THE PSYCHOPATHIC OFFENDER

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To my parents, my wife and my
son Mohammad

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SUMMARY

Psychopathy is a subject which is now being duscussed with increasing interest in forensic psychiatry, criminology and sociological circles. The aim of this thesis is to show that the problem of the so-called psychopath is not the province of psychiatrists. The reason for this is that the psychiatric approach ignores any social or ethical factors in its approach to this behavioural problem. The writer attempted to prove that social and environmental factors are the most crucial in determining the condition. In an attempt to rebut the alleged plausibility of the medico-scientific explanation of this phenomenon, the writer produced evidence from various sources in an attempt to show that psychopathy stems from inadequate upbringing rather than heredity, brain damage or disease. As far as the legal position of psychopaths is concerned the law (in Scotland and England) seldom regards those individuals as mentally abnormal. In the writer's opinion the side effect of adopting a relative concept such as abnormality, explaining psychopathic behaviour, is hazardous and may lead to the use of the legal system itself to produce real injustice and social harm.

The question of responsibility was also dealt with. It was noted that there is no chance for psychopaths to benefit from the plea of insanity either in England or in Scotland. Under English law a diagnosis of psychopathy is recognised by the courts as an acceptable basis for a defence of diminished responsibility in many of the cited cases. In Scotland the courts denied the application of the doctrine to psychopaths. For this reason the legal position of psychopaths in England and Scotland is dealt with separately in the text.

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CHAPTER 1

THE PSYCHOPATHIC OFFENDER

1. The Problem of Definition
2. The Unreliability of Psychiatric Diagnosis
3. Prediction of Dangerousness
4. Notes

The Problem of Definition

Many descriptions of psychopathic persons exist in literature and in psychiatric writings. One of the chief difficulties concerning the acceptance of the definitions given by psychiatrists to psychopathy is that, the term psychopathic personality has been used in a great number of different ways, and at one time or another has been applied to almost every sort of abnormal personality type. This renders the term confusing and there is no general agreement on just what constitutes the characteristics of this type of personality.

Some psychiatrists use the term "sociopathy" to denote a broad spectrum of behaviour which is antagonistic to the laws and norms of society. It is true that the term implies that a person's misdeed is principally directed against society and that he has repeatedly come into conflict with its written and unwritten laws but it is difficult to accept that this type of behaviour - even where it deviates substantially from normal behaviour - is a psychiatric condition. Deviation from normal behaviour is not necessarily an indication of mental illness. For example, a man who breaks the law or who views the world a little differently from his neighbours is certainly deviating from normal behaviour but it would be illogical to classify him as mentally ill. Normality here is a relative concept because what is considered as normal in one society or at a given time might well be considered as abnormal in a different society or at a different time. Surely then the concept of deviation from normal behaviour is a poor criterion for

distinguishing pathological conditions from healthy conditions and in this way the psychiatric criterion ends up by being similar to the popular distinction between mad and sane i.e. lacking a scientific basis. It is detrimental both to an individual and to society to explain deviant behaviour by a remote hypothesis like mental illness. Thomas Szasz **argues that :**

> "instead of recognizing the deviant as an individual different from those who judge him, but nevertheless worthy of their respect, he is first discredited as a self-responsible human being, and then subjected to humiliating punishment defined and disguised as treatment"[1] *

A fixed standard of normal behaviour is in any event open to discussion since the codes of conduct and prohibitions of the present will not necessarily be our standards and guides in the future. It is therefore not out of the question to say that the phrase (deviation from normal behaviour) comprises many reproachable activities which we do not classify as pathological (in the psychiatric sense) unless we accept or adopt a very wide use of the term.

Most psychiatrists, however share the opinion that the term "psychopathy" implies that the person has no conscience,never experiences guilt, remorse or anxiety and that he is never really sincere. These are not necessarily psychiatric symptoms which denote psychiatric illness as presently defined. It is rare to find someone who never experiences guilt, remorse or anxiety. A person may feel guilt or anxiety even for his failure in committing a certain crime. (take for example the traditional custom of taking revenge from a family member killer which exists in the Nile Valley especially in some remote agricultural areas in Egypt). The feeling of guilt or anxiety

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* Those who assert that mental illness is a myth seem to suggest that explaining deviant behaviour by mental illness supports the claim that psycho-social, ethical and legal deviations can be corrected by medical action.

is likely to exist in every human being including those who are classified as psychopaths. Some psychiatrists support this thesis, one of them is the American writer Eric Pfeiffer who suggests that: "such people do at times express feelings of guilt, remorse and anxiety, but that with them these feelings are of a very fleeting nature, and hence appear to us as false or as shams" [2]. If we can assume that the feelings of guilt, remorse and anxiety are mere manifestations of fear, then we can conclude that the experience or the knowledge of fear (which is inherited from our animal and human anscestors or acquired during life experience) is responsible for producing those feelings. But the absence of a reliable guide (namely a good understanding of the nature of human behaviour)as to what is going on inside the individual causes the difficulty and leads us to deny the existence of such feelings. The point at issue, however, is not the absence of these feelings (for they are always there) but rather the absence of the objectivity of such feelings. Thus it will be more reasonable to say that these individuals do feel guilt and anxiety but they cannot manifest or express those feelings with any degree of objectivity. But this lack of objective feeling of guilt and anxiety should not necessarily be constructed or interpreted as indicating the absence of these feelings.

It has been suggested that the emotional peculiarities shown by the psychopath are usually seen in one of two forms; the emotions shown are either excessive or inadequate. This idea is advocated by many psychiatrists, for example Curran, Partridge and Storey suggest that these two peculiarities may be found in the same person as when a psychopath may be quite untouched by some cruel and conscienceless

act that he has committed, but may show an excessively emotional tantrum on being himself criticised [3].

If this hypothesis is accepted, then it would seem that the feelings are there but they are misdirected, not controlled or inadequately placed and they need to be properly instructed and directed towards the benefit of the individual and society.

This apparent falseness of feelings may be observed in other types of disordered behaviour for example in hysterical behaviour. If this is true, then we may understand that mental illness (organic or functional) in some cases is accompanied by what has been described as psychopathic behaviour or psychopathic tendencies, and many psychiatrists, with this in mind, try to tie this phenomenon to mental illness. Going on with this process of labelling psychiatrists sometimes classify individuals who are suffering from severe emotional disturbances or experiencing inner conflicts and who engage in anti-social behaviour as symptomatic, secondary or neurotic psychopaths, but:

> "one of the difficulties with terms such as secondary and neurotic "psychopathy" is that they imply that individuals so labelled are basically psychopaths. However, this is likely to be misleading because the motivations behind their behaviour, as well as their personality structure, life history, response to treatment, and prognosis, are very different from those of the psychopath ... Many individuals exhibit aggressive, anti-social behaviour, not because they are psychopathic or emotionally disturbed, but because they have grown up in a delinquent subculture or in an environment that fosters and rewards such behaviour. Their behaviour, although considered deviant by society's standard, is nevertheless consonant with that of their own group, gang or family" [4]

This, however, reveals the vagueness of the psychiatric definition, and the problem still needs to be solved rationally and humanely rather

than arbitrarily. What we should be concerned with is the behavioural problem a patient has not the label hung around his neck.

However, some psychiatrists may argue that the label is necessary for treatment and prognosis and for enabling doctors to communicate with one another. But this will not be convincing or of practical value unless we are in a position to judge that these people are psychiatrically treatable and that treatment is available for them. The question, is there any evidence to support the availability of and susceptability to, treatment, is not easy to answer in the case of the psychopath . Individuals put together under the diagnostic category "psychopathy" are generally regarded as untreatable because no single type of treatment is expected to cure the variety of disorders which fall under such a heading. It has been said that the number of psychopathic types designated has risen as high as 16. It is clear therefore that the use of the term "psychopathy" is not sufficiently precise. The result will be that the doctor can have no clear idea of desirable treatment or prognosis. Halleck reported that:

> "repeated efforts to replace the phrase "psychopathic personality" with friendlier terms such as "sociopathic personality", "neurotic character" or "simple adult maladjustment" have met with limited success. The term "psychopath" seems to be retained because it has communicative value" [5].

If this is the case and some psychiatrists are still insisting on retaining the term (which has no meaning other than indicating that certain individuals exhibit anti-social and criminal conduct in excessive way) then it will be more reasonable to use it only as indication of the severity of other disorders. This is acceptable since anti-social and criminal conduct also exist in many other well established psychiatric conditions. That means the term should not be used to

indicate a separate clinical entity.

The label therefore does not actually make the difference between human responses to, for example treatment and the alternative of punishment. In fact in the case of the psychopath, the so-called treatment efficiently amounts to punishment since the terms "psychopathy" and "anti-social criminal behaviour" have become almost the same.

Where psychopathy is a recognised syndrome and where its existence is defined in psychiatric terms, then to equate it solely with anti-social behaviour is both meaningless and dangerous since it uses psychiatry in the unacceptable way of merely serving the interests of the correctional or penal process rather than in its medical role of healing or curing. This may always, of course, be a problem which psychiatry has, but it may be exacerbated in the case of the psychopath. Szasz pointed out that:

> "there is evidence to suggest that psychiatrists may be more punitive toward persons defined as mental patients (especially if they are labeled "dangerous" as well), than prison personnel toward persons defined as criminals"[6].

Craft mentioned that:

> "at a 1962 conference near London, groups of prison medical officers and practising hospital psychiatrists were first asked whether the term "psychopath" was a necessary one for penal and psychiatric thought. The reply was that some term was needed to designate those persons who, although apparently rational and in possession of good intelligence, yet seemed at the mercy of their emotional needs, at crucial, often frequent, periods of time. If the term "psychopath" was not used, some other term would be necessary with which to discuss the sociological and treatment needs of this group of people" [7].

The answer given to the question in the above statement is confusing, for the reason that the term "psychopathic personality" may

be used to designate every conceivable type of abnormal character and this is why it is impossible to define "psychopathy" with any precision. In addition medical treatment is designed to solve only medical problems and not those problems whose existence had been defined and established on non-medical grounds.

According to Rees:

"the various definitions applied to psychopathic personality have four common features:

(1) Exluding cause, Viz. the condition does not amount to mental defect, he is not insane or psychoneurotic; whether or not the person is of low intelligence it is independent of subnormality and mental illness.

(2) Time factor. The abnormality exists throughout life or from a comparatively early age and is usually recurrent, episodic or persistent.

(3) Description of behaviour, Viz. anti-social, unable to accept social requirements on account of abnormal peculiarities of impulse, temperament or character; conduct is abnormally aggressive or irresponsible.

(4) Personality characteristics which have been described as part of psychopathy are marked egocentricity lack of sincerity, lack of feeling and lack of guilt." [8].

These four common features imply that the concept of psychopathy lies outside the range of psychiatry.

The first of these four common features place the condition far from the two major groups of mental illness i.e. the psychoses and the neuroses.

The time factor is of no value here since some other psychiatric abnormalities exist also throughout life and are also recurrent, episodic or persistent (e.g. anxiety states, hysteria,schizophrenia etc.).

Third, the description of behaviour is not in itself a good criterion for defining mental illness since there is a lack of clear etiological knowledge. There must also be some sort of relationship between symptoms and etiological factors. For example there is a close relationship between organic causes and organic states. The former comprises the assessment of the physical, psychological and constitutional factors and their relative importance in bringing about the condition in question. The latter consists of the syndrome that is observed. In the case of the "psychopath" the causes have not been satisfactorily established and hence the reference to etiology was entirely ommitted. Accordingly a complete psychiatric diagnosis is not fulfilled by a mere description of a clinical picture. In other cases when attempting to make a complete diagnosis psychiatrists usually distinguish the descriptive aspect from the causal aspect and do not ignore the past history and the environment of the patient.

Finally, personality characteristics which have been described as part of the condition i.e. 'egocentricity, lack of feeling and lack of guilt', are all referring to a patient's communications about himself, others and the world about him and therefore do not constitute good grounds for establishing the existence of a psychiatric condition. The reason for this is that, the term mental illness was only applied here to observable patterns of behaviour and not to states of mind or body. To this extent the so-called characteristics of the psychopathic personality represent only a terminology or a definition not meaningfully related to observable conduct. Most of these characteristics are found in quite ordinary people. But not every one who is different

is psychopathic. Surely the essential difference between regarding people as weird or eccentric, and calling them psychopathic relates in great measure to the nature and perhaps the extent of the deviance. The term "psychopathic personality" is given to any one who has substantially different standards of behaviour from those generally accepted by the society. Some of these persons may be inadequate that is to say, although perfectly intelligent, unable to earn their own living. Others are the creative people, who as in the case of Van Gogh, did many eccentric things but also many productive things. The concept of psychopathy is clearly too broad so that it could be used to identify every individual repeatedly demonstrating non conforming behaviour. But the difficulty here is that:anti-social personalities are a mixed group of individuals who nevertheless have certain characteristics in common, and for this reason the terms "psychopathic" and "anti-social" are sometimes used interchangeably to refer to these behaviour patterns. To this extent we could diagnose non-criminals as "psychopaths" because anti-social behaviour is not always looked at as criminal conduct. But recent psychiatric studies showed that psychopathy is one of the principle psychiatric conditions associated with criminality. For example, Halleck pointed out that: "psychopaths are usually described as being specially prone to criminality" [9]. In the Diagnostic and Statistical Manual, anti-social personality was used to describe those individuals who repeatedly encountered difficulty with the law [10].

Smith in his study "The psychopath in Society" mentioned that:

> "since the World Health Organization (WHO) has begun work on systematizing diagnostic classifications world wide, the term anti-social personality (301-7) has been introduced and is gaining currency as the term for designating psychopaths (WHO, 1972)" [11].

The important question here is : does non criminal psychopathic behaviour really exist? If the answer is in the affirmative, then it contradicts with the four common features of the definitions introduced by Rees [12], because these definitions do not speak about mental symptoms but rather fairly and clearly enough place the condition far from the two major groups of mental illness i.e. the psychoses and the neuroses.

We may however reach the conclusion that we cannot diagnose any individual as a psychopath unless he deliberately and repeatedly violates the law. This in fact is no more than an unnecessary widening to the motion of mental illness which is something more than a response to or a reaction against, social and environmental conditions. This approach has been rejected by some psychiatrists even in cases where the responses or reactions fit in better with the medical model. For example, Laing and Esterson in their unique study of schizophrenia state that:

> " psychiatry has been particularly concerned with individual experiences and behaviour regarded in our society as abnormal. In an effort to bring psychiatry into line with neurology and medicine in general, attempts have been made to categorize such experience and behaviour into 'symptoms' and 'signs' of supposedly pathological syndromes or illnesses" [13].

By the same token, the psychopath's anti-social and criminal activities have been categorized as "symptoms" and "signs" of mental illness. But criminal anti-social conduct and mental illness are clearly not necessarily one and the same thing. The law does not equate criminality with mental illness. Indeed if it did, then all criminals would be treated not punished. The dangers inherent in making such an assumption are best illustrated by Halleck:

> "If the psychiatrist can be persuaded to argue that an offender should not be held responsible for behaviour which is largely determined by unconscious factors, then perhaps the sociologist should be required to argue that poverty, discrimination and delinquent association would also make the offender non-responsible. Either approach would be compatible with a deterministic viewpoint" [14].

Obviously this approach endangers the existence of the free-will theory which is a corner stone of the criminal law. The free-will theory cannot simply be replaced by an unverified hypothesis of assumed mental illness. As Malcolm Lader has said:

> "To medicalize this by assigning such people to psychiatric care merely underlines our ignorance of the causes of social deviance .... It is not only illogical but hazardous to infer mental illness solely on the basis of anti-social behaviour" [15].

Crime is fundamentally a socio-legal and not a medical concept. Since legal and moral codes can be seen to change with culture, time and place, our assessment of the anti-social conduct will inevitably be relative and flexible. This, of course, will not be a reliable criterion for classifying those who are engaged in anti-social activities as mentally ill. But if this idea were to be accepted, some acts which are legal now could become illegal in the future and vice-versa. To support this view, Sir Norwood East has said:

> "World War II and post-war legislation introduced new offences. Perhaps most of us in consequence have become occasional offenders and it may be assumed that some existing prohibitions will disappear as circumstances permit. Again, a person who is drunk and disorderly in his own house commits no offence, but on the same showing is an offender in a public place. According to the thesis crime is at one time or place a disease and not at another, and it would seem that Parliament can add to the diseased population by making new prohibitions" [16].

Crime is a relative concept and this is quite obvious to the degree that there is no need to give examples here. Some psychiatrists may ignore this fact and at the same time ignore the social element in criminal conduct by simply interpreting anti-social behaviour in terms of mental illness. Sutherland, in his study of white collar crime, went to ask whether we are to think that:

> "the crimes of the Ford Motor Company are due to the Oedipus Complex, or those of the Aluminium Company of America to an Inferiority Complex, or those of the U.S. Steel Corporation to Frustration and Aggression, or those of Dupont to Traumatic Experience or those of Montgomery Ward to Regression to infancy?" [17].

or - one may add - those of the numerous politicians and generals of our time to psychopathy?

This verbal war between sociologists and some psychiatrists serves the purpose of this paper to the extent that it reveals the fact that without the existence of social and criminal systems psychopathy as a concept would not exist. Lady Wootton in her famous book 'Social Science and Social Pathology' points out that:

> "If mental health and ill-health cannot be defined in objective scientific terms that are free of subjective moral judgements, it follows that we have no reliable criterion by which to distinguish the sick from the healthy mind. The road is then wide open for those who wish to classify all forms of anti-social, or at least of criminal behaviour as symptoms of mental disorder" [18]

In the case of the "psychopath" she went on to demonstrate the absence of the relationship between psychiatric diagnosis and symptomatology. She says, for example,

> "In his case no such symptoms can be diagnosed because it is just the absence of them which causes him to be classified as psychopathic. He is, in fact, par excellence, and without shame or qualifications, the model of the circular process by which mental abnormality is inferred from anti-social behaviour while anti-social behaviour is explained by mental abnormality" [19].

No doubt, the absurdity of this approach will lead eventually to the elimination of the concept of responsibility for it is true that, as Lady Wootton put it:

> "If you are consistently (in old-fashioned language) wicked enough, you may hope to be excused from responsibility for your misdeeds; but if your wickedness is only moderate, or if you show occasional signs of repentence or reform, then you must expect to take the balme for what you do and perhaps also to be punished for it" [20].

