

SEXUAL OFFENDERS—A BRITISH VIEW*

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AMONG the flotsam of modern society sexual offenders require special consideration. To the average lawyer they represent a class of individuals little known and rarely encountered. For this reason when legal precedent alone determines the outcome of litigation involving sexual offenders, it may be a case of the blind leading the blind. This, then, is an attempt to enable the lawyer to appreciate the complex factors which constitute the personality of the sexual deviate and to understand the limitations and potentialities of his treatment.

At the same time anyone who approaches the subject of sexual crime from the scientific aspect is confronted with some difficulty in establishing satisfactory "norms" and values. For criminology has hardly reached the dignity of a science, and psychiatry has scarcely attained the high estate of maturity. Moreover, the subject impinges upon social morality and religious doctrine, and the ordinary citizen is tempted to appraise sexual misconduct in accordance with the manner in which it personally affronts him, rather than by the measure of its social importance, or its significance as an individual shortcoming.

Further, although the ethics of the Christian religion are beyond reproach and the scientific quest for truth must be disciplined as well as sincere, the exponents of religion on the one hand and of science on the other sometimes fail adequately to define the standards with which they illuminate their particular points of view.

So it comes about that the ordinary man occasionally ignores the opinions proclaimed by religion and science and establishes his own standard of sexual behaviour. This deviation is frequently based upon ignorance and unreliable premises with the consequence that the man or woman so offending may be incompetent to evaluate accurately the activities of others. It is also important to bear in mind that, particularly in matters concerning sex, emotion is often uninfluenced by reason and may obey chance circumstances.

This much seems certain in regard to sexual as well as to acquisitive and aggressive activities: we must live on a higher level than the rest of the animal world. We cannot live on the same level, for, apart from other considerations, our activities have numerous impacts and may

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adversely affect social security unless the potentialities of the higher levels of behaviour are exploited.

Ideas change with the times. The Mosaic Law imposed the penalty of death on both parties when a married woman committed adultery. The old Roman Law punished adultery on the part of the wife but not on the part of the husband. Although under Roman Law a father had the right to kill both his married daughter and her accomplice if she was taken in adultery either in his house or her husband's, a husband had no such right as to his wife in any case, and no such right as to her accomplice unless he was an infamous person or a slave taken in his own home.¹ By a law of Cnut's a woman was to forfeit both nose and ears for adultery,² and in the seventeenth century the ecclesiastical law punished both adulterous accomplices with extreme severity. But when the Divorce Act of 1858 was under discussion in England, the suggestion that adultery should be treated as a criminal offence was decisively rejected.³

More recent English law regarding sexual offences does not inflict criminal penalties upon all those acts which ecclesiastical law prohibits and used to punish, and which the law of contract still visits with the sanction of nullity. Rather, it selects for criminal prohibition only those deviations in which there is also present some further element—whether of abnormality, violence, fraud or the immaturity or mental disability of the victim—that provokes such a general popular disgust as will make it certain that prosecutors, witnesses and jurymen will be content to see the prohibition actually enforced.⁴ Thus, the criminal law in general is intended to maintain the standards of behaviour which are considered to be necessary for the welfare of the community, but which cannot be enforced by the operations of the civil courts. This is particularly noticeable in the case of sexual offences.⁵

1. 1 STEPHEN, HISTORY OF CRIMINAL LAW OF ENGLAND (1883) 15.

2. *Id.* at 54.

3. 3 *id.* at 318.

4. C. S. KENNY, OUTLINES OF CRIMINAL LAW (6th ed. 1914) 28. A study of the literature shows that sexual offences are considered under different headings by different authorities. In England and Wales they are officially classified as follows:—(a) Unnatural offences—that is, carnal knowledge of any animal and carnal knowledge by a man of a man, or a woman per anum. (b) Attempts to commit unnatural offences. (c) Indecency with males. (d) Rape—that is, the offence of having carnal knowledge of a woman against her will by force, fear or fraud. (e) Carnal knowledge of a female idiot, imbecile, defective or lunatic. (f) Indecent assaults on females. (g) Defilement. (h) Defilement of girls under 13, and of girls aged 13 and under 16 years. (i) Incest. (j) Procuration—including living on the earnings of prostitution, detaining women in brothels, etc. (k) Abduction. (l) Bigamy. (m) Prostitution. (n) Indecent exposure.

5. Jeremy Bentham, in his classification of offences, referred to "imaginary offences," which he defined as "acts which produce no real evil, but which prejudice, mistake or the ascetic principle have caused to be regarded as offences. They vary with time and place. They originate and end, they rise and they decay with the false opinions which serve as

Enforcement of these criminal sanctions can precipitate injustice. Sexual offenders are perhaps more liable to be misjudged by prejudice and ignorance than the majority of criminals. Bias is almost inevitable if their conduct is reviewed solely in the light of narrow personal experience and the tastes and distastes of the assessor. Many persons of both sexes are grossly ignorant on sexual matters in spite of the modern tendency to discuss the subject with a considerable amount of freedom. Some husbands, in effect, commit rape upon their wives because they do not understand the art of married life and do not realize that a woman is at a disadvantage unless a psychical approach precedes each physical contact. Such sexually unaesthetic men and women, manifestly incompetent to pass judgment upon the inter-relationships of the sexes, may be called upon as members of a jury to assess the guilt of a sexual offender.

Most discussions of crime take place on common ground, and the disputants address themselves to facts related to similar experiences in the lives of their fellows. In the trial of sexual offences a common ground may be beyond reach, for no one can be sure that he approaches the problem from the same angle as his fellows whose sexual experiences, and the direction of whose innermost thoughts on such matters, are usually undeclared. This is particularly the case where women are concerned. The matters which are most significant to women in connection with the physical and mental aspects of sex are usually concealed and often unsuspected by others.

Yet the importance of viewing the problem of sexual offenders objectively in all its aspects is well-illustrated when one considers the evil of prostitution, which is tolerated in some cultures and not in others. Bentham pointed out that the kept mistress may be regarded as almost as infamous as the prostitute.⁶ Nevertheless, some may agree that when the former remains under the same protection continuously she may compare favourably with the woman who rapidly indulges in one or many marriages for a short period. Here, as so often elsewhere, it is more instructive and equitable to ascertain the purpose of behaviour than to consider the manner of its presentation.

Moreover, as Putnam warned: "It is true, however those who have not looked into the matter may think otherwise that, in the eye of science, perverted instincts, such for example, as an excessive passion for a person of the same sex carried from the realm of thought into act, finds its analogue in many overdone or even quasi-normal relationships

their foundation." He instanced the vestal virgins who were buried alive for unchastity and he considered, so far as the public are concerned, that sexual offences in which there is neither violence, fraud, nor interference with the rights of others could be arranged under the head of "imaginary offences." BENTHAM, *THE THEORY OF LEGISLATION* (Ogden's ed. 1931) 245-6.

6. *Id.* at 390.

of daily life. It is a question of degree that is at stake, and although for purposes of punishment, prevention, public self-protection and social standards we must draw sharp lines, yet knowledge should make us prudent in passing scientific judgments." 7

This analysis is not designed to belittle the gravity of sexual crime. But in order to attain a true perspective of this complex group of offenders, it is necessary to recognize the fact that sexual crime may be the result of many different forces ranging from depraved brutality or selfish indulgence to sublime emotion. Moreover, in sexual offences the element of seduction may even emanate from the victim who then proceeds to the rank of an accomplice.⁸

When we consider the state of flux which exists today concerning sex morality, and the fact that we cannot yet see clearly its future direction, it is surely fundamental to insist steadfastly that our judgments be connected with the shifting norms of morality in general.

CAUSAL FACTORS OF SEX OFFENCES

Ethnic and Geographic. There can be no doubt that sexual activities and sexual offences are related to national qualities, and that national habits, such as alcoholism, are likely to be reflected in the estimates of sexual crime in different communities.⁹ For example, a 1936 study of

7. J. J. PUTNAM, *ADDRESSES ON PSYCHO-ANALYSIS* (1921) 24.

8. Von Hentig, *Interaction of Perpetrator and Victim* (1940) 31 J. CRIM. L. & CRIMINOLOGY 303-7.

9. In England and Wales in 1938, the last year for which figures are available at the time of writing, the number of sexual offences committed by males was in round figures ten times the number committed by females. For all kinds of offences the proportion is eight to one. The reasons for this are probably various, and biological, psychological, and social factors seem to influence the result.

The number of official sexual offences known to the police in England and Wales in the year 1938 was 5,018 against 4,646 in 1937. The number of crimes known to the police, however, exceeded the number of persons found guilty because many crimes are committed of which the offenders remain undiscovered, or though discovered or strongly suspected cannot for some reason be prosecuted, and also because a person convicted of an offence frequently admits numerous other offences and asks that they may be taken into account when the court passes sentence. In such a case although there is only one person convicted the conviction includes many crimes.

Of the 2,321 persons found guilty of indictable sexual offences during the year 1938: 119 or 5 percent were under the age of fourteen; 356 or 15 percent were aged fourteen and under seventeen; 354 or 15 percent were aged seventeen and under twenty-one; 209 or 9 percent were aged twenty-one and under twenty-five; 269 or 12 percent were aged twenty-five and under thirty; 1,014 or 44 percent were aged thirty and over. Among these were 1,104 cases of indecent assault and 274 of bigamy.

The number of sexual offenders dealt with at the Central Criminal Court, Courts of Assize and Quarter Sessions was:—18 aged fourteen and under seventeen; 150 aged seventeen and under twenty-one; 287 aged twenty-one and under thirty; 527 aged thirty and over; a total of 982.

