THE LEGAL ASPECTS OF PSYCHIATRY.

CRIME AND PUNISHMENT.*

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Introduction.

Discussions on crime and punishment frequently bring into relief two fundamental facts: one that everyone is dependent upon his fellows; the other that the physico-chemical, biological and psychological or spiritual worlds are, as J. S. Haldane pointed out, only the same worlds at different planes of interpretation.

Legal, executive and administrative authorities are constantly concerned with problems relating to the punishment for crime and the treatment of criminals, and frequently consider what modifications and alterations of the authorized penalties are applicable to modern conditions. Others, less directly associated with the administration of the law, occasionally apply themselves to the same problems. But the community as a whole is little interested in the subject, and ideas regarding punishment are often ill-advised and presumptuous. They tend, however, to become less arrogant as the observer learns that those who are best informed have no illusions as to the complexity of the subject.

Respect for the law is essential if the latter is to be effective; law cannot advance far without the moral support of the society it serves. It often lags behind the anticipation of those who fail to realize that their views must reach the public and become incorporated in civic understanding before action can be taken.

Perhaps the delay is advantageous in a world which is to-day more concerned with its rights than with its duties, for it affords an opportunity to consider fully the possible implications of controversial proposals. Such, for example, as the assertion that a person can only gain self-realization if he is able to exercise his emotional tendencies more freely than society will allow—a view which disregards the fact that the treatment of crime must be considered from the position of those who respect the law as well as of those who break it. Further, a democratic government is not static, although by appealing to reason it may appear to operate slowly when compared with the decisions of the dictator, who incites his subjects to action or submission by emotional appeals.

It has been said that the savage sentences of former times, and the brutal manner in which they were carried out, were due to the intellectual starvation of the people. But it is also to be remembered that character is not merely a

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matter of intellect, and may be of outstanding importance in maintaining the law. There can be no doubt that by arousing the public conscience a higher standard of social rectitude can be attained, and this is sometimes more closely related to the emotions than to the intellect. Moreover, in modern society the different classes tend to merge into one another, whereas formerly the transitions were abrupt and understanding between the classes distant.

It is a matter for speculation whether an improved attitude on the part of the potential criminal towards society is a more important contribution to social security than the changed attitude of society towards the criminal. At least this can be said: although the criminal fails in his duty to society, we are not thereby absolved from carrying out our duty to him.

The Nature of Crime.

Jeremy Bentham seems to have looked upon crime as a prohibited act from which there resulted more of evil than of good. Professor Kenny considered that the definition of crime was "a grave—if not indeed insoluble—difficulty . . . For it consists of the fundamental problem *'What is Crime?'* Clearly, the criminal law is concerned with crimes alone, and not with illegal acts in general. But how are we to distinguish those breaches of the law which are crimes from those which are merely illegal without being criminal. . . . Crimes are wrongs whose sanction is punitive and is remissible by the Crown *if remissible at all.*" (Italics in original text.)

W. A. Bonger wrote: "Crime is a serious antisocial action to which the State reacts consciously, by inflicting pain (either punishment or correctional measures)." J. Michael and M. J. Adler state: "The most precise and least ambiguous definition of crime is that which defines it as behaviour which is prohibited by the criminal code." They use the word delinquency for the criminal behaviour of a person below some age prescribed by law. B. A. Wortley, still more recently, declares: "A crime is an offence against the law, and it is usually also an offence against morality, against a man's social duty to his fellow members of society: it renders the offender liable to punishment."

In medical literature, as well as elsewhere, crime is often referred to as antisocial conduct. The imperfections of this description are obvious, but it does stress the fact that injurious social consequences follow certain kinds of activity.

Juries are sometimes told that a criminal court is not a court of morals. When this statement has been made during trials in which I was concerned it seemed to me to refer to the quality of virtuousness. Stephen declared that "the great difference between the legal and the popular or moral meaning of the word crime is that whereas the only perfectly definite meaning which a lawyer can attach to the word is that of an act or omission punished by law, the popular or moral conception adds to this the notion of moral guilt of a specially deep and degrading kind." He added: "The criminal law must from the nature of the case be far narrower than morality. In no age or nation, or at all events, in no age or nation which has any similarity to our own, has

the attempt been made to treat every moral defect as a crime. . . . Criminal law, then, must be confined within narrow limits, and can be applied only to overt acts or omissions inflicting definite evils either on specific persons or on the community at large. It is within these limits only that there can be any relation at all between criminal law and morality." He pointed out that this relation is not the same in all cases: "The two may harmonize, there may be a conflict between them, or they may be independent." In our own time Lord Hewart stated: "It would indeed be a poor and starved morality which depended upon the provisions, positive or negative, of law, and it would probably be an intolerable law which sought to give legal effect to all the dictates and exhortations of morality."

Morality is so closely interwoven with social conduct and immorality with criminal conduct that it seems desirable to pursue the matter a little further.

In early times the operation of the law between subjects was not so much to punish as to assess the compensation to be paid to the injured individual or to the Crown. J. W. C. Turner points out that: "As time went on the idea gradually developed, probably under ecclesiastical influence, that the infliction of punishment was necessary. The same influence seems to have led to an agreement that liability to punishment should depend upon moral guilt."

In spite of the cruel sentences imposed by the ecclesiastical courts, it would appear to their credit that the adoption of moral standards introduced the necessity of taking into account the mental functioning of the offender. As Turner points out, in that way lay the recognition of the doctrine of *mens rea*, as a subjective ingredient in the assessment of criminal responsibility, although moral guilt was measured by strictly objective considerations.

There can be little doubt that the ecclesiastical courts were satisfied that what they considered to be immoral and wrong was so in fact, and it is almost inconceivable that they could do otherwise than attach a religious significance to their assessments. It is perhaps instructive that whatever words they may have used in declaring their awards, the only occasion in which an appeal is made to the Deity by the judge to-day is in pronouncing the sentence of death.

As I see it, a crime arises if voluntary conduct results in the commission of an unlawful and punishable act (*actus reus*)* or omission, which the offender must have foreseen was likely to cause certain consequences. And here a discrimination must be made between intention, recklessness and negligence. Turner puts the matter clearly: "*Intention* denotes the state of mind of the man who not only foresees but also desires the possible consequences of his conduct. . . . *Recklessness* denotes the state of mind of the man who acts (or omits to act when it is his legal duty to act) foreseeing the possible consequences of his conduct, but with no desire to bring them about. . . . *Negligence* is the state of mind of a man who pursues a course of conduct without adverting at all to the consequences of that conduct: he does not foresee those consequences, much less desire them."

* Such result of human conduct as the law seeks to prevent, that is to say, a specific crime (J. W. C. Turner).

These considerations are commonplaces among lawyers, but are not necessarily in our minds when psychiatrists engage in discussions on crime and criminals. We all recognize that in human society prohibitions must be enforced lest harm result to all, and that a degree of intelligence, wisdom and control is required before the fundamental standards of behaviour subserve the basic needs of the individual as well as of the society in which he lives. Taboos and regulations are introduced in order to ensure the preservation of society and the propagation of its members. Hence the manner in which an individual urge is regulated and controlled will gain approval or disapproval according to its conformity with an authorized code. So it comes about that approval and disapproval are terms which involve morality and immorality and express the possibility of success or failure in social adaptability. But the presence of the criminal in our midst proves our adaptation to be far from universal.

The criterion of immorality seems to depend upon the fact that the conduct in question is injurious to society when it is generally practised. And because the consequences are usually harmful, the term is sometimes applied to activities in which the actor, an accomplice or the public are uninjured.

A criminal act must be considered, if possible, in association with its motive, and E. Mira points out that the highest moral conduct may result from motives which in themselves are immoral. He records the case of a soldier who, in an experiment undertaken at a military hospital, urged that the greatest quantity of blood possible should be taken from him for the benefit of his company commander. But under pressure he told his questioners that he had formerly suffered from syphilis and hated his superior officer, and hoped that he would thus be able to infect him with the disease.

Without entering into the realm of casuistry, it may be said that a crime may occasionally be the result of altruism; as when a doctor induces euthanasia at the request of a dying patient, or a parent steals food for his necessitous family. So, too, when an insane husband kills his wife in order to protect her from the vicissitudes and hardships of a world he believes he is about to leave.

Modern society is far from being single-minded in passing moral judgments, and the difficulty of establishing precisely a norm of moral behaviour and the many points of view which may be held on a hypothetical or concrete situation are matters of almost daily experience, and can be demonstrated by suitable tests. Mira found that in ten suggested courses of action to solve a problem of conjugal infidelity 578 married couples gave widely different answers. The preferences also differed markedly in six courses of action offered to 156 trained nurses in a concrete test on the ethics of professional conduct. In fact, in many situations the norm of moral behaviour is undetermined.

To some extent morality depends upon tradition, and the potential criminal, like other persons, is required to base his behaviour mainly upon that tradition. All will agree that in ordinary situations we are assisted in this matter as our reasoning capacity and emotional control advance through the prohibitions and penalties of egoistical childhood and credulous adolescence to the controlled activities of understanding maturity. The progress is gradual, but at

length prudence is dissatisfied unless social order is maintained in the forefront of our desires.

During this development it becomes important to distinguish, however simply and imperfectly, between sin and crime. The latter has been defined above. Sin may be regarded here as moral evil considered from the point of view of religion and regardless of its relation to civic law and ethics. Sin and crime, however, have certain common features. Both are opposed to the best traditions, both reject the golden rule of doing as you would be done by, and both in different spheres ignore the satisfaction of real or assumed security.

From the psychiatric point of view there is a significant difference between the two, inasmuch as crimes are acts or omissions which are scheduled by law and are ascertainable by the curious, whereas the declaration in the Pauline epistle that "whatsoever is not of faith is sin"* is of much wider import, and carries the speculator into the realms of mysticism. And here I am reminded that Dean Inge has said that "the real lesson of anthropology is that religion, science, ethics and aesthetics have all become differentiated out of the confused muddle in which they exist together in the mind of the savage." I am reminded, too, that the Dean feels with others that "since the psychologist has debarred himself from explaining mysticism by philosophy (in the older sense), he is practically obliged to explain it by pathology." At least this will be accepted, it seems useless to attempt to maintain the view that science deals with certainties and metaphysics with uncertainties.