Then the sensible view must be that, many individuals present social rather than medical problems, as in the case of the psychopath. The decision as to whether a man is mentally ill or not does not purely depend upon social inadequacy, but in addition to this, upon the presence of other symptoms, so that the whole picture can reasonably be regarded as constituting what is known as a "psychiatric condition". Unfortunately in the case of the psychopath, this approach was not recognized by many psychiatrists. Instead a man is classified as a "psychopath" precisely because he has no symptoms. And he, as Lady Wootton has suggested:

> "is trapped in circular definition : he is a psychopath because he has committed anti-social acts, but these are explained by his personality disorder. The more brutal and remorseless his crime the more likely he is to be excused responsibility for it on psychiatric grounds" [21].

The Unreliability of Psychiatric Diagnosis

The diagnosis of mental abnormality cannot always be inferred from the mere exhibition of unusual or remarkable behaviour, be this criminal or not. It depends upon the presence of associated symptoms and at the same time upon distinguishing causal from descriptive aspects. The reliability of psychiatric diagnosis, however, is generally not very impressive.

According to Matarazo : "research findings which reveal diagnostic judgements based on psychiatric interviews to be unreliable, outnumber those studies which show that they are reliable" [22].

More recent studies also provide little confidence in the reliability or validity of diagnosing mental illness and predicting its consequences. Halleck (1971) pointed out that:

> "Psychiatrists could help society immeasurably, however, if they would frankly admit that current diagnostic categories do not have much scientific meaning - that they are largely arbitrary. Then society might be able to confront rationally and humanely the moral question raised by those who behave differently" [23].

In most psychiatric writings and in the Diagnostic and Statistical Manual, the diagnostic category, anti-social personality is reserved for:

> "individuals who are basically unsocialized and whose behaviour pattern brings them repeatedly into conflict with society. They are incapable of significant loyalty to individuals, groups, or social values. They are grossly selfish, callous, irresponsible, impulsive and unable to feel guilt or to learn from experience and punishment. Frustration tolerance is low. They tend to blame others or offer plausible rationalization for their behaviour" [24].

It is clear that psychiatrists choose to conceptualize (psychopathic behaviour) in a descriptive way which make it possible to understand it in a variety of ways. A psychopath, for instance, could be thought of as possessed by supernatural powers, suffering from a disease, the product of heredity or his environment, or the combined result of internal and external factors. This description however, has always been a problem for psychiatric diagnosis, and although some psychiatrists are of the opinion that psychiatric diagnosis is essentially a shorthand description [25], others suggest that this attitude has led to a great and widely recognized weakness of psychiatric diagnostic methods.

According to Eysenck:

> "Psychiatrists often speak of various syndromes, such as anxiety state, reactive depression, fatigue syndrome, hypochondria, hysteria, psychasthenia, obsessional-compulsive personality, and many more. When encountered in the text books these can be described and no doubt present a reasonably orderly picture, but in actual fact few patients fall clearly and cleanly into one or the other of these categories; most show symptoms characteristic of more than one symdrome and some show symptoms from all. Even worse : a person who at one time may seem to fall fairly clearly into one group may at another time fall into quite a different one" [26].

Medical dictionaries define diagnosis as the art of distinguishing one disease from another. Taking this definition, it becomes easy to identify the problems of psychiatric diagnosis, which may require to be made in the absence of clear physical symptoms.

The usefulness and reliability of psychiatric decision-making or diagnosis has been attacked on many different grounds. For example, the clinician is sometimes faced with a condition or a patient with

clinical features suggesting two different conditions. This may happen when the psychiatrist have variant sources of information about his patient (e.g. one psychiatrist may speak with the patient's family while another does not). This informaion variance and over-lapping of symptoms make it very difficult for the psychiatrist to reach an accurate judgement. This however, may also apply to non-psychiatric medicine but what makes it harder for the psychiatrist is that his diagnosis (unlike the diagnosis of physical conditions) is not backed or corroborated by laboratory tests or reliable investigations. Consequently psychiatric diagnosis is, in most cases, no more than a personal judgement made by the psychiatrist. Another difficulty with the reliability of psychiatric diagnosis is that it may not stand the test of time. In other words, if we go back half a century we find that those who are now labelled as psychopaths were then said to be morally "insane". Some may argue that the advance of medical science and medical discoveries make it possible now to diagnose the "morally insane" as "constitutional psychopathic inferiors". But there is no scientific evidence to support this diagnosis which now stands only on the basis of the psychopath's behaviour.

Many studies and researches done in the area suggest strongly the unreliability of psychiatric diagnosis and the questionable usefulness of the classificatory system adopted by clinicians. Different investigators (psychiatrists, sociologists and lawyers etc.) are engaged in this process. What follows is an outline of the conclusions suggested by some of these investigators.

In detailed review of literature in this area, Ennis and Litwack state that:

"psychiatric diagnosis using these (traditional diagnostic) categories are not very reliable" [27].

The account given by Eysenck of the weakness of psychiatric diagnostic methods also tends to support the view, already expressed, that they are unreliable . As Eysenck says:

> "different psychiatrists diagnosing the same set of patients, come up with quite divergent diagnostic labels for the same people. When well trained psychiatrists, who have received the same sort of training and have agreed on definitions of the various categories, are asked to give diagnosis of one and the same set of patients, independently of each other, agreement is seldom better than 20 percent - leaving 80 percent to chance, to individual biases and notions, and other irrelevant factors. Agreement on whether a particular illness is neurotic as opposed to psychotic is of course better than that, but even here there are many sources of disagreement, some of them quite far-reaching. Thus American psychiatrists have a very extended concept of schizophrenia, embracing many other psychotic and neurotic states that in Britain and Europe generally would be diagnosed as depressive, or psychopathic, or hysterical" [28].

Professor Eysenck showed:

> "in one study, comparing diagnostic habits in the USA and Britain that similar groups of patients (and in one case an identical group of patients) were diagnosed as schizophrenic five times as frequently by the psychiatrists trained in the USA as by those trained in Britain!"[29]

The case of the so-called psychopath represents a troublesome dilemma for the psychiatric diagnostician. The fact that the psychopath has no symptoms other than his criminal anti-social behaviour makes the process of diagnosis very difficult and consequently the concept of psychopathy will become meaningless outside the prison. This is because there is not enough scientific evidence to support the diagnosis. In addition social factors, while important, are not

sufficient to justify a diagnosis of mental illness.

The conclusions reached by Hare and Schalling in their investigation in this area are here in point:

> "A more important source of confusion arises from the diagnosis of psychopathic personality as a "waste basket" category. Any individual who displays a general tendency towards anti-social activity, but for whom there is no other suitable psychiatric classification, is often called psychpathic" [30].

If this is the case then the psychiatric diagnosis of psychopathy will not be a discovery but only an invention designed to fit all or some of those who are engaged in anti-social activity. This sounds like modifying facts to suit the theory instead of the theory being the logical explanation of the facts. Therefore some writers suggest that where mental illness is concerned, the criterion of abnormality should be firmly rooted in a disturbance of psychological function in the same way as the criterion of physical abnormality is rooted in a disturbance of physiological function. One of these writers is Lewis, who wrote that: " deviant, maladapted, non-conformist behaviour is pathological only if it is accompanied by a manifest disturbance of one or more such functions" [31]. He went on to say:

> "disorder of function must be detectable at a discrete or differnetiated level that is hardly conceivable when mental activity as a whole is taken as the irreducible datum. If non-conformity can be detected only in total behaviour, while all the particular psychological functions seem unimpaired, health will be presumed not illness" [32].

Lady Wootton seems to support Lewis's view when she argued that:

> "This criterion has many virtues. Cheif of these is its strength as a defence against the circular argument which explains anti-social behaviour by ill-health, while inferring the ill-health from the behaviour. By the use

> of this criterion the sick are always to be distinguished from the healthy by the fact that there is something else peculiar about them, beside their inability to keep the rules of the social game" [33].

One of the chief endeavours of this work, however, is to succeed in establishing that "psychopathy" is a social rather than a psychiatric condition. Lewis, however, seems not to favour this view when he insists that: "one can be sociopathic without being psychopathic" [34]. However, if the only evidence of psychopathy is the anti-social behaviour, then this in itself does not support the view that psychopathy is a distinct psychiatric condition. For, as Walker observed: "if the psychopath did not behave anti-socially we might hesitate to label him as such" [35] . Walker further explains that:

> "some psychiatrists - notably in the United States - confine the term to people whose abnormality includes anti-social sexual conduct, and the term is used in this narrow sense in some states penal codes. In the penal codes of other states, and in the English Mental Health Act, it is used in the wider sense which includes abnormally aggressive or irresponsible conduct. In the Scottish Mental Health Act, such conduct is also recognized as grounds for compulsory admission, but is not called psychopathy" [36].

Many writers, have expressed doubt that psychopathy can be treated as a unique clinical entity [37], (see for example, Hare 1970, pp. 10-12). According to Ziskind : " A major problem in the diagnosis of sociopathy or psychopathy stems from (i) the lack of generally accepted definition and (ii) the lack of a precise recognition of the sociopath" [38].

It is fair, however, to say that definitional uncertainties and operational difficulties undermine the validity of diagnosis of "psychopathy" and render it unreliable.

The Problem of Prediction

The purpose of psychiatric diagnosis is not only the simple recognition of mental disorders. Psychiatric decisions are also relied upon to predict future behaviour or dangerousness, and hence to determine a patient's need for future hospitalization.

The process of prediction is essential for estimating future risks. In the field of medicine the aim is to prevent disease. In the field of criminology the aim is to estimate risks of criminality which are genuinely in the future, and to prevent the origin of criminal careers.

We have already observed that certain criminal behaviour is interpreted as evidence of psychopathy and that the psychopath shows no other symptoms independent of his criminal anti-social behaviour. In addition, most of these (patients) are usually referred to the psychiatrist by courts, police, prison officers, relatives or families usually complaining of their inadequate and aggressive conduct.

It will be understood therefore that the deviations of behaviour referred to the psychiatrist often appear to be selected arbitrarily by custom and tradition rather than on the basis of scientifically established fact. One of the most striking and consistent observation about psychopathy has been its greater incidence in men as compared to women. This however may imply that the probable criterion for the diagnosis "psychopathy" is criminality since the detected or reported offences committed by males outnumber those committed by females in every country in the world. This may in turn suggest that these

clinical diagnosis were validated by criminal statistics and criminal records.

Psychiatrists are still not agreed on the existence of psychopathy as specific clinical entity. This makes it very difficult to distinguish between the so-called psychopath and the normal recidivist. Halleck who considered psychopathy "as an abstract state rather than a definite syndrome" [39], explains the disagreement between psychiatrists by stating that:

> "even within psychiatry there is a widespread disagreement as to whether psychopathy is a form of mental illness, a form of evil or a form of fiction. Most of the major disagreements within psychiatric criminology have originated in efforts to understand and treat psychopathic personality" [40].

Further, if it is accepted that there is no firm definition of psychopathy, there is every reason to believe that psychiatric prediction is of questionable validity. The diffuse nature of the definition of psychopathy which is solely in behavioural terms and does not constitute a full medical diagnosis, offers little help for the process of predicting future risks.

Despite all these problems, many psychiatrists and mental health professionals are currently engaged in the task of deciding who it is who tomorrow or the next day will be dangerous. But many other prominent psychiatrists support the contention that psychiatric predictions of dangerousness have been consistently characterized by low levels of validity. Cleckley, for example, who describes the psychopath as an "unreliable personality" [41], suggests that this quality (the unreliability) makes the task of predicting the psychopath's future behaviour a difficult one. He says:

> "The psychopath's unreliability and his disregard for obligations and for consequences are manifested in both trivial and serious matters, are masked by demonstrations of conforming behaviour, and cannot be accounted for by ordinary motives or incentives. Although it can be confidently predicted that his failures and idsloyalties will continue, it is impossible to time them and to take satisfactory precautions against their effect. Here it might be said, is not even a consistency in inconsistency but an inconsistency in inconsistency" [42].

Cleckley's view as a psychiatrist seems to support the idea that psychopathy is an outcome of problems in living rather than mental disorder. He carefully admitted that the concept of psychopathy lies outside the range of psychiatry when he pointed out that:

> "the faulty reactions in living which these patients show are indeed difficult to describe without sometimes using terms that come more readily to moralists or sociologists or laymen than to psychiatrists. The customary psychiatric terminology does not, I believe, offer a range of concepts into which we can fit these people successfully" [43].

If it is true that it is difficult to describe the psychopath's faulty reactions in living without using sociological or moral terms, then the implication will be that the psychopath's future behaviour or dangerousness equally cannot be predicted or estimated by psychiatric methods.

In fact, there are actually no psychiatric methods for handling this sensitive task other than the personal opinion that stems from the professional experience of the psychiatrist. Halleck seems to support this view when he says that:

> "The most a psychiatrist can say is that he has had considerable experience in dealing with disturbed people who commit dangerous acts, that he has been designated by society to diagnose and treat such individuals, and that his skill in treating dangerous behaviour in those diagnosed as mentally ill has generally been appreciated" [44].

This is no more than a personal judgement and it may lead to contracdiction and inaccuracy in the process of evaluating or anticipating future behaviour, since psychiatrists naturally do not have the same standard of experience. And even if we ignore this, there are such factors as the lack of clear etiological knowledge and definitional precision which are enough to plague the process of prediction. Despite all these facts, some psychiatrists express confidence in their ability to handle a task which is admittedly difficult. Many other psychiatrists for example, Cleckley, Szasz, Greenland [45], criticize this approach and find no justification for it except that some psychiatrists exaggerate their power. All the above mentioned psychiatrists are of the opinion that the issue of dangerousness is a matter of public concern and not the responsibility of one professional system.

In any event, however, prediction of dangerousness is always difficult and is likely to be more so in the case of the psychopath because the causes of his behaviour are unclear. Furthermore it is uncertain whether or not psychiatric prediction is appropriate since there is no evidence to support the idea that psychopathy is a medical condition. Therefore a reasonable approach may be to replace the psychiatric prediction of dangerousness by public adjudication which will be conducted under supervision of the court who will see that

decision-makers employ proper criteria and reached reasonable conclusions. The task of assessing dangerousness and estimating future risks may be done efficiently when the court receives different information about the subject from various people (e.g. social workers, school authorities, legal officers and the subjects' relatives). This may present a more complete picture of the psychopath's future behaviour than could be obtained by psychiatric professionals. The rationale of this social prediction is clear enough. If children with delinquent tendencies could be spotted before they commit their offences, then it might be possible to save them from getting into trouble with the law. Perhaps by giving them and their parents additional support and by providing facilities lacking in the environment.

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CHAPTER 2

CHARACTERISTICS AND ETIOLOGY

CHAPTER 2
CHARACTERISTICS AND ETIOLOGY

This chapter is primarily concerned with the typical characteristics of the "psychopath". The etiology of this phenomenon will be considered in the terms outlined in Chapter 1 supra. Thus the underlying hypothesis will be that "psychopathic" behaviour is not a product of mental illness but rather a manifestation of behavioural disorder caused by faulty upbringing and social difficulties.

Characteristics:

Before discussing questions relating to etiology, the general characteristics of the psychopath which appear in all psychiatric writings and in the second edition of APA Diagnostic and Statistical Manual [1], will be considered. Although these characteristics are typical of psychopaths, they are not generally all found in a particular case. Commonly identified characteristics are as follows:

1. Lack of conscience or feeling.
2. Impulsivity; inability to delay gratification.
3. Inability to profit from mistakes and rejection of authority.
4. Lack of emotion ties to other people.
5. Inadequate anti-social conduct.
6. Ability to make good impression on others.

Lack of Conscience or Feeling:

It has been said that the "psychopath" is always distinguished by pathologic egocentricity and incapacity for love. This may suggest that the "psychopath" bases his personal morality on self interest. That is to say, the psychopath is a self centered person who lacks

the capacity to love other people. Cleckley suggests that: "This is usually of a degree not seen in ordinary people and often is little short of astonishing" [2]. This statement indicates that the psychopath's anti-social behaviour differs in degree from the normal person. But could we interpret or understand this lack of feeling which differs only in degree from the normal person, in terms of mental illness?

If the answer to this question is in the affirmative then the result will naturally be the unnecessary broadening of the definition of mental illness and this would greatly complicate the question of criminal responsibility. If anti-social behaviour is invariably thought of as being caused by mental illness then all those who act anti-socially should not be considered as responsible for their actions. Such a deterministic viewpoint will result not only in depriving the individual of his capacity to exercise his choice, but also in denying the validity of the concept of free will which is a corner stone of the criminal law.

It is very difficult to accept that lack of conscience in these individuals is attributable to mental illness since there is no satisfactory medical evidence to support the idea. It will be more reasonable to assume that this lack of conscience came as a result of faulty upbringing and social difficulties. It is generally accepted that every human being is born without any social qualities, but that his parents and the environment around convert him into a special type of person. The underlying meaning of this will be that the process of upbringing and environmental causes play a vital role in the formation of human conscience as transmitted to the child by his

parents. In the case of the "psychopath" who shows no symptoms other than his anti-social conduct, there remains only the man himself. The man who was not **or was incapable of being adequately socialized or disciplined by his parents in early childhood.**

Impulsivity; inability to delay gratification

The psychopath was said to show from an early age an abnormality of character marked by tendencies to act on impulse to satisfy his immediate need. But again in this it is possible to argue that the "psychopath" differs only in degree from normal well-adjusted people. He, like most other maladaptive people, chooses the wrong means to satisfy his needs and that means he lacks the power to control his desires in the same way as the alcoholic cannot control his cravings for drink. This, however, may be indicative of social maladaptation rather than of something else, for example, mental illness.

The impulsivity of the "psychopath" (as an established pattern of maladaptive behaviour) may produce behavioural symptoms similar to those found in other psychiatric disorders. From an early age the psychopath was not taught to delay his gratification or to control his desires i.e. his parents failed to make good behaviour habitual with them. As a child, he may have been extremely deprived of affection leading him to live for the moment, not for the future. He does not feel secure about the future and so he lives for the moment and has grown up addicted to that. Rees explains that:

> " consistent security lays the foundation for the transformation of the energies of the primitive impulses into activities which satisfy the child, are acceptable to others, and achieve better emotional , intellectual, social and ethical development"[3].

There is also strong evidence to suggest that parental rejection or neglect plays a major role in bringing psychopathy to existence. Zax and Cowen state that:

> "..since the aggressive behaviour and poor self control seen in the rejected child are somewhat similar (italics) to what is seen in the adult psychopath, it is inferred that parental rejection plays a key role in the development of psychopathy" [4].

