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Police Interrogation: A Psychoanalytic View

Philipp Brockington

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POLICE INTERROGATION: A PSYCHOANALYTIC VIEW

by

Philipp Brockington

April 15, 1965

Submitted to the Harvard Law School in partial fulfillment of the requirements for the degree of Bachelor of Laws.

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The entry into Freud cannot avoid being a plunge into a strange world and a strange language -- a world of sick men, a diagnostic language of formidable technicality. But this strange world is the world we all of us actually live in.
-- Norman O. Brown¹

Introduction

This paper will examine police interrogation in the light of psychoanalytic theory. Its purpose is to generate information relevant to developing appropriate law to govern the admission of confessions in criminal actions. The paper was precipitated by the observation that confession is an extraordinary act clearly in opposition to the best interests of a criminal suspect; no conventional explanation is adequate to account for the fact that confessions are common, frequently false, and given by persons who will suffer serious consequences as a result of their confessions. I have pursued psychoanalytic theory with the hope that it would provide such an explanation, and I believe that the pursuit has been successful.

I have been able to conclude (or at least suggest very strongly) that confessions obtained under any conditions have inherent qualities which tend to make them irrelevant to the task of determining objective truth. Also, I think that I have been able to demonstrate that a psychological

understanding of what happens during police interrogation is pertinent to the problem of making a legal evaluation of particular practices of interrogators.

The main body of this paper has taken the form of a study of those aspects of men's personalities which are irrational and self-destructive. It has been necessary to hold in abeyance the criminal law's underlying assumption that men are essentially rational. I wish to emphasize at the outset, however, that I do not intend this paper to stand as a criticism of the underlying assumptions of criminal law. Doubtless an assumption of rationality is necessary in order to have any orderly system of criminal law which satisfies all the requirements to which our society subjects the criminal law and its procedures. Police interrogation, however, is extra-judicial in the sense that it exists outside the regular procedure of arrest, arraignment, and trial. The ordinary assumptions of criminal law are not really applicable to it. Police interrogation must be understood in the light of more comprehensive realities, and as a result, the problems of evolving law to govern interrogation and the admission of confessions into criminal proceedings have been particularly difficult. Psychoanalytic theory can pinpoint some, but not all, of the realities of police interrogation. In short, this paper does not recommend the jurisprudence of Mr. Fuller's imagined monarch, Rex II, who took the powers of lawmaking away from

lawyers and judges and put those powers in the hands of psychiatrists and experts in public relations in order to make people happy without rules.²

My framework for the discussion of motivation for confession will be Freudian psychoanalytic theory as evolved by Freud and others. This theory is eminently suited for such a discussion because it is comprehensive, coherent, and widely accepted as a useful description of psychological processes. In order to relate the psychological processes of interrogation and confession to psychoanalytic theory it will be necessary to restate large portions of that theory. I will not hesitate to dwell on this aspect of the paper because it is my intent not only to make a stark restatement of relevant portions of psychoanalytic theory but to supply enough explanatory and illustrative material to make it credible. I have tried to write with the assumption that the reader has no knowledge of psychoanalytic theory. It has not always been possible, however, to provide an adequate explanation of some very basic concepts. It will be well for a reader to have at least a limited knowledge of the concepts "id," "ego," and "super-ego."

The paper is divided into three chapters. The first is brief, and it was written merely to make clear that an explanation of why men confess is needed. The second chapter is the essence of the paper. It traces psychological processes which begin with instinctual aggressive impulses and end in complete verbal confession. Its bulk has been fortified

by applying psychoanalytic theory to police interrogation whenever I have found it possible to do so. This application might have been made in a separate chapter, but I believe the system I have adopted makes up for its awkwardness by enabling me to draw conclusions while the psychoanalytic materials are present with their full impact. The plan has obviated the need for lengthy restatement.

Chapter three is an attempt to apply the content of chapter two to the process of lawmaking. It is a commentary on "confession law" as that law now exists and as it may develop. The dialectic form has been adopted for several reasons: First, the chapter does not attempt a painstaking examination of legal decisions. The attempt at careful analysis in the second chapter has changed to an attempt to make comments limited in their scope. This change in approach is reflected in a change in style. A dialogue is particularly suited for the purpose of making limited comment. A psychiatrist qua psychiatrist cannot tell a legislator or judge what laws to make. Many non-psychological considerations must go into the process. The dramatic relationship created by the dialogue keeps this point from being obscured. Also, a comprehensive examination of "confession law" is beyond the scope of this paper. Not only has such an examination been made several times by others, but it would require dwelling on subjects which psychiatrists are not prepared to comment upon. A discussion of only bits and snatches of cases relating to confessions would be awkward and inconclusive.

I have taken all my information about the techniques of police interrogation from the manual, Criminal Interrogation and Confessions, by Fred E. Inbau and John E. Reid (1962).³ They have been called "top-rung interrogators,"⁴ and Inbau has been called "the surest, craftiest interrogator around."⁵ Their book evidences a remarkable ability to play to those psychological considerations which promote confession, and this ability is combined with an equally remarkable failure to recognize those psychological considerations which would cast doubt on the merits of interrogation. They claim that their techniques "all certainly measure up to the fundamental test that not one of them is apt to induce an innocent person to confess."⁶

I have had to rely heavily on Theodor Reik's Compulsion To Confess⁷ in those portions of the paper which discuss verbal confession. Unfortunately, the work is composed of a series of lectures badly in need of rewriting. It has been necessary to extrapolate Reik's meaning by clarifying particular statements through the use of many other statements in the book. Therefore it will be difficult to use my footnotes to trace some of the statements which I have ascribed to Reik to statements in his book which are exactly the same.

Chapter One

THE INQUISITORIAL SYSTEM

In the familiar decision, Watts v. Indiana,⁸ Mr. Justice Frankfurter wrote, "Ours is the accusatorial as opposed to the inquisitorial system."⁹ This is a pithy statement of the principle of American law that the guilt of a criminal is judged by a jury on the basis of evidence presented according to strict rules at a trial which incorporates many procedural safeguards. At least in theory we do not try suspects by using interrogation with confession as its goal.

Frankfurter's statement, however, can be read to imply something more: The accusatorial and inquisitorial systems are essentially different in their ability to establish the actual guilt of a defendant. The fact that in certain instances all criminal courts in this country admit confessions which result from interrogation perhaps obscures the basic differences between the two systems in the minds of courts and lawyers. Therefore, it will be useful to approach interrogation as part of the American judicial system by first examining the inquisitorial system as it existed in purer forms elsewhere. My purpose is to demonstrate that confession to a crime is truly an extraordinary event which does not lend itself to easy explanation.

The Spanish Inquisition was notable for its total reliance on interrogation and confession and for the great number of confessions which it was able to obtain. An auto-de-fe was the religious ceremony during which the king and other officials pledged themselves to pursue heretics and to support the Inquisition. Part of the ceremony surrounding this "act of faith" on the part of officials was the reading of heretics' confessions. Confessions to minor heresy were read first, and this part of the ceremonies ended with the reading of confessions of those persons who would be turned over to secular officials for burning. The procedure could be lengthy; the auto-de-fe of Inquisitor Toulouse in April 1310 lasted five days. In his fifteen years as Inquisitor General (1483-1498), Torquemada is said to have reconciled 90,000 heretics, condemned to be burnt in effigy 6,500 and burnt 8,800.¹⁰

The main lesson to be drawn from the experience of the Spanish Inquisition is that the inquisitorial system is an effective and efficient means of dealing with lawbreakers. If results are judged merely in terms of the number of confessions and convictions, the inquisitorial system works perhaps better than any other.

The character of the inquisitorial system, however, is revealed in British confessions to witchcraft. These confessions are uniquely useful to a study of the inquisitorial system because all the confessions are by their very

nature false (unless one accepts the possibility of literal "conversation with the devil").

One student of prosecutions for witchcraft in England and Scotland commented:

Some of them present the extraordinary spectacle of individuals, not only freely (so far as the absence of physical torture constitutes freedom) confessing themselves guilty of these imaginary offenses, with the minutest details of time and place, but even charging themselves with having, through a demoniacal aid thus avowed, committed repeated murders and other heinous crimes. The cases in Scotland are even more monstrous than those in England.¹¹

I quote the passage mainly for its tone of incredulity. Without physical coercion, persons confessed to the highest of crimes when they were innocent of committing them. Moreover, they confessed in a manner which was convincing to any believer in witchcraft.

One notable aspect of witchcraft confessions is their abundance of detail. Issobell Gowdie of Auderne, Scotland, confessed to witchcraft in 1662. She talked for four days, confessing as follows: The second time she met the devil she renounced her baptism in a ceremony in which she placed one hand on the top of her head and the other on her foot giving all between to the devil. He baptized her in his name and put a mark on her shoulder. A birthmark evidenced this point. She killed more than half a dozen persons with her witchcraft and she helped Janet Breadheid and others kill all the sons of the Laird of Parkis. With the help of others, she blighted the land by yoking a plough of frogs. The devil

held the plough and Issobell went up and down the field praying to the devil that thistles and briars might grow there. She and her companions copulated with the devil who, although cold and heavy, was more able sexually than any man. Issobell had a horse on which she would fly, although bean stalks served her in the same capacity. Also she could travel in the shape of a hare, a cat, a crow, a jack daw, or a rook.¹²

Issobell's confession was corroborated when her story of killing the male children of the Laird of Parkis was confirmed by Janet Breadheid's confession. According to Janet's confession, they killed the first child by making a clay image of it which they roasted until the child died. They kept the image in a cradle until the next child was born, "and then within half a yeir efter that bairne was borne, we would tak it out of the cradle, and bak it and rost it at the fyr, until that bairn died also."¹³

Corroboration of witchcraft confessions was common.¹⁴

The English example of Ann Cate of Much Holland is similar to the case of Issobell Gowdie. Some excerpts from her confession follow:

This examinant saith, that she hath four familiars, which shee had from her mother about two-and-twenty yeeres since, and that the names of the said imps are James, Prickeare, Robyn and Sparrow: and that three of these imps are like mouses, and fourth like a sparrow, which she called Sparrow. And this examinant saith, that to whomsoever shee sent the said imp called Sparrow, it killed them presently; and that, forst of all shee sent one of her three imps like mouses, to nip the knee of one Robert Freeman, of Little Clacton in the county of Essex aforesaid, whom the said imp did so lame, that the said Robert dyed on

that lameness within half a year after. *** And this examinant saith, that shee sent her said imp Sparrow, to kill the childe of one George Parby of Much-Holland aforesaid, which child the said imp did presently kill; and that the offense this examinant took against the said George Parby, to kill his said childe, was, because the wife of the said Parby denied to give this examinant a pint of milk.¹⁵

When confessions were obtained by using torture, the character of those confessions did not differ from the character of confessions obtained without torture.¹⁶

The details in witchcraft confessions render them bizarre and ludicrous. These details emphasize the falsity of the confessions, but at the same time they represent the sort of content which in another context would be accepted as evidence that a confession is true. Doubtless the prosecutors of witchcraft found the credibility of the confessions increased because of the abundance of detail. The detail includes facts which only the person who committed the crime could have known. The confessions include the motive for a crime and a description of the method of committing the crime. Such "objective evidence" as a birthmark on Issobell Gowdie's shoulder or the presence of a mouse or sparrow near Robert Freeman's home at the time of his death as well as corroboration would appear to confirm a confession's validity. Since we know that witchcraft confessions are false, they prove that circumstantial evidence and corroboration are of little value in establishing the validity of a confession.

Witchcraft confessions may seem irrelevant to criminal interrogation in the United States because they evidence delusional schemes which strongly suggest insanity. Such a conclusion, however, would not explain why the delusional schemes followed a pattern which could be believed by both the accused witch and her interrogator. When a "witch" confessed, she confessed to crimes which her society found altogether credible. Something other than mere insanity must be operative in order to give the confessions content which was credible to persons other than the "witch"

The fact that interrogation produces confessions with a great deal of convincing detail and little actual proof of guilt is explained by Jerome D. Frank as the result of collaboration between the interrogator and a suspect who is ready to confess.¹⁷ The interrogator does not seek a false confession deliberately, but he will approach his task of interrogation with natural and inevitable zeal. He may tend to believe that a suspect is guilty, and he will be interested in having his efforts bear fruit. Frank illustrates the process with the following example. It is based on an account from Levi-Strauss.¹⁸

An adolescent was accused of witchcraft, a capital crime, because a girl had a convulsion just after he touched her. Brought before the priests, he first tried vainly to deny his guilt. He then changed his tactics and made up a long account of his initiation into witchcraft, including how he had been taught the use of two drugs, one of which made girls mad and the other cured them. Ordered to produce the drugs, he got two roots, ate one, feigned a trance, and brought himself out of it with the other. He then gave the second to the girl and declared her cured. This still did not satisfy the family of the girl, so he invented a more dramatic

story, telling how all his ancestors were sorcerers and how he could change into a cat and do other wonderful things by means of magic feathers. Then he was ordered to produce one of the feathers. After tearing down several walls in his home he finally found an old feather in the mud, which he presented to his prosecutors with a long explanation of how it was used. Then he had to repeat the whole story in the public square, adding new embellishments all the time and ending with a touching lamentation over the loss of his super-natural powers. After this he was freed.

Thus the boy acquits himself not by proving his innocence, but by producing evidence confirming his guilt. It seems obvious that the judges want to believe that he is a sorcerer, for they do not suggest tests that would be impossible for him to pass, such as changing himself into a cat, but ask him only to find a feather. Levi-Strauss sums up: "The judges require (the accused) to corroborate a system to which they hold only a fragmentary clue and which they want him to reconstitute in an appropriate way The confession, strengthened by the participation, even the complicity of the judges, turns the accused from culprit into a collaborator in the charge . . . the youth succeeded in transforming himself from a menace to the physical security of the group into proof of its mental coherence." Levi-Strauss adds that they boy, too became convinced.¹⁹

An interrogator will know all the available facts about the case being investigated, and he will be in a position to suggest to a suspect what sort of thing he might confess to. Of course, the suggestion does not have to be explicit. Inbau and Reid recommend that an interrogator should interview the victim, the accuser, or the discoverer of a crime in order to learn all that is known about it before he interrogates a suspect.²⁰

The inquisitorial system has been widely employed. There were many clerical inquisitions other than the Spanish Inquisition, and the purges under Stalin as well as many other instances of interrogation by both Russian and Chinese communists illustrate the use of the system for political

ends.²¹ It cannot be denied that use of the inquisitorial system is a significant part of the criminal investigation conducted by American police.