Again, we should avoid confusion when using scientific terms, particularly if we are concerned with others in such practical subjects as crime and punishment. Bernard Hart reminds us that the psychologist, like the physicist, employs conceptions which cannot be demonstrated to have an actual phenomenal existence. The psychologist uses terms, as does the physicist and others, to explain observed phenomena. Hart refers to an unconscious mental process as "a phenomenal impossibility just as the weightless frictionless ether is a phenomenal impossibility. In both cases the conception justifies its claim to rank as a scientific theory because it serves to resume and explain in a comprehensive and convenient manner the facts of our experience, and because it satisfies the one great criterion of science, the test of utility." Unfortunately, in the witness-box theory is sometimes presented as fact in circumstances which are detrimental to psychiatry. Nevertheless, when the captious critic censures the psychiatric approach to crime he should bear in mind Hart's statement.

On the other hand, the psychiatrist will often fail if he approaches the subject of criminal behaviour in a monopolist spirit. If he accepts the fact that the understanding and treatment of criminals are tasks which require the efforts of different professions, the experts in those professions are also entitled to express their views. Our contributions differ, their values differ and their practical usefulness differs. We cannot doubt that the co-operation of many workers will surely take us further towards successful achievement in these difficult matters than a monopolist approach, however earnest and erudite its exponents may be.

* Romans, XIV, 23.

The danger of a monopolist approach is well shown in the eighteenth century *Essays on Physiognomy* by Lavater. No one can doubt his sincerity and industry, but he wrote: "A long, projecting, needle-formed, or a strong curled, harsh, rough hair, springing from a brown mole or spot on the chin or neck, denotes, in a most decisive manner, very great voluptuousness, which is rarely unaccompanied by great imprudence and indiscretion." His contemporary Gall, anatomist and physician, formulated his phrenological doctrine in a similar monopolist spirit, and might have reached other conclusions by a wider approach. Bernard Hart in his Goulstonian Lectures seems to have referred to the same danger. He pointed out that although the observations of Charcot and his pupils on hypnosis in hysterical patients were made with extreme care and accuracy, they were misapprehended and vitiated by the adoption of too narrow an angle of approach.

To look upon sin in the Pauline sense as behaviour which is mainly injurious to the individual, and crime as behaviour which is essentially injurious to society, stresses the fact that in crime self-regarding behaviour predominates over social behaviour, conscience and moral standards. Moreover conscience—character developed under moral guidance (W. McDougall)—is not infallible and morality is not static.* Both are acquired in contact with our fellows, and we must remind the uninstructed that our impulses and aptitudes can only be directed towards social behaviour by training and contact with those who are socially mature. In this process, reason, aided by knowledge and experience, balances one course of action against another, and the result is to some extent determined, of course, by inherited traits of character. If the impulses and aptitudes are socially acceptable, fresh situations will usually be met by appropriate action. And if the natural tendencies are controlled by the will, as well as by social conventions and habits, a satisfactory course of action is likely to be selected and maintained.

Apart from the difficulty arising from the fact that different persons possess different qualities, and that some have more difficulty than others in making social adjustments, there is the fact that we have little control over the biochemical factors which affect us.

Among the extrinsic factors which are important in this matter is public opinion. The collective approval or disapproval of our associates and of society at large undoubtedly exercises by its strongly pleasant or unpleasant effect an important restraining influence upon the activities of ordinary men, and many potential criminals. So strong is the desire for approval that examples are constantly presented in which the manner of a man's life subserves his desire for posthumous praise. At the same time some criminals willingly incur the disapproval of society if they can by this means gain the approval of their associates. It is clear that social behaviour based upon the fear of disapproval can hardly acquire a high standard if it is only concerned with avoiding wrongful acts. And well-doing for the sake of praise is not entirely commendable. For it is fundamentally selfish, and lacks the altruism necessary for social behaviour. This is relevant to my thesis, since the majority

* Whereas conscience in ordinary so-called moral persons is co-operative, altruistic and questioning, in habitual criminality it is unco-operative, selfish and unaccusing.

of criminals are not so much vicious or depraved as intensely selfish. Their self-regarding sentiment is exaggerated and misapplied.

As already stated, the law recognizes the fact that a criminal act involves a certain state of mind. As psychiatrists we often must insist that past events of psychological significance are related to present occurrences. Although a crime cannot be regarded in isolation, or understood unless a history of previous events and a longitudinal section of the offender's ordinary as well as unusual behaviour is studied, it is often necessary to introduce our view with care. In so doing the evidence in favour of determinism often seems opposed to the doctrine of freewill. But since controversy in this matter has been handed down throughout the centuries and the issue is still uncertain, it is unnecessary to pursue it. The psychiatrist can perhaps do no more than insist that a greater degree of determinism should be accepted in some cases. At the same time, if he thereby attempts to relieve an accused person of responsibility, it is relevant to regard the fact that in the ordinary affairs of life we are held accountable for our behaviour at home, at business, or in our professions, in spite of our constitutional disabilities and the force of circumstances beyond our control.

Both lawyers and doctors will agree that they exercise the power of selecting their course of action in the important affairs of life, and many will accept the view that their choice may be affected by past events which are not apparent at the time their decision is made.

The conduct of our fellows is usually judged on the assumption that they know whether their action is socially correct or incorrect, and exercise, or refuse to exercise, their self-control. An idea of limited liability has become associated with those who are unable to develop or exercise this power, and postpone an immediate gratification for a distant advantage. Unfortunately discussions on self-control are usually obscured by abstruse metaphysical speculations. Nevertheless, the power of controlling our urges and of guiding our desires is very real and of the utmost importance. We all accept this, and the fact that control can be developed by use and weakened by disuse, as well as the fact that one of the earliest lessons taught children is the necessity to compel themselves to do what must be done although they may wish to do otherwise. It is even more important for an offender to force himself to submit to social requirements by the exercise of his will power than it is for the patient, suffering from a minor mental abnormality, to assist his recovery by compelling himself to follow the fundamental principles of mental hygiene and control his emotional habits.

This much is certain: the treatment of criminals must be sometimes qualified by taking into consideration events in their lives which may reach far back in their personal history. Among still more distant factors we cannot disregard the inherited traits which influence character and the careers of reputable persons as well as of criminals. Indeed, he would be a poor legal or medical therapist who neglected to do so in his efforts to help the offender towards rehabilitation.

Our inherited antisocial tendencies, like other constitutional qualities, may be modified by training, and it will be agreed that social adaptation depends

upon the qualities of the trainer as well as of the trainee. But as children and young persons do not select their monitors, they may have reason to protest that their faults are largely attributable to the ineffectiveness of others.

As we faithfully observe our associates, and have opportunities to study their thoughts and dream phantasies and compare them with our own, we are driven to the conclusion that most of us are potential criminals. And just as we have come to realize that prolonged psychological stress produces abnormal mental reactions in persons who have previously been regarded as normal, so must we accept the fact that environmental stress may cause crime in those who are potential criminals. The important thing to remember is that crime may result if the tendencies of the individual and the environmental conditions together outweigh the resistance which can be opposed to them. These factors being variable, and as a rule the environmental factor is the most easily altered, it follows that whether crime results or not often depends upon the degree of variation present in one direction or possible in another. Nevertheless, the primary concern of society, and the first duty of its legal instrument, is the protection of the majority from the misdeeds of the fractional minority, and we simply cannot afford to discriminate always between the variables which go to make up criminal behaviour. Rather must we often deal with results, and act upon the assumption that although some dispositions are socially acceptable, and others are antisocially inclined, all must be subservient to the general welfare. Society must be jealous of its rights if it is to survive, and therefore is not always very ready to accept with equanimity the irresponsibility associated in a criminal court with insanity and some forms of mental defectiveness, or the lessened culpability which is apparent in some forms of minor mental abnormality.

Here I may add that, although I have seen it somewhere stated that we shall not progress in medico-legal understanding as long as we use the term insanity, it seems well to remember that our duty is to present our views in the criminal courts as clearly as we can. The term insanity has a legal significance which is generally understood by juries. Are we satisfied that the terms psychosis or mental disease will be better understood by laymen ?

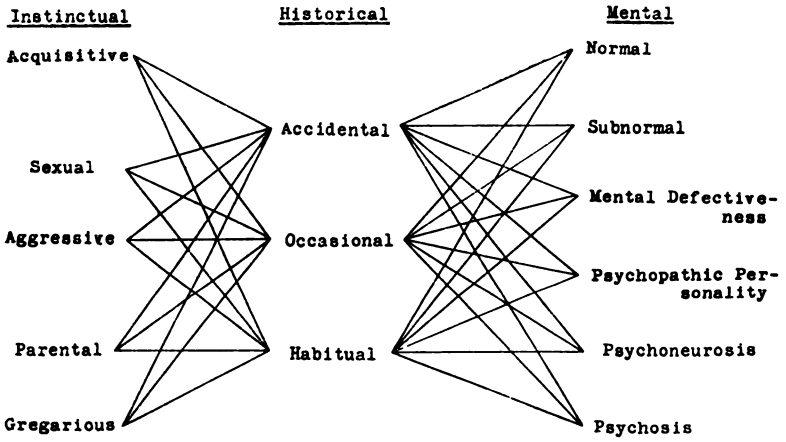
At the same time, when we refer to the association of insanity and mental defectiveness with criminal behaviour, we must avoid the tendency to lead others to attach too much importance to the intellectual factors, and too little to the emotional qualities which so profoundly affect human behaviour.

Classification of Criminals.

The legal and executive authorities in the past seem to have been more concerned with the classification of crimes than of criminals, and because of the many difficulties the classifications have met with a considerable amount of criticism. The classification of the administrative authorities has been practical and free from doctrinaire influence. But I am here concerned with the medical aspects of crime, and need not delay to present the classification used by the Prison Commissioners for general purposes.

Towards the end of the last century, and during the earlier years of the

present, criminals were frequently said to belong to one of three groups—accidental, occasional and habitual or professional. This classification represents a high, medium or low breaking-point, and is still useful as a partial assignment. It may be advantageously combined with a reference to the causal instinctual activity at fault in terms of acquisitiveness, aggressiveness, sexuality, and parental or gregarious anomalies of behaviour. The classification is completed by including a reference to the mental condition of the offender. The result enables the psychiatrist to form an idea of the individuality of the person who is described as an accidental aggressive schizophrenic, as an occasional sexual constitutional psychic inferior, as an habitual acquisitive normal, and the like. Briefly, I suggest that the most satisfactory medical classification of offenders is tripartite: historical, instinctual and mental. It may be set out diagrammatically thus:



Medical Classification of Criminals.

Hitherto legal and executive, as well as administrative authorities have been chiefly occupied with offenders whose mental condition was normal, mentally defective or insane. Looking back one is impressed by the advances that have been made in the methods of dealing with crime associated in modern times with these conditions. Although the legal method of dealing with accused persons who are insane is criticized by some—usually those least informed—many believe that it is in practice as equitable as is possible in the present state of medical knowledge. There is, however, reason to think that the punitive treatment of some subnormals, psychopathic personalities and psychoneurotic offenders can be carried out more intelligently than is the case at the present time if the public will accept psychiatric guidance in the matter.