Zax and Cowen believe that parental rejection represent a background factor in the etiology of psychopathy despite the fact that this has not been universally accepted.

Inability to profit from mistakes and rejection of authority

The psychopath who is incapable of remorse and devoid of conscience is unable to profit from mistakes simply because he does not consider them mistakes. The lack of conscience in the psychopath affects internal controls and makes him totally dependent on his instincts which cannot be modified without the effective interference of the conscience. Like a wild animal the psychopath acts and reacts instinctively without consideration for the consequences and the outcome of the consequences e.g. punishment. This is mainly due to the absence of an internalised system of authority. For this reason the psychopath sees nothing particularly wrong with his behaviour and hence disbelieves in the fairness of his punishment. He may believe that those who inflict punishment upon him are truly the ones who deserve punishment. Eventually he may reject any form of external authority upon him and this leads him to violate the laws of society. As Hare has put it, the psychopath: " cannot understand the reasons for society's objections to his behaviour nor the punishment meted out by it" [5]. This is because the psychopath does not think

of himself as committing wrong. Like a naturally wild animal he acts instinctively and that is because he has no self-control or conscience. (I am using the word conscience here independent of any moral sense i.e. in the sence of its existence or non-existence as a power of self control). Unlike conscience, instinct is inborn behaviour which does not have to be learned, while conscience is the product of learning and the parents play a vital role in the formation of the conscience or the super-ego as psychologists call it. Zax and Cowen state that: "The super-ego comes into existence through identification with parents who reward certain actions and punish others" [6]. It is therefore when something goes wrong with the process of learning that psychopathy is likely to eventuate.

Lack of emotional ties to other people

The psychopath who is described in literature as unstable, unreliable and impulsive is characterised by a lack of emotional ties to other people. He may be hyperactive in moving from place to place or from relationship to relationship and will rarely have long term commitments. The result, of course, will be a complete failure in establishing any real or permanent relationship or ties. One possible explanation of this behaviour may be that, the psychopath as a child was extremely deprived of love, consistent security and consistent parental example which followed a certain code of morals and ethics. He was not taught that a human being can commit himself lovingly to another person. As a result he cannot tie himself to another person in a permanent relationship and for him nothing lasts. If therefore the formation of permanent relationships with him and the emotional acceptance of his behaviour are considered as precondition for treatment

then it will be nearer the truth to say that he is untreatable. Cleckley's experience with psychopaths led him to conclude that:

> "This lack in the psychopath makes it all but impossible for an adequate emotional rapport to arise in his treatment and may be an important factor in the therapeutic failure that, in my experience, has been universal" [7].

Inadequate anti-social conduct

The "psychopath" who lacks loyalty to any code of morals or ethics is characterised by inadequate behaviour and social irresponsibility. That is not because his code of conduct differs from that of the society but because there is actually no code of conduct at all in his case. The classification of "psychopath's" made by Scott and quoted by Rees[8] are important in this connection. They are as follows:

1. Persons trained to anti-social standards.
2. Reparative behaviour.
3. The untrained offender.
4. Rigid fixations.

The first category i.e. persons trained to anti-social standards, should not be considered as psychopaths because they are loyal to their own code of conduct which is normal in their families and environment. Their behaviour is considered as anti-social only because their view of right and wrong differs from that of the wider society. An example of this is found in the Western Sudan in some remote areas in the "Nuba" Mountains. Stealing among these western Nubians is intended as a means to gain prestige in order to qualify for a respectable marriage. Although their code of morals differs from that of the larger society they are

nevertheless, guided by a particular code of conduct while in the case of psychopaths there is a remarkable lack of a particular code of conduct. In contrast the untrained offender (the third classification) who was not taught to follow a particular code of conduct could be regarded as a psychopath. Hare made a clear distinction between what he calls, the true "psychopath" and those individuals who exhibit anti-social conduct not because they are psychopathic but rather because these individuals "have grown up in a delinquent sub-culture or in an environment that fosters and rewards such behaviour" [9]. In the second classification (reparative behaviour), Scott describes the psychopath's criminality as goal-motivated. But it is very difficult to assume that an individual who lacks a basic sense of any standard of morals or values and who does not follow any code of conduct is able to maintain an effort towards any far goal at all. As Cleckley has said:

> ".. On the contrary, he seems to go out of his way to make a failure of life. By some incomprehensible and untempting piece of folly or buffonery, he eventually cuts short any activity in which he is succeeding, no matter whether it is crime or honest endeavour " [10].

Scott also suggested that the psychopath's criminality is aimed at compensating for feelings of inadequacy and inferiority which the environment has produced in him. But the individuals described in psychiatric literature as "psychopaths" are characterised by the inability to see themselves as others see them and as a result their criminality in unlikely to be directed towards compensating the feelings of inadequacy or inferiority which their environment has produced in them.

In the last classification (rigid fixations), Scott suggests that, in this category, learning has broken down and has been replaced

by a fixed, maladaptive pattern of response [11]. But this is a very broad definition since the "fixed pattern of maladaptive response" can be caused by many different factors other than the disintegration of learning. For example such a pattern might be caused by epilepsy, childhood psychosis, brain damage and mental retardation.

Ability to make good impressions on others

Finally, in current literature the individuals labelled as psychopathic personalities are often likeable, charming and have the ability to make good impression on others. The assertion that the psychopath is only guided by his instincts presupposes that he is under no duty to abide any rule of conduct and therefore never feels guilt, remorse or anxiety. This makes him free to promote his abilities in many directions in order to exploit or manipulate others in a very efficient manner . Halleck who considers the psychopath as a freedom seeker (no matter whether this freedom is moral or not) seems to support the assertion made by Wheelis[12] that:

> "if a man can disentangle himself from involvement with others he is free to develop qualities in his own personality which are socially useful" [13].

In search for the legitimacy of the psychopath's efforts to gain his inhuman or immoral freedom, Halleck claims that this freedom 'is still a commodity so often lacking in the lives of most of us that it is highly coveted' [14]. It is, at least in his opinion, acceptable to the psychopath himself. But Halleck seems to follow the same line of argument suggested earlier by Scott when the latter classified those individuals trained to anti-social standards as psychopaths [15]. Following Scott's approach to the problem Halleck

suggests that: "In some value systems, psychopathy can't be all bad"[16].

Of course, the acceptability of social values and morals varies from place to place i.e. what is considered as morally sound in one society may not be so in another. This may be what made Smith conclude that: " we must not look for psychopathy everywhere!"[17].

ETIOLOGY

The remainder of this chapter will be dedicated to the question of etiology. In trying to comprehend the causes of psychopathy certain factors regarded in literature as responsible for the existence of this disorder will be discussed. Many prominent psychiatrists seem to share the opinion that it is very difficult to trace a single cause sufficient to explain the origin of this disorder. There are, however, a number of possible explanations including heredity, pathological and environmental factors.

Heredity

Heredity is the study of the transmission of physical and mental characteristics from one generation to another. Accordingly it has been suggested that heredity plays a part in the causation of psychopathy. Curran, Partridge and Storey, who regard the etiology of psychopathy as a difficult and unsolved problem, suggest that the condition may develop through hereditary as well as the influence of upbringing. In their opinion the latter factor in certain cases may seem not to produce a good explanatory evidence at all [18]. Although these writers suggest strongly the hereditary basis for this condition, they do not produce evidence to support this assumption.

However, many studies carried out on twins seem to favour the hereditary basis for psychopathy. The double occurrence of psychopathy was said to be higher in identical twins, whose genetic structure is identical, than in fraternal twins who are no more alike than is usual with members of the same family. Zax and Cowen (1972) mentioned two studies on twins carried out by Lange (1930) and Rosanoff (1943) [19]. In these two studies the incidence of shared psychopathy was higher in identical twins than in fraternal twins. But these studies were said to be lacking the good criteria for establishing the hereditary basis for psychopathy. Although it is a fact that identical twins are identical in their physical structure, they are not always identical in their psychological make-up. Studies on identical twins who had been reared apart from an early age and had grown up in different environments produced good evidence to exclude the hereditary factor in psychopathy. These studies emphasize environmental influences rather than hereditary factors. In the 1930's in America, the well-known studies conducted by Newman (on 19 pairs of identical twins who had been reared apart from an early age and had grown up in different environments) suggested that while the adult twins maintained a striking physical resemblance, the personalities of the pairs seemed in many cases to have moved apart. In one case Newman found that the first of the pair had been successful in his career, acquired good education and leading stable family life, while the second had been unfortunate and rather unsuccessful in both his family life and career. Similar findings were in general reached by Newman's inquiry.

Although most of the studies are conducted for the purpose of proving the influence of heredity as an explanation of psychopathy, the

role played by environment is always noted. As Zax and Cowen explained: ". most of these studies failed to isolate the relative contributions of heredity and environment to the disorder" [20].

Very recently, Eysenck emphasises the importance of heredity by suggesting that a large number of psychopaths appear to belong to what he called the hereditary circle [21]. Although environmental factors are still the most crucial in determining the condition, Professor Eysenck speculates that psychopathic tendencies are genetically transmitted. But such a view ignores any reference to the person's interactions with others. In trying to prove the unreliability of the evidence based on studies performed on identical twins, Eysenck suggests that if we agreed that identical twins are rare then it will be more difficult to find identical twins who have been brought up in separation [22]. In spite of this, Eysenck depends on one study performed by Shields on four pairs of identical twins who had been brought up separately and a similar number of pairs of identical twins who had been brought up together [23].

Finally, most of the studies which tend to prove the influence of heredity are considered by many as unreliable and insufficient to establish a genetic causation of psychopathy. For example, Cleckley states that: "Even the famous studies of the Jukes and the Jonathan Edwards families have been severely criticized and called fallible by some" [24]. He went on to say: If an inborn biologic defect exists and plays an important part in such a psychopath's disorder, it is not necessary to assume that the defect is hereditary" [25]. This suggests clearly that the present state of knowledge and the available

studies do not offer any good explanation as to how psychopathy is transmitted from generation to generation.

XYY Chromosome

Recent investigators have suggested that a certain number of psychopaths are the XYY chromosomal type. Like the old Lombrosian theory which propounds that criminality is determined by heredity, and that criminals could be distinguished from non-criminals by certain stigmatizing features [26]. These investigators suggest that psychopaths could be distinguished from normal individuals by an abnormal chromosomal pattern (XYY). It should be mentioned, however, that the investigators have based their opinion on the ground that the XYY type is characterised by low intelligence, that he is often more than 6 feet in height and has a tendency to aggressive behaviour. Without going into too much detail there is not enough evidence to support this hypothesis. Hare, for example, rejected the idea when he stated:

> "Whether the XYY complement is related to extremely aggressive forms of psychopathy (as opposed to other forms of criminal, anti-social behaviour) is as yet unknown. Even if it is, the relationship would not really provide evidence one way or the other on the role of hereditary factors in psychopathy, since the XYY complement is not inherited - it apparently reflects the failure of the sex chromosomes to separate properly during formation of the sperm " [27].

Very recently Emery explained that:

> ".. the exact relationship of this chromosomal anomaly with either mental retardation or criminal tendencies is uncertain especially as XYY individuals have been found amongst the normal general population" [28].

Further, many psychiatrists , psychologists and others rejected this hypothesis [29].

BRAIN DAMAGE

It is a well known thesis that brain damage is associated with change in behaviour. Brain damage caused by accident, surgery or disease may cause the individual to behave in a totally abnormal manner. Certain diseases like meningitis and encephalitis are sometimes considered as responsible for producing or resulting in a social and psychopathic behaviour.

The electroencephalogram (EEG) which measures electrical activity of the brain is usually used for testing this hypothesis. The results of EEG studies were said to be unencouraging. For example, Fabisch states that: ".. any attempt at defining psychopathic states with the help of an EEG is bound to be somewhat limited" [30].

In addition, these studies are used as a method of distinguishing the psychopath from the merely wicked. But the results are not sufficient to provide this distinction since, as many psychiatrists agree, the records of psychopaths with abnormal EEG's were no worse than the records of those without abnormalities. It is worth mentioning here that an abnormal EEG should not always be interpreted as something indicating the existence of physical defect in the brain. That is because several EEG studies showed that the slow wave activity (of the brain) found in adult psychopaths resembles that found, usually, in healthy children. This has led to the invention of the cortical immaturity hypothesis of psychopathy. Cortical immaturity in healthy children is not a sign of physical disease or injury to the brain. It

is a characteristic of the brain in a developmental stage in childhood. As the child matures the slow wave activity of the brain is gradually replaced by faster wave activity. Therefore there is not enough evidence to support the thesis that abnormal electrical activity of the brain causes psychopathy (at least in children) . Smith pointed out that:

> "..even should careful research turn up consistent substantial correlations between those earning the label psychopath on behavioural or attitudinal measures and EEG activity, it cannot be assumed that the brain activity is the cause of the behaviour or attitudes expressed" [31].

Furthermore, EEG studies do not show whether there is a relationship between cortical immaturity and social immaturity i.e. whether psychopathic behaviour is a product of cortical immaturity. These studies also failed to explain what causes cortical immaturity in the adult psychopath. Is it, for example, due to a certain organic defect, inadequate socialization or related to a developmental delay. If we exclude the organic factor (because there is no evidence to support it) and the factor of delayed development (because the adult psychopath is not mentally retarded); There will remain only the factor of inadequate socialization. But is it responsible for bringing the condition of cortical immaturity found in adult psychopaths? If the answer is 'yes' then inadequate socialization in early life is responsible for causing social immaturity in adult life as well as cortical immaturation. That means the attainment of cortical and social maturation is a result of adequate socialization in early life. Again there is no evidence to support this assumption. But if we observe that:

1) the slow-wave activity which appear in psychopaths appears naturally in children but not in adults.
2) the child reaches the adult pattern between sixteen and twenty years of age.
3) the slow-wave activity in psychopaths diminishes with age
4) the incidence of psychopathy decreases with age.

We will find that the time factor is very important in determining the attainment of cortical and social maturation in normal persons. If therefore the slow-wave activity (which appears in adult psychopaths) diminishes with age and the incidence of psychopathy decreases also with age, then it is reasonable to say that the time factor is also responsible for determining cortical maturation as well as social maturation in psychopaths. It is important to note that the concept of time here is not used in a vaccum. Time comprises learning, instructing and upbringing and this is what actually makes the attainment of social maturation possible. In addition the slow-wave activity which appears in psychopaths is not a sign of brain injury and does not reflect biological predisposition to certain attitudes. Its presence indicates, only, that psychopathy and immaturity are closely associated. For example, many characteristics of psychopaths (impulsivity, aggressiveness, egocentricity, inability to delay gratification etc.)are found in children. In fact the psychopath's behaviour differs only quantitatively and not qualitatively from that of the child. It is interesting to mention here, that Dr W F Roper who analyses the relationship between delinquency and immaturity observes that:

> ".. If criminality and immaturity are so closely associated, may they not be much the same thing? We know that young children can be seen in any not too tidy nursery, assaulting each other, taking the belongings of others, and even engaging in sexual exploration, in a way which would be criminal in adults. No sensible person worries about these things because he knows that it is a normal phase of development which will disappear with training. May it not be that criminality is merely the persistence or reappearance of this nursery stage of development , which becomes ugly and dangerous simply because of the greater strength and sophistication of the adult?"[32].

By the same token we can say that psychopathy and immaturity are closely associated and that the presence of the slow-wave activity which appears in adult psychopaths is only evidence of this immaturity. In other words, the psychopath is only a child grown up as a product of unsuccessful domestication, inconsistency in learning and inadequate socialization. To be more precise the presence of EEG abnormalities (child pattern) found in adult psychopaths emphasizes the environmental factors more than any other factors. As Hare has explained "The cortical activity of psychopaths is probably the results of experiential and learning factors" [33]. Hare based his opinion on research findings reported by Miller [34]. The contents of Miller's research are explained by Hare in this way:

> " In this research the brain wave-activity of rats was monitored, and whenever slow-wave activity was observed it was reinforced by direct electrical stimulation of rewarding areas in the brain. Other rats were reinforced for fast-wave activity. In each case the results indicated that the use of this instrumental learning technique could modify brain-wave activity; that is, either slow- or fast-wave activity could be learned. On the basis of these results, Miller suggested that it was possible that in the course of being rewarded for certain overt activities some people may learn a high level of arousal (that is, fast, low-voltage activity), while others may learn a low level of arousal (that is, slow, high voltage activity). In regard to psychopathy, it is conceivable that the parents of psychopaths have consistently rewarded behaviour that is associated with a low level of cortical arousal and that this is reflected in the slow-wave activity and cortical under arousal observed in psychopaths" [35].

To conclude this section, it should be noted that the child pattern of EEG, which is the abnormality found in psychopaths, is only abnormal because it is found in an adult individual. Therefore the question is one of delayed development rather than one of pathological nature. And this may be mainly due to inadequate socialization and inconsistency in learning.

ENVIRONMENTAL FACTORS

As has already been noted, environmental factors may play the most crucial role in determining "psychopathy". By environment is meant the surrounding conditions and the circumstances of life of a persion, his family and his socitey.

The Formation of Conscience:

The family is regarded as the primary source of ethical values and social attitudes. Within its circle the child learns about right and wrong and how to adapt himself to the realities of the social environment. Psychologists, sociologists and even laymen agree that the role of the family, which is still the fundamental unit of most socieites, is very important in determining the future character of the child. The child is characterized by instinctive behaviour which requires immediate satisfaction. All human beings, like other creatures, are born with this disposition. Like a piece of clay the human infant can be shaped and moulded into a particular picture.

Society, in the form of parents and others, takes a full part in shaping the future character of the child. The instinctive attitudes need to be modified and postponed in order to meet the requirements of

the family and, later, social life. If therefore the hedonistic tendency of the child is not modified and controlled by consistent learning and proper socialization, the result will be that the child will grow up like a wild animal without any code of conduct to follow.

The process of learning and upbringing results in the formation of conscience which, as has already been mentioned, is the representative of parental figures. Hare reported that:

> "several studies have found that anti-social and delinquent behaviour are related to erratic and inconsistent disciplinary and socialization technique on behalf of the parents (Andry, 1960, Bennet, 1960; McCord and McCord, 1964)" [36].