Russian purges, like the British witchcraft prosecutions, lead one to the conclusion that the system has little value in an effort to determine actual guilt. In 1956, Krushchev commented on a portion of Stalin's purges:

A large part of these cases are being reviewed now and a great part of them are being voided because they were baseless and falsified. Suffice it to say that from 1954 to the present time the Military Collegium of the Supreme Court has rehabilitated 7,679 persons, many of whom were rehabilitated posthumously.²²

The modern Torquemada, Vyshinsky, revealed his intimate knowledge of the inquisitorial system when he commented before the General Assembly of the United Nations on the repatriation of Communist prisoners held by the United States. He asserted that the prisoners would appear before the repatriation commission "with their spirits entirely broken . . . they will come quaking with fear that will have been implanted in them in the course of that procedure, so that they will be utterly incapable either of asking any questions or of awaiting any answers -- because all the questions will have been asked and all the answers will have been forthcoming in advance."²³

Even this brief look at the inquisitorial system has made abundantly clear that confessions have an inherent lack of reliability. That lack of reliability will be imported into any system which attempts to seek the truth about an

occurrence by employing interrogation. As in the recent and much-discussed Whitmore case,²⁴ a credible confession can prove as false as any other. Confessions are insidious because they disguise their falsity. False confessions share all the characteristics of valid confessions. The only truly reliable confession would be one which includes the confession of some fact which (1) in itself conclusively proves the guilt of a suspect, (2) could be known to or even guessed by only the person who committed the crime, (3) was ^{not} known to or surmised by the interrogator at the time of confession, and (4) can be proved with objective evidence. Such a confession probably is rare, and there would be no need to admit it in evidence during a criminal trial because it has been confirmed by objective evidence which can establish the guilt of a defendant without the supplementary evidence of the defendant's confession.

Confession to a police interrogator is an extraordinary act because it is an act clearly against one's best interests. Yet it occurs frequently, and many times the confessions may be false. Moreover, people who confess falsely tend to believe in their guilt.²⁵ In many instances criminals who have a professional knowledge of how to commit crimes, who know something about the law pertaining to those crimes, and who know or should know what to expect from police exhibit a remarkable inability to remain silent while being interrogated. Doubtless, skilled interrogators are

devilishly adept in getting an accused person to talk; Inbau and Reid's manual on interrogation makes this point emphatically clear. Nevertheless the frequency with which persons confess to police amounts to such a significant failure on the part of these persons to protect their own interests that one can easily conclude that most persons accused of crimes are merely foolish and ignorant. Although there may be at least some truth in this conclusion, it is on the whole too facile. It seems reasonable to assume that at least some persons who are made to confess during interrogation are far more shrewd than their interrogators. There is some other variable in the equation which describes why men confess, a variable with the quality of self-defeat. In order to talk about this variable, it is necessary to talk about those aspects of human motivation which are not rational. It will not be enough to merely discuss remorse of conscience or "religious feelings" in such a manner that they appear to amount to rational motivations for confessions.

Chapter Two

POLICE INTERROGATION AND CONFESSIONS EXPLORED IN THE LIGHT OF PSYCHOANALYTIC THEORY

Any psychoanalytical discussion of confession must concern itself primarily with guilt. By "guilt" I do not mean remorse resulting from the commission of some specific act believed to be wrongful, but a more generalized guilt existing to some extent in all human personalities. A discussion of this "guilt" will lead to the recognition of a need for punishment and a compulsion to confess. I have adopted Freud's Civilization and its Discontents²⁶ as my basic source for the initial parts of this discussion.

I. Aggression, Guilt, and a Need for Punishment

In order to understand guilt, Freud begins by recognizing that ". . . the inclination to aggression is an original, self-subsisting instinctual disposition in man . . ." ²⁷

Aggression, according to Freud, is a destructive or death instinct. Aggressiveness opposes erotic instincts in the primary task of relating single individuals, families, etc. To some extent aggressive instincts cannot be expressed, and they must be dealt with in some other manner. Freud's work in psychoanalysis led him to the conclusion that these aggressive instincts are dealt with by turning them back upon their source. That is, aggressiveness, to some extent

is internalized or introjected. Aggressiveness " . . . is taken over by a portion of the ego, which sets itself over against the rest of the ego as super-ego, and which now, in the form of 'conscience,' is ready to put into action against the ego the same harsh aggressiveness that the ego would like to satisfy upon other, extraneous individuals."²⁸

The process is a result of an individual's confrontation with authority which is first represented primarily by a child's parents. When a parent trains a child by making him conform his actions to those required by a society, the child is forced to forego satisfaction of his own impulses. Authority, therefore, is unwelcome, and it is the natural object of instinctual aggression. Full expression of that aggression is impossible, however. If a child does not conform to the patterns of socialization established for him by his parents and other figures of authority, he is threatened with the loss of the love of the persons on whom he is entirely dependent for all his needs. Before a child has any internal standards to define wrongdoing, he knows that wrongful conduct is that which threatens him with loss of love and with punishment. Punishment is the means through which a child is reinstated as an object of the authority's love.

Through a process which is beyond the scope of this paper, a child's manner of dealing with his difficult confrontation with the demands of authority is to internalize

that authority, thereby making a part of himself the mores which the authority represents. The commands of authority are taken over by a part of the child's ego which sets itself apart from the rest of the child's ego as a super-ego. To some extent, the super-ego will preserve the aggressiveness of the original authority, but the truly remarkable aspect of the creation of the super-ego is that it takes over the unexpressed aggressiveness which the child felt toward the authority. A child's relationship with his parents was characterized by a high degree of ambivalence. That is, the child both loved and hated (felt aggressiveness toward) his parents. With the creation of the super-ego, that unexpressed aggression toward authority is taken over by the super-ego and directed towards the ego. The super-ego is a harshly aggressive source of internalized commands and it acts upon the ego to prevent it from carrying out instinctual impulses in opposition to the now internalized commands. Fundamentally, the child's fear of authority has been superceded by the ego's fear of the super-ego.

The aggressiveness of the super-ego maintains that aggressiveness of the original authority, but it should be emphasized at this point that at least one of the components of the super-ego's aggressiveness is not the authority's aggressiveness, but the aggressiveness which was felt toward the authority. As Freud comments, "The child's

ego has to content itself with the unhappy role of the authority -- the father -- who has been thus degraded."²⁹

Karl Menninger has pointed out that many suicides can be interpreted as the killing of persons with whom the victim has identified.³⁰ Through the psychological process of identification, a person is introjected into one's own ego. Aggression felt toward the introjected person can become directed toward the ego instead of toward the person as an external reality. The result can be suicide or some lesser self-destructive act. Menninger uses as an example of such a suicide the case of a boy who was reprimanded by his father for some minor offense and who hanged himself in a barn a few hours later. The wish to kill his real father could not be carried out because of love for the father or perhaps because of fear of the consequences. As a substitute for killing the real father, the introjected father was killed in an act of self-destruction. The process can be observed at a more familiar level. Menninger refers to the case of a golfer who became angry with a caddy who hic-coughed while the golfer was putting. Turning in anger to the caddy, his verbal outburst was checked by the arrival of several women players. The golfer reacted by swinging his putter in a wide arc, crashing into his ankle "with sufficient force to evoke a howl of pain and send him limping into the clubhouse."³¹ Menninger cites also a case in which a man broke his leg in the same manner.³²

At this point it is possible to conclude that the psychology of all men includes some self-destructive component. From the point of view of the interrogator, introjected aggression will be the prime factor in bringing about the self-destructive act of confession if self-destruction can be channeled to that end.

We are also in a position to observe a few of the dynamics of self-directed aggression. Since a fundamental source of the super-ego's aggressiveness is an individual's suppressed aggressive impulses, the severity of a person's super-ego should reflect the degree to which his aggressive impulses were suppressed and the degree to which they were expressed. Freud, using the work of Alexander³³ concludes that an overly lenient and indulgent parent can cause a child to form an over severe super-ego because such a parent is not an appropriate object for expressed aggressiveness. The child of such a parent, for want of an object for his aggressiveness, will have no alternative but to direct his aggressive impulses inward. Conversely, children brought up without love develop little tension between ego and super-ego. Being able to express their aggressive impulses, they develop a weak super-ego which allows them to continue to express aggression in all the anti-social modes of the delinquent.

The reader should be cautioned not to draw the inappropriate conclusion that all delinquent persons are relatively free from self-destructive tendencies, and that those persons

who commit crimes are precisely those who have a minimum of those self-destructive tendencies which are a potential aid to an interrogator. All criminal behavior cannot be explained so easily. For example, it will be explained later that introjected aggression can itself cause criminality.

Experience can intensify the aggressiveness of the super-ego. One of the means in which such an intensification can occur is as follows: Not all of the super-ego is conscious. A person is aware of many of the commands of his super-ego, and to this extent he acknowledges a conscience, but vast parts of the super-ego are unconscious. Those unconscious portions of the super-ego include much irrational and infantile "morality." Rapaport points out that the conscious portions of the super-ego require stimulus nutriment.³⁴

The maintenance of conscience seems to require the continuous nourishment readily provided by a stable, traditional environment in which the individual is born, grows up, and ends his life; that is, the stimulus of the presence, opinions and memories of the "others" who have always known him and always will.³⁵

It is familiar that a man's conduct among strangers or perhaps in a strange place will not reflect the restraints which govern his conduct among friends and in familiar places. Yet while in certain circumstances the conscious commands of the super-ego are subject to compromise and corruption, the unconscious super-ego is guilty of no such laxity. The result is that conduct which has been carried out because of a weakening of only a portion of

the super-ego is reacted to by other parts of the super-ego with undiminished aggressiveness.

Inasmuch as delinquency can be correlated with areas or neighborhoods having little coherence and providing few patterns for socialized living, delinquency can be expected to generate severe aggressiveness in a super-ego which originally was without significant strength.

Tension between the aggressive and authoritative super-ego and the ego which is subjected to it results in a sense of guilt. "Sense of guilt," as it is being used here, does not mean a sense of guilt resulting from the commission of any specific acts, nor is it being used to denote a phenomenon of abnormal personalities. It exists to some degree in all persons, and it results from the super-ego's mere existence. It may seem remarkable, then, that most persons have no awareness of this sense of guilt. The explanation, of course, is that for the most part, a sense of guilt is unconscious. In as much as a sense of guilt is part of conscious experience, it is felt only as a general sort of anxiety or discontent. At most it amounts to a vague "sense of sin" or unworthiness. The fact that a sense of guilt is unconscious, however, does not make it any the less operative.

A sense of guilt expresses itself as a need for punishment. Stated by Freud, ". . . the need for punishment is an instinctual manifestation on the part of the ego,

which has become masochistic under the influence of a sadistic super-ego; it is a portion, that is to say, of the instinct toward internal destruction present in the ego"³⁶ The purpose of punishment is to form an "erotic attachment"³⁷ to the super-ego. The process is not as unfamiliar as it sounds. A child, for example, will accept punishment in order to reinstate himself as the object of his parents' love. Religious confession and penance follow this theory explicitly; confession and penance reinstate the penitent into the grace of God.³⁸ That tension between the ego and super-ego is expressed as a need for punishment reflects the earlier relationship between a child and authority. Punishment was the result of being caught at a wrong act, and punishment was the necessary consequence. Once authority has been internalized in the form of a super-ego, the need for punishment is self-defeating, yet this pre-super-ego heritage persists. In a slightly different context, Erich Fromm points to the biblical story of Cain as the classic illustration of the point that rejection is more severe than punishment:

God accepted Abel's offerings but did not accept Cain's. Without giving any reason, God did to Cain the worst thing that can be done to a man who can not live without being acceptable to an authority. He refused his offering and thus rejected him. The rejection was unbearable for Cain, so Cain killed the rival who had deprived him of the indispensable. * * * His punishment was to be made an outcast; after God had rejected him, he was rejected from his fellow men. This punishment was indeed one of which Cain had to say: "My punishment is greater than I can bear."³⁹

Once the super-ego has come into existence, the distinction between doing a forbidden act and wishing to do a forbidden act disappears. Even thoughts are known to the super-ego; and since in the eyes of the super-ego thoughts are as reprehensible as deeds, the aggressive super-ego reacts to thoughts as it would react to deeds. Wrongful thoughts are equivalent to deeds as the cause for punishment of the ego by the external world.

The super-ego can equate thoughts with deeds and it can preserve an infantile perception of morality because it is not organized according to principles of reality and logic. Unconscious portions of the mind function in a manner entirely different from conscious portions. Processes of consciousness, familiar because they are conscious, are not present in the unconscious. Processes of consciousness relate to reality. Attention,⁴⁰ a sense of time,⁴¹ and judgment (the decision whether an idea is consistent with reality)⁴² occur only in consciousness. The primary characteristic of conscious processes which is lacking in unconscious processes is the ability and tendency of conscious thought to synthesize its contents.⁴³ The degree of organization in conscious thought distinguishes it from unconscious processes; only in conscious thought does rationality and logic exist. Thinking, the orderly arrangement of thoughts through time, is unique to

consciousness. Freud has characterized the unconscious as "the Kingdom of the Illogical."⁴⁴ Unconscious processes, lacking logic, order, or judgment (all of which are responsive to reality), have only the "logic" which underlies dreams but without even the apparent logic which also characterizes dreams. Unconscious memory is far more comprehensive than conscious memory,⁴⁵ but of course memories cannot be organized with relation to time or with patterns of logic. These conscious processes are replaced by symbolic or prelingual associations,⁴⁶ the inability to distinguish between contraries,⁴⁷ condensation which relates elements unrelated according to any conscious rationale,⁴⁸ or the displacement of the meaning or importance of one element to another element.⁴⁹

It is clear, then, that the unconscious super-ego will not only be harsh, but its tyranny will be at times infantile, unresponsive to reality, irresponsible, or unprincipled. The morality of a child persists in a man. Super-ego "morality" need have no relation to logical or pragmatic ethics. Also, the super-ego can command the ego to act toward one object (a policeman, for example) in a manner which would be (or was in the past) appropriate for acting toward another object (a father, for example) even though the two objects are related only symbolically or in some other superficial way. Many of the most

aggressive portions of the super-ego do not deserve the respect usually accorded to "conscience." Conscience, in the ordinary sense, includes conscious notions of "right" and "wrong" and therefore it is not synonymous with "super-ego."

