can be cured, and he tries to demonstrate "that *since* these people are emotionally abnormal, they cannot be held legally responsible; and that psychiatric treatment, and not punishment, is the preferred and logical treatment of crime" (*italics present writer's*). He cites a number of cases in support of this thesis, which can only be accepted as evidence that the persons concerned were emotionally abnormal and not as evidence that they could not be held responsible: this hinges upon acceptance of the above-mentioned premiss. "Criminal behaviour", he says, "is an *unconsciously* conditioned psychic reaction over which they have no conscious control" and "there can be no question of responsibility where there is no evidence of conscious guilt" (*italics present writer's*). Tappan (1952), a sociologist, however, declares that: "The criminologist is generally hesitant today to establish a strictly clinical orientation in the

treatment of most offenders. He is skeptical particularly concerning the application of medical psychology to the great mass of what appear to be psychologically normal criminals or to 'emotionally deviated', 'psychopathic' or neurotic offenders where their conditions are not amenable to reasonably effective treatment modalities nor even to uniform diagnosis among the experts." (One might comment, *en passant*, that if the latter criteria were to be taken seriously medical psychology would not be applied to anyone.) Buckman (1952) puts it: "The abnormal behaviour of the delinquent has its origin in the deeper and *unaware* part of the mental life of the delinquent and he is, *therefore*, less able to manage his acts than the person who has normal emotions. The psychiatrist thinks of criminals as sick in the sense that he knows it is difficult for them to *control themselves* without therapy of some kind, and therefore he does not condemn them." (Italics present writer's.) Frank (1952), a police commissioner, has a contribution more pertinent than most; he gives two meanings of "responsibility": "In one sense, it relates to a power that one has over his own fate. There is the assumption of a free will which most criminologists deny. That concept of responsibility has been criticized as mere inference or rationalization. From a strictly scientific point of view, praise or fault cannot be attributed to any individual act. When one's conduct is examined it must be, at least, in terms of heredity and life experience." Some concept of responsibility is necessary for society to function, however, and "a person must be held accountable for his personal behaviour"—to refute the concept of free will does not relieve an offender of responsibility in this sense of accountability; this viewpoint "has found expression in the gradual acceptance by our community of a theory of protection in lieu of punishment that is merely vindictive in character".

In Scots Law, in the case of murder the concept of "partial responsibility" is permitted. Henderson (1944) quotes Lord Alness, referring to those who do not merit the description of "insane" but "are nevertheless in such a condition as to reduce the quality of their act from murder to culpable homicide"; there must be some weakness, aberration, unsoundness, "a state of mind bordering on, though not amounting to, insanity; there must be a mind so affected that responsibility is diminished from full responsibility to partial responsibility". That is to say, for responsibility to be diminished there must be some disorder or deficiency which diminishes responsibility . . . He also quotes Prichard who, as long ago as 1835, postulated "a form of mental derangement", something which is uncontrollable, which indicates a diseased mind, and, therefore, is not subject to reason and free will". Other factors which are allowed as reducing responsibility are tender age and alcohol, under the influence of which "a person is not fully responsible for his actions", his inhibitions against anti-social acts being undermined or paralysed (Scott, 1944). Others take a simpler, not to say more naïve, view. Rockwell (1953), for instance, says: "There are no degrees of liberty. A person is either confined or he is at liberty. The price of liberty is responsibility. If liberty is indivisible, so then is responsibility, and the concept of degrees of criminal responsibility is fallacious." In this view, only the certifiably insane criminal is relieved of responsibility.