It should be noted here that inconsistent socialization practices are not necessarily carried out by parents. They can be carried out also by parent substitutes or others. We cannot deny that there are many individuals who lost their parents in their early childhood and yet are not necessarily psychopaths. Also there are many psychopaths who came from respectable and well adjusted families. Cleckley who studied a considerable number of psychopaths who are probably from middle class families reported that:

> "a very large percentage of psychopaths I have studied show backgrounds that appear conducive to happy development and excellent adjustment" [37].

The implications of these observations may be that the well adjusted and non-psychopathic parent is not necessarily capable of or willing to give consistent learning or consistent discipline. Also the loss of parent or parents does not necessarily indicate that the consistent learning or socialization ceases to exist. The important thing about socialization is that it should always be there whether it is performed by parents or other people.

Parents may be well adjusted and stable but still unwilling to make their child learn in a consistent manner. Parents may also be unstable, ignorant and unable to carry out a difficult task such as consistent learning and consistent discipline. This is also applicable to parents' substitutes. As was mentioned earlier in this chapter, consistent learning leads to the development of a particular code of conduct (the question whether this code is ethical or non-ethical is irrelevant here) [38].

We sometimes describe people as having bad or good conscience, but this is not applicable in the case of the psychopath because one of his distinctive characteristics is that he had no conscience. This lack makes him incapable of having internal conflicts, although he often has conflicts with his external environment. Coleman in his valuable study of "Abnormal Psychology and Modern Life" describes such personalities as follows:

> "Anti-social personalities are not classifiable as mentally retarded, neurotic, or psychotic. Their outstanding characteristics are a marked lack of ethical or moral development and an inability to follow approved models of behaviour. Basically they are unsocialized and incapable of significant loyalty to other persons, groups, or social values" [39].

No doubt this description is helpful in proving the lack of a basic sense of feeling right and wrong (in any sense) in the psychopath. According to Hare:

> "..psychopaths appear to be deficient in only two components of morality, namely moral feelings and behaviour; there is little doubt that they know on a cognitive level, what society consideres to be right and wrong. However being deficient in the conditioning of emotional responses they are unable to experience moral feelings with sufficient intensity for awareness of the rules of society to be reflected in behaviour" [40].

This, however, explains that in their early life, psychopaths did not receive a proper training which is necessary for the development of sufficient sense of feeling right and wrong, that is to say the development of conscience. Therefore the formation of conscience depends largely on providing consistent learning, affection, security, rewards and punishments. Also if the child who is immitative by nature does not have a consistent example to immitate, his self will remain difuse and inconsistent and consequently grow up without any basic sense of feeling right and wrong. According to Rees:

> " consistency in all matters and relationships helps the child to form a stable attitude to life and enables him to develop standards and rules of behaviour which help him in reaching decisions and appropriate behaviour" [41].

Obviously a consistent style of upbringing is necessary for the formation of conscience. Inconsistent behaviour on the part of the parents prevents the child from establishing stable rules of conduct and behaviour, with the result that a consistent self-concept does not develop. Under these circumstances the child may grow up with awareness (on a cognitive level) of what society consider s to be right and wrong but at the same time, he almost certainly does not know the meaning of right and wrong at a feeling and emotional level. This results in his rejection of any social restraints. He is disorganized, impulsive and anti-social. The only internalised principle controlling such persons is the achievement of self-gratification. This indicates clearly that there is a weak conscience which acts not only as a moral compass but also as an ethical director which is necessary for keeping the individual on the right direction.

Briefly, as mentioned earlier the formation of conscience depends largely on the availability of consistent methods of upbringing and learning. This implies that early childhood experiences should not be ignored when we are discussing the origins of human conscience.

Aronfreed explains the origin of conscience in this way:

> "The antecedents of conscience tend to be highly concentrated in the child's early relationships with a few socializing agents, to whom it has very strong affective attachments" [42].

This supports the assumption that early childhood experiences play a key role in the development of human conscience. This is true since it cannot be denied that children are basically modifiable and flexible organisms. According to this theory, the child is born with a capacity for knowledge. The realities he knows are the realities he experiences. It is worth mentioning here that the whole Scottish system of juvenile justice is based on this theory. In their concluding observations, the members of the Scottish Committee on Children and Young Persons (under the Chairmanship of Lord Kilbrandon) which reported in 1964, pointed out that:

> "From the earliest age of understanding every child finds himself part of a given family and a given environment - factors which are beyond his or society's power to control. During childhood the child is subject to the influences of home and school. Where these have for whatever reason fallen short or failed, the precise means by which the special needs of this minority of children are brought to light are equally largely fortuitous. The individual need may at that stage differ in degree, but scarcely in essential character,and such children may be said at present to be, more than most, in a real and special sense 'hostages to fortune'. The time has come, we believe, when society may reasonably be expected so to organise its affairs as to reduce the arbitrary effects of what is still too often a haphazard detection process; and consequently to extend to this minority of children, within a sustained and continuing discipline of social education, the measures which their needs dictate, and of which they havehitherto been too often deprived" [43].

According to these observations the Kilbrandon Committee recommeded that the whole business of coping with children with problems would be fundamentally dealt with as an educational problem [44]. Needless to say, by placing more emphasis on proper and consistent learning, many of the children whom we now stigmatize as psychopaths might be prevented from becoming delinquents at all. A continuing experience of inconsistent learning and unsound discipline will make the child, as growth takes place, unable to adopt any code of conduct or to develop a basic sense of feeling right and wrong. An example of this is children who experience many changes of background, live with different people in different places with repeated changes of school and repeated changes in the parents attitudes when providing love, protection and discipline. The life history of Charles Manson who murdered Sharon Tate and others in America in 1969 is a typical example of this faulty upbringing style. After tracing Manson's history in his study "Abnormal Psychology", Martin concluded that:

> "In thinking back over the experimental and correlational literature on the internalization of social values, we can see several factors that might have contributed to Manson's psychopathic personality. His mother modelled a life of prostitution, irresponsibility, and crime. She probably provided little in the way of cognitive structuring about rules, consequences or values. It seems unlikely that she gave enough consistent love to provide an approach to child rearing that could even remotely be called love-oriented. In fact, Manson as a child was moved around so much that he probably experienced little consistent parenting by anyone" [45].

Probably within this framework and with the contribution of other factors, psychopathy as we know it is a possible outcome.

In addition to past social learning experiences there are, subsequently, some socio-cultural factors which contribute to the

development of this phenomenon which has been regarded by psychiatrists as indicative of mental illness. The children who grow up without a basic sense of moral obligation are likely to become anti-social in adulthood and repeatedly come into conflict with society's written and unwritten laws. No doubt persons with such qualities are expected to cheat, exploit and manipulate others when pursuing their own interests and they often appear not to know that their anti-social and inadequate conduct is in any sense wrong.

In this area of behavioural problems it becomes unnecessary to borrow words from medicine in order to explain or even to describe this social phenomenon. It is not a problem of "psychiatric disorders" but the reflection of inadequate socialization, lack of consistent love, discipline and inspired leadership.

In modern societies, where sometimes the end justifies the means, there is a great expectation that the seeds of anti-social behaviour will find more nourishment. If the goal is to make money, for example, then it is justifiable to use any means in order to achieve this goal without the slightest concern for the noxious side effects. The society itself breeds new possibilities of violating its laws. In fact many features in the structure of modern societies work against true social health and lend encouragement to anti-social and criminal tendencies. Life in modern societies is characterized by hypocracy in the sense that the values existing are not respected or followed by the members of these societies. Halleck who describes the modern American society as "peculiarly characterized by inconsistency, self deceit and paradoxical communication" [46] , explains the matter in this way:

" We can illustrate this point by listing only a few of the double messages that might be received by a lower-class negro boy growing up in a crowded urban area. He would be repeatedly exposed to inconsistent messages such as the following. On the left hand side are listed those ethical guidelines he would probably receive in church, in school and from his parents. On the right hand side are listed those messages which he would learn from his experiences on the street or from observing the actual behaviour of his parents and other adults.

"Virtue is its own Reward"	"Don't be a fool, take what you can get"
"Love thy neighbour"	"Don't involve yourself in other people's trouble"
"Thou shalt not steal"	"Some kind of stealing is all right, but just don't get caught"
"Obey the law always"	"Try to stay out of trouble, obey those laws that meet your needs"
"The meek shallinherit the earth"	"You get what you fight for"
"All men are brothers"	"We don't want those niggers moving into our neighbourhood"
"Thou shalt not covet thy neighbour's wife"	"Everybody has to cut loose once in a while, but don't let the "old lady" know"
"Ask not what your country can do for you, ask what you can do for your country"	"What do I owe this country? Not a thing"
"You must learn to control your sexual impulses"	"You're not a man until you've had it. You're not a queer, are you?"
"Everybody in America has the same opportunity"	"Don't get too uppity, black boy"
"You can be happy without money"	"Nobody gets in without a ticket"

[47]

If such contradictory ethical standards are experienced by a young person, it may produce anger and readiness to choose crime as a career. Perhaps, Malcolm X, the black American who was a member of the criminal sub-culture represents a good example of a black child whose criminal development is largely due to the imposition of such contradictory ethical standards. Martin explains Malcolm X's criminability by stating that:

> "Although individual psychological influences undoubtedly played some role in Malcolm X's criminal development, sociological circumstances seem to be the most important. If Malcolm X had not been born black, if his father had not presumably been killed by white racist, if he had not been discouraged from seeking an establishment career as a lawyer, and had not lived in the ghetto areas of Boston and New York, would he have become an habitual criminal? It seems unlikely, (Malcolm, X, 1966)" [48].

It is not, however, far from the truth to say that the criminogenic social circumstances mentioned here are the natural outcome of the confusion we witness in today's world which can be attributed to the obvious disparity between the great advances made in science and technology and the backwardness in human behaviour and morals. In the above example of Malcolm X, the notion of black inferiority can easily be denied intellectually or even scientifically but is difficult to shake-off emotionally.

To sum up what has been said so far : it has been claimed that psychopathy is neither the outcome nor an aspect of mental illness but rather the product of earlier faulty upbringing accompanied later by other sociocultural factors which are the main source for nourishment of anti-social behaviour. And if it is true that man does not alone fashion his life, then it is not unreasonable to conclude that psychopathy is the creation of others in the form of parents and the larger society. This may be what made a convicted psychopath like Charles Manson address his society in this was:

> "Mr and Mrs America - you are wrong. I am not the king of the Jews nor am I a hippie cult leader. I am what you have made of me and the mad dog devil killer fiend leper is a reflection of your society.." [49].

Notes

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21. For further discussion see Eysenck, H.J., Crime and Personality, (Revised Ed.,), Paladin, 1977, at p. 57.
22. ibid., at p. 101.
23. Quoted by Eysenck, ibid., at p.p. 100-101.
24. Cleckley, op. cit., at p. 403.
25. ibid., at p. 412.
26. This theory was presented by the Italian Psychiatrist Cesar Lombroso in 1876. The theory is now regarded as unproved. For further discussion of this theory see for example, Halleck, op. cit. at pp. 12-13. Also, Taylor, Walton and Young, The New Criminology.
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CHAPTER 3

THE PSYCHOPATHIC OFFENDER AND THE LAW

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This chapter considers the legal position of psychopaths in both Scotland and England. The legal definition of the psychopath in the Mental Health Act of 1959 and the Mental Health (Scotland) Act of 1960, (as amended), will be commented on in order to see to what extent this definition coincides with psychiatric and other definitions of psychopathy.

The question of the responsibility of psychopaths, which is complex and closely connected with social values and beliefs will also be discussed together with the evidence produced in a number of cases for establishing a scientific determination of the psychopath's responsibility.

Introduction

Before discussing the legal position of psychopaths in both Scotland and England we need to highlight the major developments of the law relating to insanity and diminished responsibility with particular reference to the way in which these particular pleas may relate to the psychopathic offender.

All modern laws accept a person's abnormal mental condition as a ground for exempting him from conviction or punishment for an act prohibited by the law which he has committed.

In ancient times lunatics were not regarded as suffering from disease but were believed to be possessed by demons and were beaten, put in chains or sentenced to death by hanging or burning. Even if the

alleged lunatic had committed some crime, there was no consideration of the offender's responsibility. However, rules to determine criminal responsibility were gradually formulated. One of the earliest tests of responsibility was that, for an accused to escape punishment - he must know what he is doing, no more than a wild beast. This requirement was altered and moderated when the terms right and wrong were substituted for "good and evil". The terms right and wrong were introduced in the famous English M'Naghten Rules (1843). According to the Rules, to qualify for immunity the accused must show that at the time the offence was committed he:

> ".. was labouring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong" [1].

It should be noted that the M'Naghten Rules are a test of responsibility in law for acts done. They do not relate to the matter or existence of insanity or any defined mental disorder.* For this reason the case of the so-called psychopathic offender could not be brought within the Rules. The psychopathic offender knows the facts concerning the particular criminal act that he has committed, knows its harmfulness (quality) and its unlawfulness and consequences.

The Rules have been supplemented by the so-called irresistible impulse test. It applies to a person who knew the nature, quality and the wrongfulness of his act but has lost the ability to choose between right and wrong because he was suffering from mental disease or defect. The reason for introducing the irresistible impulse test which is often applied with M'Naghten, is that the medical profession has protested

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* The Rules concentrate on cognitive ability i.e. if a man has a gun, does he know that it is a gun? Does he know that, if he discharges it, the effect may be damaging to other people? Thus the question "Does he know that it is wrong?" must be taken legalistically to mean "Does he know that it is wrong in law and punishable accordingly?"

that under the Rules insanity is defined as a matter of law and so psychiatrists are forced to make judgements about a legal state rather than a behavioural state. Although the admissibility of the irresistible impulse (defence) depends on satisfying the requirement that, the accused by reason of mental disease or defect, has lost the ability to choose between right and wrong, psychiatrists failed, at least in the case of the psychopath, to satisfy this requirement.

The M'Naghten test which is adopted by most English-based legal systems has been severely attacked not only by psychiatrists but also by many eminent lawyers on the ground that the Rules provide only cognitive criteria for determining the absence of sanity. For example, the Scottish jurist G.H. Gordon has observed that the Rules: "are open to the objection that they treat man as a purely cognitive being, and ignore the volitional and emotional aspects of human nature" [2].

In America where in many states, the Rules for a long time have been used in establishing legal insanity the medical profession protested that the Rules fail to take account of modern psychiatric knowledge. Psychiatrists argued that the determination of sanity should depend on whether the accused is suffering from mental illness or mental defect.

In 1954 in the case of Durham v. U.S.[3] the Court of Appeal for the District of Columbia decided that: "an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect" [4]. The Durham Rule provided the opportunity for psychiatrists to testify more completely and scientifically about their understanding of the motivational forces underlying the criminal act. But psychiatrists fail to go beyond presenting diagnostic labels

(a clear example is the case of the psychopath) which are not sufficient for explaining the origin of the disordered behaviour.

Because of this failure on the part of psychiatric witnesses the American Law Institute proposed a new alternative:

> "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease..... he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law" [5].

Needless to say this definition does not include cases where the abnormality is manifested only by criminal or otherwise anti-social conduct and therefore it clearly excludes from the concept of mental illness persons classified by psychiatrists as psychopaths. In addition it is questionable whether this definition differs substantially from the M'Naghten formula. In this definition the phrase "to appreciate the criminality of his conduct" is capable of being construed as referring to the cognitive ability of knowing right and wrong. As Gordon explains: "Appreciation is a wide enough term to cover all aspects of the conduct - its nature, its consequences, its moral value, and its legal effect" [6].

Diminished Responsibility:

The notion of diminished responsibility was developed in Scotland through case law. As many have suggested it was by no means peculiar to Scotland. It was recognised by many other legal systems in Europe, America and many other English-based legal systems in different parts of the world. The concept was introduced into English law by the Homicide Act of 1957. The reason for introducing it into English law is to avoid the rigidity of M'Naghten Rules as a

test of responsibility. This is, however, by no means the position in Scotland where the M'Naghten formula is not the test of criminal responsibility.

It should be noted that diminished responsibility does not protect the accused from conviction. It only reduces the charge from murder to culpable homicide (in Scotland) and to manslaughter in England. In practice, the doctrine is confined to murder cases and carries a much broader interpretation of insanity than the M'Naghten Rules. It covers cases where the accused knew the nature of his act and intended the consequences but nevertheless he is partially responsible. This departure from the Rules implies two things; first that the M'Naghten Rules are limited to cases of gross insanity and therefore incapable of dealing with borderline insanity cases; second, that the doctrine of diminished responsibility is devised for the purpose of making the law capable of keeping pace with modern psychiatric and psychological knowledge. This is, no doubt, a convincing argument but as far as psychopaths are concerned the present state of psychiatric or psychological knowledge is not in a strong position to prove that those individuals are mentally ill and the concept of psychopathy remains medically and legally meaningless.

The history of the concept of diminished responsibility shows that the concept was at first no more than the idea that if total insanity was a complete defence then partical insanity is a partial defence in that it would mitigate punishment. But a major change was introduced by a decision made in 1867 in the case of H.M. Adv. v. Dingwall [7] where it was decided that: "Diminished responsibility could reduce a charge of murder to one of culpable homicide" [8].

According to this decision, mental conditions not amounting to insanity may be accepted as a defence altering the category of the offence. The moral purpose behind this decision may be that it is necessary to distinguish legally between the bad and the mad. No doubt there may be mental conditions (not amounting to insanity) whose presence might lead the court to treat the accused as different from the normal person. But the distinction between the bad and the mad cannot be gained in the absence of proper criteria and accurate scientific evidence. In the absence of such evidence the courts will not allow those who are truly responsible to suceed in their defence of diminished responsibility.

At present the label 'psychopath' is of disputed medical validity and psychiatrists themselves are not agreed on the existence of such a condition. Under these circumstances the jury are expected to convict the accused of murder rather than the lesser charge. In Scotland the application of the doctrine is denied to psychopaths while it was accepted in England as a basis of diminised responsibility.

THE LAW OF SCOTLAND

In Scotland the Mental Health Act of 1960 avoided the actual use of the term "psychopathic disorder", but it recognizes by implication the condition as grounds for compulsory admission. This avoidance may suggest that the medical profession in Scotland does not directly recognize psychopathy as specific psychiatric condition. But it is not clear whether the medical profession in Scotland was opposed only to the use of the term "psychopathic disorder" - (which can be substituted by another) or to the recognition of the disorder itself as a distinct

medical entity. If the opposition was declared - only - against the use of the term then we expect to find a substitute for that term in the Mental Health Act of 1960. And although section 23 of the Act avoids the direct use of the term by mentioning a certain "persistent disorder which is manifested only by abnormally aggressive or seriously irresponsible conduct" it still does not avoid the definitional uncertainties associated with the concept in England and perhaps as Hogget has put it:

> "..it makes them worse by insisting that the disorder must be manifested only by abnormally aggressive or seriously irresponsible conduct, thus reinforcing the claim that the diagnosis is wholly circular" [9].