The Nature of Punishment.

It is not always remembered that criminals to-day are sent to prison as a punishment and not to be punished. Punishment is provisionally defined by B. A. Wortley as "the totality of the legal consequences of a conviction for a crime." It seems clear that Jeremy Bentham regarded punishment as an

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evil, for he said, " the evil of punishment must be made to exceed the advantage of the offence." But he does not say how these variables are to be standardized and measured, though he added, " the proportion between punishment and offences ought not to be so mathematically followed up as to render the laws subtle, complicated and obscure."

Punishment may be looked upon as an evil when it prevents an offender from providing for his dependants, when his work in the outer world is more valuable to society than his occupation in prison, when his family suffer because of his conviction, and when he leaves prison more hostile and embittered than when he entered it. The first three results may be irremediable. It is the duty of society to prevent the fourth whenever possible, not only for the sake of the offender but also for the benefit of society.

Bentham considered that the evils of punishment were: The evil of coercion—that is to say, a more or less painful privation; the sufferings caused by the punishment; the evil of apprehension—that is, the fear of prosecution; the derivative evil suffered by the offender's parents and friends. It is, however, pertinent to remember that pain, which forms so large a part in the evils described by Bentham, is not necessarily evil. The religious significance of pain has been acclaimed by churchmen, and has recently been discussed in simple language by C. S. Lewis.

Eighty-five years ago John Hilton, the eminent surgeon of Guy's Hospital and President of the Royal College of Surgeons, taught that pain had a beneficial effect. He showed that it called attention to the presence of injury or disease and the necessity for rest. In other words, pain is valuable if it demonstrates the importance of ascertaining its cause and of applying the appropriate remedy. Even the constant pain of an incurable disease may not be wholly evil if it has a good effect upon those who bear witness to the fortitude of the sufferer. Again, the feeling of guilt and its partner pain is relative to the traditional standards of the offender's associates, and it is hardly necessary to add that the importance of the fear of pain and the desire for pleasure is easily exaggerated where normal people are concerned. Moreover, the intensity of a painful or pleasurable emotion is transient.

It is important to stress the fact that the subject of punishment is surrounded with difficulties. For example, many considerations modify the turpitude of a crime—the age and previous record of the accused, the motive for the offence, its danger to the community, the amount of premeditation exercised, the provocation and temptation to which the accused has been subjected, and so on. These variables are, for the most part, imponderable, and it by no means follows that different judges and juries will assign to them similar values. And although provocation is not taken into account in determining the guilt of the accused, it may be a factor in estimating his degree of turpitude and in modifying the sentence.

The prevention of crime is perhaps more important than its punishment, and prophylactic measures may be direct or indirect. Among the direct may be mentioned the deterrent effect of punishment, police action of a preventive character, the activities of societies such as the Prevention of Cruelty to Children and the Prevention of Cruelty to Animals, and of organizations dealing

with the after-care of discharged prisoners. Among the indirect may be added confidence in the integrity of the judicial and police authorities, the maintenance of a high standard of civic responsibility, improvements in social conditions, and the activities of social and religious organizations. Nevertheless, our complex human nature is woven into the fabric of our lives, making a crimeless state a Utopian dream, and discrediting the belief that our choice of action is as simple as that of the amoeba engulfing its prey.

Retribution, deterrence and reformation are the usual aims of punishment to-day, and it is generally accepted that their relative importance varies with circumstances. The armchair critic sometimes appears to support the principle that in dealing with criminals self-regard should be given more freedom. Those with first-hand knowledge usually believe that increased self-discipline and not greater licence is necessary if we wish to preserve social security and promote the amenities of communal life.

An eminent American psychiatrist* has stated that in the United States of America only a relatively few persons who commit homicide are ever apprehended, only a relatively small number of those who are apprehended are ever convicted, and of the latter a lesser number—for the most part defenceless youths—are finally executed. How do these facts compare with the position here? In the ten-year period 1929 to 1938 there were known to the police in England and Wales 880 cases of murder of 1,001 persons aged one year and over. In 340 cases the murderer or suspect committed suicide, and 5 died before trial. Of the 504 persons arrested 222 were found to be insane and 154 were sentenced to death. Of the latter 73 were executed, and in 81 the sentence was commuted to penal servitude. In addition 2 persons were arrested and dealt with abroad, and 2 youths were sentenced to be detained during His Majesty's pleasure, being under the age when sentence of death is passed, namely, 18 years. The results do not include those cases in which murder was reduced to manslaughter. In all cases the accused is afforded legal aid, and it is evident that punishments in any country must be considered from the manner in which they are applied.

The armchair critic who opposes the ***retributive element*** of punishment sometimes seems to forget that it has a deep-seated biological significance. In a cultured society it may be necessary, and advantageous if it preserves a correct relation between the turpitude of the offence and the severity of the award. At the same time justice must be dispassionate, and stress the need to restrict our abhorrence and disgust to proper proportions as well as oppose pusillanimous sentimentality by vigorous understanding. Moreover, we must not confuse retributive justice with vindictive punishment; revenge may be an evil to the avenger as well as to the object of his vengeance.

In the present context ***deterrence*** may be regarded as the effect upon potential criminals of the legal treatment of actual criminals. Unfortunately we lack the means of assessing its importance. But it is not merely an intuitive speculation, and its practical value cannot be denied. Mercier's statement still deserves consideration: "If punishment is to deter from crime, it need not be severe, but it must be enough to render the crime unprofitable. It

* Dr. W. A. White.

need be no more than this, but it must be certain, and it must be speedy." He added: " . . . all that is necessary to deter the criminal from committing crime is to deprive him promptly of the fruits of his crime. If this is not done, punishment will be inefficacious. If it is done, punishment will be unnecessary." However true this may be where acquisitive offences are concerned, it must surely leave one in a state of pessimistic bewilderment if the crime immediately relieves the emotional tension which was its purpose, as in sexual and many non-sexual aggressive crimes.

Finally, *reformation* may be considered as the result of purposive treatment directed towards the mental, moral and social rehabilitation of actual criminals. Here again is a complicated problem, but unlike that presented by deterrence, it can be measured with some degree of accuracy by appropriate follow-up studies. Reformation may be transient in some cases of mental defectiveness as well as in some cases of psychopathic personality and psychoneurosis. It is probably most enduring when it arises from within the offender, and it cannot be attained by severity on the one hand or sentimentality on the other. It is sometimes suggested that deterrent and reformative aims are opposed to one another. I believe that they can be more truly regarded as supplementary to a common purpose—the prevention of crime.

Classification of Punishments.

Punishments may be considered under four heads:

1. *Punishments which cause pecuniary loss to the offender.*—In courts of summary jurisdiction fines are a frequent and convenient award. The retributive element is stressed when a substantial fine is added to a sentence of imprisonment.

2. *Punishments which cause loss of prestige.*—This is mainly brought about in this country by the publication of criminal proceedings in the press. It may be double-edged if publicity at any cost satisfies the vanity of the offender or that of his relations. In a recent case of murder, with which I was concerned, the mother of the homicide was reported to be mentally defective or very backward. She was delighted when told that her son had been arrested for murder, and said that " she never thought he would be clever enough to get his name in the papers." Curtis H. Clay, Managing Editor, *Daily Post Tribune*, La Salle, Illinois, has stated: " Since crime was banned from our page one offences committed by local residents have been few and of a minor nature." In 1909 Judge H. T. Hulbert, Head of the Wayne County, Detroit, Juvenile Court, persuaded the editors of four papers to cut out entirely, or tone down, the notices of crimes in which juveniles figured. J. N. Baker reports that delinquency was reduced so much that " the court practically went out of business." Section 49 of the Children and Young Persons Act, 1933, declares that no newspaper shall in future reveal the name, address or school, or include any particulars calculated to lead to the identification of any child or young person concerned in proceedings in a juvenile court, or to publish any picture of him. Further, all other courts are given discretionary power to prohibit newspapers from publishing similar particulars in regard to Children

or Young Persons in any proceedings which arise out of any offence against or any conduct contrary to decency or morality (Section 39).

On the other hand, whilst formerly all proceedings under the Punishment of Incest Act, 1908, were heard *in camera* (s. 5), this provision was repealed by the Criminal Law Amendment Act, 1922, thereby inviting publicity.

Loss of prestige the result of publicity may be unjust if it is continued after the legal punishment has been satisfied. No doubt the pillory, the stocks and the public whippings of former times caused loss of prestige, and it is interesting to note that public whippings may still be inflicted in Delaware State, although this method of punishment is said to have declined in recent years.

3. *Punishments which cause physical suffering.*—In this category punishments are based upon fear, and include death, quartering and corporal punishment. Death is usually restricted to cases of murder and treason, but may be inflicted in certain cases of piracy and arson. The Crown may still order quartering, or the beheading of a traitor (by 54, George III, c. 146). Corporal punishment was considered by a Departmental Committee in 1938. It was decided that the weight of evidence favoured the view that this form of punishment was not essential for the interests of society, except for the prison offences of mutiny, incitement to mutiny or gross personal violence to an officer of the prison. The Criminal Justice Bill, 1938, adopted this recommendation.

4. *Punishments which cause social restrictions or loss of liberty.*—Although outlawry has not been abolished, it is obsolete, and the punishments in this class are limited in practice at the present time to probation, sending the offender to an Approved School, or to a Borstal Institution, or to a sentence of imprisonment, penal servitude, or preventive detention. It is unnecessary to consider them in detail here. It will be remembered that the Criminal Justice Bill proposed certain alterations to the present practice, and that some bear upon the medical diagnosis, prognosis and treatment of offenders. If these modifications are introduced, a better understanding of the criminal by extra-mural psychiatrists and a wider conception of punishment as a method of treatment will be required.

Psychiatry and Punishment.

When a crime is committed the processes of criminal justice should be directed to the fact. But this does not always follow, since in some cases—for example, occasionally in bigamy and incest—the victim is an accomplice; and in other offences also the crime may not be reported to, or may baffle, the police. The detection of the criminal is the next process, and if followed by his arrest and conviction, leads up to considerations which decide whether punitive or non-punitive methods shall follow.