It has been argued that the law should also make allowance for the "irresistible impulse", which is the doctrine of partial responsibility in another guise. This, naturally, has given rise to some heart-searching on the part of those who might be called upon to gauge the degree of resistibility of an impulse. "Whether a person can, or cannot, resist a desire can only be determined by

studying carefully and minutely his past behaviour and past life", states Rudolf (1944). He adds: "This may take an hour or more, particularly if evidence confirming some of his statements must be obtained."(!) This assessment of controllable reaction can be computed accurately only by a trained and experienced person, of course. Lord Jowitt (1954) cites Neustatter who says: "As long as there is no proof which impulse is genuinely irresistible it would clearly be unsafe to allow it as a plea, as those who would have controlled themselves for fear of the consequences might be tempted not to do so, with consequent danger to the public."

The M'Naghten Rules, as Strauss (1954) has pointed out, were formulated at a time when man was regarded as a kind of reasoning machine: "Today we know, however," he says, "that many forms of insanity—in fact, most kinds—do not primarily impair the intellect so much as disorganize the life of the emotions, and in such a way as to deprive a man of his capacity for moral choice, or anyhow seriously to distort his perceptions of right and wrong." The British Medical Association has sought to have the much-quoted specifications ("... the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong") enlarged by the addition of "a disorder of emotion such that, while appreciating the nature and quality of the act, and that it was wrong, he did not possess sufficient *power to prevent himself* from committing it" (italics present writer's) and "... to such an extent as not to be fully accountable for his actions, they shall return a verdict of 'Guilty, with diminished responsibility.'" Wingersky (1954) writes: "Since there is blurring between the extremes of sanity and insanity, it is difficult, if not impossible, to draw a clear line of demarcation between responsibility and irresponsibility. Coupled with this ineluctable condition and the fact that a wide variety of mental abnormalities generate diminution of responsibility, [subject of the sentence missing] led the [Royal] Commissioners to their final conclusion on the proposal to introduce this doctrine into English Law", that it was "beyond the scope of this Commission's power". These quotations further illustrate the traditional presuppositions which stultify thinking about such problems as we are concerned with here.

The M'Naghten Rules embody the tendency to look not *at* but *past* the behaviour of the individual in search of some ill-defined, nebulous mental kink. Mayer-Gross *et al.* (1954) have pointed out how a quite anomalous procedure led to the crystallization, over a century ago, of a contemporary opinion, one which is now subject to much variation in its interpretation by judges, and how "the debate centres around, [*sic*] not the medical facts, but metaphysical issues of which, if they have a meaning at all, the medical man has no direct knowledge". Confusion they attribute to the use of the word, "responsible": "Lawyers seek to establish non-responsibility on the basis of evidence, when all that can be established medically is the extent of the mental abnormality of the accused, and the *decision on non-responsibility* is an *ethical judgment* to be made by judge or jury." Attention is focussed on whether the mental abnormality passes the M'Naghten test ("... such a definition of madness, that nobody is hardly ever really mad enough to be within it", said Lord Bramwell in 1874, "yet it is a logical and good definition"), and therefore the really important clinical aspects of the case are passed over. In Slater's (1954) estimation, it "prevents the proper presentation of psychiatric evidence;

it impedes scientific advance in the understanding of the relation between mental abnormality and crime; and it throws a barrier in the way of education of the public and of officers of the law in what our scientific knowledge and understanding already are". In lesser crimes, say Mayer-Gross *et al.*, the psychiatric aspects do not receive adequate consideration in the courts; and sometimes not even in capital cases. The existence of capital punishment results in conflicts between the legal and the medical viewpoints in an acute form and with maximum publicity. No other European country is burdened with a formulation of the M'Naghten type. Moreover, under the present system, it is impossible to obtain psychiatric evidence on an impartial footing: such evidence should be called by the court and be subject to cross-examination by both sides.