The offences of which they were convicted were:—

<i>Offence</i>	<i>Males Convicted</i>	<i>Females Convicted</i>
Unnatural offences	58	—
Attempts to commit unnatural offences	76	1
Indecency with males	141	—
Rape	40	—
Indecent assaults on females	115	—
Defilement of girls under 13	31	—
Defilement of girls 13 and under 16	179	—
Incest	40	4
Procuration	15	2
Abduction	4	—
Bigamy	195	81
	<hr/> 894	<hr/> 88

982

In addition to the above, persons aged 17 years and over (sexes not differentiated) were found guilty by courts of summary jurisdiction as follows:—Attempts to commit unnatural offences (indecent assaults on male persons under sixteen) 225; indecent assaults on females under sixteen, 657; indecent exposure, 1,574; offences by prostitutes, 3,192. CRIMINAL STATISTICS, ENGLAND AND WALES (London 1940) 17.

The Annual Report of the Prison Commissioners for 1938 shows that 246 males were received into prison for unnatural offences and attempts, etc.; 483 males and one female were received for rape and other offences against females; 110 males and 22 females for bigamy; 154 males and 32 females for brothel keeping and living on the earnings of prostitution; 5 men and 172 women for prostitution; and 449 men and 81 women for indecent exposure.

The reconviction rates among males guilty of five types of offence were:

<i>Age</i>	<i>Violence Against the Person</i>	<i>Sexual Offences</i>	<i>Frauds and False Pretences</i>	<i>Breaking and Entering</i>	<i>Larceny</i>
16 and 17	21.4	22.9	48.0	35.1	28.8
18-20	28.6	11.3	30.5	28.5	26.3
21-29	19.6	16.6	24.4	28.0	23.1
30-39	10.5	13.1	15.8	30.7	14.9
40 and over	8.3	5.6	9.9	32.1	10.0

The number of persons found guilty of indictable sexual offences in the five-year period 1934 to 1938 show a gradual rise from 1935, although the year 1934 showed a higher figure than 1935. They are set out hereunder in age groups:—

<i>Year</i>	<i>Under 17</i>	<i>17 and Under 21</i>	<i>21 and Under 30</i>	<i>30 and Over</i>	<i>Total</i>
1934	353	232	400	829	1,814
1935	347	235	379	811	1,772
1936	429	232	429	838	1,928
1937	397	294	394	950	2,035
1938	475	354	478	1,014	2,321

The following figures show the proportion per 100,000 of the population aged 17 and over found guilty of offences during the years 1934-38:—

the criminality among the Jewish and non-Jewish populations in ex-Russian and ex-Austrian Poland¹⁰ indicated that the rate was much lower among the Jewish population for all kinds of offences against the persons—that is to say, for crimes against life, against health and the body, against sexual morality and the family, against individual liberty and against honour.¹¹

It has been noted that in Germany sexual offences occurred most frequently in the months of June and July. In France in the years 1827-70 indecent offences against children and against adults reached their peak in the same months, as did also indecent offences in England in the years 1905-09. As an explanation of this phenomenon, since the increase had already started before there was any question of a noticeable rise in the temperature, it is probable that the primary cause was not an enhanced sexual urge due to climatic or seasonal changes¹² but rather that the lengthening of the days and the better weather allows opportunist crimes to take place in quiet woods and parks. Sexual offences are naturally committed more in the open air and upon strangers.

Clinical and Environmental. It has been observed that sexual criminality is committed to a large extent by unmarried people.¹³ In his anthropological study, *The American Criminal*, Hooton found a great excess of unmarried men among criminals in general. But he also found that rapists and other sex offenders tend to marry in excess of the total criminals although the differences were not statistically significant when due allowance had been made for state sampling.¹⁴ The age distribution of offenders convicted of incendiarism and other forms of wilful damage to property, stealing, sexual offences and crime

Year	Violence					
	Against the Person	Sexual Offences	Fraud and False Pretences	Breaking and Entering	Larceny	All Other Offences
1934	3.9	4.9	15.6	10.8	110.2	5.8
1935	4.4	4.7	15.0	10.1	107.7	5.6
1936	4.3	5.0	14.9	10.0	111.3	5.7
1937	4.9	5.3	14.1	11.2	116.5	5.8
1938	4.7	5.9	15.3	13.1	117.3	6.2

PRISON COMMISSIONERS, REPORT FOR 1938 (London 1939) 100-01.

The proportion of sexual offenders is not sufficient to cause alarm, and the sentences imposed in Britain are much less severe than they often were in the early years of the century. If imprisonment is regarded as a means of ensuring social order there can be no doubt that a further measure of security can be assured by the imposition of the authorized heavier penalties.

10. Hersh, *Delinquency Among Jews* (1936) 27 J. CRIM. L. & CRIMINOLOGY 521-2.

11. Compare Van Vechten, *The Criminality of the Foreign Born* (1941) 32 J. CRIM. L. & CRIMINOLOGY 139, 146.

12. W. A. BONGER, INTRODUCTION TO CRIMINOLOGY (1936) 110-2.

13. *Id.* at 112.

14. 1 HOOTON, THE AMERICAN CRIMINAL (1939) 259.

of violence against the person "are fairly similar to each other; their respective marriage rates, allowing for expected variations due to random sampling, are in close accord."¹⁵

Other social conditions contribute to sex crime. For example, numerous persons in present day society grow up in an environment in which there is no possible sublimation of sex-life. Inadequate housing accommodation brings children into close contact with sex-life when they should be kept away from it. Bad example and the low mentality of parents also are also considered important etiological factors.¹⁶

Biological and Anthropological. The importance of biological factors in connection with sexual crime does not always receive the attention it deserves. The animal kingdom and primitive human societies present many striking illustrations of the physical as distinguished from the mental bases of sexual behaviour from which the lawyer might analogize in his forensic explanation of human conduct. Human society, like other animal societies, is sustained by the fundamental urge of the sex instinct. Although the desire for offspring may be often present and the predominant factor in human mating, it is clearly not always so. There seems to be little doubt that parental emotion is usually the result and not the cause of sexual union in the lower animals.¹⁷ Similarly, we are led to believe that an association between courtship and the idea of future offspring may be an occasional and necessary antecedent to their mating.¹⁸

Among animals are found behaviour patterns similar to those of human sexual offenders. When I think of the bull sea-lion who asserts his ownership of a cow, wandering from his harem towards a rival bull, by seizing her so that she is torn to pieces in the tug of war between the two,¹⁹ and of the female baboon in the London Zoological Gardens who was torn in pieces when her mate died and the unmated males fought to possess her,²⁰ I am reminded of the men I have examined who murdered the woman of their choice, determined that if they could not possess her no one else should have that privilege. Again, there is a strong likeness between the activities of the flagellant sadist and that of a male painted terrapin, who was observed to swim around and oppose the path of the female. Having done this he closed up, and with his long whip-like finger nails beat her about the head so rapidly

15. C. GORING, *THE ENGLISH CONVICT* (1913) 310-1. On the other hand, crimes involving fraud appear to be committed by a larger proportion of married and other persons.

16. BONGER, *op. cit. supra* note 12, at 95.

17. W. P. PYCRAFT, *THE COURTSHIP OF ANIMALS* (1914) 141-2.

18. Consider the aphrodisiac advances of the male warbler in "ecstatic mood," holding a leaf or piece of stick in his beak before his prospective mate, as if suggesting the work of nest building and its delightful sequence.

19. PYCRAFT, *op. cit. supra* note 17, at 84.

20. H. G. WELLS, J. HUXLEY and G. P. WELLS, *THE SCIENCE OF LIFE* (1931) 951.

that nothing more than their blurred image was visible.²¹ Even among the domestic species parallels of sexual conduct may be observed.²² Indeed, in some cases of exhibitionism one is reminded of the courtships of the farmyard and the love antics and "showing off" indulged in by certain animals to arouse sexual desire in the females of their species.²³

In appraising the biological significance of animal or aboriginal behaviour, the lawyer must be conscious of the standards by which a particular society judges that activity. Among animals attempts at sexuality between members of the same sex are often seen on our home farms as substitute reliefs to sexual tension, and would be regarded as sexual deviations if they occurred between men or between women. Normal sexual activity in man is expressed through biological channels in a socially-sanctioned manner. Abnormal action may go no further than the preliminary overture, or it may be expressed in directions which appear to have little biological significance. For example, bestiality is not an uncommon offence in some districts and under certain circumstances, but "it is uncertain whether unwillingness to mate with an individual of another species is a widespread phenomenon."²⁴ Additional light is thrown upon the biological associations of sexual perversions by the example of the central Australian native in his home²⁵ wherein homoeroticism²⁶ is usual in psycho-sexual life. Another illustration is the cruel practice of infibulation²⁷ of Somali women and their defibulation on the wedding night, which is sadism by our standard but cannot there develop into a special perversion because it is simply a normal condition of Somali society.²⁸

The forensic psychiatrist giving evidence in a criminal court in a sexual case and the lawyer who examines him are, I believe, likely to be more intelligible to a jury if they have the biological approach to sexual offences in mind than if they only concern themselves with abstruse psychological theories which may not stand the test of time.

Physical. The physical characteristics of the subject of the sexual offence may or may not influence its perpetration depending on the type of crime. The personal attributes and attractions of the woman who is the victim of a sexual offender do not usually seem to be con-

21. PYCRAFT, *op. cit. supra* note 17, at 159.

22. See also *id.* at 164.

23. W. N. EAST, *MEDICAL ASPECTS OF CRIME* (1936) 205.

24. 11 *ENCYCLOPAEDIA BRITANNICA* (14th ed. 1937) 955-6.