The avoidance of the use of the term is therefore of no value since the Mental Health (Scotland) Act 1960 recognizes the characteristics of the condition as grounds for compulsory admission and practically psychopaths are dealt with in much the same way as under the English Mental Health Act of 1959 [10].

However, as Gordon has explained, the Mental Health (Scotland) Act 1960, "... does recognise the psychopath as someone who is mentally ill, and as having a special place in the criminal law" [11].

The Defence of Insanity in Scotland:

In Scotland the criteria for the defence of insanity appear to be somewhat broader than the English M'Naghten Rules. The Directions given in the case of H.M. Adv. v. Kidd by Lord Strachan to the jury were said to represent the current criteria for the defence of insanity in Scotland:

> "In order to excuse a person from responsibility for his acts on the ground of insanity, there must have been an alienation of the reason in relation to the act committed. There must have been some mental defect ..... by which his reason was overpowered, and he was thereby rendered incapable of exerting his reason to control his conduct and reactions. If his reason was alienated in relation to the act committed, he was not responsible for that act, even although otherwise he may have been apparently quite rational" [12].

It has been suggested that this test is not far from M'Naghten Rules, since it also concentrates on cognitive ability. But the difference between this test and M'Naghten Rules is that the Scottish test accepts that a person may not have a sane understanding of what is happening even though he is aware of the nature of his act and its unlawfulness. Gordon describes the Scottish test as:

> "consistent with the more general requirement of 'sane understanding' of which the Faculty of Advocates spoke in their evidence to the Royal Commission, and with Lord Moncreiff's view that mere 'intellectual apprehension' is useless without a sane mind to apply one's knowledge" [13].

Lord Strachan's approach in Kidd appears to be less stringent than the earlier approach suggested by Hume:

> "an absolute alienation of reason ..... such a disease as deprives the patient of the knowledge of the true aspect and position of things about him, - hinders him from distinguishing friend or foe.... and gives him up to the impulse of his own distempered fancy" [14].

According to this approach the disorder must amount to an absolute alienation of reason if it is to serve the purpose of a defence in law. It does not specifically refer to the mental state of the accused in relation to the act committed and for this reason it requires a higher standard of 'alienation of reason' than that required by the Rule in Kidd .

The M'Naghten Rules were followed in some of the earlier cases in Scotland [15]. Gordon mentioned that Lord Hope in the case of Jas Gibson declared the Rules to be part of the law of Scotland [16]. In later cases (1869 to 1888) there was an obvious departure from the Rules. This was mainly due to the attempts made by Lord Moncreiff who stressed in a number of cases that the accused is irresponsible if his unlawful acts are the product of mental disease [17].

These different approaches may suggest that there was no specific test for dealing with insanity cases in Scotland and that judges were free to adopt a more liberal approach than that allowed by the M'Naghten Formula.

However, as it has been mentioned, the Rule in Kidd is seen as representing the current position in Scotland. This Rule comes closer to the proposals made by the American Law Institute which, as we have seen, clearly excludes the psychopath. In Scotland there is no legal authority that psychopathy was accepted by the courts as a basis of the defence of insanity. It is also unlikely that the Thomson Committee's suggested defence "Absence of legal responsibility due to mental disorder" [18], could include the psychopath, since there is no evidence that psychopaths are mentally disordered. Further, the Scots have rejected even the application of diminished responsibility to the psychopath.

Irresistible Impulse:

Is a test applied to a person who knew the nature and quality of his act and its unlawfulness, but by reason of some mental disease or

defect he had lost the power to control his actions. The doctrine of irresistible impulse (unlike the M'Naghten Rules) clearly considers the volitional aspect in human actions. In Scotland the doctrine is likely to be accepted since the Rule in Kidd (which represents the current position in Scotland) focuses not only on the accused's thinking on reasoning but also on what is called a "volitional defect",

> "..There must have been some mental defect, by which his reason is overpowered, and he was thereby rendered incapable of exerting his reason to control his conduct and reactions" [19].

The irresistible impulse test has its own difficulty in that the mental defect which led to the commission of the uncontrolable act may be confused with other states of hatred, revenge or passion growing out of anger. However, according to the directions made by Lord Cooper in Braithwaite (1945), [20], the person is accountable if his act is induced by any of these causes i.e. hatred, revenge etc. Also it may be difficult for expert witnesses (at least in the case of the psychopath) not to confuse such mental defect or disease with these states. But if the medical evidence is sufficient to prove that the criminal act was the product of mental defect, the courts are likely to accept the defence on this basis.

Gordon who disagrees with the generalizations made by Lady Wootton [21] on the subject, seems to support this view. He says:

> "..while this might be true in the context of the psychopathic gangster there are some cases where we are prepared to treat the offender as lacking free will" [22].

Needless to say, offenders treated "as lacking free will" are either suffering from mental disease or defect, or acting under compulsion or coercion while the evidence would suggest that psychopaths are not.

Diminished Responsibility:

As mentioned earlier the plea of diminished responsibility originated in Scotland and is a part of the Common Law (in England it was introduced by statute). It should be noted that the liberal approach followed by the Scottish judges in dealing with insanity cases is also followed in cases of diminished responsibility and the interpretation of the doctrine is left wholly to the judges.

In the case of Alex Dingwall (1867) [23] Lord Deas who is regarded as the founder of the doctrine (in its modern form) appears to be accepting not only the mental state of the accused as sufficient for reducing the charge from murder to culpable homicide, but also factors such as volitional weakness induced by sudden loss of temper and the unpremeditated nature of the criminal act itself. In that case the accused quarelled with his wife and killed her because she had hidden his liquor and his money. Lord Deas stated the grounds justifying the reduction of the charge from murder to culpable homicide:

> "1st, The unpremeditatedand sudden nature of the attack; The prisoner's habitual kindness to his wife, of which there could be no doubt, when drink did not interfere; 3rd, There was only one stab or blow, this, while not perhaps like what an insane man would have done, was favourable for the prisoner in other respect;...." [24]

Gordon pointed that Lord Deas in later cases "referred to all the mitigating factors, and not only to the accused mental state, as the reason for the reduction of the crime to culpable homicide" [25].

Lord Deas's approach suggest clearly that the doctrine is based on general humanitarian grounds in that it gives consideration to the

accused's mental state as well as to other mitigating factors.

If we compare this with the English approach we find that the English approach make the doctrine incapable of interpretation except within the stated limits in the Homicide Act while Lord Deas approach allows the doctrine to operate in a non-restrictive way. The Scottish approach has also its own difficulty when it views diminished responsibility as something affecting responsibility rather than punishment. For example, the responsibility of the accused cannot be properly assessed in cases (like psychopathy) where the alleged mental abnormality is incapable of scientific proof. The courts cannot accept vague or conflicting medical evidence without deliberately ignoring the traditional criteria of criminal responsibility. In the case of Francis Gove [26] Lord Deas himself seems to treat diminished responsibility as something affecting punishability rather than responsibility when he accepted the accused's mental weakness as sufficient justification for the reduction of punishment:

> "There might be men of habits of mind who should not be punished with the Capital Sentence of death, as they would have been in full possession of their faculties...." [27].

It may be possible that this definition could include psychopathy (in a non-psychiatric sense) since "men of habits of mind" are not necessarily or by definition suffering from mental disease. Lord Deas' observations suggest that character defect could be considered by the law as an excuse leads to reduction of punishment. Thus diminished responsibility, according to these observations, is not viewed as a defence per se but rather as a means empowering the court to reduce punishment if it decided to consider such excuse i.e. character defects.

However, the Scottish Courts, appear to be much more cautious in admitting "defects of character" as excluding responsibility. They may treat those cases as deserving leniency or mitigation of punishment after conviction has been established. There are many cases in Scotland in which diminished responsibility was directed towards mitigation of sentence [28].

Diminished Responsibility and Psychopaths in Scotland:

Unlike the English Courts the Scottish Courts rejected the application of the doctrine of diminished responsibility to psychopaths. One reason for this may be that, although one purpose of the doctrine may be to make the law regarding insanity capable of keeping pace with scientific developments it is still feared by the Scottish Courts that diminished responsibility may be abused or given wider interpretation. In fact the defence of diminished responsibility has been introduced in a variety of ways e.g. lack of control, jealousy, drug taking, bad temper, provocation and mercy killing can be offered as evidence of diminished responsibility.

In H.M.A. v. Braithwaite (1945), Lord Justice - Clerk (Cooper) directed that:

> "...it will not suffice in law for the purpose of this defence of diminished responsibility merely to show that an accused person has a very short temper, or is unusually excitable and lacking in self control. The world would be a very convenient place for criminals and a very dangerous place for other people if that were the law" [29].

This attitude of the Scottish judges is justifiable not only because there is a possibility of the doctrine being abused or given a wider interpretation, if it includes these categories, but also

because this attitude stands firm against those who claim that there are no ordinary criminals who break the law voluntarily and responsibly and that all criminals are sick in such a way as to diminish their responsibility. But this view is unacceptable because it will result in a disregard of public security. The increased availability of the diagnosis of sickness will encourage those who are criminally motivated to violate the law in order to satisfy their own desires. They expect their conduct to be explained in terms of mental illness, since psychiatrists are willing to define them as sick rather than bad. Habitual criminals may malinger when they fail to escape the consequences of anti-social deeds. The community would be a comfortable home for the games that habitual criminals play. Some may argue that by calling them sick the society attempts to humanize its treatment of criminals. But there are many ways of helping criminals without calling them sick.

Furthermore the judge will no doubt be sceptical about the genuiness of the defence if one of the above categories is introduced as evidence of diminished responsibility. The only step he can take in order to avoid this dilemma is to explain fully to the jury the scope and effect of the doctrine. But this will be a very difficult task for both the judge and the jury members who are laymen and not competent to understand genuinely a legal explanation full of technicalities. It should also be noted that in ptractice the doctrine of diminished responsibility applies only in murder cases, and so it would in any event not be any help if the psychopath is charged with different offence.

The idea of diminished responsibility was explained by Gordon in this way:

> "It... seems to have started in practice with an understanding that certain cases of mental weakness should be dealt with by way of a conviction accompanied by a recommendation to mercy" [30].

That means the doctrine operates only after conviction has been established and therefore affects only the amount of punishment or the type of disposal. Maher concluded that: "..."diminished responsibility" was one of the factors considered by the judge in using his discretion in determining the sentence for a convicted person" [31].

In the light of this understanding and in trying to apply the doctrine to psychopaths, diminished responsibility should not be considered as a defence per se but rather as a mitigatory factor which is capable only of deciding the amount of punishment (at the discretion of the court) or imposing the proper method of disposal. In this way courts can avoid the unnecessary widening of the concept of diminished responsibility and at the same time find a solution for the question of the responsibility of the "non sane - non insane category which is admittedly difficult to tackle. The difficulty therefore arises when we consider diminished responsibility as the decisive factor in assessing responsibility rather than sentence or disposal. And if the categories of diminished responsibility are wide and difficult to define, then the discretionary power of the judge will allow him to treat every case according to its merits. This of course will be of great assistance especially in dealing with certain types of cases which are difficult to define with any precision.

In Scotland the most important case on "psychopathy" was the case of Patrick Carraher[32] in which the decision was said to have put an

end to the development of the doctrine of diminished responsibility, in general, and in particular denied the application of the doctrine to psychopaths [33].

The Case of Patrick Carraher (1946):

The accused killed a man by stabbing him on the neck. He was charged with murder and tried. In the course of his trial the defence produced evidence that the accused was in a state of intoxication at the time. The defence also produced evidence that the accused had a "psychopathic personality". He was convicted. The Counsel for the Defence presented an application for leave to appeal against conviction.

The main reasons for appeal were that the trial court failed to consider how the combination of drink and psychopathic personality might diminish responsibility. The inference to be drawn from this, is that, psychopathy if not combined with drink, will not amount to an evidence of diminished responsibility. The appeal was refused and Lord-Justice-General (Normand) gave the opinion of the High Court [34]:

> "The learned judge felt, as he says, difficulty about remitting this evidence for consideration to the jury as a ground for reducing the charge from one of murder to one of culpable homicide. I also have grave doubt whether it was evidence of any thing approaching to mental disease, aberration or great peculiarity of mind, and whether the judge might not have been warranted in withdrawing the issue from the jury. The court has a duty to see that trial by judge and jury according to law is not subordinated to medical theories; and in this instance much of the evidence given by the medical witnesses is, to my mind, descriptive rather of a typical criminal than of a person of the quality of one whom the law has hitherto regarded as being possessed of diminished responsibility" [35].

The decision in Carraher indicates clearly that psychopaths should not be regarded as of diminished responsibility and that criminal behaviour

should not be equated with abnormality of the mind since there are many people who are plainly evil.

Furthermore there is no approved medical criterion for distinguishing psychopaths from habitual criminals [36].

The Scottish jurist G.H. Gordon who studied the case of Carraher put his views on the question of the responsibility of the psychopaths in this way:

> "One fundamental difficulty in accepting psychopathic personality as an abnormal state is that it appears to be a personality defect, or at most a form of emotional instability, so that the psychopath's "excuse" seems to be his own character, and the acceptance of such an excuse conflicts with ordinary ideas of moral responsibility and free will" [37].

No doubt the problem of "psychopaths" and the idea of diminished responsibility pose many philosophical, moral and legal questions. Apart from the legal contexture of the phrase "diminished responsibility", it is not clear what is meant by diminished responsibility. The word responsibility may mean here : accountability, culability or the degree of blameworthiness as well as liability to punishment. If, for example, we take "responsibility" here as meaning the degree of balmeworthiness, this may lead us to think that the concept of diminished responsibility will apply here as a defence. On the other hand if we understand "responsibility" in the sense of liability to punishment then it will apply here as an excuse (in a literal sense). Gordon in his above statement explained no difference between excuses and defences when he pointed that, the psychopath's excuse (his character) "conflicts with ordinary ideas of moral responsibility and free will".

The use of the phrase "moral responsibility" in Gordon's statement implies that if an excuse was not accepted the accused will be fully responsible, but if it was accepted the accused will only be partially responsible. In this way diminished responsibility is considered as something affecting the question of guilt rather than punishment or disposal and for this reason it (principally) provides for removing the offence into a separate category which carries a lower maximum penalty. This indicates that diminished responsibility affects the question of guilt, in that it reduces the charge from murder to culpable homicide, as well as affecting the penalty by giving the punishment prescribed for the charge of culpable homicide or by imposing a proper method of treatment and disposal. But a proper and a suitable method of disposal or treatment cannot be reached if we understand diminished responsibility (in the first place) as something affecting the responsibility rather than the punishability of the accused. In this sense diminished responsibility concentrates on the offender's state of mind at the time of the single act committed and consequently attached less weight to his state of mind at the time of disposal which is more relevant when deciding methods of treatment or disposal. What the accused did in the past may not be a relevant or a sufficient guidance for the court when imposing suitable methods of future care and treatment. The combined effect of diminished responsibility i.e. the fact that it affects both responsibility and punishment causes great difficulty especially in cases where the (defence) of psychopathic personality is adduced as evidence of diminished responsibility. In order to escape this difficulty the distinction between defences and excuses will remain necessary. If

therefore we suppose that the result of an accepted excuse will be the reduction of punishment (mitigation), then an excuse will be an answer to the claim that someone should be punished. On the other hand if we suppose that the result of an accepted defence will be the elimination or the diminishing of the responsibility of the accused, then a defence will be an answer to the claim that someone should be convicted. But the difficulty with the latter approach is that it is not possible in all cases to reduce the offence to the lower category. An example of this are cases of theft where the only other alternative is to reduce the sentence.

The former approach i.e. an excuse is an answer to the claim that someone should be punished, suggests that the plea of diminished responsibility affects, only, the liability to punishment after conviction has been established. In this way diminished responsibility can more easily be explained to the members of the jury who are laymen and competent only to decide on questions of facts not on questions of law. The mitigation of the severity of punishment where there is a clear evidence of the presence of mitigating circumstances, is, no doubt, a question of fact. In this way the meaning and the scope of diminished responsibility can be explained easily to the members of the jury. In addition, and as far as psychopaths are concerned, diminished responsibility should not be interpreted in terms of mental incapacity for this causes great difficulty for the members of the jury who are also not competent to understand psychological or philosophical notions such as mental abnormality or emotional instability.*

Finally the decision in Carraher stands not only against the

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* If it is true that the doctrine of dinished responsibility is ultimately based on general humanitarian grounds and that it exists because the law shows a tenderness towards the frailty of human nature, then (on this ground) it can easily be explained to the members of the jury.

application of the doctrine to psychopaths but also against any wider interpretation of the doctrine itself. This reveals the fact that if diminished responsibility is to be regarded as a defence rather than an "excuse" or a plea in mitigation, then the result may be an unnecessary widening to the concept itself. In the words of J.L.L.J. Edwards, the case of Carraher,

> "...indicates clearly a fear on the part of the Scottish Court of Criminal Appeal that the concept of diminished responsibility was in danger of becoming an unruly horse and that the time had come to apply the brake" [38].

On the other hand it appears that the rejection of the application of the doctrine to psychopaths in Scotland is mainly based (particularly in Carraher) on the fact that the medical evidence is insufficient to prove that the condition falls within the ambit of diminished responsibility. The inference to be drawn from this is that psychopaths may fall within the ambit of diminished responsibility if there is a sufficient medical evidence. But we have already noticed how the medical model have failed "psychopaths" who are presenting - in the first place - a behavioural problem. In the present circumstances the problem of dealing with these individuals can be solved by regarding the psychopath's "excuse" (i.e. his character) as a mitigating circumstance, the effect of which will be not only the reduction of sentence where punishment is effective, but also the provision for alternative methods of treatment because some of those individuals are unable to learn or benefit from punishment. An example of these alternative methods may be, reformatory institutions, or community homes (with educational and training facilities).