BASIC ASSUMPTIONS

The basic *assumptions* underlying most of the viewpoints indicated above will reward careful scrutiny. First and foremost, it is assumed that human beings possess a power or faculty of "self control" (which is indistinguishable from "free will"). Second, it is assumed that this power, present in all psychologically normal people, is impaired to a greater or lesser extent in all psychologically abnormal people—whether their abnormality is described as an intellectual or an emotional disorder or deficiency. (There has been a move away from the "all-or-none" idea of responsibility, its presence and absence corresponding to legal sanity and insanity respectively, to a graduated responsibility.) Third, it is assumed that "self-control" stands in a linear relationship to "responsibility"—if it is not actually the same thing—so that decrease in one entails decrease in the other. (From these assumptions it follows that every psychological abnormality involves some diminution of responsibility.) Fourth, it is assumed that conscious factors determine a person's conduct when he is in a normal psychological state, unconscious factors when he is in an abnormal.

No evidence or argument, psychological or logical, is adduced for either the *modus operandi* of this "faculty" or for its alleged presence in the normal and absence in the abnormal. It is not explained what is controlling what, or how. To talk of the "self" controlling the "self" is a meaningless use of words, and one which leads to an infinite regress, since the question then arises, "What controls the self which controls the self?" The "self" of "self-control" dissolves, in Smith's (1954) words, into "a series of *disconnected* interventions, irruptions into the 'causal chain.'"

PRACTICAL CONSEQUENCES

Some of the practical consequences of this way of thinking, which has normal and abnormal persons, criminal and non-criminal, all performing to the tunes of different sets of laws, are seen in the courts when psychiatrists of different persuasion appear for the defence and for the prosecution to argue the sanity of the accused. Wertham (1949) refers to the endeavours of four psychiatrists to demonstrate to be sane a man who had indulged in such practices as inserting pieces of cotton, saturated with alcohol, into his own rectum and setting fire to them; he had had a hundred child victims for similar purposes; X-rays showed twenty-nine needles in his body, which he had been sticking in between rectum and scrotum for years; he ate human flesh (said one of the psychiatrists, "There is no accounting for taste") and faeces (quoth another, "I know of individuals prominent in society—one individual in particular that

we all know. He ate human faeces as a side dish with salad.”). Wertham himself, however, appears to regard as psychologically normal a man who knifed his brother's baby and another, with a history of crime stretching over many years, who committed murder quite unnecessarily. For Wertham, apparently, psychopaths and simulators are normal. Other psychiatrists feel that there must be something odd about individuals who perpetrate such deeds; one senses a bewilderment, for example, in East's (1949) remarks on the case of a man who killed a woman and then ravished the corpse, finding it “difficult to believe that anyone could commit this act unless gross mental abnormality was present”. As Mayer-Gross *et al.* (1954) point out: “The very horror which the abnormal features of a crime have aroused in the public and in the minds of those present in court, may prevent their appreciation as evidence of the abnormality of mind of the accused.”

Another anomaly produced by this attitude we are discussing is the concern of psychiatrists over what might be their “most useful contribution to the problem of punishment”, as East (1949) puts it. “Punishment”, he says, “may be more effective if accompanied by psychiatric treatment”, in the case of neurotics and psychopaths. He chides the armchair critic who opposes the *retributive element* of punishment and who “sometimes seems to forget that it has a deep-seated biological significance . . . In a cultured 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.” Unfortunately, this flourish of fine-sounding phrases does not include instruction on how to assess the “correctness” of the relation between crime and punishment or the “propriety” of the proportions of our emotions. The only difference discernible between “retribution” and “vengeance” is that the former is applied in cases where the writer approves and the latter where he disapproves of the action taken. Another essay in the same collection quotes the Hippocratic Oath: “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.” We find effort being misdirected, then, into seeking methods of simultaneously causing and alleviating suffering, for the medical practitioner can support punishment, which means causing suffering, only with detriment to his professed ethic, which means alleviating suffering.

East (1949) also writes: “The State acts, and must act, upon the assumption that men and women are mentally normal until the contrary is proved.” But normality is not to be assumed, analogous to innocence: if the accused is proved guilty, i.e. physically responsible for the offence, then it follows that his behaviour has been deviant or abnormal, and to talk of “psychologically normal criminals” is a contradiction in terms, equivalent to saying, “persons who behave normally who behave abnormally”.