25. Roheim, *Psycho-Analysis of Primitive Cultural Types* (1932) 13 *INT. J. PSYCHO-ANALYSIS* 54.

26. *Homoeroticism*: Eroticism directed toward a person of the same sex, especially when the role assumed by the affected person is passive. Ed.

27. *Infibulation*: The fastening of the labia majora with clasps or stitches to prevent copulation. Ed.

28. Roheim, *op. cit. supra* note 25, at 207.

sidered in any detail by the attacker. In a recent case with which I was concerned an edentulous virgin of unprepossessing appearance was raped in her seventieth year and murdered by a man of twenty-six who was not drunk, mentally defective, or suffering from mental disease. On the contrary, in some cases of homosexuality the attractive appearance and physique of the accomplice may be an important causal factor.

Apart from alcohol, the ingestion of aphrodisiacs is rarely associated with sexual crime in England. There is little doubt that some persons occasionally drink alcoholic liquor because of its action as a sexual excitant, and that a sexual crime results. Some who take alcohol solitarily or convivially commit similar offences almost accidentally. This has been attributed to the fact that alcohol strengthens their life instinct and consequently also the sexual instinct.²⁹

When the offender is an alcoholic or under the influence of alcohol at the time of the offence, it may often be difficult to determine whether alcohol is really the cause of his behaviour. To prove such was the case, one must be able to affirm that had the offender been sober he would not have committed the offence. However, alcohol is believed to be a concomitant cause in certain categories of sexual offences, notably assaults on women.³⁰ In Esthonia the prohibition law of 1914 at first produced a reduction of sexual offences, but, when the sale of alcoholic liquors again became legal, assaults on women increased from 13 in the first half of 1920 to 34 in the first half of 1921, and were similarly frequent in the second half of that year.³¹

An enlarged prostate gland is sometimes alleged to be a common cause of sexual crime in elderly men, but there is reason to believe that the connection has been exaggerated. At the same time it may be noted that a sexual offence sometimes seems to be related to climacteric³² changes in men and women, although the majority of those presenting sexual abnormalities during a change of life do not show any demonstrable abnormality of their endocrine glandular systems. In this connection, castration in adult men does not necessarily abolish sexual desire or phantasy. Men who have been castrated in adult age may

29. Kratzmann, *Die Seetischen Grundlagen des Alkoholsmus* (1931) 6 REVUE INTERNATIONALE CONTRE L'ALCOHOLISME 306-25.

30. Scharffenberg, *Alkohol und Kriminalität* (1935) 4/5 FORSCHUNGEN ZUR ALKOHOLFRAGE 133-44.

31. Ernits, *The Temperance Movement in Esthonia* (1922) 4 REVUE INTERNATIONALE CONTRE L'ALCOHOLISME 178-85.

32. *Climacteric changes* (climacteric: round of the ladder). A particular epoch of the ordinary term of life in which the body is believed to undergo a radical change. The time of puberty and the menopause (cessation of menstruation, etc.) are climacteric. The menopause in women is accompanied by alterations in the secretions of the endocrine glands and the period of transition is often punctuated by psychic and physical effects. There is now medical evidence that men undergo similar involuntional changes though these are not as dramatic or pronounced as in women. Ed.

cohabit with their wives.³³ This is significant in connection with the proposal which is sometimes put forward, and has been practised in Germany, that castration should be adopted as a method of preventing sexual crime. Even if potency is destroyed, castration of the body does not enforce castration of the mind; desire may continue and result in indecent assaults.

Psychological. The effect of conscious and unconscious mental stimuli upon overt sexual behaviour are often underrated etiologically. An illustration of the psychological factors upon physical response is the fact that auto-suggestion may be a cause of impotency—that is to say, a man may be actually impotent if he believes that he is so. Conversely, sexual pleasure may be purely mental as when sexual phantasies are unaccompanied by physical sexual activity.

Past traumatic experiences and learned responses account for much deviational conduct. A chance occurrence in which sexual pleasure is experienced for the first time with emotional intensity may, by its associations, permanently affect the sexual life of the individual. One sadistic murder was traceable to a sexual experience in childhood. The personal taste of a shoe-fetishist was due to an experience at puberty when the shoe of an attractive girl played an important part. The pollution of a girl's underclothes by a youth, and her resulting dismay served to condition his future activities as a sadistic dress-defiler.

Differential psychology is a field often ignored by legal assessors of sexual delinquents but which influences the disposition and treatment of certain sexual delinquents. The strength of the sexual urge, whether the activity is normal or perverted, varies in different persons. We do not acquit a rapist because he is over-sexed and may have more difficulty in restraining himself than many others. Although the strength of the sexual urge is sometimes sufficient to cause the sexual offender to defy the penalty he may incur, the same choice is made by many thieves and fraudulent persons and by many aggressive offenders, and this fact should not be considered in determining his responsibility. Thus it may be inexpedient to accept the psychological difficulties of the pervert when deciding the appropriate award for his offence, if he is not mentally defective or suffering from some form of mental abnormality other than his perversion.

Our social and ethical customs are based upon the cumulative experience and wisdom of our predecessors as well as of our contemporaries. If it be true that every dream represents the fulfillment of an unconscious wish and that our phantasies cover the full range of criminal activity, it would seem that we are all potential criminals. The

33. A. FOREL, *THE SEXUAL QUESTION* (1937) 26. See also 3 ELLIS, *STUDIES IN THE PSYCHOLOGY OF SEX* (2nd ed. 1921) 7. Castration is, however, often effective to relieve homosexuals from their desires. See p. 556 *infra*.

difficulties implicit in these voluntaristic diagnoses from dreams were summarized by Putnam in discussing the so-called "insufficiently dressed" dreams: "Such dreams show, what we ought in the interests of human sympathy to recognize, that between ourselves and those whom we stigmatize as exhibitionists, and, therefore, criminals, the difference, important as it is, is one of degree alone."³⁴

The Freudian theory of sexual development provides a structuration for understanding abnormal sexual behaviour. It is convenient to regard the earliest form of sexual interest as that in which the individual discovers that he can obtain sexual pleasure from self-stimulation. This may commence in infancy or early childhood, and is probably at first a purely mechanical activity. In the second, or homosexual, stage of the development the object of the sexual instinct becomes another individual and of the same sex. In the third or heterosexual stage the sexual object is an individual of the opposite sex. This appears to be the normal manner of development. The stages may overlap, or be arrested at any point in the process and the development is then said to be "fixated." In the process of development through these stages, due to propinquity or more specific environmental stimuli, phantasies tend to develop round the autoerotic form of pleasure and, as growth proceeds, become associated with persons of the same or opposite sex, or other animate or inanimate objects.³⁵ For many years the normal sexual goal may not be realized or understood and the existent phantasies may be associated with the individual himself and with all possible relations and emotions that arise between human beings. So it comes about that, in phantasy, sexual feeling may become associated with the infliction and bearing of cruelty, or may interest itself in activities such as excretion, exhibitionism and the like, the exact form depending upon the experience of the individual, his treatment by adults, the stories he is told or the books that he reads.

Moreover, free sexual development or sexual development along abnormal lines is opposed by ordinary social standards. There is the general disapproval and condemnation of overt sexual behaviour, and the general pressure applied to make the individual conform in development and behaviour with what is considered to be, in a particular society, ethically correct and socially acceptable. The first type of opposition will tend to drive out of the forefront of the mind all sexual pre-occupations and interests, particularly those which are tabooed. The second type of obstructive factor will tend to shape the individual into leading, or attempting to lead, a monogamous heterosexual life. But, as the impact of the social censor on the sexual drive is highly

34. PUTNAM, *op. cit. supra* note 7, at 166.

35. The discourse which follows has been drawn in part from EAST and HUBERT, REPORT ON THE PSYCHOLOGICAL TREATMENT OF CRIME (1939).

complicated in form and to some extent variable in different peoples, the sex drive may often become associated with other sexual patterns which are less socially acceptable among some peoples and illegal among others. As indicated above, our social system is only one of many alternatives and it is far from perfect. Formerly, homosexuality was encouraged in Grecian states to strengthen educative influences for cultural purposes, or to make a special military system more cohesive and effective; again, incest was common among the Ptolemies.

A true sexual perversion may be regarded as sexual activity in which complete satisfaction is obtained without the necessity of heterosexual intercourse. It must be persistently indulged in, preferably in reality, at any rate in phantasy, and not merely be a substitute for a preferred heterosexual activity which is unobtainable for some reason. Perverse activity which is a preliminary to ordinary sexual relations is excluded from the above definition. Sexual perversion may mean an interest in an abnormal sexual object, or abnormal sexual activity, in a combination or in a synthesis of the two. Both sexes may indulge in perverse activities although criminal proceedings against women are uncommon.

In some persons we find an underlying tendency towards a general sexual perversion, which personality factors may direct toward a particular interest involved on a special occasion. Further, many sexual perverts are quite normal in ordinary heterosexual relationships, but have a strong bias towards one and sometimes more than one form of perversion. Moreover, cases of sexual perversion occur in families of sexual perverts under circumstances in which common environmental factors can be excluded with some degree of certainty.

The environmental factor which conditons a sexual perversion may be an early experience of perverse activity arising before the ordinary sexual pattern of activity has been established, or from a more recent happening which actively repels the normal heterosexual expression. Occasionally a more general environmental factor may favour the development of the perversion in persons who are so disposed.³⁶ One observer has been much impressed by the family constellation in the psychogenesis³⁷ of homosexuality. He finds the atmosphere of the "broken home" is extremely common, and that if the father does not play his part and take a proper interest in his son the latter is left skirt-bound and in increasing dependency and thralldom to his mother: "When the father is weak and gives in for the sake of peace, or spends most of his

36. *Id.* at 87. In one case a septuagenarian wrote obscene matter on strips of paper which he dropped on the floor of a well-known shop in London hoping women customers would read what he had written.