A case from the criminal law reported by Theodor Reik illustrates the unconscious super-ego's irrational tyranny as well as some other points which have been discussed.⁵⁰ The case demonstrates in particular that the super-ego does not distinguish between thoughts and deeds.

In 1878 a Viennese prostitute, Katherina Steiner, was accused of murdering her neighbor. It was established that either she or one other person could have committed the murder. Katherina denied her guilt, but certain circumstantial facts militated against her. The dead woman had been beautiful, and Katherina was jealous of her. The two had quarrelled often. Katherina had threatened within the hearing of witnesses to kill the dead woman. The accused had a violent temper and a long record of theft convictions. After the murder was discovered, Katherina was afraid of being alone, was nervous, had nightmares, and made several remarks which her prison companions interpreted as signs of bad conscience. Her defense exhibited easily discernable contradictions, and her behavior in court alienated everyone's sympathy. When in court, according to her counsel, "She dressed in her be-ribboned best and flirted with the audience; her bold locks

and her provocative conduct contrasted sharply with the gravity of the accusation. At the same time she showed such ungovernable temper that she had to be put in the dark cell for three days."⁵¹ The solicitor-general and the judges of both the trial and appellate courts were convinced that Katherina killed the dead woman. However, four years after Katherina's conviction the true murderer confessed,

Katherina had wished for the death of the murdered woman. In Reik's analysis:

[Her behavior] could not help being peculiar because it was the expression of terror felt by human beings when suddenly and without any effort on their part, one of their most insistent but forbidden wishes comes true. This behavior was interpreted as a sign of guilt and, judging by psychological reality only, it was a sign of guilt. * * * Her fear was interpreted as the expression of a bad conscience. So it was, but it referred to the murder wishes, not to the actual murder.⁵²

The case presents not only an example of the irrational super-ego failing to distinguish between a wish and an act, but it demonstrates further a sense of guilt expressing itself as a need for punishment. Katherina denied her guilt, but her actions contradicted that denial, confessing guilt in a manner which the court and other persons were able to respond to as they would have responded to a signed confession. Her bold and flirtatious behavior served no purpose, and it can be interpreted only as a confession of guilt. It was purely self-destructive.

Katherina Steiner's super-ego reacted to wishes which were actually realized, but murderous wishes alone are

are sufficient to create guilt and a corresponding need for punishment.⁵³ Indeed Katherina's way of life exhibits many self-defeating qualities apart from her response to the murder. She was a prostitute and a thief with many convictions. Her temper was severe, and she expressed her wish to kill in the presence of others.

We can observe at this point that the self-destructive force which will be the interrogator's ally in producing a confession is, in its most essential aspects, irrational to an almost unimaginable degree. In other words, the "guilt" which expresses itself in self-destructive behavior does not correspond to the "guilt" which the law would punish. The "morality" of the super-ego is not founded on judgment and reason as is the more customary morality of ethics or as is the morality which is contained in law, both of which bear a close relationship to reality.

The proposition that thoughts are the true progenitor of guilt is given at least some recognition by Inbau and Reid when they recommend that an interrogator ask a suspect whether he ever thought about committing the alleged offense or one similar to it.⁵⁴ Of course the theory that thoughts and not acts generate guilt is contrary to the primary assumptions upon which Inbau and Reid's interrogation manual is predicated.

Of course, the degree to which the behavior of a person under interrogation will be self-defeating will be a function of the intensity of the person's sense of guilt. As can be surmised from the fact that the most

essential portions of the super-ego are unconscious, the intensity of a sense of guilt cannot be described by principles which have that sort of logic and rationality which is founded on reality. Nevertheless, certain principles which relate to the intensity of a sense of guilt can be established.

The super-ego's aggressiveness originated in the renunciation of aggressive instincts toward figures of authority a consequent internalizing of that aggression. Once authority is internalized in an aggressive super-ego, it demands further renunciations of aggressive impulses. Indeed, its very function is to prevent the direct expression of instinctual impulses. With each further renunciation of an aggressive impulse or an impulse with aggressive components the super-ego maintains or even increases its aggressiveness by taking over the aggression of the renounced impulse. Consequently, a sense of guilt -- the ego's fear of the super-ego -- is maintained or intensified. Since the super-ego finds equally reprehensible an instinctual impulse (wish) and the act of carrying out that impulse, instinct renunciation does not obviate a sense of guilt and a demand for punishment. The impulse alone gives rise to a sense of guilt when the super-ego comes into existence, yet the renunciation of that impulse intensifies the super-ego's aggressiveness. "Every renunciation of instinct now becomes a dynamic source of conscience and every fresh renunciation increases the latter's severity and intolerance."55

We are led to the seeming paradox that renunciation of instinctual impulses does not lead to a sense of well-being but to a sense of guilt, a need for punishment and the demand for further renunciation. The man of greatest apparent virtue, the man with the most severe super-ego, is the most oppressed with a sense of sin. We are forced to conclude that the wages of both virtue and sin are death.

The truth of the above paragraph can be illustrated with the historical example of Simon Stylites.⁵⁶ A horrible stench, intolerable to others, exhaled from his body, and worms dropped from him wherever he went. Worms filled his bed. At times he would leave his monastery to sleep in a dry well. He lived for thirty years on the top of a pillar sixty feet high, exposed to the weather in all seasons. On the pillar he spent his time praying, ceaselessly and rapidly bending his body almost to his feet. For a year he stood on one leg, the other one being covered with ulcers. His biographer was commanded to pick up the worms which fell from his body to replace them in the sores.

It is possible to formulate the principle that an unduly strong and over-developed super-ego results in a high degree of guilt and a great need for punishment. The person who would probably appear to be meek, virtuous and non-aggressive has strong self-destructive tendencies. Such a person should be an easy mark for an interrogator. A study

of those American soldiers who collaborated with their communist captors revealed that they were persons whose backgrounds and family experience had created in them a strong sense of guilt.⁵⁹

Another principle of the dynamics of guilt put forward by Freud is that ill-luck, external frustration, etc., bring about an increased sense of guilt. Freud accounts for this with the following explanation:

As long as things go well with a man, his conscience is lenient and lets the ego do all sorts of things; but when misfortune befalls him, he searches his soul, acknowledges his sinfulness, heightens the demands of his conscience, imposes abstinences on himself and punishes himself with penances. Whole peoples have behaved in this way and still do. This, however, is easily explained by the original infantile stage of conscience, which, as we see, is not given up after the introjection of the super-ego, but persists along side of it and behind it. Fate is regarded as a substitute for the parental agency. If a man is unfortunate it means that he is no longer loved by this highest power; and, threatened by such a loss of love, he once more bows to the parental representative in his super-ego -- a representative whom, in his days of good fortune, he was ready to neglect.⁵⁸

Although this explanation exhibits the ingenuity of which Freud was so eminently capable, it is too facile and directly contradictory to the more basic theory set forth by Freud in the same discussion. The substitution of fate for a parental agency would be more convincing if the response to bad fortune were the same as the response to a parent. Before he has a super-ego, a child fears parental authority when he has done something which he knows will alienate that authority. More precisely he

fears punishment. He cannot truly be said to feel guilty. Guilt is the stress between ego and super-ego, and a super-ego does not exist yet. If the child is punished, he is reinstated into his parents' love. If fate is truly analogous to a parental agency, reverses of fortune would be equivalent to punishment from an authority. Punishment of this sort does not create guilt but restores the amicable relationship between child and authority. In the child-parent relationship loss of love and punishment are the same in the sense that punishment is the expression of the loss of love. At the same time it redeems that lost love. When Freud analogizes fate to a parental agency, he implies that punishment (bad fortune) is an expression of loss of love and that additional self-imposed punishment will result as an attempt at reinstatement. This implication does not correspond to any aspect of the child-parent relationship before the formation of a super-ego. Self-punishment as the expression of a sense of guilt is a demand which Freud accounts for only by introducing the concept of super-ego into his theory. Therefore, an increased sense of guilt as a response to bad fortune cannot be accounted for as the response of an "infantile conscience." We must turn elsewhere to account for Freud's observation that an increased sense of guilt is the response to bad fortune.

Such an explanation is provided by Menninger.⁵⁹

According to his theory, aggression is freed to be directed

toward the ego when ambivalent object attachments have been upset. All of a person's relationships contain both erotic and aggressive elements. In primitive peoples or in persons of an immature personality development, the degree of ambivalence is great.⁶⁰ Such persons are relatively incapable of making positive object attachments which are free from a high degree of ambivalence. That is, such attachments will contain strong aggressive components. When object attachments are upset those aggressive components cease to be bound up with the previously prevailing erotic components, and they are free to be directed against the ego into which the lost object had been introjected. Of course, the upsetting of object attachments is equivalent to bad fortune.

Menninger's explanation which accounts for an increased sense of guilt resulting from bad fortune also accounts for the fact, demonstrated by Menninger, that the increased self-destruction (the expression of a sense of guilt) does not correspond to an objective and rational assessment of the severity of the bad fortune. It will reflect the amount of aggression in the ambivalent object attachment. Menninger demonstrates this proposition by pointing to the seemingly inadequate events which precipitate many suicides. His examples are a woman who killed herself after missing two trains, a boy who committed suicide after his pet canary died, and a farmer who took his life after his only cow died.⁶¹ The fact that an upset in object

attachments or bad fortune can precipitate the ultimate self-destructive act of suicide provides further testimony that the aggressiveness which the super-ego directs toward the ego is a formidable force indeed and that the resulting need for punishment can be a need for punishment of the most severe sort.

Menninger's theory compels acceptance, but it is predicated on an observation which demands some modification of Freud's over-all description of the super-ego. The upshot of Menninger's theory is that aggressive impulses are rendered harmless to some extent by being bound up with erotic impulses. Therefore, a sense of guilt does not arise automatically from the renunciation of aggressive impulses. If the contrary were true, it would not make any difference if object relationships were upset or not. In the case of Katherina Steiner discussed above, Katherina's sense of guilt was in part generated because the dead woman actually died. Reik glosses over this point. One obvious alteration in Katherina's conduct after the murder occurred was her fear of being alone which had not existed before. Reik accounts for this by saying that Katherina feared the dead woman's revenge,⁶² but any explanation of why she should fear revenge is lacking. If a fear of revenge is a psychologically generated fear, no explanation is offered for why it should arise upon the woman's actual death when it would have to arise in an internal world where prior death wishes were the ultimate reality.

Freud's over-all theory is not directly contradicted, however. Although we must accept that the ability of aggressive impulses to bring about a sense of guilt is partially undermined when these impulses are fused with erotic impulses, they are not made totally harmless. Doubtless Freud's psychoanalytic experience provided sufficient evidence of the manner in which renunciation of impulses resulted in a sense of guilt to force acceptance of the proposition that our original theory is substantially correct. The case of the boy who hanged himself in a barn after he was chastized by his father illustrates the fact that Freud is essentially correct when he asserts that unrealized wishes result in a strongly aggressive super-ego which, in turn, brings about a severe need for punishment. Yet we must accept the subtle modification that an unrealized wish and a realized wish are only approximately equal in their ability to bring about a sense of guilt. If a person's instinctual wishes are realized, whether by that person's own acts or (as in the case of Katherina Steiner) by some other persons acts, the resulting sense of guilt will be somewhat more intense than they would have been if the wishes had not been realized.

Freud's theory of the super-ego can be shored up further by the observation that when the forbidden act occurs and when it is a criminal act, an opportunity for punishment is at hand. In the case of Katherina Steiner, her behavior pressed for conviction of a capital offense. She was,

in fact, sentenced to death, although the sentence was later commuted to life imprisonment.⁶³ Prior to the murder, any acts which expressed the fact that Katherina was guilty of murder in the eyes of the super-ego would have been ineffectual for the purpose of leading to punishment.

Once again we have seen that the intensity of that self-destructive force which provides the interrogator with his only hope of getting a confession is affected by events irrelevant to a person's suspected criminal activity. We can conclude that a person will be more likely to confess if he has experienced bad fortune. A suspect's arrest and interrogation is, in itself, bad fortune and might tend to intensify those psychological forces which promote confession.

So far I have been careful to speak of "guilt" only as the tension between the ego and the aggressive super-ego. More commonly "guilt" denotes a conscious feeling which results from committing an act which is believed to be wrongful. For the purpose of clarity, I will refer to the guilt which results from an act actually commissioned as "remorse." In Freudian terms, remorse results when an instinctual impulse becomes sufficiently strong to override the inhibiting commands of the super-ego. When this occurs, the ego is free to carry out the id impulse in spite of the super-ego. The remorse which follows presupposes the existence of a super-ego which has forbidden

the act even though the demanded impulse renunciation has not been effected. When the impulse has been carried out, "the former balance of power is restored,"⁶⁴ and the super-ego is in a position to condemn the impulse or wish just as if it had not been carried out. Therefore, the sense of guilt and need for punishment which results from doing the forbidden deed is no different from the sense of guilt and need for punishment which results from not doing the forbidden deed. Of course, the wish which was carried out had to be a strong one in order for any act to have been performed despite the super-ego, and therefore the resulting sense of guilt will be correspondingly intense. Since guilt arising from performing an act is not substantially different from guilt which would arise from not performing it, Freud chooses to ignore remorse as a subject for separate consideration.

Since the law has a special concern with illegal acts actually performed, this paper cannot dismiss remorse in Freud's cavalier manner. From what has been said already, one can see that the remorse which follows a wish effectively transformed into an act can bring about a specially intensified guilt if the act upset one or more of the actor's object relationships. Such an event is a common occurrence. Any man who murders a person who is not a total stranger would totally upset an object relationship. FBI statistics show that 82 percent of all murders originate in conflicts within families or between acquaintances.⁶⁵ Even if the

commission of an illegal act does not directly lead to a disturbance of object relationships, one can speculate that such indirect consequence as the need to live as a fugitive or the experience of being accused (with or without evidence) would bring about alteration in object relationships.