VIEWPOINT

In tracing the history of the development of the idea of the soul in Western philosophy and science, Ellis (1940) observes that with the practical success of the Cartesian mechanism there was a general acceptance of the associated metaphysic: vitalism arose as a compromise between Cartesianism and common-

sense thought—the *psyche*, a vitalistic and anti-mechanistic principle, conferred freedom upon the human; philosophical thought, on the other hand, accepted the mechanism but repudiated the dualism, generally; the scientist, without worrying about the philosophical implications, has tested out mechanism through acceptance of it as a working hypothesis. Biological mechanism, or “behaviourism”, he remarks, as a speculative idea is as old as Anaxagoras, as a mature philosophical concept as old as Descartes, as an experimental method comparatively new. “To find a mechanistic”, he says, “. . . a natural explanation of biological process, may call for years of difficult laboratory work which may yield little of significance in the end. But anyone of moderate intelligence may sit in his study and evolve half a dozen highly plausible supernatural explanations in the course of an afternoon.” In the words of Craik (1943), “The mechanist does not seek the things in between without reason and gratuitously. He seeks something between two events A and B just because A does not always produce B; and there is no other course open to him.” Nor does a mechanistic approach take any of the complexity or richness, enjoyment or meaningfulness out of life, as some people, who use “mechanistic” as an emotive rather than a descriptive term, seem to think: how does one answer a *non sequitur* other than by pointing it out? Behaviourism, since Watson’s declaration, has become the basis of all modern psychology, at least methodologically.

Modern psychology is deterministic, monistic, behaviouristic (cf. Cole, 1953). The study of behaviour is based on the premiss that every action is a product of the interplay of hereditary and environmental factors, which are but convenient ways of ordering past history and present experience. If we know the biosocial matrix of any personality, then we know the factors which have determined his conduct, be it criminal or other as defined by social mores. Any phenomenon can be traced to its origins in preceding events, theoretically: the intrusion of such an arbitrary agent as “*free will*”—which does not mean anything if you stop to think about it, in any case—would make a chaotic world in which scientific analysis would be impossible. “Free”, like “chance”, is a word to cloak ignorance. The psychology of personality bristles with difficulties because we are never in a position where we can know everything about an individual’s life history. The complexity of the material under study and the early stage of development of psychology frequently make our attempts to identify the springs of specific acts quite vain.

As Boring (1933) wrote many years ago, it has been found necessary to rid ourselves of “the mystery of an ‘*unanschauliche Bewusstheit*’, the impalpable and imponderable consciousness that will not lock horns with physical reality or honestly assume a part in a closed causal system”. Cole (1939), outlining the beginnings of psychology, states: “From first to last the science has been haunted by the ghost-soul of primitive animism.” In a more recent essay from the philosopher’s side, Ryle (1949) has effectively disposed of “the ghost in the machine”. Modern philosophy has shown, in fact, that many of the problems which exercised philosophers of yore are non-existent problems, problems which arise out of wrongly posed and therefore meaningless questions, problems which are a function of the nature of language and not of the phenomena ostensibly being dealt with (some backwoodsmen of philosophy are still kicking against the pricks—particularly those with a vested religious interest). Into this category fall, among others, questions of the “body–mind” relationship and of “free will”. We are not with “free will”, we are not without “free will”: it is just not a useful or meaningful way of talking about life. In Stevens’s (1951)

words: "The traditional but somewhat antiquated problem of psychophysical dualism is exclusively a problem of syntax. Using the common 'material mode' of speech we might say: To every psychical state there is a corresponding physical state of the body and the two are lawfully connected. Couched in this form, such a sentence is a veritable gold mine for pseudo-problems."