37. *Psychogenesis*: Technically, the term means development of the mind. As employed here, it would mean evolution of the psychological mechanisms involved in the sexual deviations. Ed.

leisure outside the home, he lets down his son and betrays his scope for suitable development."³⁸

*Psychiatric.*³⁹ Sexual offences are occasionally directly attributable to mental defectiveness,⁴⁰ some forms of psychopathic personality,⁴¹ psychoneurosis⁴² and insanity.⁴³ The effect of such abnormalities upon the responsibility of the accused may require special consideration at his trial, but it is unnecessary to consider here the various medico-legal problems which may arise in connection therewith since, generally, the principles involved in sexual cases are applicable to other forms of criminal behaviour.

Broadly speaking, in the ordinary affairs of life the behaviour of ordinary men is largely controlled by the fact that penalties are liable to be inflicted if anti-social tendencies are indulged. In mental defectiveness the penalty is either not envisaged or is too remote to counterbalance a present advantage. In the majority of psychopathic personalities and psychoneurotics the penalty may be clearly appraised, but outweighed or obscured by the urgency of the desire to commit the illegal act. A tendency towards self-punishment is sometimes apparent in the psychoneurotic. In the insane the penalty may be ignored, unrecognized or welcomed.

Among mentally defective persons received into prison, sexual of-

38. J. C. Markwood, personal communication.

39. The unconscious psychological factors elucidated by deep mental analysis are too involved for presentation here, and are not acceptable to all observers. "The extremists who see in psychiatry the sole and ultimate solution of sex crimes claim that most, if not all, of these offenders suffer from some individual mental disorder which should be treated by psychological individual methods. They want the psychiatrists to decide once and for all which individuals are treatable and determine how long their treatment should last. They want the doctors to decide definitely that they are cured or else pronounce them definitely incurable, as if it could be predicted that every sexual offender would fit into one of two cubbyholes for the rest of his life." Wertham, *Psychiatry and the Prevention of Sex Crimes* (1933) 28 J. CRIM. L. & CRIMINOLOGY, 348.

40. *Mental defectiveness*: The term is used here to signify an arrested or incomplete development of mind—in English law, existing before the age of eighteen, whether arising from inherent causes or induced by disease or injury. Ed.

41. *Psychopathic personality*: An abnormal personality, with or without psychosis, associated with emotional instability, defective will power, and a poorly developed ethical background and low character traits. Psychopathic individuals, as a rule, have no intellectual impairment but their judgment is poor; they are frequently antisocial; a number of them are chronic alcoholics, drug addicts, and sexual perverts. Ed.

42. *Psychoneurosis*: A mental disorder caused primarily by some psychic conflict, because of maladjustment, and in which there can be found no demonstrable causative organic pathology, without disturbance of intellectual function, without distortion of reality and without primary mood pathology. Ed.

43. *Insanity*: Insanity is used in this article for convenience, and refers to those psychotics in whom certifiability and irresponsibility are legal consequences. *Psychosis* is the term generally used for major forms of mental disorder which involve a widespread change of personality and often necessitate certification. Ed.

fences in England and Wales come second in frequency to acquisitive offences. Usually the sexual crime is of a minor character, but murder and rape occur. Occasionally two mentally defective persons commit a sexual offence on each other and disprove the view that grossly mentally abnormal persons do not conspire together to commit a crime. The importance of sexual offences committed by mentally defective persons lies in the fact that they are almost inevitably repeated unless the offender is placed under care and supervision.

Psychopathic personalities often commit sexual offences. The sexual perverts are included in this group of mentally abnormal persons here and in many classifications, and this is convenient in our present state of knowledge. But some sexual offenders appear to belong to the constitutional psychic inferior group of psychopathic personalities and consequently they may commit offences to overcome their feelings of inferiority and so are not necessarily sexual perverts in the narrow sense.

Psychoneurotic persons sometimes show their sexual inferiority and striving for superiority by committing a sexual murder or other sexual crime. The hysterical⁴⁴ sexual offender of this group is, however, usually a nuisance to society rather than a menace, as for example when he sends indecent letters through the post, and in mild cases of exhibitionism. The sexual life of the hysteric has usually a complicated pattern: precocity, repression, extreme flirtatiousness and provocative-ness, combined with frigidity and the gradual development with a married partner of an intricate and abnormal emotional relationship is a rather common sequence.⁴⁵ In general, sexual crime, like other crimes committed by hysterical persons, has a histrionic element often associated with it.

It is often extremely difficult to assess the amount of psychoneurotic compulsiveness⁴⁶ in sexual crime as the normal sexual urge has in many

44. *Hysteria*: A condition characterized by emotional instability and the presence of a great variety of symptoms, such as partial loss of memory, disturbances in sensation, motion, contractures of limbs, abnormal movements, disturbances in vision, olfaction, hearing, speech and symptoms referable to the respiratory, circulatory, gastrointestinal, and genito-urinary systems, all of which resemble organic disease without demonstrable objective evidences of the presence of such disease, but they are due to mental causes, such as autosuggestion, dissociation, or repressed emotions. Ed.

45. EAST and HUBERT, *op. cit. supra* note 35, at 28.

46. *Psychoneurotic compulsiveness* and *Obsessional disorder* refer to the obsessive-compulsive syndrome, one of the major types of psychoneurosis which Smith and Solomon characterize as follows: "The obsessive-compulsive syndrome is manifested by the patient having the idea that he is compelled or is likely to be compelled to carry out acts which are contrary to his ordinary desires. Thus, in the compulsive syndrome, the individual may be greatly distressed because he feels that he will throw himself out of a window; that he will harm his child; that he will run someone down by automobile. The obsessive states are those in which the individual has thoughts running through his mind which he feels unable to control or put aside. Sometimes these will be in the form of indecent expressions or li-

men and women a strong element of compulsion as well as of periodicity. The known circumstances of the crime must be considered in detail and compared with normal sexual activity, together with the intention of the accused, before an accurate assessment can be made as to the part which his obsession has played in bringing about the illegal behaviour. I believe, as a result of personal experience, that sexual crime is seldom due to true obsessional disorder⁴⁷ and that clear-cut obsessional states are less frequently a cause of crime than is sometimes supposed.⁴⁸

An anxiety state⁴⁹ may be a causal factor of a sexual offence. Sometimes a crime may be committed in order that the fear of detection may increase emotional excitement sufficiently to enable a release of sexual tension, as in the case of the woman who stole articles from a shop finding that fear of arrest produced in her a condition of marked stimulation.

Psychotic persons, who suffer from a major mental disorder, are frequently associated with criminal behaviour. The usual forms encountered in sexual offenders are schizophrenia,⁵⁰ manic-depressive

centious ideas and mind pictures. The individual will usually say that it is much like a tune running through one's mind of which one cannot get rid. Because of unpleasant connotations, those thoughts or pictures interrupt the ordinary flow of thinking and become extremely distressing. In this category one also usually considers the phobias or fears, such as the fear of crossing the street or being in closed places; the fear of riding on a streetcar or train, or going more than a short distance from home; the fear of high places. These fears, which the individual will agree are unreasonable and contrary to his better judgment nevertheless lead to a sense of panic if he tries to do the thing which produces the fear." Smith and Solomon, *Traumatic Neuroses in Court* (1943) 30 VA. L. REV. 87, 94-5.

47. See note 46 *supra*.

48. "Sexual offences or perversions are sometimes referred to as though they were obsessional; they are really no more so than gluttony. The patient enters into the act and willingly entertains the anticipation of it; he has none of the true obsessional experience even though afterwards he recognizes the unwisdom of his act and may say that he had a preliminary repugnance which had been more of the intellect than of the will, if one may so express it. There are of course rare instances in which sexual offences have been of an obsessional nature." Lewis, *Problems of Obsessional Illness* (1935-36) 29 PROC. ROY. SOC. MED. 336.

49. *Anxiety state*: "In the anxiety states, one finds an individual who becomes extremely panicky on occasions, usually without any understanding of the reason for this panic. These attacks are likely to be of relatively short duration, but represent real states of tremendous agitation. Such states of necessity are accompanied by the physical component of acute fright, namely, rapid pulse, strongly beating heart, tremors, cold perspiration, and a sense of impending collapse. These physical signs which are a part of fear and panic, naturally lead the patient to have concern about his viscera." Smith and Solomon, *op. cit. supra* note 46, at 94. Anxiety states were the most common type of psychoneurosis seen among soldiers exposed to combat conditions during the recent war.

50. *Schizophrenia* (dementia praecox): A psychosis essentially of the period of puberty and adolescence, characterized by a dementia which tends to progress, though frequently interrupted by remissions. It includes the *paranoid*, *hebephrenic*, *catatonic*, *simple*, and *mixed* forms. Patients suffering from schizophrenia comprise by far the largest number of

disorder,⁵¹ general paresis,⁵² the alcoholic psychoses,⁵³ epilepsy⁵⁴ and senile dementia.⁵⁵

Schizophrenia is rather frequently associated with sexual crime and with homicidal crimes which are sexual in origin.⁵⁶ Morbid compulsive sexual conduct is sometimes an early manifestation of a schizophrenic illness and the phantasies,⁵⁷ delusions⁵⁸ and hallucinations⁵⁹ which may be present are often frankly heterosexual or homosexual in character. The schizophrenic offender may have some insight into his condition and be willing to discuss the events connected with the crime.