From the point of view of the police interrogator, at least one force acting to intensify a sense of guilt results from the actual commission of a crime. Aggressive wishes which are actually realized will result in a sense of guilt greater than the sense of guilt which would have resulted from the mere existence of those aggressive impulses. However, it is not necessary for the act which brought about realization of the forbidden wish to have been committed by the person who wished for the forbidden act. For example, a man who kills his wife will not feel more guilty than he would have if his wife had been killed by someone else. Yet the man whose wife dies for any reason will feel more guilty than he would have if his wife did not die even though he may wish her dead. The fact that it does not matter whether death wishes are realized through an agency other than the person holding those death wishes is illustrated by the case of Katherina Steiner.

Rogge's collection of confessions by innocent persons⁶⁶ includes the case of 39-year-old Francis R. Nobel who in 1953 confessed to the murder of his common-law wife who actually had died of a heart attack.⁶⁷ Women have confessed to the killing children who died naturally or

who were never born. "One such described the whole scene with touching minuteness, the wailing of the young child, its piteous look, its burial in a little grave at the foot of a pine tree. And none of it was true."⁶⁸

Persons who confess falsely need not have a personal relationship with the crime. More than 200 persons confessed to the kidnaping and murder of the Lindbergh baby.⁶⁹ Doubtless most of these confessions appeared to be false,⁷⁰ and provided no significant danger of precipitating a false conviction. One cannot, however, assume that the following case is atypical:

In 1951 a deputy sheriff in Indianola, Mississippi and his new assistant obtained detailed confessions from three Negroes to the murder of a person whose mother had reported him missing. They confessed that they murdered the missing person with a brick and threw his body into the Sunflower River. The officers started dragging the river without success. The next morning the mother of the alleged victim got a letter from him from East St. Louis. The press located him there.⁷¹

With other cases collected by Rogge in the same note, the above case illustrates that false confessions can be made by several persons who confess jointly.

The foregoing analysis has very nearly returned us to the initial position of Freud in which a wish is equivalent to an act. Presumably some wrongful act has taken place before anyone is being interrogated about its commission. If a person wished for the results of the criminal act, his feelings of guilt will be increased by its commission, but it makes no difference whether such a person is responsible for the commission of the act or not. When an act has brought

significant harm to a suspect's object relationships, that person will tend to act as if he were guilty of the commission of the act whether such a fact is true or not. It follows that the confession of such a person should be particularly suspect.

Of course, the implication arises that the self-punitive act of confession would be more likely to be performed by the person actually responsible for the criminal act merely because that person had to possess strong aggressive impulses militating for the commission of the act in order for the act to have occurred. Such a principle is only approximate in a legal context however. The husband of a murdered woman might have harbored stronger aggressive impulses toward his wife than did the casual burglar who actually murdered her. His sense of guilt upon her death would then be stronger than the sense of guilt of the real murderer. Interrogators might find it easier to elicit a confession of the murder from the innocent husband than from the guilty burglar.

The foregoing discussion illustrates also that false confessions can occur even though the guilt in which they originate has nothing whatever to do with the actual commission of a crime. Remorse resulting from the commission of a crime, "remorse" resulting from the realization of crime wishes, and guilt having no connection at all with a crime, all can result in confession. Freud's facile dismissal for psychoanalytic purposes of distinctions between remorse and guilt represents an attitude which as a practical matter

is appropriate for understanding the guilt which is operative in causing men to confess to police. It has been possible to draw distinctions between remorse and guilt on the level of psychoanalytic theory, but these differences have few practical ramifications in the field of police interrogation. Practical conclusions do not follow for two reasons: First, although remorse by definition results from a wrongful act, it in no way reflects the responsibility for the commission of that wrongful act. Second, guilt and remorse both can precipitate convincing confessions. It follows, then, that whether a person confesses depends less on the fact of his legal guilt than on his psychological makeup.

II. The Relation of Self-destruction to Other Determinants of Behavior

The ego's need for punishment which results from the aggressiveness of the super-ego is an ever-present factor of psychic life, but only one of several demands which determine actions. The ego must answer to the demands of three tyrannical masters simultaneously -- the super-ego, the id, and the external reality.⁷² The diplomatic tasks of the ego are dramatized by Freud in the following passage:

Owing to [the ego's] origin from the experiences of the perceptual system, it is earmarked for representing the demands of the external world, but it strives too to be a loyal servant of the id, to remain on good terms with it, to recommend itself to it as an object and to attract its libido to itself. In its attempts to mediate between the id and reality, it is often obliged to cloak the unconscious commands of the id with its own preconscious rationalizations, to conceal the id's conflicts with reality, to profess, with diplomatic disingenuousness, to be taking notice of reality even when the id has

remained rigid and unyielding. On the other hand it is observed at every step it takes by the strict super-ego, which lays down definite standards for its conduct, without taking account of its difficulties from the direction of the id and the external world, and which, if those standards are not obeyed, punishes it with intense feelings of inferiority and of guilt. Thus the ego, driven by the id, confined by the super-ego, repulsed by reality, struggles to master its economic task of bringing about harmony among forces and influences working in and upon it; and we can understand how it is that, so often we cannot surpress a cry: "Life is not easy!"⁷³

Waelder describes the task of the ego as an even more complicated one. He distinguishes the compulsion to repeat from other instincts originating in the id and classifies it as a fourth agent acting upon the ego.⁷⁴ While the ego is being acted upon by these four outside agencies, the ego must take a role which is other than passive so that it will not be overwhelmed by the forces acting upon it. The ego must assign itself the task of preserving itself from each of the forces which act upon it. Waelder sees this task as comprising four more separate problems, bringing the total to eight. Each of these problems is really a group of problems. For example, the task of dealing with the demands of external reality is the aggregate of dealing with each of the problems posed by external reality.

The conclusion to be drawn from this account of demands placed upon the ego is valid regardless of the specific number of forces which we decide act upon the ego. Any act of the ego, and as a result, any human act, will represent a compromise solution to several simultaneous and conflicting demands.⁷⁵ Any specific action is unlikely

to be totally effective as a response to a single and specific demand which the ego is subjected to. The conclusion for a police interrogator to draw from this discussion is that external reality will demand that an accused person remain silent in order to preserve his liberty, but this demand will be compromised with other demands by psychological necessity. The other demands which we are specifically concerned with are, of course, the demands of the aggressive super-ego. These demands are diametrically opposed to the reality's demand for silence because the result of the super-ego's aggressiveness is a need for punishment.

An interrogator can pick out those statements of a suspect which betray a compromise with the super-ego. Inbau and Reid point out to interrogators that such equivocal answers as "Not that I remember" instead of an unequivocal "No" should be treated as disguised admissions.⁷⁶

III. The Ability of Guilt To Cause and Betray Crimes

One aspect of psychoanalytic theory tends to demonstrate that a sense of guilt produces confessions which can be relied upon. The theory, initially stated by Freud,⁷⁷ provides that a sense of guilt produces not only the confession but the crime as well. In other words, an unconscious sense of guilt turns certain persons into criminals. Guilt is not the product of the crime, but its motive. In such crimes Freud emphasizes principally the fact that a

"criminal from a sense of guilt" finds some relief in his criminal activity because his unconscious sense of guilt is attached to something specific.

It is clear that the commission of a crime which is the product of a sense of guilt has the capacity to bring about punishment, the expression of a sense of guilt. Criminality, of course, is only one means of bringing about punishment. Other means of self-punishment are various. Some of the more familiar are suicide, asceticism, alcohol addiction, self-mutilation (even in such a mild form as nail biting), "accidents," impotence and frigidity, etc.

The fact that feelings of guilt cause crimes accounts for the senselessness and apparently thoughtless quality of many crimes. The criminal himself does not understand his crime because its motivation is greatly unconscious. An overwhelming number of criminals combine great caution with easily avoided mistakes. Unconscious self-betrayal is an expression of the underlying, unconscious guilt which is clamoring to be revealed.⁷⁸

Crimes which are caused by a sense of guilt are characteristically committed by young persons or persons with immature personalities.⁷⁹ The persons who commit these crimes cannot resist those impulses to commit crimes, present in all persons, but neither can they escape censure from their super-egos. Having yielded to their impulses, they must also seek punishment. They will allow themselves to be caught or even commit provocative crimes.⁸⁰

An example of such a crime is provided by the case of Bert Whipley, age 23.⁸¹ On the evening of the day he was released from prison having served a sentence on several charges involving car theft and burglary, he found a car with keys in it and drove it away on the main road leading out of his city. He was about seven miles out of the city when he noticed a car overtaking him and heard the car's horn. He was terrified, and he put on all possible speed to pass the car which was in front of him. He was rounding a curve in the wrong lane, and he met a car coming toward him. To avoid collision he swerved off the road and came to a stop in a potato field. The car which had been behind him followed him into the field, and Whipley gave himself up to the men inside. The men were not policemen but the owners of the potato field. Whipley, however, confessed to the car theft immediately and was turned over to the police. He was sentenced to prison, but escaped from the jail while awaiting transfer. He went to a theatre to wait for dark, but left before that time. He walked a half mile along the main street in the daylight and was picked up by the police.

Whipley was intelligent. Prison tests revealed that his intelligence equalled that of the average college student. Yet his criminal record was long. During the preceding nine years he was at liberty only for twenty-two months. His background was such that a criminal career

would have been one of the few profitable careers available to him, yet he failed in burglary at every turn. The case provides an example of self-betrayal which can be explained only as resulting from unconscious motivation.

Even if it is not clear that a particular crime has been caused by a sense of guilt and a need for punishment, guilt may be revealed in the commission of the crime itself. One of the most startling cases of a criminal's exhibition of self-defeating conduct is the Hungarian case of Franz Gal.⁸² Gal heard that his neighbor had sold his oxen, and he planned to break into the neighbor's house to steal the money. He waited until the neighbor and his wife had left the house and then stole the money. The neighbor's six-year-old daughter had been left at home, and Gal determined to kill this witness. He tied a rope with a noose to a beam in the ceiling and asked the girl to stand on a chair and put her head into it. At the girl's request, Gal himself stood on the chair to show her how to do it. Suddenly the chair slipped out from under Gal, and he was found dead when the neighbor returned home. Punishment preceded the forbidden act of murder, but this is not surprising since we have seen that the wish or intent to commit the act is not substantially different from the deed itself from the point of view of the super-ego. The need for punishment drove the ego to death as the ego had unconsciously willed.

Reik discusses what is apparently the Leopold and Loeb case and claims that several of its aspects cannot be understood without assuming an underlying sense of guilt.⁸³ One of the murderers left his glasses at the location of the crime even though the murder was planned with exceeding care. He accounts for the defendants' insolence and defiance at trial as further unconscious self-betrayal.

Crimes which proceed from a sense of guilt tend to establish the need for committing crimes of ever-increasing magnitude.⁸⁴ The emotional relief resulting from the commission of a crime is short-lived, and it is followed by a resurgence of guilt now increased with the guilt (or remorse) derived from wishing and carrying out the forbidden act. A need for punishment is an increasing pressure for persons caught up in this cycle, and their transgressions will increase in gravity until they approximate in degree the repressed murderous impulses of the criminal. A sense of guilt becomes oppressive to the extent that the carrying out of forbidden impulses is only secondarily the motive of the crimes.

Menninger considers the fact that guilt is the motivation for crime to be of such importance that it is necessary to draw a clear distinction between criminals who are caught and criminals who are not caught.⁸⁵ He points out that very few crimes are solved and that the persons charged with crimes tend to have a long record of criminal activity. His conclusion is that criminals

who are actually apprehended by police are mainly those criminals whose guilt has caused them to commit their crimes and at the same time caused them to betray themselves. In other words, criminals caught by police are a special class of criminals which are not representative of all criminals.

In as much as Menninger's conclusion is empirical, it must be respected. In psychoanalytic theory, however, it is possible to distinguish between those persons who commit crimes because of a sense of guilt in order to reduce that sense of guilt or bring about punishment and those persons who commit crimes because the impulse to carry out the wrongful act reached such intensity that it could not be overridden by the injunctions of a harsh super-ego. Both classes of persons will have a strong sense of guilt which will be revealed in self-punitive behavior. Both classes of persons, therefore, are likely to be apprehended.

Parenthetically, the fact that crime can be caused by a sense of guilt and a corresponding need for punishment provides interesting commentary on the theory of deterrence in penology. Certain crimes will be committed because the law imposes a penalty,⁸⁶ and the persons who commit these crimes are those most likely to be caught. Curiously, when the death penalty was restored in Oregon in 1920, the state's homicide rate almost doubled within a year.⁸⁷ Of course, the explanation is not clear, but Oregon's

homicide rate was not explained in any other way. It is curious to note also that when a crime is widely publicized, frequently a succession of similar crimes follows.

We can conclude then in certain instances that the super-ego is responsible for the commission of a crime, the detection of that crime, and finally the confession of that crime to an interrogator. In such instances, a confession should not be difficult to elicit. Frequently, such crimes will be characterized by their bungled quality and by the psychologically immature personality of the person who commits them. At least the former characteristic can be noticed easily by an interrogator, as it would have been in the case of Bert Whippley. Moreover, persons who commit crimes out of a sense of guilt or with a great sense of guilt are likely to be apprehended. They will provide the main fare for an interrogator even though these persons may not commit the majority of crimes.

IV. Confession

So far this paper has tacitly assumed that a sense of guilt and a need for punishment will result in a compulsion to confess. The assumption was justified only to the limited extent that confession in certain instances will bring about punishment. In other words, confession can be the direct result of a need for punishment.