Now the notion of "responsibility", as it is commonly used, is rooted in these ideas, of "mind" and "free will": it is "the ghost in the machine" that is held responsible for the individual's conduct, or misconduct. If it was a sick ghost at the time of the misconduct, say the forensic pundits in effect, then it may be excused punishment; a very young or a very drunk ghost may also be treated magnanimously; otherwise it is culpable (animals other than human never being responsible). It is suggested further that the ghost may be allowed to have irresistible "impulses", which would absolve it from its sins.

The question of irresistible impulse is, of course, a purely hypothetical and metaphysical one: all impulses which have emerged into action have *ipso facto* been shown to be "irresistible" impulses. Who are you or I to say that the arraigned "could have" resisted the impulse "if he had tried to", or that he "could have" made the effort "if he had wanted to", anyway? The impulses and actions are determined by influences not under the control of any ghost-soul. (By "irresistible" in these discussions "sudden, irresistible" impulse is usually meant—but that is neither here nor there.) With reference to Neustatter's remarks (q.v.), apart from the fact that there never could be proof that an impulse was irresistible—and it might be recalled here that no two situations are ever the same, either for different persons or for the same person—it is true that knowledge of the existence of such a law by an individual would be a part of the complexity of previous experience forming the matrix of his present conduct—but not necessarily a significant or a "conscious" part, nor one operating in the way imagined by those who regard the criminal as a creature motivated by pure reason, as they themselves understand it. It might also be noted that implicit in such statements about "danger to the public" is the unwarranted assumption that recognition of psychiatric factors means that the criminal "gets off" and that no appropriate remedial measures are to be taken. The proponents of the "irresistible impulse" are presumably believers in free will, since all impulses which have been acted upon must be "irresistible" for the determinist—if this formulation means anything to him. The free will, then, is subject to limitation by uncontrollable impulses, forces which it cannot resist. But how can the irresistible force move the immovable object? Or are there certain regions where free will operates and others where it does not—if so, what are these and how are they defined? Such questions visibly enough spring from a play upon words. The fundamental criticism is that our universe is not populated by a species of impulse omnipotent over human beings, periodically galvanizing individuals into action: such things as "impulses" are never discovered, they are invented, parts of a system which we impose upon the world of our immediate experience for particular purposes, constructed as part of a model to explain and predict behaviour. As Boring (1933) put it: "One does not attempt to discover conscious elements, attributes, or dimensions; one makes them up and uses them as phenomenological exigencies require."

The basic objection, Smith (1954) states, is not so much to the libertarian's refusal to accept mechanical or para-mechanical determinism as an account of moral choice as to the ease with which he accepts it as an account of non-moral choice. The division of labour between the free-floating ghost and the lawful

determining factors of these cosmologies is not made clear. It is evident, however, that for those who think in the conventional, lawless, ghost-in-the-machine framework it is only when there is some striking factor in the previous history of the individual, obvious to laymen—as in some cases of gross mental disease or deficiency, drunkenness or infanticide—that responsibility is to be regarded as diminished, are psychologically operative factors to be recognized; in other cases, it is the ghost. Thus the allocation of responsibility is tied to the jury's microscopic understanding of psychology. Healthy ghosts are free, sick ones are determined—this is the crux of the matter. This curious view, that only in disease and not in health do psychological factors work, is reflected in several dichotomies: conscious–unconscious, responsible–irresponsible, free–determined, inhibited–uninhibited. The relation between abnormality and responsibility is explained no more than is the functioning of the free, conscious, responsible and elusive ghost, be it in the pineal gland as Descartes suggested, in the navel as D. H. Lawrence had it, or elsewhere.