The Law of England:

Psychopathic states are defined by the Mental Health Act of 1959 as:

> "Persistent disorders or disability of mind (whether or not including subnormality of intelligence) which result in abnormally aggressive or seriously irresponsible conduct on the part of the patients, and require or are suscceptible to medical treatment-" (S.4(4)).

This definition indicates that the abnormally aggressive or the seriously irresponsible conduct of psychopaths is an outcome of a disability of the mind. The phrase "disability of mind" indicates a disability (from whatever cause) which can produce irresponsible and serious anti-social conduct. Therefore the above subsection makes it very difficult to distinguish the psychopath from the imbecile, the idiot, the feeble minded or the moral defective who is also aggressive or irresponsible. As a result the term "disability of the mind" may mean any departure from the normal standards of mental health and therefore is incapable of exact definition, and may be used in more than one sense.

In Parliament during the discussions of the Mental Health Bill the definition was attacked and many thought that it might be better not to define psychopathic disorder. Many remained sceptical (though they are doctors) and finally accepted the proposed definition solely in the hope that the Bill would stimulate the Medical Research Council to action because, as suggested by Dr. Summerskill: "there is an urgent need for research in this field" [39]. Dr Summerskill's remarks clearly suggest that the medical profession in England is not

yet in a position to decide whether or not psychopathy is a mental illness. Further Dr Summerskill's own opinion on the matter seems to support the thesis that psychopathic disorder lies outside the field of medicine. He argued:

> "The diagnostic criteria is a social one, and the fault may be more with society than with the patient's inheritance or with his genes" [40].

Needless to say, this argument totally exludes the possibility that psychopathy is an outcome of heredity or constitutional factors. In spite of that, Dr. Summerskill was not against the definition suggested by the Bill. He gave another justification for accepting the definition. He said " it is doubtful whether one could find an alternative to satisfy everyone" [41]. However, in any event, this will not be sufficient to encourage the acceptance of a definition of mental illness. In these circumstances the only way out may be to decide the matter by way of voting and again this is not a scientific or a proper criteria for defining mental illness.

Another member (Mr. Walker-Smith) suggest that the definition "approximates closely to the general understanding of the term" [42]. But the general understanding of the term is no more than a layman's view (i.e. the man who committed this horrible crime must by a psychopath) and could not justify a detention of a sane criminal in a mental hospital on the ground of mental illness.

As far as the question of treatability of psychopaths is concerned, many members (mainly doctors) appear to be pessimistic about the matter. For example, Dr. Reginald Bennet who had a considerable experience in

treating psychopaths, confirmed this pessimistic attitude:

> "I think that without any hesitation we can say the psychopath is almost entirely unsuitable for hospital treatment. The other trouble is that I very much doubt whether anyone would be likely to confirm with any confidence that he is in any way susceptible to medical treatment" [43].

Obviously Dr. Bennet's remarks suggest that the proposed definition can lead to nothing but unproductive labelling.

Early in the nineteenth century the term "moral insanity" was introduced to describe those who are now classified as psychopaths [44]. The term "moral insanity" means different things to different writers. To some writers moral insanity is regarded as something of emotional and psychological nature rather than of ethical or moral nature. Michael Craft reported that Prichard (1835):

> "...first uses the term "moral insanity"throughout his treatise to describe those patients with insanity whose emotional and affective faculties are disordered" [45].

The definition of psychopathy in the 1959 Act is close to this description of moral insanity and causes a similar definitional problem because both definitions are capable of comprising a mixture of several disorders. In fact the same definitional problems are seen in the old definitions of psychopathy. For example, under the Mental Deficiency Act of 1913, the category of moral defective was reserved for cases of serious behavioural disorder. Moral defectives were defined as:

> "persons in whose case there exists mental defectiveness coupled with strongly vicious or criminal propensities and who require care, supervision and control for the protection of others" [46].

After the 1913 Act, the Amending Act of 1927 was passed which replaced the term "moral imbecile" by the term "moral defective". But the important change introduced by the Amending Act of 1927 is that a defect of intelligence or understanding is not necessary for creating the condition. Professor Glanville Williams suggeststhat:

> " The change of terminology in the Act of 1927 was intended to show that there need be no defect of understanding" [47].

The definition of psychopaths found in the 1959 Act resembles that of moral defective found in the Mental Deficiency Acts of 1913 and 1927, since the 1959 Act defines psychopathy as "a disability of mind (whether or not including subnormality of intelligence) which result in abnormally aggressive or seriously irresponsible conduct" and require or is susceptible to medical treatment. It is very difficult to reject this similarity between the two definitions because there seems no clear difference between the term "mental defectiveness" which appears in section one of the 1927 Act and the term "diability of mind" which appears in the 1959 Act. There is actually no difference since the word "mental" is synonymous with the word "mind" and the word "defectiveness" may be synonymous with the word "disability".

If therefore the terms "mental defectiveness" and "disability of mind" have virtually the same meaning, then there is no clear advance mady by replacing the term "moral imbecile" (which appears in the Act of 1913) by the term "psychopathic disorder" which appears in the Mental Health Act of 1959. Further, the Mental Deficiency Acts of 1913 and 1927 and the Mental Health Act of 1959, suggest that the condition results in abnormal and criminal behaviour which requires care and

treatment. The only difference is that the 1959 Act stressed that treatment should be of medical nature while the Mental Deficiency Acts speak (in general) of care, supervision and control. But this can also be interpreted as of medical nature as well as any other sort of treatment. In practice, however, the psychopath is now dealt with punitively rather than medically.

In the years of 1954-57 a Royal Commission on the law relating to Mental Illness and Mental Deficiency [48] came to the conclusion that it is very difficult to classify someone as moral imbecile unless he is characterised by some weakness of intelligence or understanding and his behaviour is accompanied by some limitation of intelligence. For those who are characterised by aggressive and inadequate dispositions which do not amount to severe sub-normality, the diagnosis of psychopathic personality is reserved and medically recognized as a pathological condition and if their behaviour is accompanied by some limitation of intelligence the person should be called a "feeble minded psychopath".

This definition includes persons whose intelligence is not markedly limited as well as those persons whose intelligence is markedly limited. Like the Commission's definition, the 1959 Act's definition includes both categories and of course recognizes the condition - medically - as of a pathological nature. That means the diagnosis of psychopathy covers both mental illness and sub-normality. This is similar to the old definition of "moral imbecility" or "moral defectiveness". As Lady Wootton has put it:

> "Moral defective is an excellent shorthand description of the psychopathic type of personality" [49].

Hoggett [50], who reviewed the legal history of the definition of psychopathy expressed her views about the definition of psychopathy in the 1959 Act in this way:

> "The resulting statutory definition of psychopathy ....emphasized still further the connection with serious anti-social behaviour, and it is questionable how far it departed from the old idea of moral imbecility" [51].

The Mental Health Act of 1959 describes the condition as requiring or being susceptible to medical treatment. But most psychiatrists agree that few psychopaths respond to medical treatment and in practice few hospitals agree to admit psychopathic patients who are admittedly untreatable and difficult to handle. In 1972 the Committee on Mentally Abnormal Offenders [52] was set up to review the provisions of the criminal law relating to mentally abnormal offenders and the facilities for the treatment of such persons. The Report of the Committee suggests that:

> "Psychopaths are not in general treatable at least in medical terms" [53].

As far as the treatability of psychopaths is concerned, this statement corresponds with the present state of medical knowledge. In addition, the inaccuracy of the diagnosis renders the question of the treatment of psychopaths very difficult if not an impossibility. In spite of the fact that the Report of the Butler Committee is quite confident on this matter, some writers have attacked the Committee's recommendations on the ground that the Committee made its recommendations on the basis

of studies made principally in institutions for recidivists. For example, Scott makes the point that:

> "To draw conclusions about the treatability of psychopaths from the comparison of two such institutions (Hersted Vester and Horsens, or Grendon and Wormwood Scrubs) is not really relevant to their conclusion since all four institutions are for recidivist criminals. If the Committee had studied Schizophrenia in the chronic wards of mental hospitals it would no doubt have concluded that Schizophrenia is in general incurable, which is not true" [54].

As far as the treatability of "psychopaths" is concerned, this argument seems to ignore the fact that in many cases psychiatrists lock up people as mentally ill only on the basis of anti-social behaviour and offer only custodial rather than therapeutic measures.

The so-called psychopath is only a diagnostic label and is not in itself sufficient to prove the availability of treatment or to show that there is a difference between therapeutic and custodial measures.

Furthermore the Butler Committee concluded that the concept of psychopathic disorder was no longer useful or meaningful and recommended that "responsibility for dealing with dangerous psychopaths should be clearly placed on the prison ratherthanhospital services" [55]. This recommendation was probably reached after realizing that psychopaths are not welcomed by most hospitals, and even if they are admitted, the hospital services will remain primarily custodial in nature. This rejection on the part of hospitals reflects their belief that psychopaths are untreatable by medical measures and leadsthe patient himself to believe that he is incurable even if there is a possibility of benefiting from medical treatment. In these circumstances, the prison will be the best or perhaps the only alternative. Prisons are provided

with training and educational facilities which as the Committee suggests, are superior to those found in many hospitals [56]. The Report of the Committee goes some way towards meeting this point by recommending that:

> "no hospital order shall be made by the courts in the case of an offender suffering from psychopathic disorder with dangerous anti-social tendencies, unless the court is satisfied:
>
> (a) that a previous mental or organic illness, or an identifiable psychological or physical defect, relevant to the disoreder is known or suspected; and
>
> (b) there is an expectation of therapeutic benefit from hospital admission" [57].

We have already seen that it is difficult in the present state of medical knowledge to satisfy the two conditions (a) and (b). And it is obvious that in the absence of medical or scientific explanation of the psychopath's criminality, the members of the Committee felt that the condition does not represent some pathological abnormality which is capable of specific diagnosis or treatment. They describe the definition of psychopathy (as appears in the 1959 Act) as carrying no implication that psychopathy is a single entity, and say:

> "The statutory definition of psychopathic disorder includes not only the abnormally aggressive person but also under the criterion of serious irresponsibility, such a person as the compulsive gambler" [58].

Many witnesses to the Committee expressed the view that the concept of psychopathy is no more than "a part of the general attempt of secular society to replace moral explanations of behaviour by medico-scientific explanations" [59]. It is therefore not far from the truth to say that the Committee sees the diagnosis as no more than a label

reflecting the view that psychopaths are a social menace or social nuisance and it is for this reason that they suggest that the more suitable place for the psychopath will be the prison.

Their recommendations are not merely designed to protect hospitals - as many have suggested - but rather to protect the patient's interest as well as the interest of society by making the prison a more suitable place for the training, resocializing and the rehabilitating of those unfortunate individuals. And if the hospital services now are, admittedly, of custodial nature, then a properly equipped and humane prison will be the more suitable place. Consequently in these circumstances, the compulsory hospitalization of psychopaths seems to be irrelevant and ineffective. Therefore the arrangement for psychopaths in section 60 of the 1959 Act - which empowers the courts to impose a hospital order instead of a penal disposal - should not be interpreted as a mere licence for compulsory detention. However, one can also say that the Butler Committee members wished to leave the door open for laterknowledge to find a medical explanation of psychopathy when they suggest that:

> "no hospital order shall be made unless the courts are satisfied (medically) that the offender is suffering from mental disorder and that there is a possibility of benefiting from medical treatment" [60].

This is a moderate and realistic approach to the problem because it satisfies both those who are looking for or expecting a possible scientific explanation of the problem in the future, and those who favour a social explanation to the problem and consequently prefer that the penal system deals with the question of caring, re-educating and controlling those individuals.

In Britain now there is continuing uncertainty about the treatability - in medical terms - of those individuals classified as psychopaths. Many psychiatrists who testified to the Butler Committee were of the opinion that there is, at present, no recognised effective medical treatment for such condition. The British Psychological Society reported that there is no solid evidence of the effectiveness of treatment for psychopaths.

If, however, there is no evidence to indicate that psychiatry has found a therapy for changing those individuals then the only available alternative will be the custodial care which, needless to say, is the function of the legal system. The traditional inclusion of the "psychopath" in the prison system offers options to the prison service to provide re-education rather than mere punishment. There is therefore the need for a legal framework within which such new educational facilities could be set up.

Insanity in England:

The defence of insanity as formulated in the M'Naghten's Case (1843) is very limited because it excludes a wide range of mental abnormalities. The defence concentrates on defects of reasoning and ignores that a person may know the nature, quality and the wrongfulness of his act, and yet be classified by the medical professionals as severely mentally disordered.

In 1953, the Royal Commission on Capital Punishment recommended that: either (a) the Rules should be extended to include cases where the accused is labouring (as a result of disease of the mind) under an

emotional disorder which makes him incapable of preventing himself from committing an act, even though he is aware that it is wrong and capable of appreciating its nature , or (b) the Rules should be entirely abrogated and the jury given total discretion to determine whether he was so insane as not to be responsible for his actions. [61].

The Commission's recommendations were not implemented and the only change introduced was the inclusion of diminished responsibility in the 1957 Act.

However, as for psychopaths, the Royal Commission on Capital Punishment concluded that:

> "For the present we must accept the view that there is no qualititative distinction, but only a quantitative one, between the normal average individual and the psychopath, and the law must therefore continue to regard the psychopath as criminally responsible" [62].

This exclusion of psychopaths from the categories of mentally abnormal offenders appears to be in line with the more recent exclusion of psychopaths proposed by the American Law Institute and the practices of the courts in Scotland. Further, the Royal Commission thought that it would be right for the Home Secretary to give greater weight to psychopathic personality as a ground for reprieve [63].

This sounds more realistic than the present inclusion of psychopaths in mental hospitals where treatment is not available and where the discharge of the restricted patient is left to the Home Secretary rather than the hospital.

In any event,it has been largely accepted that the English defence

of insanity with its emphasis on cognitive ability could not be applied to the psychopath who has no cognitive dysfunction.

Very recently the Committee On Mentally Abnormal Offenders (Butler Committee) [64] proposed a new defence namely, "not guilty on evidence of mental disorder". The grounds for this comprises two elements:

> (a) a mens rea element approximating to the first limb of the M'Naghten Rules.(Did he know what he was doing?? (b) specific exemption from conviction for defendants suffering from severe mental illness or severe subnormality at the time of the act or omission charged [65].

These two grounds cannot be applied to the psychopath who, as stated earlier, does not lack the capacity of knowing what he is doing and who is not suffering from severe mental illness or subnormality. The Committees' proposed definition is equivalent to the present concept of psychosis and the psychopath is excluded by psychiatrists from this major category of mental illness.

Psychopathy as a Defence:

The recognition of psychopathy by the English Mental Health Act of 1959 gives the psychopath the opportunity to raise the defence of insanity within the meaning of M'Naghten Rules or the newer defence of "diminished responsibility".

To establish a defence on the grounds of insanity, it must be proved that at the time of committing the act the party accused was:

> "labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing or if he did know it he did not know he was doing what was wrong" [66].

For the psychopath who knows what he was doing in quality and nature and who also knows the wrongfulness of his deeds, the M'Naghten Rules offer little protection from conviction. That is because the Rules are limited to cases of gross insanity and consequently ignore the category of "non-sane/non-insane" which includes psychopathic offenders. In addition the word "wrong" which is used in the Rules as synonymous with "punishable by law" does not refer to any question of abstract value which is relevant in the case of the psychopath who does not lack the mental capacity for distinguishing right from wrong but rather the basic moral capacity which is necessary for making the individual respect and abide by the law. The psychopath knows the illegality of his actions and that they are punishable by the law and consequently he is not protected by the Rules.

In practice, however, courts are trying to overcome this difficulty by interpreting the Rules with an increasing elasticity. This attitude results in what is known as the doctrine of "irresistible impulse". The doctrine is simply that, if the accused is to be excused it must be proved that he is suffering from a disease of the mind which deprives him of the power of controlling his acts. Lawyers usually object to this on the grounds that there is the difficulty of distinguishing an irresistible impulse from an impulse which was not in fact resisted [67]. In the case of the psychopath we have already seen that impulsivity is one of his characteristics but that it is not an outcome of mental illness or disease. Therefore, the doctrine of

irresistible impulse cannot be applied to psychopaths since there should be according to the doctrine extraneous evidence of mental illness apart from the anti-social conduct. More or less the doctrine was not, and still is not, accepted as a defence by English courts.

Psychopathy and Diminished Responsibility

The English legislators, while trying to avoid the shortcomings of the Rules, introduced into English law the Scottish doctrine of "diminished responsibility" which has been available in Scotland since the nineteenth century [68]. The provision for the defence of diminished responsibility was made by the Homicide Act of 1957. According to the doctrine a person whose act is attributable to mental abnormality may be held only partially responsible and this may be a mitigating factor in assessing punishment. Thus, on a charge of murder a finding of diminished responsibility reduces the charge to manslaughter.

The degree of abnormality required for the defence of diminished responsibility is defined in section 2 of the Homicide Act 1957:

> "where a person kills or is party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing"

The criteria of diminished responsibility laid down in this section, were said to be vague and undefined. It is difficult, for example, to define what is normal, what is substantial and what is mental responsibility. Although this formulation appears to be allowing the courts a greater degree of flexibility, it still has its

own problem. The requirement of proving that the accused's criminal conduct stems from or induced by inherent causes or disease is often difficult to satisfy. The jury will eventually rely on their own common sense in order to satisfy themselves whether the accused's criminal act stemmed from abnormality of mind.

During the introduction of the Homicide Bill in the Parliament one member (the Attorney General) raised the point that clause 2:

> "...goes a little further than the doctrine does in Scotland" [69].

This was later proved to be true and the doctrine was interpreted (particularly in the case of psychopaths) more favourably to the accused than the doctrinein Scotland. Another member (Major Lloyd George) suggest that clause 2:

> "... is not intended,....., to provide a defence to persons who are merely hot-termpered, or who, otherwise normal, commit murder in a sudden access of rage or jealousy" [70].

This suggestion is similar to the direction of Lord Cooper in the Scottish case H.M. Adv. v. Braithwaite [71]. After the Homicide Act was put into effect the English courts looked to the Scottish cases for guidance and Lord Cooper's direction in Braithwaite has been approved in the English cases [72].