The two great professions of Law and Medicine offer a parallel when the former deals with law-breakers and the latter with patients. The magistrates who adjudicate upon 99 per cent. of the offenders and the general medical practitioners who attend the great majority of persons who are ill frequently see the results of their decisions, and if necessary adopt alternatives on future

occasions. It may be otherwise in cases of serious crime or illness, as the High Court Judge may never see or hear of a prisoner after the sentence has been declared, nor the medical consultant his patient after he has left the consulting room. The former may remain ignorant concerning the result of the legal decision, and the latter of the medical treatment. But unless a person is informed he may be convinced that the result of his award is satisfactory when it is not so. The medical consultant endeavours to check the correctness of his diagnosis, prognosis and treatment by follow-up studies when possible; and it is rather surprising that no remedy has been devised to place the judicial authority in a similar position, since it is frequently declared that the determination of the sentence is his most difficult task in a criminal trial. To act upon the assumption that the usual form of punishment will be suitable in an individual case may be unsatisfactory, and almost seems to promote a possibility to the status of a certainty. The practice takes us back to the days when retaliation and deterrence were the only factors considered, and the reformation of the offender was scarcely contemplated. As I have already stated, public safety must take precedence, but justice is concerned with the three aims of punishment, and since reformation benefits society as well as the offender it cannot always be denied.

A psychiatrist recently stated that the Law still nourishes certain superstitious beliefs in the virtue of punishment. In this appears the germ of the idea that criminals ought not to be punished by the usual legal measures, but should be dealt with in some other way. It disregards the fact that the legal and executive authorities are constantly using methods in which punishment and treatment are associated, and that in the ordinary affairs of life we have to pay for our mistakes. The view maintained by prison psychiatrists in this country, that punishment may be a valuable adjunct to treatment in selected cases of criminal behaviour associated with a minor mental abnormality, appears to be gaining ground.

Let us have no illusions. Judges cannot always accept the psychiatric and psychological interpretations of criminal conduct advanced by some enthusiasts. It cannot be denied that psychiatric views are sometimes directly contradicted by the known circumstances of the crime, and that these do not always receive from psychiatrists the consideration which is their due. Above all, let us remember that society rightly refuses to hand over to doctors the powers of the courts to decide the punishment. We must also accept the fact that our punitive measures have been evolved by the wisdom and experience of highly skilled legal and executive authorities and meet with a large measure of success.

We have only to study the practice of the criminal courts to be convinced that the training of a psychiatrist cannot compare with a legal education when the accurate estimation of facts and their correct interpretation in complex situations are concerned. And Sir Roland Burrows, Recorder of Cambridge, has stated that "lawyers were sometimes able to appreciate the nature and bearing of evidence because it was a matter with which they had to deal, and he had occasionally been driven to the conclusion, from what he had seen of medical men, that the appreciation of the significance of facts and of the

hearing of the evidence was not yet sufficiently a part of the training of the medical man."

The relation of psychiatry to punishment, as I see it, is concerned with diagnosis, prognosis and treatment.

Diagnosis.—The ascertainment of the mental condition of a person who is mentally ill is usually a straightforward application of psychiatric knowledge to the circumstances and indications of normality and abnormality present. If mental abnormality is suspected in criminal cases the position is more complex. The offender has often an undisclosed motive for his criminal behaviour, and secret reasons for the manner in which he presents himself to the psychiatrist for examination. It is clearly necessary for the diagnostician to be well experienced in the more unusual motives of normal persons as well as of psychiatric patients, and to have practical knowledge of the boundaries of normality.

Looking back, say, twenty-five years, one recollects that many exhibitionists were said to be moral imbeciles and later moral defectives. To-day they are often assumed to be psychopathic personalities or psychoneurotics, without taking into consideration the fact that some are no more abnormal than the greedy man who overeats. Indeed, the term "sexual appetite" may be particularly appropriate in a criminal court if it refers to a man who leaves home to seek a sexual adventure in a country lane, just as another sets out to satisfy his gluttony at his favourite restaurant.

It would lead us too far to recall the many difficulties in diagnosis which may arise in cases of alleged mental abnormality and crime. But highly technical laboratory methods, whose value is at present undetermined, sometimes add obscurity to the problems before the court and confuse the evidence. It must also be admitted that we are often on dubious ground when certain psychoanalytical views are introduced as diagnostic aids, and psychoanalytical terminology, as well as theory, often arouses opposition. This is sometimes because of the manner in which it is presented. A jury may be shocked when told that sexuality is present in infancy. But their hostility may be moderated if they are reminded that we frequently see evidence of acquisitiveness and aggressiveness in infants, and that it would be a strange biological anomaly if so important an urge as sexuality was entirely omitted from infantile expression.

An unfavourable impression is introduced if a satisfactory psychological explanation for a crime is presented in order to excuse the offender, regardless of the fact that it would not absolve him from responsibility for, say, a bankruptcy connected with his business or profession.

There is perhaps an unavoidable tendency for the psychiatric diagnosis in a criminal case to become so involved in the course of a trial that it lacks the precision which the administration of justice requires. The difficulties of presenting a precise diagnosis increase when different types of mental abnormality overlap, and if—as is not uncommon—they are in an initial stage of their development. For the most meticulous accuracy on the part of the expert witness is essential, and in cases where the diagnosis is uncertain it is well to bear in mind that Sir Travers Humphreys, the eminent judge of the

High Court, discussing Science and Justice, said: "The best witness is the one who is not afraid to say upon occasion, 'I do not know'."

The differential diagnosis and classification of the sub-groups in some forms of mental abnormality, for example psychopathic personality, may be matters of opinion when first studied. We must accept the fact that psychiatry, like other branches of medicine, is too dynamic to be often dogmatic. Nevertheless, crisp terms should be our aim in the diagnosis of the mental condition of an offender. The careful exclusion of abnormal mental states will go far to establish normality, although circumstances connected with the crime may seem to be unusual.

Prognosis.—Lawyers and administrators are intimately concerned with prognosis—that is, the chances of an offender's rehabilitation—and psychiatrists may be asked to predict the probable effect of legal and medical treatment. Ordinary assessments may be of little value when either normal or abnormal mental states are related to criminal behaviour, and experience of criminals as well as of psychiatric patients is important even for an approximate forecast. The problem often presents insuperable difficulties, but something is gained when this is recognized, and also the fact that the most reliable medical opinion may be that which is least assured. The psychiatrist, however, is often in a position unhesitatingly to declare that legal punishment alone is hardly likely to effect the desired result.

Hornell Hart, in 1923, appears to have been the first person to suggest the possibility of applying to punitive measures the methods used in the field of insurance for predictability. Since then prediction techniques have been advanced by E. W. Burgess, Sheldon and Eleanor Glueck, G. B. Vold, E. D. Monachesi and others. The Gluecks, in 1930, stated that "legislative prescription of penalties and judicial sentencing are founded upon considerations almost wholly irrelevant to whether or not a criminal will thereunder ultimately be a success, a partial failure, or a total failure." They constructed a prognostic device based upon the offender's industrial habits preceding sentence, the seriousness and frequency of pre-reformatory crime, arrest for crimes preceding the offence for which sentence to a reformatory was imposed, penal experience preceding reformatory incarceration, economic responsibility preceding sentence to reformatory, and mental abnormality on entrance to reformatory.

In a recent study M. Hakeem, using the Glueck method, considers that "it is possible by statistical analysis and an actuarial technique to utilize the experiences of paroled subjects to establish a scheme of predicting future criminality or parole outcome of subjects before their release from penal and correctional institutions." And the Gluecks in a more recent volume state: "The possible value of predictive devices to judges in sentencing offenders cannot be over-emphasized. . . . Prognostic tables, based as they are on the actual results of treatment in hundreds of cases, would induce judges to individualize in terms of *objectified experience*" (italics in original text). It is legitimate to doubt whether objectification might not tend to supplant the individualization which is of such great importance, and for which moderns have striven so hard, in their dealings with criminals,

Treatment.—The modern penal policy in the criminal courts as well as of the legislature has gradually brought about in this country changes which are directed towards making punishments more humane and more lenient. Perhaps the most important of the many factors which have forwarded this policy is the absence of an excess of crimes likely to cause alarm—which Bentham suggested might vary from disquiet to terror—in society, and the infrequency of serious organized criminality. We are here concerned with the medical aspects of punishment, and in passing it need only be mentioned that probation orders have come to play an important part as alternatives to detention, and the tendency has increased for the order to be accompanied by a direction as to supervision. The very short and ineffective sentences of imprisonment in former times have ceased to be regarded as desirable forms of punishment; and prolonged sentences of imprisonment or penal servitude are comparatively infrequent. Moreover, training, education and rehabilitation are primary considerations during the period of detention.

The appropriate punishment for offences committed by mentally normal offenders does not particularly concern the psychiatrist. The awards declared in cases of insanity and mental defectiveness are for the most part established, and there can be little doubt that our most useful contribution to the problem of punishment, at the present time, is in connection with offenders who are subnormal, psychopathic personalities or psychoneurotic.

Since subnormality approximates to mental defectiveness on the one hand and to mental normality on the other, the effects of punishment may vary. It may be effective or non-effective. The lower the grade of subnormality, the more important generally will be the after-care and occupational placement of the offender. That is to say, the subnormal offender will be likely to become a recidivist unless he receives more than the usual amount of help and guidance when he is at liberty. For although his constitutional disability will handicap his efforts, he may adjust himself to social life if he is emotionally stable and if his occupation is within his capacity.

I believe that psychiatric assistance in the treatment of psychopathic personalities and psychoneurotics who have committed crime is likely to be most impressive if precise views are held concerning the clinical limitations of the groups under consideration. Otherwise the psychiatrist may fail to convince those who have to deal with the offender as a social unit. I have suggested elsewhere that for practical purposes it is convenient to consider the offender who is a psychopathic personality as belonging to one of the following groups: Psychic inferior personalities; aggressive egocentric personalities; ethical aberrant personalities; alcohol and drug addicts; sexual perverts; schizoid, cycloid and paranoid personalities. The usual grouping of the psychoneurotic reaction types into neurasthenia, anxiety states, hysteria and compulsive-obsessive states enables the psychiatric position to be clearly expressed.

Bearing in mind the fact that the moral and emotional abnormalities of psychopatic personalities are largely the result of psychological immaturity, and that the psychoneurotic reaction is regarded as an indication of mental conflict and faulty response to the stresses of life and is more or less associated

with a constitutional factor, it is not surprising that the ordinary methods of punishment sometimes fail to rehabilitate offenders who are so affected. The psychiatrist may usefully submit that in these cases punishment may be more effective if accompanied by psychiatric treatment as an alternative, or as an adjunct, to a sentence of imprisonment. At the same time we have to remember that as psychiatrists we are mainly interested in individual offenders, and that the judicial authorities are obliged to consider their awards from a wider point of view. We must also make it abundantly clear that the result of psychiatric treatment, even in selected cases, may be disappointing. It will be less so when a special penal institution is established and administered on psychiatric as well as disciplinary principles, and as our researches advance.