Manic-depressive disease may be associated with sexual crime in either the elated or depressed phase. In the elated the crime is often impulsive. In the depressed phase a sexual crime may also be impulsive but is usually the result of delusions and deliberation. At times a homicidal sexual crime committed in the melancholic cycle may be of an altruistic nature. In some cases of mental depression a sexual crime

admissions to hospitals for mental disease. Some of the outstanding symptoms of schizophrenia are: Marked *introversion* (withdrawal of the patient's interests from the outside world as objectively conceived), *narcissism* (love of one's self), emotional flattening, negativism, stubbornness, eroticism (sexual excitement on a physical, mental or emotional basis), delusions and hallucinations, all of which gradually lead to mental deterioration. Ed.

51. *Manic-depressive disorder*: In this condition there occur alternating periods of excitement (mania) and depression with usually, but not always, a comparatively normal period (*lucid interval*) between the two. The duration and severity of the attacks, and the duration of the relatively normal period are very varying. During the manic stage there is a feeling of happiness and unusual well-being with overactivity in speech, thought (*flight of ideas*) and action; during the depressed stage the patient is sad, has difficulty in thinking and acting, and is generally retarded. Ed.

52. *Paretic*: A patient suffering from *general paresis* which results from advanced syphilitic infection of the brain. Ed.

53. *Alcoholic psychosis*: Serious mental illness in which alcohol is a primary etiological factor. The three main clinical types of alcoholic psychosis are delirium tremens, Korsakow's psychosis and chronic alcoholism. The reader probably knows something about the first and third of these. Korsakow's psychosis is a psychosis usually based on chronic alcoholism, marked by disturbance of orientation, susceptibility to external stimulation and suggestion, falsification of memory, and hallucinations. The signs of polyneuritis (wrist drop, etc.) are usually present. Ed.

54. *Epilepsy*: A disorder characterized by one or more of the following: Recurrent attacks of impairment of consciousness, involuntary movements, and special types of abnormality in the brain-wave pattern. Ed.

55. *Dementia*: A defect or loss of the intellectual processes, memory and will power acquired later in life in a person previously intelligent. Ed.

56. See p. 536 *supra*.

57. *Phantasy*: A psychic mechanism by which the picture of a harsh reality is changed into imaginary reality that satisfies the patient's subjective demands. Ed.

58. *Delusion*: A false belief which cannot be disproved to the patient; as a rule, delusions are not true as to fact; they are highly improbable, even manifestly impossible and often bizarre; they cannot be corrected by an appeal to reason and are out of harmony with the individual's education and surroundings. Ed.

59. *Hallucination*: A perception without there being anything to perceive; it is usually *auditory* or *visual*, but may include any of the senses. Ed.

may be the result of an attempt temporarily to replace gloom by a pleasurable experience.

In general, paretic sexual offences are less frequent than some earlier writers declared. When they occur they are usually, in my experience, of the minor sort and are carried out in a particularly shameless manner.

The alcoholic psychoses are rather frequently related to sexual crime. The aphrodisiac action of alcohol together with the blunting of conscience and reason which accompany alcoholic excesses often cause major and minor forms of sexual crime apart from declared mental disease, and the mental and moral deterioration which gradually overtakes many alcoholics is also occasionally associated with illegal sexuality.

Idiopathic epilepsy⁶⁰ is only rarely related to sexual crime. In elderly men sexual crime is often due to the fact that phantasy and crime have outlived potency and may be a symptom of senile degeneration. Senile sexuality, deprived of an adult victim or accomplice sometimes expresses itself by indecent assaults upon willing and unwilling children. Homosexual crimes of a minor character sometimes occur early in the course of the disease. Murder due to sexual delusions concerning the married partner arises in persons of both sexes. Senile sexuality sometimes expresses itself by sending indecent letters through the post to persons who may be strangers.⁶¹

SEXUAL OFFENCES

Heterosexual. Under the heading of heterosexual offences are included rape, carnal knowledge, incest, indecent assaults on unwilling women, and sexual interference with girls under the age of consent.

It is sometimes alleged that it is impossible for a man of ordinary physique to overcome a woman of ordinary strength and have carnal knowledge of her by force and against her will. It would almost seem that those who hold this view persuade themselves that the rapist treats his victim with the consideration that men usually adopt towards the women they meet socially. But medical men dealing with these cases are sometimes revolted by the brutality inflicted upon the victim. In one case a woman was murdered whilst struggling with her attacker. She received three fractures of the jaw, thirteen ribs were broken, the liver was ruptured and there were numerous bruises about the chest, abdomen, arms and legs as well as the local injuries due to penetration. It is unnecessary to refer to other examples since lawyers, pathologists, police surgeons, and prison psychiatrists are aware of the injuries which are sometimes inflicted on women when forcibly raped.

60. *Idiopathic epilepsy*: Epilepsy which arises apparently spontaneously without any specific cause, in contradistinction to traumatic epilepsy which is due to head injury and the formation of scar tissue in or near the brain which sets up a focus of irritation. Ed.

61. EAST, FORENSIC PSYCHIATRY (1927) 220.

Reference has already been made to the fact that incest was practised by the Ptolemies. It may be added that in Babylonian Law it was punished by death or exile according to its heinousness, and that formerly it was not generally treated as a crime in England, although with other offences against morals it was made punishable by death in 1650.⁶² Although incest has been a criminal offence in England since 1908,⁶³ and in 1922 the proviso that the proceedings were to be heard *in camera* was repealed,⁶⁴ there is still much public ignorance of the fact that it is today a misdemeanour and is still probably more frequent than is sometimes supposed. During the years 1929-1938 inclusive, 471 males and 49 females were convicted of incest. The majority of the women were over 21 years of age. The fact that among men incest was much more prevalent in the age group 40 to 50 years than at any other age suggests that many were widowers with daughters living at home.

In regard to the other heterosexual offences a miscellany of information may suffice. First, indecent assaults on unwilling women, and interference with girls under age may not be evidence of mental or sexual abnormality. Second, fewer sexual offences occur in women than in men, and the law has been more occupied with protecting women and girls from men than men and boys from women. Third, sexual offences among women are usually heterosexual and those connected with prostitution are the commonest. The prostitutes who are received into prison form a collection of very different individuals. Some are depraved and alcoholic; others are mentally defective or psychotic; some are constitutional psychic inferiors; many are temperamentally unstable, hysterical and suggestible; others are idle, vicious, deceitful and unscrupulous.⁶⁵

Homosexual or Sexually Inverted. As already inferred this term is applied to cases in which the sexual impulse is directed towards a member of the same sex. At the present time homosexual behaviour reaches extremes which are condoned by some commentators and decried by others. The position is fluid: some observers see little objection to restricting homosexual crimes to acts which cause bodily injury, or contaminate young people, or offend against public decency. There is reason to believe, however, that ethical considerations and religious observances enable some, perhaps many, homosexuals to lead

62. Herbert quotes Blackstone that since the Restoration it has been left "to the feeble coercion of the spiritual courts." 12 ENCYCLOPAEDIA BRITANNICA (14th ed. 1937) 132. Writing in 1883 Stephen stated "The only reason I can assign why incest in its very worst forms is not a crime by the laws of England is that it is an ecclesiastical offense and is even now occasionally punished as such." 2 STEPHEN, *op. cit. supra* note 1, at 430.

63. Punishment of Incest Act, 1908, 8 Ed. VII, c. 45.

64. Criminal Law Amendment Act, 1922, 12 & 13 Geo. V, c. 56.

65. It is significant that when answering the questionnaire of Katherine Davis, of 1006 replies, 30 women viewed prostitution as a necessary evil and 24 favored regulation. DAVIS, FACTORS IN THE SEX LIFE OF TWENTY-TWO HUNDRED WOMEN (1929) 377.

chaste lives, and that to amend the law and permit homosexuality *ubi absque injuria* would make their self-denying efforts still more difficult.

If the psychological definition of a sexual perversion is accepted many homosexual offenders are not sexual perverts. For example, those who occasionally indulge in homosexuality as an adventure or as a substitute when long deprived by circumstances of ordinary sexual relationships, as a temporary convenience and as the result of a surfeit of experience in heterosexual relationships or fear of venereal disease are not to be considered perverts.

Homosexuality is often found in persons who show no other marked mental or physical abnormality; they may be of superior intelligence, prominent and successful in creative work and in occupations of social importance. It is well to remember that the proportion of homosexuals in the general population is probably large and that antisocial conduct appears to be less certainly attributable to mental abnormality in proportion to the frequency with which the corresponding anti-social tendencies are found in the ordinary population.

There is perhaps even more uncertainty in regard to the amount of homosexuality among women than among men.⁶⁶ A questionnaire survey revealed that among married women selected from ordinary civil life, women's clubs and colleges, and unmarried women college graduates, that over half (605 of 1,200) who answered a questionnaire had at some time or other experienced intense emotional relationships with other women, and that over a quarter admitted that the relationship was carried to the point of overt homosexual expression.⁶⁷

Homosexuality may be constitutional or acquired, and in many acquired cases a constitutional factor seems to be also present. Generally, a clearer view of the condition is obtained if it is regarded as the result of a combination of various causes.

The importance of the constitutional factor was emphasized by Havelock Ellis who found family or hereditary inversion in 35 percent of the cases.⁶⁸ In a series of 79 cases of homosexuality in males coming before the courts, it appeared fairly certain that a factor related to the physical type concerned might play an important part; attractive and good looking boys and young men would be predisposed to the development of homosexuality because they would be likely to attract homosexuals and be seduced by them.⁶⁹ A constitutional element is occa-

66. Katherine Davis states: "My own observation in both educational and penological institutions leads me to believe that the phenomena . . . are much more widespread than is generally suspected." *Id.* at 245.