Psychoanalytic theory provides a more sophisticated explanation. Confession serves two distinct purposes:

First, a need for punishment is displaced into a need to confess, and therefore confession is a partial direct gratification of that need for punishment.⁸⁸ Second, guilt originates with the repression of impulses by the super-ego, and confession of those impulses can bring about partial gratification.⁸⁹ This second proposition is more relevant to psychoanalysis where any particular confession is likely to be partial and expressed in symbolic terms without patent meaning to either patient or analyst. Doubtless surpressed impulses achieve some gratification when a police interrogator is successful in getting the kind of confession he seeks, but no significant conclusion follows from this psychoanalytic observation beyond the fact that still another factor has been isolated which presses for the self-defeating act of criminal confession.

The proposition that the compulsion to confess is a displaced need for punishment is more directly relevant to the basic theory which I have attempted to develop. That a need for punishment can be transformed into a compulsion to confess as if by magic may seem extraordinary, but it must be remembered that the displacement or transformation takes place in the realm of the unconscious where logic holds no sway, and where displacement is a characteristic process. In as much as a need for punishment has been displaced into a compulsion to confess, the confession itself is required to ease guilt and not the

confession coupled with subsequent punishment. Confession has become equivalent to punishment.

The process is more familiar than it seems when it is stated abstractly. Reik, in his description of the shift from a need for punishment to a compulsion to confess that these remarks are based on, gives several characteristic examples. Children who have committed some wrongful act (presumably after they have developed a super-ego) appear to fear the punishment which will result when the act is revealed to their parents. Reik points out that a closer examination of the situation reveals that often a child is more concerned with the scene in which he must tell his parents of his misdeed than with the punishment which will follow. He has transformed his fear of punishment into a fear of confession, and the confession has become more terrifying than the punishment. Similar displacements of fear can be observed in the student who is anxious only before an examination or in a soldier who is fearful before a battle but not while it is going on. Indeed, a person can recognize in himself and in others that a concern with "being found out" is greater in many instances than a concern with the consequences of "being found out;" one's reputation may seem more important than one's well-being.

A compulsion to confess is not in itself enough to bring about an immediate confession of the sort that would be

suitable to a police interrogator. The principle reason why a verbal, conscious confession is difficult, is the fact that a person with a compulsion to confess has little conscious recognition of the origin of his guilt. As soon as wrongful impulses occur a person is capable of unconscious betrayal,⁹⁰ but conscious confession must be preceded by a conscious recognition of the psychic meaning of wrongful conduct (which in its essence was an impulse).⁹¹ "The perpetrator knows of his deed but he does not know in what underground connection it stands with the emotional processes since his early childhood, and what unconscious meaning it conceals. The deed originated in id-tendencies. The ego has perhaps not yet taken notice of the crime."⁹²

Confession is the process in which conscience gets its voice.⁹³ Confession is the process in which the ego takes notice of the wrongful deed, and the process requires time and effort.⁹⁴ Reik has described the process by which the ego takes notice of the meaning of a crime and the effort involved in this process as confession work.⁹⁵

The product of confession work is a widening of consciousness. When a criminal deed is committed, its perpetrator will probably have an intellectual recognition of the deed, but this is not enough to bring about the self-defeating act of confession. Through confession work, a criminal enlarges his knowledge of the mere fact that he committed the deed to include recognition of its

significance. Reik does not make clear the character with which the unconscious meaning of the criminal act presents itself to the consciousness of the criminal. Presumably confession does not enable the criminal to articulate the specific underlying meaning of his deed in the language of a psychoanalyst. It seems reasonable to assume that confession work puts an emotional charge on the criminal's recognition of the fact that he has committed a crime and that the emotional charge is in the nature of a conscious and tormenting guilt. In other words, through confession work, the criminal achieves conscious knowledge of the fact that the deed which he has committed has great personal meaning.

The time and effort which goes into confession is expended upon resolving the conflict between the criminal's attempt to conceal the meaning of his deed from his own consciousness and the opposite tendency for the meaning of the deed to make itself known consciously so that confession can alleviate the underlying sense of guilt. Both a realistic fear of punishment and an excessive irrational need for punishment inhibit confession. The ego fears punishment and militates for concealment of the crime. But the ego also fears the super-ego and the anxiety or guilt with which the super-ego torments the ego is a harsher punishment than the punishment imposed by any earthly judge.⁹⁶ Confession would mitigate the sense of guilt,

but a strong need for punishment inhibits confession. In the dynamics of psychological economy, the demands of the super-ego cannot be satisfied so easily; the displacement of a need for punishment into a compulsion to confess cannot be complete. The ego seeks the benefits of confession for the purpose of escaping the tyranny of the super-ego, but in order to realize those benefits the super-ego must be at least partially placated. Confession work describes a process of torment through which anxiety is overcome. Suffering is intense because the full terrors of conscience must be lived through.

Confession work exhibits itself while it is going on with partial confessions and unconscious substitute actions. Unconscious substitute actions would consist of acts of self-betrayal or statements which would amount to a partial confession if properly interpreted.

The end result of confession work will be a complete, verbal confession made to a father representative. Id impulses which have been condemned by the super-ego (the internal father) are shown to a father-representative to achieve relief from guilt. This aspect of confession illustrates the infantile origin of the displacement of a need for punishment into a compulsion to confess.

The fact that confession work is an agonizing process which caters to a need for punishment explains why the resulting confession frequently is made in an unemotional and unaffectionate manner. The tortures of conscience have

been lived through in the preceding suffering. Also, the criminal may await the punishment imposed by the state with little anxiety.

This discussion of confession work has proceeded on the assumption that the person confessing has actually committed the act to which he confesses. We have seen, however, that this is not necessarily so. The process of confession merely transforms unconscious processes into conscious processes. The transformed unconscious processes which underlie confession bear no particular relation to reality.

An interrogator is adept at bringing about partial confessions during the process of confession work, and he exploits them fully as an aid to bringing about complete confession. Inbau and Reid give interrogators many instructions for this endeavor. The following ploys are recommended: Sympathize with the suspect by telling him that anyone else under similar circumstances or conditions might have done the same thing. Minimize the moral seriousness of the offense. Suggest a less revolting and more morally acceptable motivation or reason for the offense than that which is known or suspected. Sympathize with the suspect by condemning his victim, by condemning his accomplice or by condemning anyone else upon whom some degree of moral responsibility might be placed for the crime in question.⁹⁷ Interrogators are told to point

out the possibility of exaggeration on the part of the accuser or victim,⁹⁸ and they work to make the suspect admit that he was at the scene of the crime or in some sort of contact with the victim or the occurrence.⁹⁹ An attempt is made to make the suspect admit to some incidental aspect of the crime.¹⁰⁰ All these procedures give the accused an opportunity to make a verbal confession to something less than full responsibility for the crime charged.

Many aspects of interrogation generate or provide the punishment which is essential to confession work. Interrogation -- and mere detention as well -- demands that a suspect focus his attention on the alleged crime. Under such conditions, confession work cannot be put aside easily. More important is the fact that interrogation in itself is punishment.¹⁰¹ Interrogation is not carried on as a voluntary and casual dialogue between persons who are willing to respect each others integrity. The interrogator treats his "subject" harshly, and does his best to make him fearful and uncomfortable. Such tortura spiritualis can provide the partial punishment which the super-ego demands.

Here we can see the psychological use of physical abuse. It enhances the likelihood of confession because it can provide the punishment which is a prerequisite to confession. In this psychological sense, an accused

person will not confess in order to terminate or avoid pain, but he will demand pain so that he is able to confess. Corporal punishment, then, has no special quality merely because it is physical. Police "third degree" can be equated with the harsh and abusing manner of an interrogator in its ability to promote confession.

Several conditions for interrogation serve to create anxiety or to prevent its relief. Inbau and Reid suggest that the suspect and the interrogator should sit close to each other in straight-backed chairs with no table or desk in between them.¹⁰² The suspect should not be allowed to smoke,¹⁰³ nor should he be allowed to play with loose objects during the interrogation.¹⁰⁴

A confession must be made to a father-representative. Therefore a police interrogator must cast himself in that role. He must take advantage of what psychiatrists call transference.

Transference begins with a compulsion to repeat. Freud observed that when a person represses impulses, he is obliged to repeat that repressed material as contemporary experience instead of remembering that material as something to be ascribed to the past. Repressed impulses are acted out in a transference situation.¹⁰⁵ In the transference situation, a person will act toward another in a manner which is not responsive to the actual situation.¹⁰⁶ Impulses which were not expressed toward a person in some

past situation are transferred to a representative of that person. Anna Freud defines "transference" in the following way: "By transference we mean all those impulses experienced by the patient in his relation with the analyst which are not newly created by the objective analytic situation but have their source in early -- indeed the very earliest -- object-relation and are now merely revived under the influence of the repetition-compulsion."¹⁰⁷

It may seem surprising that the impulses can be repeated to a father-representative, but that they could not be expressed fully in the past. We have seen that confession is, in fact, inhibited by a sense of guilt and a need for punishment, and therefore confession is by no means automatic even in an appropriate transference situation. Yet it is the transference situation which makes confession possible once the inhibiting need for punishment is overcome. Confession is possible in a transference situation because such a situation is different from the real situations which preceded it. It is an "intermediate realm between fantasy and life"¹⁰⁸ in which old impulses are awakened with their prior intensity. For the impulses to be expressed, words must replace actions in the transference situation.¹⁰⁹ A child's first aggressive impulses were directed toward his father or other figures of authority, and it was the father's mores which the child internalized.

In a transference situation with a strong need for punishment no longer present, repressed aggression can be shown to a phantom father for the first time.¹¹⁰ The initial aggression is shown through an act of confession.

Transference is a part of the relationship between a patient and a psychiatrist or other psychotherapist, but the same phenomenon is a part of the relationship between a suspect and a police interrogator. The main difference between police interrogation and psychotherapy is its purpose. Psychotherapy is conducted as an attempt to aid a patient, whereas police interrogation is conducted as an attempt to cater to self-destructive impulses for the purpose of bringing about the self-defeating act of confession. Interrogation is recognized to be much like psychotherapy when the interrogation is conducted by a political enemy. Then interrogation is likely to be called "brainwashing."

Many of an interrogator's techniques are directed to bringing about transference. A good interrogator will not appear to be working toward his suspect's conviction. He will appear in the role of one who is merely seeking the truth.¹¹¹ He will express interest and confidence in the suspect,¹¹² and he will act in a sympathetic and understanding manner.¹¹³ A suspect should be treated with decency and respect.¹¹⁴ Inbau and Reid suggest that an interrogator's attitude of sympathy and understanding can be brought about if the interrogator pictures himself

in the suspect's position and then attempts to justify or excuse the crime.¹¹⁵ In certain instances a well-timed pat on the shoulder or a grip of the hand is effective in bringing about a confession.¹¹⁶

Inbau and Reid recommend those techniques which bring about transference for use particularly when a suspect is believed to have committed an "emotional crime" (usually a crime against a person), and when his mental anguish is apparent.¹¹⁷ This one empirical observation tends to confirm many of the important points which have been made in this paper. There is first the observation that crimes against persons produce strong mental anguish. Presumably these are the crimes which make little sense when viewed objectively, and therefore they must arise from the abnormally strong aggressive impulses present in a personality characterized by highly ambivalent relationships. The persons who commit such crimes will be likely to confess. The mental anguish is specific evidence of confession work and self-punishment. An interrogator who confronts the person who has committed such a crime and who is experiencing confession work needs to do little more than provide an appropriate transference situation.

Inbau and Reid report a case which illustrates the importance of transference.¹¹⁸ A sixty-year-old woman called the police to report that one of her boarders had died, apparently of natural causes. The man had been

the woman's sleeping companion, and he had, in fact, died as a result of a small-caliber bullet wound in the back. The woman was suspected of the killing. The police captain who took the woman to the interrogation room where an interrogator was ready to question her pointed to the room as they approached it and shouted, "Get in there you old whore; this man wants to talk to you!" The interrogator was careful to address the woman as "Mrs. _____," and he sent for food when he learned that the woman had not been given anything to eat since she arrived at the police station some time before. In a short time the woman confessed to killing the boarder, and before she was through talking, she confessed also to killing her husband several years before. The case not only focuses on the importance of transference, but it illustrates as well the manner in which the partial and disguised confessions which precede a full verbal confession aid criminal investigation. The woman acted suspiciously from the start and brought herself to the attention of the police.

I have discussed previously the need of police interrogators to act harshly toward their suspects, and this need may seem to contradict the requirements of the transference situation. The interrogator must play both the role of an abuser and of a father-representative. This is accomplished in what Inbau and Reid call "the friendly-unfriendly

act."¹¹⁹ The technique is recommended to be used on suspects who do not respond to interrogation with any significant quantity of affect. It appears safe to assume that these are the persons who are not experiencing confession work. Such persons are not likely to appear guilty or to betray themselves. Presumably the "unfriendly act" will prime the process of confession work by providing some punishment.

The "friendly-unfriendly act" can be conducted by two persons who question the suspect alternately, but one interrogator can play both the roles. This is not as difficult as it may sound. Inbau and Reid instruct interrogators as follows:

When a single interrogator acts out both parts he feigns impatience and unfriendliness by getting up from his chair and addressing the subject somewhat as follows: "Joe, I thought that there was something basically decent and honorable in you but apparently there isn't. The hell with it, if that's the way you want to leave it; I don't give a damn." The interrogator then sits down in the chair again, and after a brief pause, with no conversation at all, may say, "Joe, you'd tax the patience of a saint the way you've been acting. But I guess there is something worthwhile in you anyway." Or the interrogator may even apologize for his loss of patience by saying, "I'm sorry. That's the first time I've lost my head like that." The interrogator then starts all over again with the reapplication of the sympathetic approach that formed the basis for his efforts prior to the above described outburst of impatience.¹²⁰

I have pointed out above that the ego is responsive to the demands of reality, id impulses and the inhibiting forces of the super-ego. During interrogation the ego

will fear punishment (i.e. the consequences of confession) as a response to reality, and at the same time it will need punishment because of its relation with the super-ego. An interrogator must address himself to the ego's fear of punishment. He reduces the ego's fear of punishment by weakening the ego's ability to assess reality and to act in a manner which is consistent with the demands of reality. We have seen that he is aided in this task by the super-ego because the aggression of the super-ego tends to generate guilt of such intensity that the punishment which the ego fears is mild in comparison. In other words, the need for punishment and a compulsion to confess overcomes a fear of punishment out of the sheer intensity.