More generally it may be said that the function of the psychiatrist in relation to subnormals, psychopathic personalities and psychoneurotics who have committed crime is to ascertain the extent to which their behaviour is attributable to unusual psychological causes, and to determine whether psychiatric treatment is likely to be advantageous. It is to be remembered that although psychopathic personalities and psychoneurotic patients may profit by the adoption of such measures, additional difficulties arise if the subject has committed crime. Moreover, the psychiatric treatment of crime is still in its infancy and forecasting is often fallacious. The most that can usually be said is that it is worth a trial in some cases, and ordinary punitive measures may fail. The psychiatrist may also be able to give advice concerning the placement of the offender on release, and give suggestions as to the style of life he should aim at.

The subject is too large to consider here. It may be said that prison experience shows that certain factors favour medical treatment during a sentence of imprisonment of sufficient length for the purpose. The desire for cure is then more insistent, and the offender, perhaps for the first time, is brought face to face with the reality of his position and with the " black beverage of Remorse." There is also in prison an unusual release from the distractions, cares and temptations of the outer world, there is time to think, and the offender leads a regular life under medical supervision.

Caution is necessary and overstatement harmful. When a psychiatrist declares that "*all* sexual offenders should be psychiatrically examined" (italic mine), one can only feel amazed, and wonder why a bigamist, or a man who offends by committing a sexual act with a consenting girl who is under age but looks mature, should be examined. When, too, it is stated that " society is entitled to protect itself against acts of public indecency but is not entitled to punish psychological disorder," we can hardly be surprised if an opinion based upon a monopolist approach antagonizes those whose approval is necessary for our purpose. For even if they are willing to listen to the pronouncements of science, these must not be presented as the dictates of a cult.

One is reminded that W. MacNeile Dixon, in his Gifford Lectures, stated: " We speak, indeed, of weighty opinions, but how many millions of them will depress a balance to the extent of a pennyweight ? "

Without doubt many sexual offenders require a psychiatric examination if their activities are to be understood and treated. At the same time we must

take into account the fact that this method of treatment requires co-operation, and many offenders object to psychotherapeutic intervention. Again, if we are realists, we shall admit the fact that society punishes the insane and mentally defective persons who have committed no crime, by segregating them in institutions which deprive them of their liberty and require them to conform to the rules of the establishment. And we also know that the great majority of offenders resent being regarded as mentally abnormal, and prefer detention in prison to segregation in a mental hospital.

In the diagnosis, prognosis and psychiatric treatment of crime there is scope for our best psychiatrists. I am also convinced that if the psychiatric treatment of offenders in suitable cases is made a condition of a probation order, only psychiatrists of wide experience and mature judgment should undertake the work.

Conclusion.

Crime is not a disease. It is sometimes attributable to mental disease and mental defectiveness. It occurs when self-regarding behaviour replaces social behaviour and threatens social security. In our present state of knowledge we cannot assume that character anomalies and mental disease are necessarily identical and co-extensive. The difference between normal and criminal behaviour is for the most part quantitative rather than qualitative.

Punishment—deterrent, retributive and reformative—is the instrument used by society for its protection. Equal emphasis on its different aims is not always practicable. The punishment of mentally normal offenders is not the special concern of the psychiatrist. He is already engaged in the treatment of insane and mentally defective offenders. He is coming to take a part in the treatment of offenders who are affected by minor mental abnormalities.

Some of these offenders will be suitable for medical treatment without imprisonment, and further provision will be required to carry this out if it is made a legal condition of a probation order. Some are a danger to society, and require imprisonment to ensure the protection of the public. To promote the medical treatment during a sentence of imprisonment we must face the fact that short sentences may be insufficient, and that a longer sentence than that usually awarded, but not necessarily the maximum authorized by law, may be required for the purpose.

Our responsibility in these cases is grave. The judicial and executive authorities have to decide whether they can accept the medical view. Theirs is the last word. Psychiatrists have to consider whether the mental abnormality present lessens the culpability—according to medical opinion—of the offender ; and if so, they must not encourage him to believe that he is a mental invalid. Our aim is to assist him to carry out his social obligations to others.

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DISCUSSION.

LORD COOPER (Lord Justice Clerk) said: Dr. Norwood East has given us one of the most balanced and judicial surveys of this difficult subject which I have been privileged to hear.

My approach and my background are very different from yours. In six years as a public prosecutor and another six years as a Judge, one learns a lot. *Experientia docet*. But lest you should suppose that I belong to the crusted school of Rhadamanthus, let me add that in 1938 I was the Law Officer who assisted Sir Samuel Hoare, as he then was, in the Parliamentary promotion of the Criminal Justice Bill, and I then heard all that could be said on the psychiatric treatment of crime.

You and I have only one prime object in view—the better service of our fellows. Together we can accomplish much. We can do little apart. I regret to say that in recent years I have seen the lawyer and the psychiatrist drifting apart. The paramount need at the moment is to interpret the one to the other. How has this come about?

Mine is a very old job. Zeus came before Aesculapius, and, as Dr. Guthrie has reminded us in his recent book, Zeus ultimately felt obliged to slay Aesculapius with a thunderbolt! The problem of controlling and repressing anti-social conduct, whether in the form of crime or just of simple sin, is older than civilization, and its solution has been central to all the religions and philosophies of mankind since Confucius and Moses and Plato.

Against that put Dr. Norwood East's pregnant remark that the psychiatric treatment of crime is "still in its infancy."

Next, please observe that in all other aspects of the art of healing what the physician does by way of curative regime is a matter for himself and for his patient alone. Within the walls of his consulting room or hospital ward the doctor is undisputed master, and subject only to his professional traditions. But when the psychiatrist ceases to be content with curing his patient and enters the wider field of delinquency and criminal administration, he forfeits the privileges of his profession and abdicates his sovereignty by becoming in essence a politician,

seeking to mould and alter the public law in matters vital to the existence of every organized community. He cannot then complain if those responsible for public administration of law and order examine his credentials with care, and subject his arguments to exactly the same tests as would be applied to those of anyone else. The psychiatrist is not used to having his opinions questioned, and the lawyer is not used to accepting other people's conclusions unexamined. Hence the conflict.

Great harm has been done to the cause of criminal reform and to the closer co-operation of law and medicine by the exaggerated and unproved claims which have sometimes been made by the extremist devotees of psychiatry. I heartily agree with Dr. Norwood East that these problems require the widest experience and wisdom; but there are psychiatrists and psychiatrists, and on occasion I have myself been presented with the very contentions which he regarded as unjustifiable —that all crime is pathological, and that the bare fact of the commission of a major crime of violence or a serious sexual offence is, *ipso facto*, proof of psychopathic personality or something worse. Believe me, for the last fifteen years it has been a recognized point of advocacy that if there is not a real defence to a grave criminal charge the accused's advisers must get a psychiatrist—at least to support the Scottish defence of "diminished responsibility."

What has been the result? For a time it worked. In Scotland we did not have a single death sentence for about a dozen years. But it has been overdone; and I am sorry to say that judges and jurors alike have come to regard such evidence with growing suspicion. Can you wonder? The person you have to convince is the man in the jury box, who is apt to apply to such matters the yardstick of a robust and vigorous common sense, and who feels in his bones that you cannot convert a criminal into a patient by the simple expedient of describing the age-long characteristics of the typical criminal in words borrowed from ancient Greek philosophy. Indeed, I have sometimes wished that the psychiatrist would borrow a good deal more from Plato than his terminology.

Note this. You see the criminal wrapped both literally and metaphorically in a white sheet. We see him in the dock—but we see more than that. We see the weapons he used and the bloodstained garments of his victim. We see and hear the victim, or more usually the widow of the victim, or the mother of the ravished child. After that it is not easy to accept it on the *ipse dixit* of any medical man that the perpetrator of some outrage should be sent to a nursing home, and encouraged in the belief that he had no responsibility for the misery he caused or might cause again. The lawyer is not yet ready to accept the principle that there is a section of the community chosen by medical men whose members are free to commit crime with limited liability, or perhaps with no liability at all. The object of criminal law is not to make a world safe for criminals to live in.

The two fundamental difficulties which are now threatening to part the lawyer and the psychiatrist are (1) the extremist psychiatrist view which concentrates too exclusively upon the rehabilitation of the offender and subordinates, if it does not wholly ignore, the retributive, deterrent and protective aspects of punishment, and (2) the not infrequent attempt of the psychiatrist to justify his diagnosis on the simple assertion of his own conclusions, without adequate verification of his data or the production of reasons convincing to the instructed lay mind of the validity of his inferences. There is no room in this field for purely authoritarian pronouncements. Anyhow, ample proof of my thesis that the psychiatrist and the lawyer are latterly drifting apart is to be found in our legal journals, in a number of recent judicial decisions, and in a succession of jury verdicts in which psychiatrist evidence has been repeatedly rejected—not, I fear, without justification.

May I, greatly daring, urge upon you the need for independent verification of all the data on which your conclusions depend, and for greater efforts to produce by reasoning conviction in the minds of judge and juror, rather than to invite submission to an opinion which is rested mainly on specialist knowledge and experience? Cases are not unknown where the data on closer investigation proved to be incapable of verification, if not actually disproved; and I sometimes feel that the psychiatrist tends to underrate the ingenuity and cunning of the ordinary criminal, who knows well how to pitch a tale to a sympathetic listener.

I am all in favour of greater efforts by means of psychotherapy to rehabilitate the convicted criminal and to help him to adjust himself to his social responsibilities. More power to your elbow in that work! Especially amongst first offenders there is much to be done. But it is another question altogether when the medical man

intervenes to prevent the offender being convicted or subjected on conviction to a just penalty.

It may interest you to know that one State in the British Commonwealth has just legislated on this question following an investigation by a commission. It is Queensland, Australia; and there provision has now been made for examination and treatment of sexual offenders and other subnormal persons by a body of psychiatrists; but it is significant that the ordinary penalties for sexual offences have been doubled or trebled, that the habitual offender code has been applied to sexual offences, and that the power is expressly conferred on the court to postpone the psychiatric treatment until appropriate sentence has first been served. That model is worthy of study in connection with the proposed revival of our own Criminal Justice Bill.

I have felt compelled to assume in this speech the unpopular role of the candid friend. But the friendship is as real and sincere as the candour. As your President said last night, you must take the lay public with you; and it is in the earnest desire to bridge the gap which threatens to part the lawyer and the psychiatrist that I have underlined the points which I have briefly summarized.