The diagnosis of psychopathy was made the basis of the defence of diminished responsibility for the first time in the case of Shirley Campbell [73]. The defence was successful in this case, but in several cases it was not and the courts refused to accept psychopathy as a basis for the plea of diminished responsibility. But in Matheson's

case [74] the defence which was partly based on the diagnosis psychopathy was accepted by the Court of Appeal. In that case the accused was charged with the murder of a boy aged 15 with whom he had a homosexual relationship. In the course of the trial, three doctors were called for the defence. They testified that the accused was a psychopath and of a mental age of less than ten years. The plea of diminished responsibility was rejected by the trial court and the accused was convicted of capital murder. The verdict was rejected by the Court of Criminal Appeal and substituted by one of manslaughter and the accused was sentenced to 20 years imprisonment. The Lord Chief Justice who read the judgement of the Court said that:

> "...there was unchallenged evidence that the appellant was within the provisions of section 2 of the Homocide Act, 1957, and no evidence that he was not". [75]

It should be noted that in this case the decision of the Court of Criminal Appeal was not based on the accuracy of the diagnosis but rather on the basis that the medical evidence was not challenged. The mere fact that the medical evidence was accepted by the Appellate Court does not fully support the assumption that the court recognised psychopathy (alone) as the only basis for the defence of diminished responsibility. That is because there was the second possibility - which can be infered from the medical evidence - that Matheson could be diagnosed as mentally retarded or mentally subnormal (the psychiatrists testified that he had a mental age of about 10 years). And if Matheson was tried in the 1960's i.e. after the 1959 Act came into force, he would probably be diagnosed as mentally subnormal rather than as of psychopathic personality. Psychopathic disorder and mental subnormality are clearly separated in the 1959 Act.

In the later case of Yvonne Jennion [76] the medical evidence given in support of diminished responsibility was conflicting and, unlike that given in Matheson's case, was not all one way. In this case the accused killed her aunt in a fit of temper, striking her on the head with an ashtray, and strangling her manually and with a cord. The accused described the circumstances of the crime in a written statement in which she said: ".. I lost my temper and got mad and I picked up an ashtray....and I hit her on the back of the head and she fell on the chair..." At the trial the medical witnesses gave evidence in support of diminished responsibility. The prison doctor described her as a case of "possible schizophrenia in its early stages" . But the consultant psychiatrist who was called by the Crown to give rebutting evidence testified that "she had a psychopathic personality without psychosis and that she is very self-willed and her moral sense is weak". The defence of diminished responsibility was unsuccessful. The accused was found guilty of non-capital murder. She appealed and her appeal was refused.

It is clear from this case and the case of Matheson that psychopathy in itself is insufficient for pleading diminished responsibility and that for its use in such a plea it needs to be linked with other extenuating factors.

It was, however, in the case of R.V. Byrne [77] that the Court of Criminal Appeal gave wider interpretation to the defence of diminished responsibility and made it clear that the defence can include irresistible impulse. The medical evidence in Byrne's case was that, the accused,, who had strangled a young woman and mutilated her body, was a

psychopath and had long suffered from violent perverted sexual desires which he found difficult or impossible to control. The trial judge, who was not satisfied that the accused's conduct was influenced by mental disease, directed the jury that the medical evidence did not amount to a defence under the relevant section of the Act. Although the medical evidence given in this case was no more than a description of the accused's conduct (i.e. the medical evidence did not explain how the accused by reason of mental disease was deprived of the power to control his impulses). The Court of Criminal Appeal held that there had been a mis-direction by the judge and the accused was entitled to a defence.

The doctrine of irresistible impulse has faced many criticisms and recently the Butler Committee doubted whether it is possible to distinguish an irresistible impulse from an impulse which was not in fact resisted [78].

The diagnosis of psychopathy can be accepted at present by English courts as a basis for the defence of diminished responsibility if there is sufficient medical evidence to support the diagnosis. But as far as the present state of medical knowledge is concerned there is not enough medical explanation to support the idea that psychopathy is a mental illness. The term itself will remain no more than descriptive indicating that a person has certain personality characteristics. In these circumstances a defence of diminished responsibility based on the diagnosis psychopathy is unlikely to succeed unless the courts tend to accept the medical evidence not on grounds of plausibility but rather because the evidence was produced by a medical expert.*

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* Some may argue that there might be sufficient medical evidence before the court, but this type of argument - appears to be somewhat arbitrary since it is particularly difficult, in the case of the psychopath, to draw a clear line between a mental and a moral defect.

Finally if, however, the proposals, made by Butler's Committee, for the abolition of the provision for diminished responsibility were carried out then there is no chance for psychopaths to benefit from either insanity or diminished responsibility defences under English law.

The fact that Butler Committee recommended that psychopaths should only be subject to a hsopital order (section 60) if there is the "expectation of therapeutic benefit from hospital admission" indicates clearly that a medical disposal is not justifiable unless a person is first diagnosed as mentally disordered.

The Butler Committee believes that there is continuing uncertainty as to the treatability, in a medical sense, of the various conditions covered by the term "psychopathic disorder or of the methods to be used" [79]. In spite of this belief the Committee recommended medical and psychological treatment for the less dangerous psychopaths only on the ground that the medical profession "has long association with the treatment of personality disorder" [80].

This faith on the medical profession is also shared by the courts and English judges who are likely to continue to regard those individuals as mentally abnormal and as having special place in the criminal law. The courts attitude is probably justified by; first the common belief that the law recognises a middle ground between sanity and insanity; second that, psychiatric evidence is sometimes goes unchallenged and this implies that more weight should be given to it.

The Committee also recommended that the most dangerous categories

of psychopaths should be sent to prison where they can receive education and training. This, however, suggests that psychopathy (even in its severe form) is primarily behavioural and social problem and its solution probably depends on the availability of efficient and workable educational and social techniques.

Notes

1. R v. M'Naghten (1843) 10 Cl. & Fin. 200.
2. Gordon, G.H., The Criminal Law of Scotland, (2nd Ed.), Edinburgh, W. Green & Son., 1978, at p. 365.
3. Durham V. U.S., (1954) 214, F. 2d 862.
4. ibid. 875.
5. Quoted by Gordon, op. cit., at p. 363.
6. id.
7. H.M.A. v. Dingwall (1867) 5 Irv. 466.
8. ibid. 479-80.
9. Hoggett, B., Mental Health, London, Sweet & Maxwell, 1976, at p. 205.
10. See Mental Health (Scotland) Act 1960, part IV and the Mental Health Act 1959, part IV.
11. See Gordon, op. cit., at p. 397.
12. H.M.A. v. Kidd(1960) J.C. 70.
13. See Gordon, op. cit., at p. 376.
14. Quoted by Gordon at p. 364.
15. See for example, H.M.A. v. Andrew Brown (1866) 5 Irv. 215 and George Bryce (1864) 4 Irv. 506.
16. See Gordon op. cit., at p. 366.
17. For further discussion of Lord Moncreiff's views see Gordon op. cit., at pp. 369-70-71.
18. Committee on Criminal Procedure in Scotland (Second Report) (Thomson Report) , Cmnd. 6218/1975, Para. 53.10.
19. H.M.A. v. Kidd,Supra cit.
20. See H.M.A v. Braithwaite (1945) J.C. 57-58.
21. Lady Wootton expressed the view that "... neither medical nor any other science can every hope to prove whether a man who does not resist his impulses does not do so because he cannot or because he will not". Wootton, B., Crime and the Criminal Law, London, Stevens, 1963, p. 74.
22. Gordon, op. cit., at p. 358.
23. H.M.A. v. Dingwall, Supra cit.
24. ibid., at pp. 479-80.
25. See Gordon, op. cit., at p. 382.
26. [1882] 4 Couper 598.
27. ibid., at p. 599.
28. See for example, H.M.A. v. Fergusson (1894) 1 Adam 517., and H.M.A. v. Wilson (1877) 3 Coup. 429.
29. H.M.A. v. Braithwaite, Supra cit., at pp. 57-58.
30. See Gordon op. cit., at p. 386.
31. For further discussion, see Maher, G., 'Sane but abnormal' In McLean, S.A.M., (ed.)., Legal Issues in Medicine, Aldershot, Gower Publishing Co., 1981, at p. 195.
32. H.M.A. v. Carraher (1946) J.C. 108.
33. See Gordon op. cit., at p. 395.
34. Supra cit.
35. 1946 S.L.T. 226.
36. See Chapters 1-2, supra.
37. Gordon op. cit., at p. 397.

38. See Edwards, J.L.L.J., 'Diminished Responsibility : A Withering Away of the Concept of Criminal Responsibility? in Mueller, G.O.W., (ed.), Essays in Criminal Science, London, Sweet & Maxwell, 1961, at p. 307.
39. Mental Health Bill, (2nd Reading), Parliamentary Debates, Vol. 598, [1958-59] p. 735.
40. id.
41. id.
42. ibid., at p. 711.
43. ibid., at p. 783.
44. See Chapter 1 supra.
45. See Craft, M., (ed.), Psychopathic Disorders, Oxford, Pergamon, 1966, at p. 16.
46. For comparison see Section 1 of the Mental Deficiency Act, 1913 and Mental Deficiency Act, 1927, S.1.
47. See Williams, G.L., Criminal Law : The General Part, London, Stevens & Sons Ltd., 1953, at pp. 348-49.
48. Royal Commission on Mental Illness and Mental Deficiency (Percy Report), Cmnd. 169/1957.
49. Wootton, B., Social Science and Social Pathology, London, Allen & Unwin, 1959, at p. 250.
50. See Hoggett, op. cit. at p. 48.
51. id.
52. Committee on Mentally Abnormal Offenders (Butler Report), Cmnd, 6244/1975.
53. ibid., para. 5.34.
54. Scott, P.D., 'Notes, The Butler Committee's Report, 11, Psychiatric Aspects' Brit. J. Crim., 1976, 16, 178.
55. Butler Report, para. 5.38.
56. id.
57. ibid., para. 5.40.
58. ibid., para. 5.13, footnote 11.
59. ibid., para. 5.20.
60. Supra cit. para. 5.40.
61. Royal Commission on Capital Punishment, Cmnd. 8932/1953, Para. 296.
62. ibid., para. 401.
43. ibid., para. 401.
44. Butler Report, para. 18.18.
65. ibid., paras. 18.20-18.25, 18.26-18.36.
66. M'Naghten, 10 Cl. and F. 210.
67. For more criticism and discussion of the doctrine and its application to psychopaths see Gordon op. cit. at pp. 357-58; See also Wootton, op. cit.
68. For historical review of the development of diminished responsibility, see Gordon op. cit., at p. 380 et seq .
69. Homicide Bill, (2nd Reading), Parliamentary Debates, Vol. 560, [1956-57], p. 1252.
70. ibid., at pp. 1153-1154.
71. H.M.A. v. Braithwaite, supra. cit.
72. See, for example, R v. Byrne, (1960), 2 Q.B., 396; R. v. Spriggs, (1958), 1 Q.B. 270.
73. See Walker, N., 'Liberty, Liability, Culpability' in Craft op. cit., at p. 42.

74. (1958) Cr. App. Rep. 42. 145.
75. ibid., at p. 152.
76. (1962) Cr. App. Rep. 212.
77. (1960) Cr. App. Rep. 246.
78. For more information see Butler Report, Para. 18.16.
79. ibid., paras. 5.27 - 5.38.
80. ibid., para. 5.57.

CHAPTER 4
SUMMARY AND CONCLUSION

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Summary and Conclusion

In the previous chapters we have looked in some detail on the definitions of "psychopathy" and discussed the various difficulties regarding psychiatric diagnosis and outlined the conclusions reached by a number of investigators who conducted researches and studies on the area and who suggest strongly the questionable usefulness of the psychiatric classifications. The problem of diagnostic validity which is common to all psychiatric categories is especially acute with respect to the diagnosis of "psychopathy". Although this diagnosis is mainly based on symptomatology, there is failure on the part of the diagnostician to specify adequately the relationship between symptoms and diagnosis. Usually, in practice, for establishing diagnosis the presence of all symptoms is not necessary. The patient does not have to possess all the typical symptoms but only some of them. Questions like; which are essential and which are not, how many must be present altogether, and which other symptoms must be absent, are not usually specified. Further, the problem of overlapping symptoms also creates great difficulty for there is no single symptom in "psychopathy" that is not found in many other states. For this reason many psychiatrists suggest that the sumptom-based classification will continue to be questioned. For example, Kendell (1975) pointed out that:

> "There have in fact, been innumerable suggestions in the last forty years that classification on the basis of symptoms should be abandoned and replaced by an entirely new classification based on data of quite different kind" [1].

In any event, however, and under any psychiatric classification the term "psychopath" which defines those with behavioural deviation will remain incapable of constituting a properly medical condition. The term is not useful in clarifying etiologic questions and for this reason it is an invention rather than a discovery. As Szasz says: "if we create categories, rather than discover them, how can we be certain that we have got things in the right classes?" [2].

The reason for retaining this term throughout this dissertation is that, it is enshrined in the legislation and used by the courts. It exists in psychiatric literature and it is an expression that most English-speaking people understand.

The question of predicting the psychopath's future behaviour was breifly discussed and we have noticed the failure in the part of the diagnostician in predicting the "psychopath's future behaviour and dangerousness. We noted that psychiatrists are still not agreed on the existence of psychopathy as specific clinical entity and that this makes it very difficult to predict validly or to estimate the future risks of "psychopathic" behaviour. In order to find a solution to the problem an alternative approach has been suggested, the essence of which is to replace the professional psychiatric prediction by public adjudication. Focussing on the so-called "psychopathic personality" we noted the various characteristics of the disorder and their role in faulty interpersonal relationships and anti-social behaviour. We have seen that although these several characteristics are agreed upon by researchers, as signifying what is meant by psychopathy, it is not yet easy to distinguish the psychopath from the normal criminal. The

question regarding the etiology of this phenomenon was discussed by examining various theories regarding causation. We have seen that many investigators view scientific factors as playing the key role in the causation of this condition. In an attempt to reject the plausibility of the medico-scientific explanation, evidence has been produced from various sources in order to show that this condition stems from inadequate upbrining rather than heredity, brain damage or disease. We noted that the phenomenon know in psychiatry, as "psychopathy" is an outcome of environmental influences in early childhood followed by socio-cultural influences in adolescence. As mentioned earlier, the conditions in modern societies nourish the anti-social tendencies (which are already implanted during early childhood) in the individual and encourage them to flourish. The gaps which exist between stated values and actual behaviour create pressures and frustrations and may press heavily upon the individual during puberty and adolescence. Such experience will probably lead children who are growing up with too little restraint and too little sense of moral obligation, into trouble and socially unacceptable behaviour. It has been said that society creates its own deviants or that it has the criminals it deserves. This may not be far from the truth since society (any society) in terms of parents and others fails to provide a consistent and fair discipline and an atmosphere of affection to cover the needs of its own children. Children are good observers and they can perceive the inadequacies of their surrounding world. They are in a position to perceive that others do not adhere to their own stated ethical standards. Such inconsistent presentation of values may encourage not only the rejection of those values but also the

anti-social tendencies in the individual. Needless to say, it is not mental illness or psychological disturbance that nourishes these tendencies but rather the impact of others (i.e. the example of the significant others). As Schur says:

> " the very notion of an individual's "self" has little meaning apart from the subtle and continuous interplay a person experiences in relation to "significant others" in his environment from early childhood on. In all of his behaviour, the individual looks to others for cues, for recognition, approval, and support, for overt or covert reactions in the light of which he can remark himself so as to conform with the image he would like to project. It is understandable then that individual behaviour is strongly shaped both by directly experienced group interaction, and also by non membership "reference groups" from which a person almost imperceptibly seeks guidance in developing his own outlooks and patterns of activity" [3].

Adolescent may learn by experience that society is not serious about its own moral standards and hence decide to embrace a "do your own thing" philosophy. His rationality cannot be denied though his reactions may be abhorred. Being exposed to such contradictory ethical standards, the adolescent eventually loses his sense of justice and learns how to show his disrespect to law. Such a loss has a destructive effect on the individual and society. He cannot trust justice and cannot be trusted to recognise justice. And when he violates the rules, society, in the form of psychiatrists, labels him as anti-social and deprives him of his liberty because he is dangerous to himself and others. Society is mainly concerned with its own safety. But what about the safety of the individual who is the creation of that very society? The label cannot solve his problem or that of society. Its effect is harmful and may add to the stresses already experienced by the individual. It may lead the individual himself to

accept the societal definition and to display increasingly such behaviour. Finally, other socio-cultural factors such as, socio-economic pressures, the availability of illegitimate means to ends, disadvantaged-neighbourhood,bad companions and other relevant factors also play a part in encouraging the anti-social tendencies in the individual.

The possible argument against this sociological explanation of the problem may be that some people are born wicked i.e. biological influences create the criminal. One of the earliest exponents of this theory was the Italian criminologist Cesare Lombroso who claimed that criminals were determined by their heredity and could be distinguished from non-criminals by prominent cheek bones and jaw, slanting eyes, receding brow, and large ears of a particular shape. This contention was disproved by Karl Pearson early this century when he found that 3,000 criminals showed no significant differences of features from a similar number of students at Oxford and Cambridge [4]. It is important to note that these facial characteristics are found in persons suffering from a certain endocrine disease known as "acromegaly" [5], which is caused by excessive secretion of growth hormone over a long period of time in an adult.

In recent times many constitutional and hereditary theories have been put forward to explain the origin of anti-social behaviour but none of these have won universal acceptance. These theories fail to produce evidence that criminals or anti-social persons can be distinguished from non-criminals by certain physical characteristics which influence their behaviour. Halleck explains this failure by stating that:

> "Although constitutional and heredity theories assume in the organism a structural defect which allegedly influences behaviour , they fail to deal with the problem of how this influence is exerted. None of the theories deals with the problem of causality in terms of mechanism or dynamisms. They either attempt to prove the presence of certain physical differences or simply allege that because they are present such differences are causes of crime. There is something almost mystical or demonological in this approach" [6].

Finally, by asserting that deviant behaviour is determined, these theories ignore human volition and free-will and personal integrity. They may encourage totalitarian methods of social control. For example, in America the (in some states) compulsory sterilization of those classified as psychopaths and feeble-minded criminals was legislated for as a means of controlling these individuals and restraining them from procreating [7].

It is not surprising, therefore, that the adoption of such theories could lead to the use of the legal system itself to produce real injustice and social harm.