That part of the ego which fears punishment because it is able to assess the consequences of confession realistically originates from experience,¹²¹ and its strength can be decreased by controlling the "reality" which a person experiences at a given time. By providing an appropriate setting for interrogation, an interrogator can minimize his suspect's ability to respond realistically to the interrogation situation. We have seen that a suspect's behavior will never be entirely responsive to the realities of the interrogation situation because all his acts must compromise the demands of reality with other psychic demands. The task of an interrogator is to weaken the suspect's relative autonomy from these other demands.

The part of a person's ego which is reality-oriented depends on stimulation from reality to maintain its stability. In other words, when the senses which preceive reality are deprived of stimulation, the ego tends to lose the benefits it has derived from experience; a person will tend to act as if police, courts and prisons did not exist. In a psychological experiment subjects were put in a sound-proof, blacked-out room, and they were restrained in such a way that other sensations were minimized. The subjects experienced autistic fantasies, and their ability to pursue ordered sequences of thought decreased. When repetitive verbal information was given to them against this background of stimulus deprivation, the subjects tended to experience this information as "truth." That is, they believed the information with delusional intensity.¹²²

When a person is arrested, the patterns of his experience are altered greatly and precipitously. He is cut off from his family and friends and placed in an unfamiliar setting. The environment in which he has an identity is lost, and there is little to call up associations with his life before arrest. Privacy and liberty are lost. Although he is not necessarily deprived of perceptual stimulation, the content of that stimulation will tend to be unrelated to the main patterns of his life.

In an interrogation room, perceptual stimulation is reduced to a minimum. Interrogation is most effective

when no persons other than the suspect and the interrogator are present in the interrogation room.¹²³ Inbau and Reid set forth the requirements of an effective interrogation room:

In providing for privacy during interrogations it is advisable to select a quiet room with none of the usual police surroundings, and with no distractions within the subject's view. If existing facilities permit, a special room, or rooms, should be set aside for this purpose. In any event, the room should be as free as possible from outside noises, and it should also be a room into which no one will have occasion to enter or pass through while the interrogation is in progress.

The less there is in the surroundings of an interrogation room to remind a criminal offender, suspect, witness, or other prospective informant that he is in police custody or in jail, or that the penitentiary awaits him or someone else about whom he may have incriminating information, the easier it is for him to make a frank statement or to supply the interrogator with the desired information. To this end, therefore, it is well to select a room without barred windows, or, better yet, one without any windows at all. * * *

The interrogation room should contain no ornaments, pictures, or other objects which would in any way distract the attention of a person being interviewed; and this suggestion also refers to the presence, within the subject's reach, of small, loose objects, such as paper clips or pencils, that he may be inclined to pick up and fumble with during the course of interrogation.¹²⁴

Care is taken during interrogation to prevent the suspect from making repeated denials of his guilt, and the suspect is prevented from making any statements during the early stages of interrogation.¹²⁵ When two persons are suspected of having participated in the same crime, they are questioned separately, but it is told or implied to each one that the other has confessed.¹²⁶ The interrogator wears civilian clothing, and he avoids notetaking.¹²⁷

In this setting of stimulus deprivation, the interrogator will express his confidence in the suspect's guilt. He will point out to the suspect that he is acting as a guilty man would act and that there is evidence to prove his guilt.¹²⁸ Inbau and Reid recommend that the interrogator begin the questioning by saying something like, "There's been a considerable amount of investigation in this case and it indicates that you haven't told the whole truth."¹²⁹ Indications of stress such as pulsation of the carotid artery, excessive activity of the adam's apple, dryness of the mouth or a "peculiar feeling inside" are pointed out to the suspect as indications of the fact that he is guilty.¹³⁰ The attempt is made to make the suspect feel that his resistance to confession is futile.¹³¹

Those forces which inhibit confession will also tend to prevent a person from remaining silent in the face of an accusation of guilt. Psychologically, silence is recognized as negative confession; and, at least unconsciously, a person will recognize it as such.* If a suspect being interrogated tries to remain silent and not discuss the alleged crime with the interrogator, the interrogator has no difficulty in playing to a suspect's impulses not to remain silent. Inbau and Reid recommend this tactic:

"Joe, you have a right to remain silent. That's your privilege and I'm the last person in the world who'll try to take it away from you. If that's the way you want to leave this, O.K. But let me ask you this. Suppose you were in my shoes and I were in

*Erratum: The following footnote should appear here:
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yours and you called me in to ask me about this and I told you, 'I don't want to answer any of your questions.' You'd think I had something to hide, and you'd probably be right in thinking that. That's exactly what I'll have to think about you, and so will everybody else. So let's sit here and talk this whole thing over.¹³²

A more subtle technique recommended by the same interrogators is to refer to some non-existing incriminating evidence to see if the suspect will try to explain it away. If the suspect tries, that is understood to be indicative of his guilt.¹³³

Inbau and Reid set forth evidence that lulling a suspect's sense of reality is of critical importance when they point out that a written confession must be presented to a person immediately after his oral confession. They say that a person is most likely to repudiate his confession if he is put in a room with other prisoners before the written confession has been prepared. Moreover, they recommend that a written confession be obtained in the interrogation room since even moving to another room may result in refusal by the suspect to sign his confession.¹³⁴

The effects of the environment in which interrogation takes place have been described by Balzac in the following passage:

It is difficult for those at large to imagine what this sudden isolation is to the accused person This absolute separation, so instantaneously and so easily brought about, causes an upset in all his faculties, and a fearful prostration of the mind; above all, when the person happens to be one not familiar,

through his antecedents, with the ways of the law. The duel between the accused man and the examining judge is therefore, all the more terrible because the latter has for auxiliary the silence of the walls

These points once explained, the least emotional person will tremble at the effect produced by three causes of terror -- isolation, silence, and remorse.¹³⁵

Chapter Three

CAN PSYCHOANALYTIC THEORY AID LAWMAKING?

AN EXERCISE IN DIALECTIC

Carson Culpa first came to the attention of the police in the city of Bonalex when he appeared at the police station, claiming that "his girl" had been murdered. His manner was curiously evasive and suspicious. By chance Mr. Partner of the city's most eminent law firm, Legis, Phact, and Tory, was in the police station paying a traffic ticket. Overhearing Culpa's initial statements and just having experienced the oppression of law, Partner volunteered his services to Culpa, an indigent. A police interrogator took Partner and Culpa to an interrogation room, and began questioning Culpa. Partner advised Culpa not to answer the interrogator's questions. Culpa, in a state of apparent anxiety, remained silent for about thirty minutes while the interrogator spoke to him. Toward the end of that period, he made some tentative statements which strengthened the suspicion that Culpa himself had committed the murder. Ten minutes later he stated against Partner's advice that he was the murderer. He confessed fully.

The content of the confession was as follows: Culpa had dated the girl frequently in the past, but he had not seen her at all during the past year until two days before the crime. Culpa met the girl by chance that

evening and they went to a bar to spend the time with mutual friends. Their relationship was renewed, and the girl presented Culpa with a photograph of herself. On the night of the crime, Culpa called at the girl's apartment, but he was surprised at his reception. The girl was drunk, and her behavior was immediately hostile. Culpa said that the girl used many terms of abuse which enraged him. Culpa said that he didn't know what happened to him, but he became so angry with the girl that he strangled her.

Culpa was convicted of murder and sentenced to life in the state penitentiary. The evidence at trial consisted of his confession, testimony from the people with whom Culpa and the girl had spent the evening in the bar, the photograph, testimony from a police inspector that the girl had been strangled in her apartment and that she was drunk when killed as evidenced by a medical report and the presence of an empty whiskey bottle found near her body. When sentenced Culpa declared himself deserving of the punishment.

Tests demonstrated that Culpa's intelligence was probably above normal, but this was difficult to determine since his schooling was minimal. His employment had been irregular, and he had committed minor criminal offenses in the past.

Culpa served five years in prison. At the end of this time he was released because it was proved conclusively that

Culpa was innocent of the girl's murder. She was in fact killed by a man whom she had come to know during the year preceding the murder.

Culpa's release from prison was given much publicity in Bonalex, and the state legislature has appointed a committee to investigate the possibility of altering the law governing police interrogation and the admissibility of confessions in criminal actions. The committee, headed by William Wisdom, has decided to hear testimony from a psychiatrist, Samuel Syke, to determine what relevance, if any, psychology has to its task. The following is a transcript of Syke's testimony at the committee's hearings.

Wisdom: We're both familiar with the case of Carson Culpa. Do you have an explanation of why he confessed to a crime which we know he did not commit?

Syke: There is only one reason why a person confesses. He is overcome by self-destructive forces within himself. These forces are irrational and infantile in character. They are also unconscious for the most part, but all these characteristics do not detract from their severity. Rather I would say that these self-destructive forces are all the more powerful because they are not responsive to reality; they are not governed by reason and judgment; and they are not likely to be tempered by real experience.

Confession to a police interrogator is essentially a self-defeating act which doesn't make sense by any standard of reason, and therefore Culpa's confession appears extraordinary.

Wisdom: What was the origin of these self-destructive forces which made Culpa commit such an extraordinary act?

Syke: The answer to that question is complicated, but it is precisely the sort of question which psychology is prepared to answer. I would go so far as to say that any answer not based on psychology would be inadequate. I will try to speak plainly, and no doubt you will recognize that my explanation is somewhat oversimplified.

Wisdom: We will try to bear with you.

Syke: You have to begin by accepting the discovery of psychologists that every human relationship is characterized by hate as well as love. In other words aggression is a part of every relationship even though it may not be recognized.

Wisdom: How do you know that the aggression is there if it is not recognized?

Syke: What happens is this: The natural and instinctive aggression which is a part of every relationship tends to undermine that relationship; it tends to end that relationship. From their earliest years, children are disciplined in the process of civilization, and, of course, the purpose of that process is to promote social relationships of all kinds. In order for a person to be capable

of even the most primitive social relationships, the aggression which opposes socialization must be dealt with in some way. Psychiatrists have discovered that this aggression is suppressed to whatever extent it cannot be expressed. Suppressed aggression becomes directed inward. It is turned against the self, and it becomes a self-destructive force. Unexpressed aggression results in a sense of guilt, and the aggression (or guilt) can be observed as self-destruction which can take the form of such self-defeating acts as confession.

Wisdom: I will have to take your word for that.

Syke: Some theory is needed to account for self-defeating behavior -- we cannot deny that self-destructive behavior exists -- and the theory which I have outlined for you is quite well established.

Wisdom: I always was led to believe that self-preservation was man's primary instinct. Isn't that so?

Syke: No doubt the instincts which promote beneficial relationships (self-preservation in a loose sense) prevail most of the time in most persons, but in order to understand my remarks you will have to abandon any theory which provides that instincts of "self-preservation" are sufficiently powerful to prevail all the time. No matter how difficult it may be to accept the idea that men are subject to irrational self-destruction, my studies and my work demonstrate clearly that such self-destructive forces must be contended with.

Wisdom: Well, perhaps you have given us a hint about what made Culpa confess, but haven't you indulged in special pleading? Self-destructive impulses made Culpa confess. Is that the same as saying that he was mentally ill?

Syke: I think that such a conclusion misses my point. The introverted aggression which I have pointed to in Culpa exists in all persons to some extent. It is an inevitable product of socialization. All persons have aggressive impulses and they must be dealt with so that men will be able to live together in some sort of social pattern. Every person capable of even the most rudimentary of civilized behavior will turn some of this aggression inward. We are all burdened with a sense of guilt, and our behavior will be self-defeating to some extent.

Wisdom: It's hard for me to believe that. I can't say that I feel any "sense of guilt" in the sense you seem to mean.

Syke: I expect that's true. But self-defeating behavior can take many forms. Have you ever hit your thumb with a hammer when pounding a nail? Even that could have been the kind of self-punishment of which I am talking. Many accidents are more purposeful than they appear.

Wisdom: That seems very different from confessing to murder. Do you really mean that Culpa's confession represents an average person's behavior?

Syke: Certainly not. The aggression which Culpa turned against himself and his corresponding sense of guilt had to be particularly intense.

Wisdom: Why should that be?

Syke: I think that I would be safe in assuming that Culpa was incapable of mature personal relationships. That is, his relationships with other persons were more like those of a child than those of an adult.

Wisdom: Now wait a minute. I know you psychiatrists say that everything that happens to a person has to do with something that happened to him as a child. You're not going to tell us that Culpa confessed to murder because of some childhood experience, are you?

Syke: You are right that we psychiatrists find that the first years of a child's life are important, but other events are important too. I don't know anything about Culpa's childhood, and I don't need to dwell on it. I believe, however, that I can be confident in inferring from the fact that Culpa confessed that he had failed to outgrow certain patterns of behavior which are childlike.

Wisdom: What kind of behavior do you mean?

Syke: The relationships of children are characterized by a great deal of aggression combined with more positive impulses. Some people never are able to form more mature relationships that are free from great quantities of aggression. The reason for this has quite a bit to do with their

earliest relationships with their parents and others. But you don't seem to want to hear about early psychological development.

Wisdom: It seems quite far from our problem with confessions. Do you think it would help us much to hear about the psychological development of children?

Syke: No, I think we can avoid it. It is enough to say that Culpa suppressed (perhaps without knowing it) many aggressive impulses directed toward others. These aggressive impulses were then turned against himself. Apparently he was fond of the dead woman, but we know that he hated her to some extent as well. If he had expressed that hate he might have killed her. He suppressed that hate however, and it turns out that it was exhibited in his self-defeating act of confession.

Wisdom: You have answered my question of why Culpa confessed when I would not have done so, but haven't you raised a more difficult problem? It seems to me that you have said that Culpa confessed because he didn't kill the woman. I don't think I can believe that!

Syke: He would have been just as likely to confess if he had in fact killed her. Culpa's relationship with the woman, following the pattern of all his relationships, included aggressive impulses of child-like intensity. A part of his mind suppressed these impulses as wrongful, and a positive relationship was possible because of that suppression. His confession was a product of that suppressed aggression. It did not result from an act.