Dr. W. M. McALISTER said: No branch of medicine has more intimate contact with the law than psychiatry. All our administrative duties are performed in conformity with the requirements of the Lunacy Acts, and even our clinical work (using that term in its widest sense) is to some extent similarly conditioned. Such matters as divorce on the ground of insanity, the management of the property of insane persons, testamentary capacity, and, occasionally, criminal responsibility, are examples of those common concerns in which law and medicine are called to interest themselves. Most of these matters are not now regarded as contentious. True, when the Divorce Bill was introduced, there were some in our ranks who disapproved of its provisions, fearing lest the interests of the insane spouse might be prejudiced. When the Bill became law it was accepted in all loyalty even by those who had opposed it most resolutely. Now it may be said that the Act works smoothly, and everyone must, I think, agree that the vigilant eye of the Court never loses sight of any possible safeguard to which the insane spouse is entitled. The interests of those unfortunates are obviously safe in its hands.

Perhaps the only controversial subject among those mentioned is the question of criminal responsibility in relation to murder, and even that is less frequently canvassed nowadays than it used to be. In Scotland one seldom hears an echo of the controversy except when some particular case momentarily excites public interest. In England, where the criteria of responsibility are still those laid down in the McNaghten Rules, enterprising barristers try—without much success—every now and again to shake the law's reliance on these century-old formulae. And sometimes one hears medical men tilting at them. But in neither country can it be said that there is widespread dissatisfaction with the existing practice. It is, of course, an anomalous situation that the doctrine of partial responsibility should have been judicially defined and regularly applied in Scotland, while being stoutly repelled in England. In Scotland we accept the anomaly with complacency. In England, everyone knows that justice is done in the long run, and that, if need be, careful investigation is made of the psychopathological factors, if any, in every case after conviction. That is of far more concern to the public than a theoretically perfect system which might yield in practice less satisfactory results.

In Scotland the doctrine of partial responsibility is relevant only when the charge is murder. It goes a long way towards meeting the common criticism that the McNaghten Rules are too narrowly drawn. On a broad view the Scottish practice certainly appears to fit the facts of experience more adequately. On the other hand, it does nothing to justify the fears of those who think any break with the McNaghten tradition must open wide the doors to abuse. That has certainly not been the result in Scotland since in 1923 the then Lord Justice Clerk stated the criteria of partial responsibility and gave the doctrine a firm footing in our criminal procedure.

The improbability of abuse becomes apparent when one considers the nature of the tests to be applied. These are:

(1) Aberration or weakness of mind.
(2) Mental unsoundness.
(3) Great peculiarity of mind.

Negatively the position was put by Lord Alness in these terms:

"It will not suffice in law for the purpose of this defence of diminished responsibility merely to show that the accused person has a very short temper or is unusually excitable and lacking in self-control. The world would be a very convenient place for criminals and a very dangerous place for other people if that were the law."

The criteria are necessarily drafted in general terms, and are applicable to a wide variety of circumstances. It may be of interest to examine the record of one particular case where this plea was proffered and failed, and where several issues of medico-legal interest emerged, and to contrast it with others in which the plea was sustained. In passing I would say that of the last thirty cases of murder in which I have examined the accused, thirteen were held to be insane, three were grossly defective, twelve were of sound mind and two, though they could not be described as insane, suffered from such a degree of mental disability as seemed to the Court to justify applying the doctrine of limited responsibility. In these two cases the accused were found guilty of culpable homicide and sentenced to 15 and 7 years' penal servitude respectively.

In the case where the plea was repelled, medical evidence was led to show that the accused was a psychopathic personality. In his summing up the judge carefully sifted this evidence and finally, using the words of the medical witnesses themselves, reduced it to this formula: "Psychopathic personality is a condition in which there is an inability on the part of the person affected to adapt himself to ordinary social conditions. It is usually less than insanity which is certifiable. It is associated with emotional instability." This by itself may not have done full justice to the medical evidence, but the remainder of the charge to the jury made good any deficiencies.

The jury rejected the plea and the accused was sentenced to death. No expert evidence on the accused's mental condition was presented by the Crown, but even without such rebutting evidence the jury reached their decision unanimously and without unduly prolonged deliberation.

An appeal against the sentence was heard by the Court of Criminal Appeal and was unanimously dismissed. When Counsel for the Defence pleaded that psychopathic personality always involved diminished responsibility, the answer from the Bench was to reiterate the remarks already quoted about the danger to the public if that were accepted as the law. And surely it is a reasonable proposition that unless the accused person is certifiably insane he must needs answer for his misdeeds, and the merits of his individual case must be thoroughly probed. It is interesting to note in passing that the Appeal Court declined to exercise its powers under the Criminal Appeal Act of 1926 to call in a medical assessor to assist in defining the appellant's responsibility. That is really the province of the jury, and the Court viewed with disfavour any attempt to substitute a procedure which conflicted with that dominant principle of criminal law. The Court ruled that the questions raised by the appeal were purely matters of law on the determination of which a medical opinion could not properly be asked to assist. Whether in other circumstances the Court would follow the same line is presumably an open question.

The hearing of the appeal was not the end of the matter. Owing to the absence of countervailing evidence as to the mental state of the accused at the original trial, the Secretary of State, confronted with a petition for reprieve, ordered a fresh medical examination.

That, by the way, is a comforting indication of the extreme care which is taken by the law to ensure a fair deal for the individual, however depraved his record may be.

Those who reviewed the medical evidence and examined the prisoner afresh could not agree with the diagnosis of psychopathic personality. That by itself may not mean much as the condition is still far short of exact delimitation. But the divergence of view went much deeper. It concerned almost every individual feature of the case on which the diagnosis rested. These were (*a*) a criminal record extending over almost half of the prisoner's life, and embracing an appalling list of crimes ranging from theft to assault to the danger of life and finally murder; (*b*) an alleged attempt at suicide; (*c*) alcoholism; (*d*) the accused's incorrigibility and apparent inability to profit from experience; and (*e*) his defiance of those commonplace obligations without which an orderly, decent society becomes impossible.

Now a criminal record *per se* is not necessarily indicative of psychopathic personality, or indeed of any other form of mental disorder. In a broad sense the criminal may not be normal, whatever that may mean. But unless it can be shown that the criminal's anti-social activities are accompanied by specific evidence of mental disorder, it is quite unjustifiable to adduce them as evidence of unsoundness of mind. The motivation of crime is as varied as it could well be, and we as medical men must keep that fact prominently before our minds. There are instances, of course, where the criminal act is the final proof of insanity, as, for example, in the insidiously developing paranoia when at last the pot boils over. But there the criminal act is only an episode. It is not the whole story.

In this particular case, the criminal record related for the most part to crimes from which the accused hoped to gain some personal advantage. Something of a ne'er-do-well, his acquisitive and gambling instincts were highly developed, just as they are in thousands of others who live by their wits. His later and more serious crimes were committed usually when under the influence of drink, and out of loyalty to the gang of like-minded ne'er-do-wells with whom he associated. On the question of alcohol we ought to be clear as to the law, so often and so clearly reiterated from the Bench, viz. that " drunkenness never excuses or palliates an offence unless it is so extreme as to deprive the man who is drunk of the capacity to form an intention to kill or to do bodily harm. The man must be incapable of forming an intention to kill or to do grievous harm before drunkenness can ever enter into the picture as affecting guilt of a crime." Before this test the accused was obviously guilty, for before setting out he had armed himself and hinted to bystanders what he meant to do with his weapon. In a more general way it was contended for the accused that drink would be likely to have a far more deleterious effect on a man of his mental make-up than on a normally endowed person. That contention, though true of many unstable people, is far from meeting the legal test. However much a man drinks and however much he is affected by what he drinks, he is responsible unless he becomes so intoxicated as to be incapable of forming the intention. In most instances, of course, such a degree of drunkenness might well paralyse any effort to carry out the intention—fortunately for both parties.

Suicide as an alleged symptom of mental disorder has been raised, as it was raised here, in several recent cases. Its significance must be interpreted in each individual case, before its value as evidence becomes clear. The accused, while undergoing a term of imprisonment had inflicted on himself a nasty-looking wound, which, however, did not endanger his life. Self-mutilation here followed on a serious outbreak of indiscipline and insubordination in the prison, to cope with which the warders had to resort to force. The accused had taken an active share in fomenting the trouble, at the same time taking care not to expose himself to the risk of punishment. In the course of a round of inspection the warders found the accused lying on the floor with a superficial wound which looked worse that it really was.

Now there are many and various reasons for attempting suicide. It is surely going too far to say, as lay observers sometimes suggest, that every attempt at suicide necessarily implies a serious degree of mental abnormality, and therefore modifies responsibility. The dock at Nuremberg is not so crowded as it might have been but for the suicide of Hitler, Goebbels and Himmler. One cannot regard their suicides as other than a conscious and deliberate evasion of their approaching condemnation. And there are no doubt several in the dock at this moment who, foreseeing the inevitable end, would choose to make a speedier exit if the chance arose.

In this particular case the faked suicidal attempt was one of the few definite and concrete incidents referred to in support of the plea. There is no doubt, however, that the attempt, far from conforming to the impulsive, reckless and apparently meaningless outburst of the psychopath, was a frigidly calculated device to ward off the consequences of his own misdeeds.

In any discussion of psychopathic personality stress is laid, quite correctly, on the constitutional aspects of the condition. It is all the more surprising that in a case like the one under review the question was never raised, although the accused was often examined, till the capital charge was preferred against him. Now, my personal experience of the psychopath is that he presents one of the most baffling problems in management in the whole range of psychiatric work. Wherever he is, and whatever his circumstances may be, the tendency to give his antisocial propensities free rein is a constant menace to the community in which he lives. Yet

this man had served several long terms of imprisonment under the eye of an experienced prison doctor (who agreed there was such a clinical entity as psychopathic personality), and in the doctor's words, " had never put a foot wrong."

Whether we take the view that the diagnosis was good or bad does not matter much. The crucial question is whether the evidence disclosed mental disorder of such severity as to justify a plea of reduced responsibility. The judge and jury at the initial hearing and the Bench of five judges in the Criminal Appeal Court were unanimous in returning the negative answer, and most, if not all, reasonable people would, I am sure, subscribe to that verdict.