What, then, is this feeling of “free choice” which some people complain about? And how does it come about that we can and do talk of “alternative” possible modes of action? These phenomena can be seen as results of a confusion of logical categories and of a misunderstanding of the epistemological status of words and concepts. “All science necessarily presents, it seems to us, but a map and picture of reality. If it were to present reality in its whole concreteness, science would be not a map but a complete replica of reality and then it would lose its usefulness” (Tolman, 1932). The different sciences are like maps of the same country (“reality”), charted by the same method (the “scientific”), differing only in scale (Woodworth, 1948); each develops its own interwoven system of special techniques and terminology, however, and confusion frequently arises when there is an inadvertent slip from one scale with its appropriate set of concepts into a neighbouring one, and perhaps back again (e.g. between psychology and physiology). Another source of confusion is the sidling from one logical category, in the use of words, into another—as described by Ryle (1949) and others. Perhaps more common is the shifting between one particular mode of scientific thought and everyday, “common-sense” experience—developing a serial system as an observer of events (especially when these events are language behaviour) and then inserting “subjective” concepts into it at different points. This is a confusion of map with reality. The feeling of “free choice” merely describes at the level of immediate awareness or common parlance the condition where, in more psychological terms, an organism pauses at a “choice” point. Alternative “possibilities” are, in fact, not “possible” at all: only one thing happens, only one thing *can* happen—and that is the only possible one. The existence in our language of terms and constructions of this sort is a result of the fact that frequently we are unable to predict with certainty, for lack of knowledge, and must talk about “possibilities” which do not exist in fact, in the “external world of reality”, but which are hypotheses that we have formulated, existing within our symbolic systems, to which we may attach varying degrees of probability, being ignorant of which one coheres with reality. As Craik (1943) expressed it, our self-consistent combinations of patterns of nervous excitation (i.e. our “alternative possibilities”) may not have counterparts in external physico-chemical combinations: “In causal chains and physical or chemical combinations, the possibility of a given combination tends to be limited by other factors than the mere self-consistency of the combination”, the nervous system only has “to produce combinations of excited arcs, not

physical objects; its 'answer' need only be a combination of consistent patterns of excitation—not a new object that is physically and chemically stable."

What now becomes of morality? A consequence of the "naturalist's" (i.e. determinist's) attitude, says Wienpahl (1953), is that justifiable punishment be of an educative nature, and it entails that "there is no difference between the criminal and the non-criminal"—"our treatment of all individuals who violate laws will differ in complexity, for example, but not in kind". If the fact is accepted, that the concept of free will is meaningless, does it then follow that there is no such thing as a morally guilty person? This objection, that it means that there is no morality, is shown by Wienpahl to rest upon a form of the "incompleteness argument"—the inference is a valid but a misleading one. ". . . The implication of relinquishing the concept of free will is not that there is no morality. The implication is rather that the words 'moral' and 'morality' have no special, unique and unalterable meaning." As in the case of all other words, the meaning depends on the context. The objection, then, is based on another of these ubiquitous confusions in language usage, the kind of thing which it is the job of the philosopher to resolve. The conclusion is not that *there is no morality*—this is a "*pseudo-object statement*"—but that a time has come when circumstances indicate that a new usage is required: at such a time we are confronted with a question which is neither factual nor logical but "philosophical". "As long as we believed in gods or a God in an experimental way", says Wienpahl, "and as long as psychological information was thoroughly inadequate, the old concept of moral responsibility worked. Circumstances have gradually indicated a new usage for 'moral responsibility' and the naturalists have, for all practical purposes, clarified this usage. Some of the motivation behind the incompleteness argument, therefore, may stem from the familiar reluctance to give up an old usage of a term, a reluctance which is understandable since any term is related to a family of terms. The family of 'moral responsibility' included 'sin', 'guilt-with-the-additional-meaning', 'free will', 'God's word', 'hellfire' and 'damnation.'" In deciding whether an individual is to be held morally responsible, he says, all that we need to know is whether his behaviour was performed without constraint by others and whether there is a reasonable expectancy that we can influence his future behaviour by rewarding or punishing him for what he has done.

