Brit. J. Psychiat. (1978), **133**, 564–66

Correspondence

EPILEPTIC HOMICIDE

DEAR SIR,

We were most interested to read the case report and commentary by John Gunn (*Journal*, May 1978, **132**, 510–13), regarding Mr A. charged with murder. Our concern is with the comment 'if . . . Mr A. killed during an epileptic automatism he should have been acquitted'. It is our understanding of the case that when first examined Mr A.'s EEG was considered to demonstrate 'severe generalized abnormality of background activity, especially the right hemisphere. Arising from this are atypical spike-and-wave discharges of subcortical origin. These findings suggest early diffuse brain damage'. Professor Hill also reported that 'given these records, it would be highly probable that at some time in his life he would have suffered cerebral damage to the right hemisphere . . .'. Later his behaviour improved with the taking of anticonvulsants and when these were stopped he shortly after went into *status epilepticus*. The EEG was again found to be grossly abnormal. A neuro-psychiatrist witnessed an 'unusually severe and prolonged post-ictal effect' and stated 'This, with the findings of a temporal lobe lesion capable of provoking a psychomotor seizure makes it possible that he might carry out some act during or soon after a fit, and afterwards have no memory or only fragmentary memory of the act'.

We ask, why should not *insane* automatism properly succeed in such a case? First, we note the speech of Lord Denning in *Bratty's* case. Then he said: 'The major mental diseases, which the doctors call psychoses, such as schizophrenia, are clearly diseases of the mind. But in *Charlson's* case Barry J. seems to have assumed that other diseases such as epilepsy or cerebral tumours are not diseases of the mind, even when they are such as to manifest themselves in violence. We do not agree with this. It seems to us that any mental disorder which has manifested itself in violence and is prone to recur is a disease of the mind'. Second, surely the case of Mr A. is not significantly different from the cases of *Charlson* and *Kemp*. To say that Mr A. should be acquitted on the basis of epileptic automatism is to take the view of Barry J. in *Charlson;* an accused man who possibly suffered from a cerebral tumour. The view taken by Barry J. was not endorsed by Devlin J. (as he then was) in *Kemp* when the diagnosis was of cerebral arteriosclerosis inducing melancholia or, alternatively, a loss of consciousness due to 'congestion of blood in the brain' (See Lord Denning in *Bratty*, p. 19).

This whole area of the criminal law is, in the words of Lawton L. J. a 'quagmire of law, seldom entered nowadays save by those in desperate need of some kind of defence' (See *R* v *Quick and Paddison*). Burger C. J. (then Burger J.) has stated: 'Not being judicially defined, these terms (mental disease or defect) mean in any given case whatever the expert witnesses say they mean. We know also that psychiatrists are in disagreement on what is a "mental disease", and even whether there exists such a definable and classifiable condition . . . No rule of law can possibly be sound or workable which is dependent upon the terms of another discipline whose members are in profound disagreement about what those terms mean' (See *Blocker* v *United States*).

We add to this that we doubt very much whether, in the long run, the defence of diminished responsibility, possibly used in the case of Mr A. as a 'compromise', will in any way drain the legal quagmire. We prefer the approach set out by Hart (1968) and adumbrated by Wootton (1959). This approach, in effect, does away with defences based upon mental abnormality and we have set out our views on this matter elsewhere (Milte *et al*, 1975).

ALLEN A. BARTHOLOMEW
KERRY L. MILTE
FRANK GALBALLY

University of Melbourne,
Criminology Department,
Parkville, Victoria 3052,
Australia

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DEAR SIR,

I would like to thank Bartholomew *et al* for drawing attention to an error in the discussion section of my paper 'Epileptic homicide: a case report'. It is true that since Lord Denning's well-known remarks in the House of Lords epileptic automata are more likely to be dealt with as insanity than as non-insane automatism, I was simply trying to indicate that theoretically in this case several defences could have been pursued (including non-insane automatism, as the epileptic basis for his behaviour was not established at that time), but the unsurprising decision of the court was to find him guilty with diminished responsibility. So often this seems to be a compromise verdict based on the pragmatic needs of the legal process.

For those who are unfamiliar with the legal issues relating to acquittal for reasons of no responsibility, I should perhaps indicate that for centuries it has been accepted in British common law that for serious crimes (such as murder) guilt not only depends on action but also on intent. Insanity, unconsciousness and the like have always been taken as interfering with the formation of criminal intent, and therefore were sometimes grounds for a straightforward acquittal. In 1800 James Hadfield was tried for trying to shoot King George III. He was acquitted on psychiatric grounds, and Parliament rushed through a Bill, 'for the safe custody of insane persons charged with offences' to ensure that he was kept in strict custody at His Majesty's pleasure. In other words, the common-law special verdict of not guilty by reason of insanity was always to be followed by indefinite detection (see Walker, 1968). However, other reasons for regarding an accused as unable to form an intention were omitted and have always been omitted in subsequent legislation, so that they are not followed by mandatory indefinite detention.

Recently the Butler Committee (Home Office/DHSS, 1975) has proposed that the area of uncertainty between non-insane automatism and insanity should be clarified by reformulating the special verdict as 'not guilty by reason of mental disorder', and giving the court discretion about subsequent disposal. Mental disorder would include everything now called insanity together with all forms of automata except those transient states caused by drugs or alcohol and by physical injury. This would go a long way towards the solution advocated by Bartholomew *et al* and simultaneously allow the concept of responsibility (intent) to continue its central role in the criminal law.

JOHN GUNN

Special Hospitals Research Unit,
119 Camberwell Road,
London SE5 0HB

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CORRECTION: MONTHLY VARIATION OF SUICIDE

In the article 'Monthly Variation of Suicide and Undetermined Death Compared' by B. M. Barraclough and Susan J. White (*Journal*, **132**, 279–82) p. 277, 1st column, line 10 should read:

$$\frac{\text{seasonal \% variance}}{\text{random \% variance}} \times \frac{c}{\text{mean value}} \quad c$$

p. 277, Table III, line 4 of results should read:

E980–989 .. % variance 2.7 0 0.9 5.8 0 2.4