The case focused the searchlight on the whole question of psychopathic personality, and showed the need for a much clearer definition of the condition. In particular, it showed the need for differentiating the psychopath from the habitual criminal. Both have obvious traits in common; what we want to define more exactly are the differentia. In the present state of our knowledge it is an unwarrantable assumption that a career of crime is a reliable indication of that degree of mental disorder that equates with partial responsibility. The case showed, too, that generalizations concerning the conduct of an accused person, whether represented as a psychopath or as something else equally abnormal, make no appeal either to the legal mind of the judge or to the native common sense of the jury. If the plea of partial responsibility is to stand, the medical evidence will require to be clear and specific, and must include some of the recognizable features of insanity. Evidence of lesser significance may properly be tendered when asked for, if for no other reason than that the medical witness is on oath and must tell the whole truth. But let us beware of overstressing the significance of such evidence. To do so does not help the accused, and it almost always casts a reflection on the reliability and good sense of psychiatric evidence in general. Let the facts be stated simply, and let the assessment of their significance in relation to responsibility be left where it should be—in the experienced hands of the Court.

Contrast with that case two others in which the plea was sustained, the charge reduced from murder to culpable homicide and sentences of penal servitude imposed. Here the doctrine of diminished responsibility applied because of the presence of definite and precise mental factors which, although not amounting to insanity, clearly indicated mental disorder. One was an epileptic with a history going back to boyhood. The seizures were infrequent, but were adequately vouched for, and there were other episodes which might possibly have been explained as epileptic equivalents. At the time of examination there were no signs of gross mental deterioration, and it was clear that when the crime was committed the accused had not been in a state of post-epileptic automatism. There were no independent witnesses of the crime, and consequently apart from the accused's own statement, little information could be gleaned as to his condition at the time of the fatal assault. The other was a man who showed signs of cyclothymia; temperamental, volatile and unpredictable, with a long history of instability, including one period in a mental hospital and with a history of a head injury which was said to have made him even more unstable. Neither case could have been certified at the time of examination as insane, but there was indisputable evidence of mental disease at one time or another. These cases are quoted as an illustration of the sort of evidence required to support a plea of partial responsibility. My experience has been that if such evidence is put before the Court it receives a fair and judicial hearing. Nothing short of that will suffice.

All the thirteen cases deemed to be insane were placed on trial before a judge sitting alone and a plea of insanity presented. In every instance the plea was sustained and the accused ordered to be detained during His Majesty's pleasure. In practice the only question to be decided in such cases is as to the sanity or insanity of the accused. There is no nice question as to whether, if insanity is proved, the accused knew the nature and quality of the act. This procedure forms a radical departure from that required by the McNaghten Rules, but it seems to serve the ends of justice as effectively as the more elaborate inquiry.

The days of the old facultative psychology are over, and the newer conception of mind as an integrated, dynamic whole has taken its place. The McNaghten Rules, in so far as they are based on an antiquated conception of psychology, are certainly open to criticism. If they are to be amended, the system pertaining in Scotland seems to indicate one method by which the legal and the medico-psychological views might be approximated.

Despite all their theoretic shortcomings, it cannot be said that there is anything in the nature of a public clamour for the formulation of a new set of rules. Nor has there ever been anything like unanimity as to what should be substituted for them. When the Royal Medico-Psychological Association in 1924 submitted a memorandum to the Committee on "Insanity and Crime," it was suggested that the legal criteria of responsibility contained in the McNaghten Rules should be abrogated, and the responsibility of a prisoner should be left as a question of fact to be decided by the jury on the merits of the particular case. Accompanying this was the suggestion that the proper questions to be put by the judge to the jury when the mental condition of the accused is in issue should be:

(*a*) Did the prisoner commit the act alleged?
(*b*) If so, was he at the time insane?
(*c*) If he was insane, has it been proved to the satisfaction of the jury that his crime was unrelated to his mental disorder?

Although this represented the collective wisdom of our Association in 1924, it is doubtful whether it would command the assent of the majority of the members now. The main difficulty arises over section *c*.

It must be remembered that this section deals with persons shown to be insane. It would be difficult, if not impossible, to prove in any given case that a crime committed by an insane person was unrelated to his mental disorder, for when the mind is disordered to the point of insanity it is the whole mind and nothing less that is affected. It seems to me that the only safe course to follow, when an insane person is accused of a serious crime, is to assume that his crime *is* related to his insanity. That is implicit in the Scottish procedure. The extreme difficulty, if not impossibility, of proving to the satisfaction of a jury that a crime committed by an insane person was unrelated to his insanity would make the Association's plan just as unsatisfactory as the original Rules. There is a great deal to be said for the comparatively simple, straightforward view of an English judge who declared that "if a man is in a deranged state of mind at the time he is not answerable for his acts. The material part of the case is whether at the time the act was committed, the man's mind was insane." A former Lord Justice Clerk in Scotland put it this way: "In a strictly legal sense, there is no insane criminal: concede insanity and the homicidal act is not criminal. The act of the insane, which in the sane would be criminal, lacks every element of crime."

The administration of justice in England, as in Scotland, is so humane that it is only sporadically it meets with criticism. That the accused is hedged about with safeguards after as well as before his conviction was well illustrated in the True case. There is, however, one respect, and this again is brought out by the True case, in which the English practice compares unfavourably with the Scottish, for an insane person to whom no right-thinking person would think of applying the extreme penalty of the law may, in England, be subjected to the ignominy of the death sentence. If the accused, though insane, is held to know the nature and quality of his act and is, therefore, responsible, it may be assumed that he also knows the nature and quality of the penalty imposed on him. It is quite beside the point that the penalty may not be exacted. Even if not, the passing of the death sentence in such a case seems out of harmony with the essential decency and humanity of the law. As against that, there may be some risk that the Scottish system might result in a person innocent of the crime in question being adjudged insane and committed to a criminal lunatic asylum. I know of no case where that has happened, but there is at least a theoretical possibility that it might happen.

Generally speaking, the public are interested in the criminal and his responsibility only so long as these fill the headlines. When sentence has been passed and the prisoner passes out of sight he also passes out of mind, and there is the end of the whole matter. The public has had its Roman holiday and turns to more workaday interests with, perhaps, a hope that the next sensation will not be too long delayed. But neither medicine nor the Law can stop there. Not on humanitarian grounds alone, but on every concern for the maintenance of a decent social order, the lawyer and the doctor must pursue the matter much farther. Only by regarding crime and punishment in an inter-related way can we get to grips with this serious social problem. The interests of the two professions are not antagonistic—both are out for the betterment of society, and if mutual criticism were replaced by mutual trust, understanding and co-operation, it would be for the good of all.

There are certain obvious directions in which the existing state of affairs might be improved. For example, is there any good reason why the plea of diminished responsibility should not be acceptable in lesser crimes than murder, to which at present it is strictly confined? Logically, it ought to apply all round. Such a statement should not be taken as undermining the authority of the Courts or condoning criminal conduct. If given effect to, it would have an exactly opposite effect. It would mean the recognition by the Court of an abnormal component in the causation of a much wider range of crime—a result that would accord with the facts. If the Court were empowered in suitable cases, i.e. where the mental component was clearly proved and the risk of repeated offences reasonably established, to resort to the indeterminate sentence, not only would the individual prisoner benefit, but society would, at the worst, be given a breathing space, and at the best might be rid of a habitual offender. The futility of repeated short terms of imprisonment in many cases has often been demonstrated.

Good results could be expected only if adequate machinery existed for investigating and treating abnormalities when they are found to exist. In this connection we, in Scotland, have little to boast about. On occasion I have seen sexual offenders, for example, dealt with in two totally different ways. Some have been sent to prison; others, though they have been guilty of conduct just as repugnant to public decency, have been referred to a mental hospital. In those former cases the sentences may have to be served in a prison with a part-time medical officer with several hundred prisoners under his care. No experienced psychiatrist will assert that sexual offenders form a homogeneous group, but in those instances where medical opinion can show reasonable grounds for expecting a response to treatment, the facilities for treatment ought to be far more liberal than they are. Let the law, if it will, sentence such cases to a term of imprisonment, and so vindicate the rights of society. But in so doing, let us not lose sight as we sometimes do of the individual's right to be helped in what is often an intolerable situation, which the accused would give everything he possesses to have resolved. The statement that imprisonment of itself is adequate in such cases can hardly be accepted.

There is one comparatively small change that might be made in Scotland and doubtless elsewhere without entailing too much cost, and without disturbing unduly the present arrangements. The psychiatric side of prison work is badly in need of reinforcement, and I go so far as to say that every prison with a large enough population should employ a whole-time medical officer, trained in psychiatry and with some specialized training in criminology. Let us not forget that the trained psychiatrist is trained in physical medicine too and might, without undue difficulty, cope with any of the ordinary physical emergencies likely to arise in prison. He has thus two strings to his bow. On the other hand, the prison medical officer who is not a trained psychiatrist may, in the course of time, acquire some interest in the psychiatric side of the work, but that is never likely to become the dominant interest it should be.

Means might be found, too, of overcoming the isolation of more remote prisons so as to make possible the transfer to the larger prisons of those cases who for one reason or another seem to require special investigation. Freer use also might be made of consultants' services. Even if it costs money it will in the long run pay good dividends. In Scotland we have barely touched the fringe of this perplexing problem. Let us hope that in the new heaven upon earth which is always just round the corner the builders will not forget to put in one of the foundation stones. We have too long been fed on pure assumption as to the causation of crime and the effects of imprisonment. We must get down to a systematic study of it along scientific lines before we can even begin to build the New Jerusalem.

It has long seemed to me that with its small population, the greater part compactly assembled within 20 miles on either side of the Edinburgh-Glasgow line, Scotland offers an excellent field for such an experiment in social hygiene as we are considering. Yet in all broad Scotland there is one whole-time psychiatrist in the prison service. So long as that policy persists, so long are we doomed to go on piling failure on failure. Let us hope that something may come of the proposal in the newly issued Russell Report on the Lunacy Acts that a special State Institution for certain types of offenders should be set up. That would be a most desirable accession provided it is adequately staffed.

I need not mention what must leap to everyone's mind—the need for great expansion of Child Guidance and the Psychiatric Clinic movements, and the further

development of these beneficent institutions, the Approved School and the Borstal system. These are but the beginnings of a rational attempt to cope with the vast amount of juvenile crime in our midst. Let us carry that beginning into our prisons, and make them not merely prisons but also, without interfering with their penal character, centres of scientific study and treatment. And let us encourage by all the means in our power these beneficient organizations which have come into being since the last war, and which aim at directing youthful energy into useful channels.

While one does not wish to over-rate the contribution psychiatry can make at this stage to the elucidation of criminal conduct, it must be remembered that its opportunities for study are limited. Only a frank recognition of the importance of the mental aspects of crime and a determination to study the make-up of the criminal and the effects of punishment will put us on the track of worth-while results. We, as psychiatrists, need not be deterred from further effort by the uncompromising attitude of those who pin their faith to the efficacy of a stiff sentence as a remedial measure. There are too many cases in which the remedy does not work. In any event the mere fact that after punishment the offender may not reappear in court is no proof that punishment has had the desired effect. Not every second or third offence is detected and the offender brought to trial.