67. *Id.* at 248.

68. ELLIS, *PSYCHOLOGY OF SEX* (1933) 199. See also Lang, *Genetic Determination of Homosexuality* (1940) 92 *J. NERV. AND MENT. DIS.* 55.

69. EAST and HUBERT, *op. cit. supra* note 35, at 89.

sionally suggested by the fact that some male homosexuals have undoubted feminine physical characteristics. But as a rule the active homosexual partner does not show any gross exaggeration in his own person of the physical attributes of the opposite sex.

Seduction in early youth or childhood was the commonest single environmental factor found in one survey, and it seemed that this was probably far more likely an explanation of homosexuality than one which depends upon the assumption that there is commonly some specific glandular influence acting in a feminine direction in these cases.⁷⁰ Apart from seduction, homosexuality appears to be sometimes acquired as the result of conditioning, when an early sexual experience is associated with an older person of the same sex. It is sometimes connected with parental warnings regarding the dangers of venereal disease which repress heterosexual and stimulate homosexual interests. In certain families the general parental attitude has much the same effect. For example, those who desire a daughter bring up the son in as girlish a manner as possible. Or the widowed mother who indirectly in her desire to keep her son to herself and away from other women, produces in him a homosexual outlook by fostering tendencies, perhaps already present, thereby increasing the chances of homosexual seduction.

The tendency towards homosexual interest may be realized for the first time at any age. In the survey referred to above the earliest homosexual activity remembered occurred at the age of four. In some cases the patient will not discover his tendency until he reaches middle age. If the activity is released by organic brain disease the offender may be over sixty years of age. In cases where the individual may not have recognized their implication he will be able to remember dreams or phantasies in early life which have had a homosexual significance. Occasionally, it appears to be true that an offender did not realize his homosexual tendency until it was expressed in a criminal action on a sudden impulse, and sometimes it may be first declared during a state of alcoholic intoxication.

In sum, homosexuality is usually unrelated to other forms of sexual perversion, and is due to environmental influences combined with a constitutional factor predisposing towards femininity. There is, however, no reason to regard heterosexuality and homosexuality as being necessarily antagonistic, and many homosexuals are bisexual.

In bisexuality although there is pleasure and satisfaction in relationships with both sexes there is usually a greater degree of satisfaction in connection with one sex.⁷¹ The forensic recognition of bisexuality is important in explaining cases of latent homosexuality. A man

70. *Ibid.*

71. ELLIS, *op. cit.* *supra* note 68, at 199.

who had been married for some years and consummated the marriage from time to time, although his real interests were homosexual, murdered his male paramour.

In conclusion, other authorities have suggested other causative factors in homosexuality,⁷² the importance of which seem to have been exaggerated: social persecution,⁷³ alcoholism, paranoia,⁷⁴ schizophrenia, and reactive depression.⁷⁵

Exhibitionism. In criminal cases exhibitionism denotes indecent exposure of the genitals and more rarely the gluteal region including the motivation of the act. It is not used for the large number of persons who endeavour by some means or other to obtain the spot-light of publicity.

Social prohibitions relating to exposure vary with the times, and a visit to many bathing beaches will show how much our ideas on the matter have been modified in recent years. Briefly, the motive behind exposing part of the body on social occasions in a conventional manner differs from that of the pervert, inasmuch as it is an adult method of attracting the opposite sex in order to bring about a closer relationship with an admirer on a future occasion. The pervert adopts a childish method of attracting attention to himself in order to experience sexual gratification at the time of the exhibition, without physical contact or long term objective.

The sexual object of the typical heterosexual exhibitionist is fairly well fixed. She must be a stranger, sometimes more than one person must be present, and her age must be fairly constant; girls of a particular age are sometimes essential. In some exhibitionists the stereotyped character of the act is shown by the fact that it is often repeated in the same place, at the same time of day and to the same person. In the ordinary heterosexual relationships exhibitionists show no tendency to enjoy exhibitionism on the part of their partner. In heterosexual and homosexual exhibitionism the act may be a commercial solicitation, but examples of true homosexual exhibitionism occur.

72. It should be remembered that in the above presentation the term homosexuality is restricted to cases in which the sexual impulse is concerned. To include in this term occasions when for social or convivial purposes men like to get together with other men, and women with other women, on a non-genital level, is an extension of its meaning which to many seems unwarranted and in the present context would be worse than useless.

73. Further, an investigation carried out by Hubert on an unselected group of women homosexuals, as well as other studies upon female offenders, prostitutes and others, showed that women homosexuals, as a group, have many characteristics which may be regarded as perverse and asocial in considerable excess of those shown in a heterosexual group. EAST and HUBERT, *op. cit. supra* note 35, at 89. See also ELLIS, *op. cit. supra* note 68, at 199.

74. HENDERSON and GILLESPIE, *TEXT BOOK OF PSYCHIATRY* (6th ed. 1944) 378.

75. *Reactive depression:* As Coon points out, depressions may be classified according to severity into *simple depression* (i.e., *simple retardation*), *acute depression* and *depressive stupor*. The cause of the factors responsible for agitated depression are obscure. The con-

Exhibitionists form a very varied group. The true exhibitionist pervert prefers this method of sexual gratification to any other, and many deliberately seek opportunities for exhibitionistic adventures. Others fight against the desire and wish to have it removed. The act may be impulsive in its nature though not the result of an obsessional disorder. There appears to be no tendency for exhibitionism to be associated particularly with hypersexuality or hyposexuality, and in many cases the exhibitionist who wishes to overcome his perversion will find he is able to restrain himself from criminal behaviour if he never goes out alone.

Offenders who show this form of sexual behaviour usually have a history of autoerotic behaviour from the age of puberty or before. The step from this to indecent exposure to passing women in a relatively unfrequented place may not be a great one in some men. I believe that in the majority of the cases the importance of phantasy cannot be overlooked, and that in some the excitement and element of anxiety associated with the possibility of arrest stimulates phantasy and becomes a desirable addition to autoerotic satisfaction. The act soon becomes a habit which is indulged in conditions of increased sexual tension, and physical satisfaction becomes so closely associated with it that the practice often persists after marriage, although normal sexual relations are established with the married partner.

Additional precipitating factors are the presence of a general tendency towards sexual perversion, a disposition which leads to careless behaviour, lack of moral control and imperfect emotional development in social relationships. In many cases a history of heterosexual play in childhood is common and may remove at an early age the barrier between the sexes and predispose to exhibitionism.

Occasionally some local physical abnormality may predispose towards the act, but usually any such explanation should be regarded with suspicion. Fear of ordinary sexual relations or of venereal disease or an inability to obtain normal heterosexual relations may be precipitating factors. It may be an isolated act in connection with a chance opportunity. It may be the result of the loss of control which follows alcoholic indulgence, and the desire to urinate may suggest the activity. It may be the result of mental defectiveness, psychoneurosis or psychosis as well as states of psychopathic personality.

dition is not necessarily limited to the involuntal or middle age period, but may come at almost any phase of adult life. "Some psychiatrists have called attention to a rigid, hyper-conscientious, perfectionistic type of personality which predisposes to the disorder." See Coon, *Psychiatry for the Lawyer: The Principal Psychoses* (1946) 31 CORN. L. Q. 327, 331.

Such depressions affect the emotional life more than the intellectual, and a person acutely depressed may appear from his outward behavior to be well oriented, since it is characteristic for intellect to be rather well preserved in the usual case. Persons subject to acute reactive depression are likely to commit suicide, and this often occurs at a time when the patient is on the road to recovery rather than at the peak of his illness.

Sadism and Masochism. The term sadism is used here for activities which enable sexual satisfaction to be obtained from the act of inflicting pain, and masochism for activities which provide sexual satisfaction by suffering pain. The victim of a sadist is not necessarily a masochist, and the aggressor of a masochist is not necessarily a sadist.⁷⁶

The cruelty or bearing of pain in sadism or masochism is the most striking feature in the emotional life of the sadist or masochist, and in many cases a complicated ritual of a stereotyped pattern precedes the act, and is an essential accompaniment.

Sadism and masochism are believed to be based on normal human impulses and reinforced weak impulses, and to be extremes of tendencies which, in slight degree, are within the biological sphere. The sadist is not necessarily impelled by the desire to be cruel; his objective is to arouse a specific emotion. So the masochist does not necessarily wish to suffer cruelty, but to experience the specific sexual emotion which pain incites. Sadists and masochists are often undersexed rather than oversexed. Strong sensations and emotions such as anxiety and grief appear to act sometimes as sexual stimulants, and may produce pleasure although painful in themselves.⁷⁷

Others regard sadism and masochism as the impulses of the two opposed but independent instincts of self-assertion and submission respectively.⁷⁸ And it is a matter of common observation that in sexual contacts the aggressiveness of the man is opposed to a degree of submissiveness in the woman. At the same time both men and women may exhibit evidence of sadism and masochism.

Freud states "The sexuality of most men shows a taint of aggression, it is a propensity to subdue, the biological significance of which lies in the necessity of overcoming the resistance of the sexual object by actions other than mere courting. Sadism would then correspond to an aggressive component of the sexual impulse which has become independent and exaggerated and has been brought into the foreground by displacement."⁷⁹ He comments in another passage "A sadist is simultaneously a masochist, though either the active or the passive side of the perversion may be strongly developed and thus represent his preponderate activity."⁸⁰ Many will agree with his view that if children

76. The infliction of suffering on oneself, or seeking out situations which enable others to inflict suffering upon one may also have a pleasurable effect apart from sexual accompaniment. But to include under the heading of sadism and masochism conduct which is pleasurable in a non-sexual manner would inappropriately extend this thesis. For the same reason the more abnormal and complicated situations and conditions arising through mental disease or any grossly abnormal emotional behaviour pattern, from whatever cause other than sexual, are excluded.