Wisdom: But what if Culpa actually had killed the woman? Then wouldn't his confession have meant that he knew he had done something wrong and that he felt guilty?

Syke: This is a very critical point. If Culpa had committed the murder, he would have had a great sense of guilt and he would have known that he had "done something wrong." The discovery of psychology is that the thing which Culpa would have condemned in himself as wrongful and the thing which would have aroused his sense of guilt could not be the act itself. It would have been the aggressive impulse which preceded the act. The commission of the act cannot in itself generate guilt.

Wisdom: Well, how do you account for the fact that a person feels guilty after he has done something wrong and not before?

Syke: When a person has done something which he considers wrong, an impulse which he considers wrong has failed to be suppressed. Guilt in my Picwickian sense will originate about the time the act is committed only because the act and the motivating impulse are reasonably simultaneous. We have seen in Culpa's case that the act is not really necessary, however, to arouse even conscious guilt.

Wisdom: Am I right, then, in concluding that you are saying that those forces within a person which make him confess have no relation to whether that person has committed a wrongful act or not?

Syke: Yes. That is one of the most important statements I have for this committee. The probability that any single person will confess to a police interrogator is not increased or decreased by his actual legal guilt. The probability of confession is determined only by the intensity of his suppressed aggression and his resultant sense of guilt.

Wisdom: I would have thought that remorse generated by the commission of an act would have been quite important, but since you say this is not so, we would have to conclude that confessions are not very reliable for determining the truth. Am I right?

Syke: You have a lot of evidence that your conclusion is right.

Wisdom: You are aware, aren't you, Dr. Syke, that Culpa was not abused in any way? The Bonalex police don't use "third degree." No one has accused them of that. Also Culpa had a lawyer.

Syke: I know that Culpa was not beaten and that he had a lawyer. Both facts are very important, but for different reasons.

Wisdom: Well, you will admit that the law of this state is sound when it prevents the police from beating a suspect, won't you?

Syke: My profession has not trained me to judge a law, but I can say that your law tends to keep a person from confessing. My reasons may seem strange to you, however.

Psychology has discovered that a person needs severe punishment before he will confess. This punishment does not have to be physical, and in most instances it will not be physical. Culpa was able to confess because he had suffered severe torment of conscience, mostly before he came to the police station I would assume. Physical punishment could have served as a substitute for Culpa's mental anguish. Some sort of punishment is needed before a person will confess. "Third degree" will serve as well as any, but it is by no means necessary. Nevertheless, since physical punishment can pave the way to confession, a person will be more likely to confess if he is beaten.

Wisdom: And won't that confession be likely to be false?

Syke: All confessions are suspect as far as I am concerned. The confession which follows physical abuse is no more or less likely to be false than any other. You will notice that I did not say that a person confesses to escape punishment, whether physical or mental. He needs punishment in order to put himself in a position where he can gain the mental relief of confession. Your law, I would guess, reflects the assumption that a confession is a reasonable act when it is given in response to "third degree." You must remember that confession is never rational. It is precipitated only by forces which are irrational and self-destructive.

Wisdom: But what if the physical torture is really severe?

Syke: Many persons have been able to withstand severe torture, and I would suggest that those persons are the ones who would not be likely to confess to a police interrogator under any conditions. That is, if a person is unlikely to confess without torture, a great deal of torture will be required to bring about a confession which is given for the purpose of ending that torture and for no other purpose. I would guess that such a confession is a rarity. Moreover, I would doubt that such a confession would be very convincing, and the person certainly would deny it in court, pointing to its origin. If a tortured person was likely to confess anyway, his confession would be made possible by the torture, and it would not be given to escape the torture. I realize that people believe strongly that the purpose of "third degree" methods is to give a person a good reason to confess. I think psychology has provided a strong challenge to this view.

Wisdom: What importance do you attach to the fact that Culpa was represented by a lawyer? He confessed anyway, didn't he?

Syke: He certainly did. I'll admit that the lawyer was no use in preventing Culpa from confessing. The presence of a lawyer reduces the likelihood of confession, however. I don't need to invoke any strange-sounding theory to say why this is true. I have said that a person confesses to a crime (whether he has actually committed it or not) because he carries self-destructive forces within him. A

person also has some capacity to behave in a manner which reflects a realistic assessment of what is good for him. In order for confession to occur, that part of a person's mind which militates for realistic self-protecting behavior must be overcome. That part of a person's mind which is responsive to reality must be nourished with continued stimulation from the real world. The presence of a lawyer -- the presence of an ally or friend at hand -- gives strength to those parts of a man's personality which promote realistic self-protection. A lawyer is a forceful representative of the real world, and it will be more difficult for self-destructive forces to get the upper hand (and bring about confession) while a lawyer is present.

Wisdom: That makes sense. But a person still may confess.

Syke: Of course. Culpa confessed. But I think his case should not obscure the point that in most cases a lawyer's presence would be enough to prevent confession. After all, Culpa must have been almost ready to confess by the time he entered the police station.

I think you have seen, haven't you, that my explanation of the psychological function of a lawyer has some important implications.

Wisdom: Can you spell them out?

Syke: I mean that the presence of a lawyer will reduce the likelihood of confession, but that he serves no other function of psychological relevance. If a person

confesses to the police in the presence of a lawyer that confession will be just like any other, no more or less reliable. The fact that the person has confessed merely reflects the great intensity of the self-defeating forces within him. Culpa felt just as guilty when the woman died by someone else's hand as he would have if he had killed her himself. He would have felt just as guilty if she had died a natural death.

Wisdom: He certainly wouldn't have confessed then!

Syke: Some people have done just that, but you must remember that guilt brings about self-destructive acts other than confession.

Wisdom: I wonder if you could speak to a different point in the Culpa case. When Culpa confessed, he confessed in great detail. He seemed to say things which only the real killer could have known. I can see now that most of the detail was merely circumstantial, but how could he have known, for example, that the dead woman had been drinking?

Syke: I have several comments to make on the subject you have brought up. Of course, I don't know enough about the circumstances of the case to know how Culpa could have learned any specific detail, but a psychologist can tell you that a false confession appears to be as valid as a true confession. Anyone can learn this from observing confessions which are known to be false. Certainly the police interrogator knew that the woman had been drinking

even if Culpa didn't. Any confession will be a cooperative effort between the interrogator and the accused. I don't mean to say that the interrogator wants to get a confession which is false. His honest wish to succeed in getting a valid confession is only natural. The zeal of an interrogator to succeed combined with an accused person's willingness to confess offer the only explanation I know of for the fact that false confessions appear so valid.

Wisdom: So far we have talked mostly about what makes a man confess and the trustworthiness of confessions. One of the possible functions of the legislature is to make laws governing interrogation. What, specifically, is the police interrogator's function in bringing about confession?

Syke: There are many. I have already discussed the effect of punishment administered by the interrogator.

Wisdom: But we don't allow that in Bonalex.

Syke: Your courts have outlawed physical punishment, but you will remember that psychology treats that sort of punishment equally with mental anguish. One of the prime functions of an interrogator is to act with a harsh manner toward the accused. He tries to make his subject squirm, so to speak. This is very effective punishment for the purpose of providing that punishment which is a prerequisite to confession.

Wisdom: What else does the interrogator do which has psychological relevance?

Syke: I suppose it is the interrogator's job to provide a setting for interrogation. Earlier I talked about the lawyer reinforcing a person's sense of reality. This sense of reality has to be nourished; a lawyer is only one possible source of this nourishment. An interrogator will make an interrogation room reflect reality as little as possible. Indicia of police will be absent. The room will be as stark as possible. Stimulation of the senses -- all evidence of the real world with which the accused is familiar -- will be eliminated as much as possible.

Wisdom: Well, the qualities of a proper interrogation setting sound quite difficult to define precisely.

Syke: Perhaps. But they are important. Any interrogator will tell you that. Along the same lines, the presence of other persons, particularly persons known to the accused, will reinforce his assessment of reality. I am sure that an interrogator's chances of getting a confession would be reduced greatly if members of the accused's family, a good friend or even his fellow criminals (assuming he is guilty) were present. Also, an interrogator should make some judgment of when a suspect is "ripe for confession."

Wisdom: What do you mean by that?

Syke: I have told you that a person needs to experience punishment before he will confess. Living with his guilt (and please remember my special use of the word "guilt") will provide some of this punishment in the form of mental

anguish as the unconscious guilt becomes conscious. The longer a person lives with his guilt the more mental anguish he will experience. Therefore he will be more likely to confess. An interrogator will probably have more success with a person who has not been arrested immediately after a crime. By the same token, it would be best for the interrogator to keep a person in jail for some time before interrogation is attempted. Of course, the interrogator should see that the suspect does not confess to someone else first. Also, if an interrogator gets a confession during interrogation, he will have to be careful that the confession is not premature and incomplete. If the confession is premature, the confession will not be a final and full act of confession. The suspect will be more likely to refuse to sign it after it is transcribed or to deny it in some other way.

Wisdom: Police who have testified before this committee never mentioned the importance of questioning a suspect at a particular time.

Syke: Perhaps psychiatrists could teach the police something. After all, our work resembles police interrogation in many ways.

Wisdom: Will a suspect's level of intelligence, his education and his background have any bearing on an interrogator's chances of eliciting a confession?

Syke: Certainly intelligence and education, formal and informal, are significant aids to appreciation of

of the realities which militate against confession. They are significant in exactly the way a lawyer is significant. What do you mean by "background"?

Wisdom: In Culpa's case I would mean such things as the fact that he had experienced difficulty with the law before, the fact that his employment was irregular and the fact that he lived in a socially disorganized neighborhood.

Syke: I would say that these facts all tend to be indirect indications of Culpa's personality characteristics, but they prove nothing in themselves. I think I can say only that these facts could not be causes of the guilt which caused Culpa to confess.

Wisdom: Is this all you have to say about the function of a police interrogator in getting a confession?

Syke: No. I think the next point is one of my most important: When a person confesses he must confess to a father-representative. Therefore the interrogator must play a role something like a father.

Wisdom: Are we back to childhood experience?

Syke: I'm afraid so, but I don't need to give you a complicated explanation of the importance of childhood experience. Let it suffice to say that people tend toward repetition of past experiences or relationships. The repetition, of course, will usually be symbolic. "Childhood experiences," as you call them provide an important key to the puzzle of why guilt leads to confession.

A man confessing to a parent-representative is like a child telling his misdeeds to his father so that his relationship to his father can be preserved.

Wisdom: Your point is, anyway, that an interrogator must somehow play the role of a father, isn't that right?

Syke: Yes, that's the nub of the matter. The interrogator does this by exhibiting feelings of regard and concern for the accused. I think it suffices to say that he has to play the role of a good father.

Wisdom: Didn't you say before that the interrogator has to be harsh and abusing?

Syke: Yes, I did. The interrogator has to play both roles. He plays them alternately, most of the time. Two interrogators can be used to play two roles, but the presence of a third person in the interrogation room would tend to reinforce the suspect's sense of reality.

Wisdom: What else does an interrogator do?

Syke: I think I have said all of what is important, but I hope you see the full import of what I have said. An interrogator's behavior is very subtle and complex. His job is to cater to those forces in his suspect's personality which are self-destructive. Those forces are irrational; they are not based on reality and they are not governed by logic, judgment or reason. That is the only way he will get a confession. He must at the same time lull those contrary forces which are rational and which tend to prevent confession. His job is to manipulate

psychological processes, and he deals in psychological manipulations to an extent no less than I do. His objective, however, is to turn a man against himself, and strong forces in accused persons help him.

Wisdom: I detect that you have formed some views about police interrogation.

Syke: I certainly have, but I am trying to give you only impartial testimony based on my understanding of psychology.

Wisdom: Even though Culpa's confession was false, I think I would have to conclude that it was voluntary. Would you agree with me?

Syke: That depends on what you mean by voluntary.

Wisdom: Perhaps I could say that the police did nothing which would tend to make an innocent man confess.

Syke: I cannot accept that definition of "voluntary" at all. The forces which make a person confess have nothing to do with whether a person is innocent or not. Whatever the police did to Culpa would have the same effect on an innocent man as ^{on} a guilty one inasmuch as the police fostered confession at all. I think I have explained this.

Wisdom: Put it this way: The police did nothing which violated one's sense of justice. They questioned Culpa for a short time only -- forty minutes, I believe -- and a lawyer was present.

Syke: I don't think that a psychiatrist has any special competence to testify about what violates a sense

of justice. I might remark, however, that if you are saying Culpa's confession was properly admitted at his trial because the police did nothing which violates your sense of justice, you are giving "justice" a curious meaning. It is true that the police may have behaved with good manners, but I would look to the result of their taking the confession. The fact that Culpa's confession was admitted at his trial had serious consequences for Culpa. He was sent to prison. Yet Culpa's confession, as any confession, was obtainable for reasons which had nothing to do with the actual commission of a criminal act. If your criminal law makes punishment turn on confession, it punishes a self-destructive mental condition. It was impossible for Culpa to escape the liability of your law. That seems to me unusual and cruel as well. I don't think that my sense of justice, for what it may be worth, is satisfied.

Wisdom: Culpa's confession was voluntary at least in the sense that he wanted to confess. His decision to confess was a free choice. Isn't that right?

Syke: Not if you mean that Culpa willed his act of confession. It would be more proper to say that Culpa was able to confess because his will was overcome. The part of his mind which is rational and responsive to reality had to be lulled or forced into submission before the confession could occur. It is true, of course, that the wish to confess originated within himself, but these forces which made Culpa confess were irrational and aggressive. Culpa "wanted" to confess only in the sense

that men "want" to eat. If hunger becomes sufficiently insistent, as it will eventually, one must eat.

Wisdom: What if Culpa had written out a confession before he went to the police? That confession would be voluntary, wouldn't it?

Syke: Certainly. It would be voluntary in the sense that the state did no specific acts which brought it about. But this seems to me to mean little. Even the police suspect confessions which are obtained too easily.

Wisdom: Then would you say that the more voluntary a confession is, in my last sense, the more likely it is to be false.

Syke: I think that conclusion is suspect. Clearly confessions which are volunteered to the police without any effort on the part of the police point to their own falsity. For example, more than 200 persons confessed to the kidnapping and murder of the Lindbergh baby. No doubt the police had little regard for such confessions. But I don't see why a confession obtained through interrogation should be any better, even though it may seem to be better.