CONCLUSION

The concepts of responsibility and punishment popular in legal and psychiatric practice are theological and metaphysical anachronisms, hangers-on of the "mind" and "free will" which are so firmly entrenched in both lay and medical mind—and so incorporated in our language that it is often impossible to avoid using them. The diagnosis of sanity is, if anything, less arbitrary than the diagnosis of responsibility and not more so, as Lord Jowitt (1954) appears to think. A jury is a quite inappropriate body to make any such diagnosis; this is difficult enough, in all conscience, for the psychiatric specialist. The task of the jury is, or should be, to ascertain the facts in the sense of what actually happened when the alleged offence took place and not in the sense of whether the accused person is psychologically abnormal.

"Cool, unexcited bystanders often demand that a criminal trial should be conducted as quietly as a scientific enquiry . . . 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." These are the words of Sir J. Fitz-James Stephen, quoted by Henderson and Gillespie (1950). That diagnosis can become, and frequently is, both inside and outside the courts, a topic for subjective argument rather than a matter of objective allocation follows from the uncertainty of so embryonic a branch of medicine. Adoption of such a system as that of Sweden, described by Mayer-Gross *et al.* (1954), would obviate the unprofessional practice of certain medical men who act as expert witnesses for defence and prosecution, which can hardly be avoided in the present system. In Sweden, psychiatric evidence is given exclusively by specialists in the service of the State and is concerned not only with the accused's psychological condition at the time of the act but also with the most appropriate remedial measures. Where psychiatric treatment is indicated, the administrative method of dealing with the case is no different from that in other cases where the patient is a social danger but has not committed a crime, and admission to an ordinary psychiatric hospital is the mode of disposal. Here is the answer to those who might object that it is impracticable to do away with present ideas of responsibility. There has been, in fact, a total abandonment of the concept of medico-legal responsibility. "The pragmatic solution of the question, 'What are we to do with this man?' is regarded as the important task, rather than the theoretical solution of the question, 'How are we to adjudge this crime?'" (Slater, 1954).

Relegating questions of responsibility, and with them those of punishment, to the amusement of the religious and others of that kidney, we are left with the important and practical question of the disposal of the convicted. East (1949) quotes the Gluecks who, 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". The law does not change much in a quarter of a century. There is, moreover, both clinical and experimental evidence (cf. Maier, 1949) to support the view that punishment has an opposite effect to that desired, at least in certain circumstances. We are concerned not with the past but with the future of the individual and of the community: what is the best course of action, in the light of all available knowledge, in order to promote the harmonious adjustment of this individual within the community? (In particular cases, the action might be the same as was formerly regarded as "punishment", but that would be fortuitous.) The answer is to be sought in the same manner as the answer to any problem in science, looking at one's material, be it sub-atomic particles acting in certain fields of force or human beings acting in their milieu, so far as possible in an impersonal, objective and detached fashion. Then, with purpose clearly stated and method delineated, appropriate action may be decided upon. Questions of "mad" or "bad", with their value-judgments and emotional loadings, do not arise. We are confronted with a person who has committed some action that is abnormal, by its infrequency of occurrence, and that has brought its doer into conflict with his fellows; we have to decide how to obviate or minimize repetition of such conflict, for the good of all concerned. In the present state of scientific knowledge and social organization, it will be a long time before satisfactory answers can be arrived at.

SUMMARY

It has been pointed out that the question of responsibility is not a medico-legal but a philosophical-psychological one.

Current legal and psychiatric notions about responsibility have been described, the assumptions on which they are based made explicit and their practical consequences indicated.

It has been shown that the ideas of responsibility and of punishment, derived from a background of outmoded "body-mind" dualism and theological "free will", subserve no useful purpose and that, on the contrary, they obscure clarity of thought and obfuscate issues of practical human importance. The feeling of "free choice" and the awareness of "alternative" paths of action have been interpreted as properties peculiar to the human symbolic system and not to the external universe.

In a world of science, based on determinism, the old ideas of "responsibility" and "punishment" should be discarded. This does not mean that henceforth there is no "morality", but that such terms take on new meaning in a new context. Pursuance of the scientific approach to the trial and disposal of criminals is advocated.

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