The legal position of "psychopaths"in England and Scotland was also dealt with, separately. The reason for this is that, the Scots have their own courts, legislation and legal concepts which differ fundamentally from those in England. We noted that the term "psychopathy" has not been used explicitly in the Scottish ligislation whereas in England the concept is defined by the Mental Health Act 1959. Although the actual use of the term was avoided by the Scottish Mental Health Act (1960), the condition by implication remain as grounds for compulsory hospitilization [8]. As far as the question of responsibility is concerned, we noted that there is no chance for "psychopaths" to

benefit from the plea of insanity whether in England, where the test of McNaghten Rules covers only cases of gross insanity,or, even, in Scotland, where the Scottish approach to the plea of insanity is more liberal than allowed by the Rules. In England, the introduction of the Scottish concept of diminished responsibility by the Homicide Act (1957) provided an opportunity for the courts to avoid the rigidity of McNaghten Rules when dealing with "non sane non insane" categories. Under English law a diagnosis of "psychopathy" is recognised by the courts as an acceptable basis for a defence of diminished responsibility . But in many of the English cases already cited the decisions made by the courts clearly suggest that "psychopathy" in itself is insufficient for pleading diminished responsibility and that for the purpose of this defence it needs to be linked with other extenuating factors. In Scotland the courts remain sceptical and denied the application of the doctrine to "psychopaths".

Conclusion

We have already seen how society, in order to protect itself, forces some individuals, who display socially unacceptable behaviour, into contact with the psychiatrist, not because they are mentally ill but rather because they behave differently and do not conform to the existing social standards. Their behaviour is explained by labelling rather than by understanding. The diagnosis as we have seen it is not based on clear etiological knowledge. It is a mere description and therefore cannot tell why those individuals behave differently. By insisting that the condition is medical, (without producing evidence) psychiatrists are in fact neglecting the possibility of offering alternative and appropriate treatment for those individuals. Labelling

a criminal or an anti-social person as a "psychopath" is tautological since the words 'criminality' and 'psychopathy' have become almost synonymous and it adds nothing to declare that a criminal is a criminal. The label is harmful to the individual because it may lead him to sustain an anti-social image of himself and it may cause him to suffer much from the stigma of (unproved) mental illness. It is embarrassing to society because society will face the possible accusation of using unsound totalitarian methods of control in dealing with its own delinquent children. The label is harmful to the psychiatric professionals themselves because they may be accused of acting as social agents who provide scientific explanations (of social deviance) required by a secular society, and whose social function is to use custodial rather than therapeutic measures. As Lader says:

> " the concept of psychopathy is really part of the general strivings by an increasingly secular society to replace moral explanations of deviant behaviour by pseudo-scientific terms and to shuffle off on to medical people the responsibility for coping with such behaviour" [9].

There is no justification for this arbitrary labelling process except that, while the treatment of definable mental illness is the primary function of psychiatrists, some are trying to widen the ambit of psychiatry by asserting that all deviant behaviour should be regarded as sickness and thereby should be treated (rather than punished) rationally and humanely. The weakness of this argument is clear. Treating social-deviants rationally and humanely does not necessarily, imply that we need to decide that they are mentally ill. Medical treatment is intended for medical conditions. Therefore, insisting on giving medical treatment in circumstances where no mental illness

is proved, may itself be dangerous and inhumane since it may divert individuals away from other, more suitable kinds of treatment.

Furthermore, under the guise of medical treatment, those individuals are admitted involuntarily to mental hospitals and are usually locked up indefinately for their failure to conform to certain social standards. Implicitly, therefore, medical treatment is no more than requiring conformity. This attitude has been criticised by many including psychiatrists themselves. For example, the American psychiatrist Szasz wrote:

> "As with the early Saint-Simonians and their later disciples, from Comte through Marx to Pavlov and Skinner, the individual should be allowed to exist only if he is socially well adapted and useful. If he is not, he should be "therapized" until he is "mentally healthy" - that is, uncomplainingly submissive to the will of the elites in charge of Human Engineering" [10].

Lader produces many examples which illustrate how the pretensions of many psychiatrists can be exploited by a totalitarian regime like that in Soviet Russia [11]. He states that, in the Soviet Union:

> "The courts almost invariably order the compulsory detention of political dissidents in special psychiatric hospitals which are reserved for those representing special dangers to society. Confinement is for an indefinite period until recovery" [12].

But, of course, recovery is not attainable until the (patient) conforms to certain social standards that others define as necessary. Lader has quoted the following statement made by a Russian psychiatrist to one of his assumed dangerous patients:

> "Listen, Borisov, you're a normal fellow and I am sure you don't want to be sent to a madhouse. Why don't you change your views?" [13].

In Britain, where the concept of psychopathy is recognised by the law as a medical condition the legislation empowers psychiatrists to participate crucially in locking-up people on the basis of anti-social behaviour. But as a legal expression the concept of "psychopathy" is viewed by many as dangerously vague and imprecise. The Butler Committee [14] declared that the concept is no longer useful or meaningful, they suggested that the words "psychopathic disorder" should be deleted and replaced by the term 'personality disorder". But this change will not solve the problem since the term 'personality disorder' indicates clearly that the condition lies within the ambit of psychiatry or psychology. Indeed, some may argue that personality disorders might be the province of the psychologist rather than the psychiatrist. But this is also vague and meaningless and could cover a wide range of disorders. In order to escape this difficulty the Committee recommended that those individuals should only be subject to a hospital order (sec. 60 of 1959 Act) if their disorder is believed to be connected with a medical or psychological disorder and there is the expectation of therapeutic benefit from hospital admission [15]. But this will not solve the present problem. It may provide an opportunity for those who expect to find a medical explanation to the problem in the future. Perhaps by establishing experimental units. As for the present, however , the recommendations make it clear that individuals classified by psychiatrists as "psychopaths" should not be admitted compulsorily to mental hospital unless there is evidence of a medical disorder believed to be connected with the anti-social behaviour.

Many disagree with these two recommendations and prefer that the

term "psychopath" should remain and the definition of treatment should be widened to include care, training, the use of habilitative techniques and medical, nursing and other help. But in any event this will not improve the quality of psychiatric testimony in court. Indeed, without clear medical evidence to support it, the label conveys nothing to the judge or to the jury who depend more on their own perceptions and common sense. In addition the label gives the psychiatrist a greater role in the determination of responsibility which is basically the function of the court. Even the widening of the definition of treatment will not avail since we cannot prescribe treatment (of any kind) before knowing whom we treat. The idea that the term should remain in legislation suggests nothing except that the individual is labelled as both a "psychopath" and a criminal. To the layman, he is mentally ill because the medical profession defines him as such and he is a criminal because he broke the law and thereby defined by the law as a criminal. Such a combined stigma may seriously damage the individuals' future. For this reason, the term 'psychopath' was not introduced into the legislations of Scotland and Northern Ireland.

As we have already seen, individuals labelled as psychopaths are regarded by psychiatry and law as mentally abnormal (i.e. deviating from normal standards). But abnormality is a relative concept, and as many have suggested,is entirely a matter of the observer's values which are the sole criterion of abnormality. But many individuals are law-abiders and conform to the norms and values of the community and yet experience , anxiety, depression and loss of personal happiness. Can we classify them as abnormal? Can we classify someone as abnormal or mentally ill only because he deviates from agreed standards of behaviour?

The relativist may answer this question in the affirmative, viewing the concept of abnormality solely as deviation from social norms and consequently rejecting the notion of a "criminogenic society" in which the norms and goals are viewed as inadequate and unhealthy. With the relativist these individuals are abnormal because society defines them as such. But this defnition may cause great difficulty, for social norms may change with time, be replaced by newer rules or even rejected. Such an approach cannot explain the behaviour of those arbitrarily defined as psychopaths and consequently cannot point to proper treatment for them. The psychiatrist (who is a person with certain social and cultural background) may be faced with the dilemma of treating a patient with a different social or cultural background.

If the so-called psychopath can only be described in social terms then it is illogical to say that this phenomenon is based on a psychiatric condition. For this reason and for the reasons stated earlier the so-called psychopath, is simply a conscienceless individual who seeks (from an early age) the immediate gratification of impulses regardless of the consequences. That from an early age he was not taught to follow a certain code of conduct and growth simply makes him more and more that kind of person. He is not necessarily a member of a delinquent sub-culture, rich or poor, black or white, a president or a citizen. It is interesting to mention here that over the years psychiatrists and other writers have made attempts to classify prominent figures, politicians, military leaders and famous artists as cases of psychiatric disorder . In the 1960's the World Health Organization declared that:

> "individuals with psychopathic tendencies who are prone to exploiting power for selfish purposes and have little concern for ethical values or social stability often become leaders" [16].

This, however, proves more the inconsistency of psychiatric diagnosis for the statement seems to suggest that the characteristics which would lead to a criminal being called a psychopath may be the very ones which make leaders of men. But we seldom call those world leaders, who possess these characterisitcs, psychopaths. Personal characteristics such as selfishness and lack of concern for ethical values cannot establish a psychiatric diagnosis. The statement may also seem to suggest that psychopathy is dependent for its diagnosis on the existence of certain types of criminality, since we seldom call world leaders psychopaths. But characteristics such as selfishness and lack of concern for ethical values, if found in any individual, are capable of producing every conceivable type of criminal and anti-social behaviour. The reasonable man will call those individuals criminals or dictators and hardly needs psychiatric consultantion to declare that a criminal is a criminal.

Therefore the concept is useless in social and legal terms since it tends to equate law breaking and social deviance with mental illness. Moreover the imposition of such concepts will probably lead to the violation of the individual's freedom since the individual who is classified by the psychiatrist as a "psychopath" may be subjected to a restriction of his liberty for an indefinite period. Also the imposition of the label may be dangerous to his personal integrity since he may be succeptible to compulsory surgical procedures such as sterilisation and frontal lobectomy which may result in a serious

damage to the health of the individual who may become a totally different person. Other methods such as E.C.T. and psychopharmacological treatment are also hazardous and uncertain. These violations of the individual's rights are usually justified by the need to protect the society and the individual himself. But is it justifiable to diagnose a sane criminal as mentally ill only because his behaviour transgressed the law. Is it justifiable to restrict his liberty - under the guise of medical treatment - to an unacceptable degree and without showing that the individual concerned has agreed to such procedure.

The harmful anti-social person will be locked up in any event under the standard rules of the criminal law. But he has the opportunity of regaining his liberty through, for example, appeals, reviews and so on. On the other hand, to treat someone as sick rather than criminal implies a greater restriction on liberty since the sick may be treated against their will or may be limited in their access to appeals, reviews or any other procedure. Therefore there is a greater restriction on liberty in the case of the compulsory patient. Criminal behaviour may extinguish certain individual rights but it does not generally extinguish all. The assumption that criminal behaviour can extinguish all individual rights implies that society in the form of authority has an absolute power over its citizens. This Hobbesian absolutism has its origin in the social contract theory. Hobbes as Campbell explains:

> "suggests that, because it would be rational for men in a state of nature to enter into civil society, this justifies the sort of absolute political authority set up by the social contract" [17].

But the social contract can not be protected by absolute power. Indeed it can only be protected by the will of the dedicated contracting parties. Absolutism necessarily leads to the abuse of powers which may lead the individual to fight forces more brutal than the forces of nature. As Locke says:

> " a rational person would not enter a contract in order to escape from polecats and foxes if this placed him at the mercy of lions" [18].

In modern societies, however, absolutism seems to have some influence in contemporary thought and in practices of many states. In many societies some individuals who are labelled as socially dangerous and whose behaviour transgresses the law are sometimes not punished proportionately. Instead they are sent to the psychiatrist who is empowered by the legislation to lock them up in a mental hospital for indefinite periods or to subject them to hazardous and irreversible surgical operations or drug treatment. The individual in these circumstances is deprived of all his rights. Admission and treatment are compulsory and segregation is indefinite. The justification given lies in the need to protect society from harm. Society (in the form of authority) therefore has absolute power over the individual. But if the authority (according to the social contract theory) is an apparatus created to secure the rights and interests of the individual, then it is the future and the welfare of the individual which is more important than the protection of the society.

As mentioned earlier, individuals who are classified by psychiatrists as "psychopaths", are presenting in the first place, a behavioural problem which is not an outcome of mental illness.

If this is so then there is no logic in treating those individuals in mental hospitals. However, alternative methods such as reformatory institutions, and community homes with educational and training facilities, were suggested in Chapter 3. The suggested approach is intended to be less punitive and more reformatory. The reason for this is that, punitive measures cannot avoid stigmatizing people as criminals, the effect of which is that, the person so labelled will find it very difficult to re-enter the ranks of normality. Punitive measures may act in these circumstances as a contributory factor in deviant behaviour and eventually support the growth of an anti-social self image.

However, for treatment purposes, those individuals can be divided into two recognizable groups i.e. adult offenders (those over 16) and juvenile offenders (those under 16). Offenders over 16 should be dealt with by the criminal courts and if their guilt is proved, they should be sent by the court to spend the period of their sentence in reformatory institutions or in community homes which are supplied with proper educational and training facilities.

Offenders under 16 are essentially deprived children who need care, education and training. They should be dealt with by welfare committees who will co-operate with their families in order to propose a suitable form of treatment in a non-leaglistic atmosphere. It is worth mentioning here that, the recommendations of the Scottish Committee on Children and Young Persons which made radical changes in the whole system of juvenile justice in Scotland tend to support this approach. The recommendations of that Committee can briefly be summarized as follows:

> " All juveniles under 16 should be removed from the jurisdiction of the criminal courts and should be dealt with by a non-judicial juvenile panel; juvenile panels are empowered to order special measures of education and training according to the needs of the juvenile concerned; A Director of Social Education would be appointed in each local authority to look after the needs of all children requiring measures of special education and training; hostels and residential homes would come under the authority of the Director of Social Education" [19].

By making the whole business of dealing with children with problems an educational matter, these recommendations emphasize the responsibility of the community (especially families and educational institutions) towards its own children. The removal of the juvenile from the jurisdiction of the criminal courts is a rational and humane attitude because children will no longer be exposed to the harmful effects of labelling. The recommendations seem to suggest that placing these juveniles under the jurisdiction of the criminal courts may suggest that we are over-exaggerating the role of the legal system. Indeed dealing with the problems, of these juveniles, in a legalistic atmosphere is unrealistic since their problem is basically educational or social and cannot be solved by penal measures.

Finally, one related point needs to be emphasized. As far as the question of solving this problem is concerned, individuals as well as social factors had to be taken into account. The question of treating those individuals (juveniles and others) should not be allowed to overshadow the need for broader social reforms. There is a need to launch a direct action against crime-encouraging social conditions. The most important social factors that help generate crime can be generally stated:

1. Lack of effective and consistent moral education (within the family, the schools and the social milieu).
2. Inequality, which usually result in poverty, lack of economic opportunities, racial discrimination and social and economic pressures.
3. Serious discrepancies between stated values and actual behaviour which create pressures and frustrations that lead the individual into criminal behaviour.
4. Bad and unjust laws.
5. Other relevant factors.

All these conditions need to be substantially reformed. Improvement in moral education by adopting effective techniques and by establishing expanded guidance services together with improvements in economic and social situations (by enacting fair and just legislations) may help eventually in re-socializing those individuals before accepting for themselves the role of the criminal or the sick.

These solutions clearly suggest that the problem of the so-called psychopath is not the province of psychiatrists or psychologists. Social and environmental factors are the most crucial in determining the condition. The medical model was rejected because it ignores any social or ethical factors in its approach to behavioural problems.

Offenders whom we describe as psychopaths are not expected to return to society as law abiding citizens if their environment continue to be unhealthy and criminogenic. What is meant by this is that it is unreasonable to regard what psychiatrists termed as "psychopathic disorder"

the misery of the individual alone. It is also the misery of his society which sometimes help to produce the anti-social and criminal behaviour. For this reason we need to provide for changing both the individual circumstances as well as social circumstances since there is always an interaction between individual personality and social experience. And as it has been suggested, sometimes society itself, whatever its racial, social, moral and economic conditions may happen to be, breeds new possibilities of violating its laws.

Notes

1. Kendell, R., The Role of Diagnosis in Psychiatry, Oxford, Osmey Mead, 1975, at p.47.
2. Szasz, T., Ideology and Insantiy, London, Calder and Boyars, 1973, at p. 190.
3. Schur, E., Our Criminal Society; The Social and Legal Sources of Crime in America, London, Prentice-Hall, Inc., 1969, at p. 97.
4. "Pears" Cyclopaedia. 1977 ed.
5. See Joyce, D.B., et. al., 'Endocrine and Metabolic Diseases' in Macleod, J., (ed.), Davidson's Principles and Practice of Medicine, (12th Ed.), Edinburgh, Churchill Livingstone, 1978, at p. 511; see also Rubenstein, D., et al., Lecture Notes on Clinical Medicine, (2nd ed.)., Oxford, Blackwell Scientific Publications, 1980, at p. 147.
6. See Halleck, S.L., Psychiatry and the Dilemmas of Crime : A Study of Causes, Punishment and Treatment, London, University of California Press, 1971, at p. 16.
7. For more information and discussion see McLean, S.A.M., and Campbell, T.D., 'Sterilisation' in McLean, S.A.M., (ed.)., Legal Issues in Medicine, Gower Publishing Co., 1981, at p. 183; see also Meyers, D., The Human Body and the Law, Edinburgh University Press, 1970, at p. 46.
8. A psychopath over the age of 21 cannot be compulsorily admitted to hospital under section 23 of the Mental Health (Scotland) Act 1960, but under section 175 of the Criminal Procedure (Scotland) Act 1975, a psychopath over 21, who has been convicted of a crime, can be admitted compulsorily to hospital.
9. Lader, M., Psychiatry on Trial, Harmondsworth, Penguine Books, 1977, at p.37.
10. Szasz, op. cit., at p. 224.
11. Lader, op. cit., at p. 13.
12. ibid., at p. 154.
13. ibid., at p. 152.
14. Report of the Committee on Mentally Abnormal Offenders, Cmnd. 6244/1975. Paras. 5.23 - 5.24.
15. ibid., Para. 5.40.
16. Quoted in Coleman, J.C., Abnormal Psychology and Modern Life., (4th Ed.)., Glenview, Scott, Foresman & Co., 1976, at p.9.
17. Campbell, T.D., Seven Theories of Human Society, Oxford, Clarendon Press, 1981, at p. 80.
18. Locke, John., The Second Treatise of Civil Government and A Letter Concerning Toleration, edited by Gough, J.W., Oxford, Basil Blackwell, 1946, at p. 46, Quoted by Campbell, op. cit. at p. 84.
19. Report of the Committee on Children and Young Persons (Scotland), Cmnd 2306/1964, Paras. 139-91-241-242.

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