77. ELLIS, *op. cit. supra* note 68, at 174.

78. W. McDOUGALL, *PSYCHOANALYSIS AND SOCIAL PSYCHOLOGY* (1936) 68.

79. FREUD, *THREE CONTRIBUTIONS TO THE THEORY OF SEX* (2d ed. 1920) 22.

80. *Id.* at 23.

of a delicate age "become spectators of the sexual act between grown-ups, for which an occasion is furnished by the conviction of the grown-ups that little children cannot understand anything sexual, they cannot help conceiving the sexual act as a kind of maltreating or overpowering, that is, it impresses them in a sadistic sense. Psychoanalysis also teaches us that such an early childhood impression contributes much to the disposition for a later sadistic displacement of the sexual aim."⁸¹

A sadist, when his confidence is gained, readily admits that he obtains sexual pleasure from the act, and this seems essential for diagnosis. Sometimes there is a very strong reason to assume that sexual excitement was present although the individual cannot afterwards verbalise the fact that it was present physically or mentally. For example, recollection of a specific emotional gratification from an overt act may be dim when the sadist has frequently obtained sexual pleasure from phantasies similar in content to the activity. To extend the term to cover cases in which sexual feeling may have been present although unrecognized raises questions as to the exact meaning of "unconscious" sexual pleasure, and of the propriety of identifying the interpretation of the interviewer with material actually presented by the subject.⁸²

In forensic situations cases of sadism can be conveniently considered in connection with reality, phantasy or simulation. Sadistic crime includes murder, attempted murder, wounding and lesser bodily injuries, as well as sexual assaults, damage to property by cutting and slashing, inksplashing and the like.

As a cause of murder sadism may operate alone or in association with an attack of manic-depressive disease or other mental disorder. The degree of violence employed varies with sadists' individual difficulty in achieving sexual satisfaction. In one case a woman and a child were

81. *Id.* at 57.

82. Discussing sadism and masochism East and Hubert state: The reasons that led to the development of this abnormality are often difficult to determine, but probably they are in all cases specific and environmental. Many "remember gaining sexual pleasure from phantasies of this nature in early years, and very often remember pleasure obtained from actual performances. Contact with others with similar, or opposite, tendencies and certain types of story also have a direct influence. . . . The child thinks of human relations so much in terms of like and dislike, friendship and enmity, kindness and unkindness, physical caress or cruelty that the developing sexual feeling readily associates itself with the dramatic form of these attitudes. It is a well-known finding also that children who are ignorant of inter-sexual relations will, upon learning something of them associate them with a sexual feeling in themselves and the conception of a violent attack by the man on the woman. In addition to this, various abnormal personality types who tend to associate sexual feeling with excretory or nutritive activities will, by easily appreciated associations, tend to develop sadistic and masochistic interests. Individuals who, through constitutional factors or unfortunate experience develop very strong aggressive drives, such as resentment or antagonism, will tend to link them with sexual feelings developing at the same time and with a similar result." EAST and HUBERT, *op. cit. supra* note 35, at 114.

murdered and four other women were seriously assaulted before the sadistic homicide was arrested. A less aggressive type is the man who stabs a woman or girl with a penknife or needle as he passes her in the street, or strikes at her with a stick, or, as in one case, with a stout piece of wire. The dress slashers and dress defilers belong to this group. A married man, aged 23, had never been in the hands of the police until he was arrested and convicted of slashing with a safety razor the dresses of two women on the same evening.⁸³ Sadistic arson, so-called, is probably infrequent in Britain and an incorrect diagnosis may be made if the statements of the offender and the details of his offence are not carefully scrutinized. There appeared to be some reason to consider that a youth, aged 21, set fire to some hayricks to produce an emotional state in which sexual erethism was an important feature. He had derived sexual gratification from sadistic conduct with boys, and masochistic phantasies accompanied autoerotic activities and were present in his dreams. The importance of phantasy in sexual affairs generally is well recognized, and sadistic acts and phantasies in association with inanimate objects may be of forensic importance. I have referred elsewhere to the case of a fetishist who committed burglary to obtain possession of women's shoes which he then slashed savagely with a knife. He was detected in prison cutting the throats of women in the photographs which other prisoners retained in their cells, and he admitted that by so doing he derived full sexual gratification. Cruelty may be inflicted upon animals for a sadistic purpose and occasionally maiming of domestic animals, cattle and horses, is attributable to the same cause.

Sadism may be simulated when a rapist kills his victim in order to silence the only witness of his crime, or uses extreme violence to overcome her resistance or to effect his escape. There was reason to believe that one murderer mutilated the body of a woman in an attempt to lead the police to attribute the crimes to a sadist rather than to a robber and so divert suspicion from himself or alternatively suggest that the crimes were due to insanity.

Personal experience and observation lead me to recapitulate the following findings of forensic importance: Sadism may be attributable to an early sex experience; it may be expressed early or late in life; it may be practised upon inanimate objects with full effect, and upon animals or a person of the same or opposite sex; it may vary in intensity from mild phantasy to savage murder; it may be accompanied by a stereotyped ritual; it may be expressed at different times in the same manner by the same person; it may be used as a sexual stimulant in

83. A widower was convicted of throwing on to ladies' dresses, from a fountain pen, a solution of horse excrement which he prepared at home for the purpose, so that if arrested he might attribute the soiling of the dresses to splashings from the road.

cases of sexual inferiority; it is usually more pleasurable to the sadist than normal sexual intercourse which is generally of secondary importance, but it may be used as an occasional alternative; it may be controlled, uncontrolled, and when associated with mental disease uncontrollable. The sadist may be sexually inferior; he may have masochistic tendencies; he may be homosexual, heterosexual, or bisexual; his victims are usually fortuitous and may be of widely different ages; the degree of violence used may depend upon the delay which occurs before full sexual satisfaction is reached, that is to say the greater the delay the greater the violence; the greater the violence used the more likely is the act to be associated with gross mental abnormality. The sadist may refuse medical treatment; he may be insane according to the law and irresponsible; he may be fully responsible; he may suffer from some minor form of mental abnormality and present various degrees of culpability.

Crime seldom results from the practice of masochism if this term is restricted to the definition given above, but it sometimes appears in convicted offenders. A young woman convicted of theft frequently cut herself about the arms, legs and breasts and inserted pins and needles under her skin usually one or two days before the onset of menstruation. She derived sexual pleasure and felt relieved when she inflicted the pain upon herself and saw blood from the incisions.⁸⁴

Sado-masochistic practices appear to be more attractive to some women than is sometimes suspected. A sadist stated that only one of several girls who were not public women refused his invitation to beat them, and there was reason to believe that he spoke the truth.

Fetishism. The term fetishism, generally employed to signify the application of objects made by art to magical and religious purposes, is used in psychological terminology in different senses to imply sexual perversion itself, or cases in which sexual interest is mainly centered upon a part of the body of the desirable individual which may be little adapted for sexual purposes, or upon an inanimate object such as a shoe or other article of her (or his) clothing. Fetishism is not exclusively confined to heterosexuals.⁸⁵

Slight degrees of fetishism are, of course, entirely normal. Every lover tends to become attracted to some individual feature of the person he admires, or to some of the various articles that come into contact with her. This tendency becomes abnormal when the striving for the fetish replaces the normal sexual aim, or when the living feature or inanimate object is divorced from the personality which it replaces and itself becomes the exclusive sexual object.

84. EAST and HUBERT, *op. cit. supra* note 35, at 114.

85. Thoinot records the case of a homosexual fetishist who was erotically excited by contemplation of the patent leather shoes of other men. THOINOT, *MEDICO-LEGAL ASPECTS OF MORAL OFFENCES* (1920) 416.

The fetishist may commit burglary, theft and assault in order to provide himself with the required article of female clothing, and some fetishists find the garment must be stolen if full satisfaction is to be obtained. The shoe fetishist occasionally appears in the criminal courts, and many years ago a man came under observation who had knocked down several women in the streets of a London suburb in order to possess one of their shoes. The hair fetishist was also a rather frequent offender at the time when young girls wore their hair plaited down their back. A man, aged 31, was arrested as a suspected person. At his address were found five plaits of hair of different colours, loose hair of two different colours as well as seventy-two hair ribbons. He was not mentally defective, and no psychoneurosis or psychosis was present. He had served in the army in the East and had committed similar offences there. The activity was traced to its origin, and was influenced by the fact that he was living apart from his wife, and the fear of venereal disease prevented indulgence in promiscuous intercourse.

In the simpler type of case, sexual excitement becomes associated by chance with a particular activity or object during a period of emotional tension, and, by repeated phantasy usually combined with autoerotic manifestations, becomes increasingly important and fulfils the primary sexual need. In the more complicated case a relatively harmless perversion developed in a similar manner allows partial outlet to a much more dangerous urge, such as a strong sadistic interest.⁸³

Unless the confidence of the offender is obtained mistakes in diagnosis of fetishistic manifestations are likely to arise. In one case of murder associated with rape the homicide took away with him an article of his victim's underclothing, and it was suggested that this was a fetishistic act indicating sexual abnormality. In fact, the homicide frankly stated at a psychiatric examination that he thought the article when examined would show signs of seminal stains and give a clue to the cause of the murder. So he took it away with him, and disposed of it at the first opportunity.