Wisdom: Aren't you going a bit far?

Syke: Perhaps I am. I will admit that my comments on this point cannot be altogether sure, but I see no effective way of refuting them. My reasoning is as follows: We have seen that persons do in fact volunteer confessions for acts which they have not committed. This is not uncommon; the Linbergh case illustrates that. Moreover, the people who confessed to the Linbergh kidnapping could not have had

a close personal relationship with the results of the crime. Their associations with it would have to have been symbolic.

Wisdom: Wait a minute. I thought you said that Culpa confessed because he had surpressed aggression which would have been directed specifically toward the dead woman. Now you mean to say that it was not necessary for his aggression to have been a part of his relationship to the dead woman, but a part of other relationships instead?

Syke: Yes. You will remember that I said Culpa's surpressed aggression was a part of a pattern of behavior. Culpa might have confessed to a crime unrelated to his own relationships if he had been able to attach his guilt to that crime. The personal meaning Culpa would have found in the unrelated crime would have been symbolic. I have emphasized that guilt which brings about confession is not governed by logic or reason, and such symbolic attachments are common.

Wisdom: Please continue with your explanation of why volunteered confessions are no more reliable than confessions elicited through interrogation.

Syke: I should think that confession would be more likely if a particular symbolic displacement of guilt did not have to occur. When police arrest a suspect for interrogation, they naturally will arrest someone who has

some possible association with the crime. This would be particularly true in murder. The police will ask themselves, "Who would have wanted the murdered person dead?" It is unlikely that they will look to a stranger. Therefore, the police will suspect those persons whose sense of guilt has some primary relationship with the crime. In other words, the police are likely to seize upon specifically those persons who are most likely to confess falsely if their sense of guilt is sufficiently strong. If the arrested person does in fact have strong guilt feelings, he will act in a guilty manner as Culpa did. Partial confessions contained in suspicious acts and statements would tend to confirm the judgment of the police that they have the right person. In fact, such suspicious acts might have actually precipitated the arrest. As the arrested person is being interrogated, he will probably learn or guess at what the police know about the crime. Under the direction of the interrogator's questions he will be able to confess convincingly. He will truly feel and act guilty even though his confession is false because he is the victim of internal forces which bring about this behavior. Once he is convicted, no one is likely to doubt the rightfulness of the conviction, and society will really believe that justice has been done. The conviction will seem to stand as evidence that confessions are useful and necessary.

I'm sorry I seem to have made a speech.

Wisdom: Will you have us believe that many persons are convicted wrongfully?

Syke: If persons are convicted on the strength of confessions, I don't see why that isn't so. The validity of such a conviction will reflect mainly the accuracy of the police's suspicions when an arrest was made.

Wisdom: This committee was established as part of a law-making process, and therefore, I would like to ask you some questions about specific provisions which might be contained in law. First, does your knowledge of psychology suggest to you any conditions under which it would be appropriate to admit a confession into evidence in a criminal trial?

Syke: I can state no specific conditions. I know only that many confessions are likely to be false, and that there are no rules for distinguishing true confessions from false confessions.

Wisdom: Certainly there could be objective evidence which would confirm the confession's validity.

Syke: If such evidence really proved the confession, it would prove the crime as well and you would not need the confession. As in the Culpa case, I think a confession is more likely to give the appearance of special meaning to evidence which would otherwise be inconclusive. Of course, my knowledge of psychiatry cannot tell you what kind of law to make. You may find some practical reason for admitting confessions even though they are not reliable.

Wisdom: I think we can assume that we would want to keep false confessions out of evidence, but do you think false confessions which appear to be trustworthy are common?

Syke: I don't think that there is any way to answer that question. Psychology suggests that it is possible for any number of apparently true confessions to be false in fact. It could be that many persons now in the penitentiary are as innocent of crime as Culpa. How can we tell?

Wisdom: But maybe you can be more helpful than that. What if we had a law that said an accused person could be interrogated only for a short period of time?

Syke: I have no doubt that a shorter time for interrogation will produce fewer confessions.

Wisdom: Well, wouldn't that accomplish some purpose?

Syke: No doubt fewer innocent persons would be convicted, but you can see from what I have said that the confessions obtained in a short time will not be more trustworthy than those obtained after a lengthy interrogation. The time it takes to get a confession reflects merely the intensity of the self-destructive forces in the person who is being interrogated. It reflects nothing else. These self-destructive forces cannot originate in the commission of a crime. That is psychologically impossible.

Wisdom: What if we combined a short interrogation period with mandatory representation by a lawyer?

Syke: My answer is the same as my answer to your last question: You would get fewer confessions, but their reliability would not be increased. Let me restate my meaning. Your suggested laws would certainly reduce the admission of false confessions into trials, but your law draws a line which is completely arbitrary from my point of view. Confessions either tend to be reliable, or they do not. In my opinion -- and I think my opinion on this point is most relevant -- confessions by their very nature are not reliable. Nothing you have suggested so far tends to reduce that inherent unreliability.

Wisdom: Let's try a different tack. Interrogation produces not only confessions, but it provides the police with leads to other evidence as well. That other evidence may be able to demonstrate its own validity. What can you say about interrogation for this purpose?

Syke: There isn't much I can say. If interrogation leads to evidence which really does prove legal responsibility for the crime charged or for a crime which was previously unsuspected, I cannot find fault with that other evidence.

Wisdom: The law is concerned also with certain personal liberties. I am thinking particularly of the constitutional right to refuse to testify against oneself and the constitutional right to remain silent when charged with a crime. Do these rights have any foundation in psychoanalytic theory?

Syke: You say a person has a right not to testify against himself. I assume you mean that a person is not required by law to tell a police interrogator about his wrongdoing.

Wisdom: That's right.

Syke: To tell a police interrogator about one's wrongdoing is clearly self-defeating behavior, and inasmuch as a person is rational he will not do so. When a person confesses, however, his rationality -- his knowledge of what is good for him -- is overcome by a different sort of force. The law you are talking about gives a man the right to act rationally out of self-preserving motives. A person will do that anyway as long as he is mentally able to do so. A person confesses because he is no longer able to act rationally. He has become the defenseless victim of self-defeating irrationality within himself. His confession does not result from a rational decision to confess, and the person who confesses has become unable to make the rational decision to take advantage of a constitutional right. He won't be able to avail himself of it precisely at that time when he needs it. I can say, however, that if a person is given the right to tell an interrogator that he won't answer his questions, the police interrogator's task of breaking down his subject will have to be more prolonged, and it will be more difficult.

Wisdom: You will admit, then, that a right to refuse to speak against oneself has some meaning, won't you?

Syke: Yes. It is much like the presence of a lawyer, but it is not nearly as effective. It will help a suspect to buttress his rational forces, but the intensity of his self-destructive impulses will finally determine whether he talks. I am not persuaded that the right to refuse to speak against oneself is very helpful in most cases. Perhaps the greatest psychological difficulty in refusing to betray oneself is elucidated by the following principle of psychoanalytic theory: Even when reasonable and self-preserving impulses have the upper hand, self-destructive forces will still be active. The result is that any course of action which is available to the suspect will represent some compromise between self-preservation and self-defeat. This will occur out of psychological necessity. A person with strong self-destructive forces -- that person who will provide an easy mark for an interrogator -- will not be very effective in exercising his right not to speak against his interests.

Wisdom: What about a right to remain silent?

Syke: As far as I can see that is really the same as the right not to testify against oneself. When you state it that way, however, I can tell you that psychologically, silence is recognized by a person remaining silent as an act of confession. Therefore, his self-preserving impulses will militate against silence. A person will feel compelled to say something to an interrogator, and then his self-destructive forces may begin to betray him.

Wisdom: You have pointed out that the length of the interrogation and the presence of a lawyer would materially effect the outcome of the interrogation.

Syke: Yes, I can't think of any two things which would effect it to a greater extent. Of course, the interrogator will not be successful unless he appears to have the suspect's interests at heart.

Wisdom: Well, I can't see how we could pass a law relating to an interrogator's fatherly manner. Nor do I think we could govern by law the way the interrogation room is set up with regard to the presense of "reality." For that matter I don't see how we could regulate the interrogator's harshness which he exhibits when he is not being fatherly. As long as he doesn't abuse the suspect physically.

Syke: I suppose you are right about what kind of laws are possible.

Wisdom: Considering all your testimony so far, I gather that you cannot point to any major inadequacy in a law which would bar the admission of confessions in criminal actions but which would allow police interrogation for the purpose of discovering other evidence of criminal wrongdoing. Is that right?

Syke: Yes, I think so. Such a law would reflect sound psychoanalytical principles. I am bothered only by one fact: When you allow interrogation at all you are allowing the

police to use most effective psychological procedures to turn a man against himself. This is the essence of police interrogation as I would see it. Perhaps this does not bother you.

Wisdom: Hmmm. No more question, Dr. Syke. Thank you for your patience.

Syke: Thank you for yours.

Notes

- ¹Life Against Death 1 (1959).
- ²The Morality of Law 38 (1964).
- ³Former members of the Chicago Police Scientific Crime Detection Laboratory.
- ⁴Kamisar, Book Review, 17 Rutgers L. Rev. 728, 729 (1963).
- ⁵Ibid.
- ⁶Inbau & Reid, Criminal Interrogation and Confessions vii (1962) [hereinafter cited as Criminal Interrogation].
- ⁷In The Compulsion To Confess (First Evergreen ed. 1961) [hereinafter cited as Compulsion To Confess].
- ⁸338 U.S. 49 (1949).
- ⁹Id. at 54.
- ¹⁰Rogge, Why Men Confess 34-35 (1959) [hereinafter cited as Rogge].
- ¹¹Id. at 55.
- ¹²Id. at 55-57.
- ¹³Id. at 57.
- ¹⁴Id. at 55-64.
- ¹⁵Id. at 59-60.
- ¹⁶Id. at 63.
- ¹⁷Persuasion and Healing 242 n.16 (First Schocken paperback ed. 1963).
- ¹⁸Anthropologie structurale (1958).
- ¹⁹Frank, op. cit. supra note 17 at 242-43 (footnotes omitted).
- ²⁰Criminal Interrogation 105-06.
- ²¹See generally Rogge.
- ²²Id. at 191.
- ²³Id. at 200.
- ²⁴Time, Feb. 5, 1965, p. 69.

²⁵Rogge 210.

²⁶²¹ The Standard Edition of the Complete Psychological Works of Sigmund Freud (1961) [hereinafter cited as Discontents].

²⁷Id. at 122.

²⁸Id. at 123.

²⁹Id. at 129.

³⁰Man Against Himself 24-45 (paperback ed. 1938) [hereinafter cited as Menninger].

³¹Id. at 31.

³²Ibid.

³³Discontents 130 n.2.

³⁴The Theory of Ego Autonomy: A Generalization (15 Bull. Menninger Clinic 113, 1951), in Psychoanalysis and Law 262 (unpublished).

³⁵Ibid.

³⁶Discontents 136.

³⁷Ibid.

³⁸Compulsion To Confess 303.

³⁹Man for Himself 147 (1947).

⁴⁰S. Freud, Formulation on the Two Principles of Mental Functioning (12 Stand. ed. 1911), in Psychoanalysis and Law 158 (unpublished).

⁴¹S. Freud, New Introductory Lectures on Psychoanalysis (22 Stand. ed. 1933), in Psychoanalysis and Law 153 (unpublished).

⁴²S. Freud, op. cit. supra note 40, at 158.

⁴³Ibid.

⁴⁴S. Freud, An Outline of Psychoanalysis (1938), in Psychoanalysis and Law 127 (unpublished).

⁴⁵Id. at 125.

⁴⁶Ibid.

⁴⁷Id. at 127.

⁴⁸Id. at 126.

⁴⁹Ibid.

⁵⁰The Unknown Murderer, in The Compulsion To Confess 147-149 (New Evergreen ed. 1961) [hereinafter cited as Unknown Murderer].

⁵¹Id. at 148.

⁵²Id. at 149.

⁵³Menninger 49-52.

⁵⁴Criminal Interrogation 101-02.

⁵⁵Discontents 126.

⁵⁶Menninger 113-14.

⁵⁷Rogge 201.

⁵⁸Discontents 126-27.

⁵⁹Menninger 24-45.

⁶⁰See also S. Freud, Totem and Taboo 66 (Strachey trans. 1952).

⁶¹Menninger 35.

⁶²Unknown Murderer 149.

⁶³Id. at 148.

⁶⁴Discontents 132.

⁶⁵Time, April 2, 1965, p. 62.

⁶⁶Rogge 67-73.

⁶⁷Id. at 72.

⁶⁸Ibid.

⁶⁹Id. at 67.

⁷⁰See Criminal Interrogations 113-14.

⁷¹Rogge 72 n.1.28.

⁷²S. Freud, op. cit. supra note 41, at 154.

73 Ibid.

74 Waelder, The Principle of Multiple Function: Observations on Overdetermination (5 Psychoanalytic Quarterly 46, 1936), in Psychoanalysis and Law 161 (unpublished).

75 See also Menninger 47-48.

76 Criminal Interrogation 33-34.

77 The Ego and the Id (19 Stand. ed. 1923), in Psychoanalysis and Law 184 (unpublished); Criminals from a Sense of Guilt (14 Stand. ed. 1916), in Psychoanalysis and Law 209-10 (unpublished).

78 Unknown Murderer 41-61.

79 S. Freud, op. cit. supra note 77 at 184; Menninger 178.

80 Menninger 178.

81 R. White, The Abnormal Personality 74-82 (2d ed. 1956).

82 Unknown Murderer 50-51.

83 Compulsion To Confess 259.

84 Id. 343.

85 Menninger 177-79.

86 Compulsion To Confess 275.

87 Time, April 2, 1965, p. 63.

88 Compulsion To Confess 201-03.

89 Id. at 193-98.

90 Unknown Murderer 60.

91 Compulsion To Confess 205-06.

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93 Id. at 205.

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96 Unknown Murderer 59-60.

97 Criminal Interrogation 34-55.

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