In the last analysis, however, the public must face up to its responsibilities. In a democratic country we are supposed to get the Government and the laws we want. It is a waste of time criticising those whose function it is to interpret and apply the law. If there is to be progress the social conscience must be roused to the point where it will not bar experiment for no better reason than that it breaks with age-old tradition.

Col. A. A. W. PETRIE said that no doubt a knowledge of the criminal was at least as essential as a knowledge of psychiatry, and he would say frankly in response to Lord Cooper's remarks that although he was a psychiatrist, when he heard some views expressed he felt sympathetic towards the lawyers. He had seen a number of cases of psychopathic personality recently and had been trying to draw from them their own feelings with regard to their responsibilities, and he found that they held varied views. A generally held attitude was: "Well, I am responsible now, but I am not quite so sure that I was responsible at the time." He thought that had held good possibly in the case of certain cerebral dysrhythmics. He had had a number through his hands, and the EEG had proved that they had undoubtedly a very considerable state of dysrhythmia. These arguments were successfully applied in a case in England when a jury broke away from the judge and acquitted the prisoner.

Dr. McAlister had said that alcohol could not be taken into account unless it deprived the person of his ability to control himself. As he saw it, these people were thoroughly responsible for their actions. It was dangerous to allow a number of people to go about with a sense of diminished responsibility; even the genuine psychotics realized that if they committed offences the law would tend to protect them owing to their previous history. That had happened, and psychotics put forward their history as a justification of their crimes committed when their psychotic condition was not present and when they were undoubtedly responsible. He thought the law would probably protect the genuine sub-epileptic. They were faced with new facts with respect to these psychopathic personalities. In Prof. Henderson's classification there was a type with emotional abnormality and anti-social trends who were often creative and artistic. One learned to recognize the type: they were not very normal; many of them had a number of crimes to their credit, they were a social problem. On a strict reading of the law they might have been dealt with as cases of moral defectiveness or moral insanity, but where they showed no intellectual defect the law and those who administered it were frankly not willing to allow them this degree of irresponsibility. Once it was allowed that they were less responsible, then it seemed that they had to be segregated, so that those individuals who were definitely less controlled and less responsible would have to realize that they could not have it both ways. They were responsible or not, and if they were responsible they must suffer the penalties of their crimes, and they usually appreciated that fact.

Dr. J. R. REES said that early in the war when efforts were being made to get some regulations in the Army which would stop the sending to prison of men who

were imbeciles, as some of them were with an extremely low level of intelligence, a legal luminary wrote to him saying, " Whatever else you do you must not interfere with the inalienable right of the lawyer to secure convictions." Lord Cooper said just now that there were psychiatrists and psychiatrists, and he would like to point out that there were also lawyers and lawyers. There should be a great deal more of interchange of opinion. As he knew from experience, very much could be learnt from the lawyers, and the lawyers could learn from psychiatrists. They learnt a great deal about a sense of social responsibility as to what happened to their charges which they did not always have. Until such time as psychiatrists could be called in as experts for the Crown to give evidence to the court, not evidence as for the prosecution or the defence, could they not themselves adopt such an attitude? In the British Army during the war that was done; no psychiatrist was allowed to be briefed; all his evidence was given to the court. That would give a greater sense of responsibility. Their first job was community medicine, not individual medicine, when dealing with cases of crime.

Dr. BACK said that, with all due respect to Lord Cooper, it was not quite correct to say that psychiatrists saw the cases in white sheets and ignored the victim. It would be a very superficial psychiatrist who accepted the statement of the accused as to the infidelity of his wife.

The PRESIDENT wished to make one or two comments in regard to this problem which was so difficult. It was very enthralling, but it was necessary that they should try to get to a combined or as near combined viewpoint as possible. Dr. Rees was referring to the Briggs Law of Massachusetts which was introduced a good many years ago, and which he thought in that State had worked reasonably well. It always raised the question, of course, of whether it could be practical politics in this country to have such a body appointed whose reports would be accessible both to the prosecution and to the defence, and where the court would find on the basis of those reports. There was a further statement which emerged from the American laws which had always been interesting to him, and here, again, it might not be possible; that was a suggestion that the trial should be divided into two phases, the guilt-finding phase and the sentence phase, that under these circumstances the guilt-finding phase would be an entirely traditional procedure, whereas the sentence phase might be a question of consideration between the law, the psychiatrist perhaps, and someone else interested in social reformation and rehabilitation. That might not be practical, but it was an interesting suggestion, and showed a point of view which all should carefully consider.

There were other points which had occurred to him. Week by week he visited, on the instructions of the Procurator Fiscal, the prison in Edinburgh to make a psychiatric examination of a varied group of offenders from minor offences to all sorts of more dangerous and serious crimes, and he had been very much impressed by the responsibility laid on him in regard to matters of this sort where one had to come to a fairly quick decision, often not with enough time to get adequate evidence. The evidence which was submitted was not very satisfactory; to examine a person under prison conditions was not a very easy thing to do, and he had found time and again that it was quite impossible, particularly in cases of sexual offences, to find the amount of evidence which would enable him to go into a court of law to submit a report that the person was irresponsible for his actions. That was very striking, yet one felt that one was dealing with a group of people who were urgently in need of help, and who failed under the prison system as it existed to get that help which was necessary for their condition.

On the question of limited responsibility he thought that in the case in which Lord Alness accepted the plea of limited or partial responsibility he himself had given evidence, and was very much impressed by the fact that Lord Alness expressed himself as he did. He thought it was a step in the right direction, but recognized that it was a step which one would have to consider very carefully indeed in reference to the type of person coming within the scope of this limited responsibility. He had felt more and more that he had a certain responsibility to justify the attitude he took at that time and which he still maintained, as he supposed he was partly responsible for the current use of the terms " psychopathic states " and " psychopathic constitution," and for bringing that conception of mental disorder more into current psychiatric thought. He would still maintain that it was impos-

sible in certain cases to understand them thoroughly, or to thoroughly impress a judge or a jury regarding something which psychiatrists nevertheless felt and recognized as motivating a person's disordered conduct. But there was this difficulty which Lord Cooper had stressed between the lawyer's point of view and the medical point of view. The lawyer thought in terms of reason and free will, and the doctor knew that conduct was so largely determined by unconscious motivation which it was very difficult to put on paper or to explain, but which the person, in many cases, could no more control than the epileptic could control his fit or the malarial patient his attack of ague. There was a group, a definite group, a real group, in which that unconscious motivation played a part, and in which it was very difficult to impress a judge and jury that it existed in a particular instance. He agreed wholeheartedly that people before they went into court or expressed their opinion in such matters should have had a long experience, so that they could answer reasonably questions put to them and could take a fair-minded attitude in relation to this very difficult problem.

There was one other point which he would like to mention. He had always been a believer in the indeterminate sentence. He thought it was a pity it could not be put into practice, because he took the same attitude towards the indeterminate sentence as he took to the discharge of a patient from his care in a mental hospital. The patients came to the hospital because they were ill; if they required to be certified they could only be discharged when they had reached the stage of social adaptability where they had a reasonable chance of getting along in society once more. He would like to see the same sort of situation carried out in regard to penal procedure. To sentence a man to six months or a year's imprisonment did not make any difference; time was not the factor; the factor was the delinquent's ability to acquire a sense of responsibility, and none of his doctors, lawyers, or anyone else was in a position to state arbitrarily how long that process of rehabilitation was likely to take. He would put this view as strongly as he could, in Lord Cooper's presence: that he would like to see a system built up where with careful medical treatment under prison conditions it would be possible to keep such people until one could say that such and such a person now had a fair chance to live at an infinitely better social level than he had ever reached or acquired before. That would really be a step in the way of progress, and something which would enable adequate treatment to be carried out in individual cases.

Dr. NORWOOD EAST, in reply, thanked Lord Cooper for the way in which he put the legal points, which he did not think were contrary to anything he said or even thought. One or two points had emerged in the discussion to which he would like to call a little further attention. Always at the back of his mind was the fact that doctors must certainly do all in their power to prevent the world being made safe only for criminals and unsafe for law-abiding folk. When he spoke of criminal responsibility and medical culpability he meant two very different things. By criminal responsibility he meant what was generally meant by the law, but he agreed wholeheartedly with Prof. Henderson that there were in the criminal world a body of people who could be well described as psychopathic personalities. There were also some psychoneurotics who were not irresponsible, but whom every medical man of experience would feel were not as culpable from the medical point of view as the ordinary person. That was not putting the psychopathic personality or the psychoneurotic in a favoured position over other people. On the contrary, such persons should receive longer sentences, which would enable medical treatment to be thoroughly carried out. They should not be allowed to impose on the public without some reasonable prospect of their being less harmful than they were before.

Prof. Henderson also mentioned the guilt-finding and the sentence-finding duties of the court. The speaker believed, at any rate as far as England was concerned, that the judicial authorities would probably object to having the sentence taken out of their hands. What he thought and what he always put forward whenever he got the opportunity was that the remedy in this particular class of case, and perhaps in all cases where the sentence was a considerable one, was that the judge and jury not only found the person guilty but would pass a minimum and maximum sentence for the same offence. This was very much like the tribunals under the Prevention of Crimes Act with regard to preventive detention. Recommendations could then be made to the Home Secretary when the right time had arrived both from the medical, social and economic point of view when the person should be

released within the limits, both minimum and maximum, prescribed by the judge. In that way a step further would be taken which would be of real advantage.

He was quite ignorant as to the Scottish procedure, but as far as England was concerned he did not think it was realized how frequently the Secretary of State ordered a statutory inquiry under the Criminal Lunatics Act, 1884, to be held on men who had been sentenced to death, and in whose case there might be some doubt about their mental condition. If the proceedings of the Court of Appeal were studied it would be frequently found that the judges said that they had no reason for altering the verdict of the jury, but that this was a case in which the Secretary of State had power to order an inquiry, and the judges of the Court of Appeal frequently put that view forward—very much more frequently than in former years.

It was mentioned that an approach between the medical and legal professions was heartily to be desired. In England there was the Medico-Legal Society which had meetings many times a year in which all sorts of cases, not only criminal cases, but other cases, were brought forward. He was sure that the doctors derived much benefit from their contact with lawyers in understanding the legal approach to many problems, and he hoped that the lawyers received benefit from the doctors as well.

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