Transvestism or Eonism. Cross-dressing was prohibited for either sex by the Mosaic Law.⁸⁷ Whatever purpose lay behind this decree it is a well-known fact that sexual pleasure in either sex is sometimes derived from wearing clothing of the opposite sex.

The act may be relatively unimportant in itself but may dramatize phantasy if the pervert looks at his image in a mirror when so clothed. On the other hand when associated with other perversions it may lead to fatal consequences. In a case which did not come before a criminal

86. A youth investigated by East and Hubert obtained sexual pleasure from collecting, making and playing with knives and from sadistic phantasies in which he made imaginary attacks on girls. EAST and HUBERT, *op. cit. supra* note 35, at 138.

87. Deuteronomy, xxii. 5.

court, transvestism, in an undersexed married man, was associated with autoeroticism and masochistic practices including suspension. The activity was accompanied by a highly complicated ritual which was carried out by the pervert when he was alone. It ultimately miscarried and caused his death by strangulation.

Although homosexuals may dress up as women to increase or vary their attraction to other men, the true male transvestite obtains sexual gratification from pretending to be a woman, and his phantasy is facilitated by wearing her clothing. In appearance, manners and interests they seem and feel more feminine than masculine and naturally adopt the little characteristic mannerisms of women. Investigation often shows that as children their play and general behaviour was girlish, and as they grew older they acquired feminine rather than masculine occupations, associating and identifying themselves with women in preference to men. It is important to distinguish this type from the homosexual as the eonist lives with no sign of sexual interest in his own sex. Perhaps both are derived from the same physical type, but in the true transvestite early homosexual seduction appears to be unusual and sexual activity is confined to phantasy and autoerotic habits.⁸⁸

Paedophilia, Necrophilia, Voyeurism, and Bestiality. The sexual perversions which do not usually lead to criminal behaviour need not be considered here. A brief notice of the less frequent sexual perversions, namely paedophilia, necrophilia, voyeurism and bestiality is, however, necessary.

In paedophilia there is sexual attraction to children or immature girls, and this may be due to influences which delay or prevent the formation of ordinary social and sexual relationships, such as mental defectiveness, retarded emotional development, or senile impotency. Interference with girls under age is hardly to be considered as abnormal if the girl is sexually mature, consenting and conceals her true age.

Necrophilia, sexual intercourse with a female cadaver, is a very uncommon offence, and my own experience is limited to three cases in which each offender was mentally defective. It is difficult to believe that anyone could commit this act unless gross mental abnormality was present. It has been suggested, however, that some sadists are necrophiliacs for fear of becoming assassins.⁸⁹

88. Havelock Ellis considered that whereas it is normal for a man to identify himself with the woman he loves the transvestite carries the identification too far, stimulated by a sensitive and feminine element in himself which is associated with a rather defective sexual virility on what may be a neurotic basis. He also held the view that an abnormal childhood with too close attachment to the mother, who might herself be rather abnormal, predisposed to the condition. He regarded it as a remarkably common anomaly, and in his experience it came next in frequency to homosexuality among sexual deviations. ELLIS, *op. cit. supra* note 68, at 210.

89. FOREL, *op. cit. supra* note 33, at 406.

Voyeurism⁹⁰ calls for police action if a concealed observer of courting couples indulges in his secret pleasures so recklessly that he is detected and assaulted by his victims. But more socially undesirable consequences sometimes result. A middle-aged man led a normal sexual life as far as could be ascertained until his wife died. He lived then with his grown-up daughter and induced her to bring men home for an immoral purpose so that he could watch the incidents which took place between them.

Bestiality is not uncommon in rural areas, and suffice it to say that it may be the result of sexual deprivation, mental defectiveness or other gross mental abnormality.

TREATMENT OF SEXUAL OFFENDERS

The defendant in a criminal court occupies the public limelight and the attention of his judge for only a brief moment. A few, psychiatrists and others, see him before and after trial in the wings, and study the manner of man he is when the paint and powder are removed. Thus, in general, the person who needs careful examination, diagnosis and therapy receives but little consideration.

At present the proportion of sexual offenders and their reconviction rates compare favourably with other groups of offenders. Experience shows that the sentences of imprisonment or penal servitude are generally effective when the offence is the result of normal impulses. However, mentally defective and psychotic sexual offenders usually repeat their offences unless they are detained in appropriate institutions. Sexual perverts may be prevented from committing a further sexual offence by a sentence of imprisonment, but there is often a grave risk that the offence will be repeated in the prison itself or when liberty is regained. In such cases the present institutional system is unsatisfactory.

The first prerequisite for improvement of the treatment of sex criminals is a better understanding, in which the public must share, of normal and abnormal sexuality. This is to be accomplished through education and not, as some of our self-appointed liberators seem to insist, by regarding unrestricted sexual indulgence as a condition of personal health. We are not expected to disrupt society for the convenience of a few who are willing to lower themselves to the level of social and ethical automatons.⁹¹

Second in importance in the handling of sexual delinquents is the institution of a pre-trial medical examination of the accused by an experienced psychiatrist. This will decide whether mental defectiveness or mental disease is present, and whether the offender requires care

90. *Voyeurist*: A person who attains sexual gratification by looking at sexual objects.

91. WELLS, HUXLEY, and WELLS, *op. cit.* *supra* note 20, at 926.

and supervision in an appropriate mental hospital. It will also determine whether the offender is suffering from a lesser form of mental abnormality which may be amenable to psychotherapy or more general psychiatric treatment. Whether or not such treatment will be successful cannot usually be predicted at this time, for many such offenders treasure their sexual gluttony and are unwilling to submit coöperatively to medical treatment which is intended to modify their taste, unless an alternative and equally pleasurable method of sexual gratification is provided.

The third requirement is close collaboration between the courts and the psychiatrists. Already some progress has been made in this direction, and valuable work done by accredited clinics in the diagnosis, treatment and social adjustment of some sexual offenders. "There is nothing about the work of the psychiatrist in these cases so technical that it could not be explained to anybody. His armory of tools does not require unintelligible words and phrases. He is not a necromancer. Often a psychiatric expert is expected to be involved, mysterious and obscure. But this is unnecessary and misleading. All he can do is to try and find facts and then to use them. Frequently the more obvious facts give the clue."⁹²

Aside from those committed to mental hospitals some sexual offenders are on the borderline which separates normality and abnormality, and in our present state of knowledge enforced detention may be the only method available for dealing with them if social security is to be immediately secured. And although frustration invites conflict and its sequelae, and the sexual offender, like others, may not be responsible for his natural tendencies, he must be held responsible for his actions if he is not insane or mentally defective, and in varying degree culpable for the manner in which he behaves.

The psychological treatment of the sexual offender has its limitations and an exaggerated idea of its value is sometimes discernible. Of course the offender must be willing to coöperate, but this is not enough. It has been observed that "the criterion for treatment is anxiety which is subjective, and not the objective acts."⁹³ And in this connection anxiety becomes an active driving force, whereas willingness has often no more than a passive and transient effect. Such anxiety is illustrated by the experience of some homosexuals who had themselves castrated and are now happy to be released from their internal struggle and fear of prison.⁹⁴

The advantages and disadvantages of psychotherapy in prisons founded on experience at Wormwood Scrubs Prison has been well

92. Wertham, *supra* note 39, at 852.

93. J. C. Markwood, Personal Communication.

94. E. BLEULER, TEXT BOOK OF PSYCHIATRY (1936) 581.

expressed. Psychotherapy "is carried out [in prison] under an unusual form of stress in isolation from normal contacts, the encouragement of friends, and from opportunities to test the progress made, and in conditions which are often disadvantageous in other ways. On the other hand the desire for cure has an added urgency to most prisoners; and the environment, an abnormal freedom from extraneous distractions, though there is also an artificially heightened news value, both for the patient and other prisoners, which may injure coöperation and transference at a stage when the loss is not easily recovered."⁹⁵ I would add that in my view the prison psychotherapist should not be burdened with administrative duties and should be a psychiatrist specially selected for the work.

The efficacy of a sentence of probation with voluntary out-patient psychotherapy also is questionable. If a sexual offender receives a non-custodial award in the hope that he will submit himself to medical treatment he may do so, but refuse to coöperate with the psychotherapist. On the other hand, until the public is better advised, a sentence of imprisonment long enough to give medical treatment a complete trial may appear unjustified for a minor sexual offence such as exhibitionism.

As short sentences of imprisonment often have no therapeutic value in this class of offence, and having regard to the social adjustment of the sexual offender as well as the security of society, the following alternatives seem to offer themselves if the offender is not dealt with as an insane or mentally defective person, and the case is not dismissed by the court:—

- | | | |
|--|---|--|
| <ol style="list-style-type: none"> 1. Probation with or without a condition of residence. 2. Imprisonment for periods reaching the upper rather than the lower authorized limits. 3. Corrective training or preventive detention. | } | With or without psychiatric treatment including psychotherapy. |
|--|---|--|

It is to be hoped that future legislation will empower courts to make medical treatment in suitable cases a condition of a probation order so as to determine further its value under these circumstances, and that corrective training and preventive detention as envisaged in the Criminal Justice Bill of England, 1938, may reach the Statute Book.

These measures seem the maximum likely to meet with public approval for the present. Until indeterminate sentences of custodial detention are imposed there may still be some failure in readjustment. But the medical treatment of sexual and other types of offenders in a special penal institution administered on colony lines with psychiatric treatment when required should enable much needed research to be carried out, and facilitate better results in cases which now appear to be incorrigible.

95. H. T. P. Young, Personal Communication.