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# The New Outlaw: A Psychological Footnote to the Criminal Law

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# The New Outlaw: A Psychological Footnote to the Criminal Law

By JOHN BATT\*

*Want to set this world on fire, that is my mad desire.  
I'm the devil in disguise, got murder in my eyes.*

—old blues song—

## I. OUR TIME AND CRIME

"The sun rises and the sun goes down," but it is no event certain that "the earth abideth forever."<sup>1</sup> For today violence is patentable, terror is vendible, and human bodies are both fungible and expendible.<sup>2</sup> It is truly a cobra's world. Death is a mere matter of intercontinental computer calibration. The dividing atom has brought us a new vocabulary of "over-kill," "counter-strike," etc.<sup>3</sup> In truth, violence has always been with us, but the Neo-Age difference is that it can be dialed directly. Further, mass media leaves the unnerving news of violence past or possible on your doorstep or in your living room—take your choice. You cannot avoid realizing it is here and there. Violence everywhere. This is all so true I abjure proof by accumulated evidence and use the shorthand of symbols. Geographic symbols of the violence of our time are: Dachau, Pearl Harbor, Hiroshima, Saigon, Dresden, Cuba, Birmingham, and Dallas. Truly, the banner of the world for twenty-five years has been bathed in the blood of the slaughter house. And, in addition, when life has not been

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<sup>1</sup> On this theme see Russell, *Has Man A Future?* (Penguin ed. 1951).

<sup>2</sup> On the fungibility of bodies and the horror of the doctrine of homo sapiens' expendability see Gilbert, *Nuremburg Diary* (Signet ed. 1961), and "Notes on the Psychology of Killing" and "Massacre from the Air" in MacDonald, *Memoirs of a Revolutionist* (Meridian ed. 1963).

<sup>3</sup> See Kahn, *On Thermonuclear War* (1961); Kahn, *Thinking About the Unthinkable* (1962). For an imaginative treatment of the "War Game" see Curtis Zahn's short story, "Sadco" in Zahn, *American Contemporary* (1963).

physically violated, it has been mechanized.<sup>4</sup> The clockwork of the mass modern state dictates that robo and robota run on time and in allotted place. M.a..n gets smaller as organizational plan and pattern become more complex. Science and organization have arrived, and old gyroscoping values have departed.<sup>5</sup> It is an existential world.

The evil rains of fallout fear, political terror, and Orwellian organization agonize the individual psyche. No one can statistically measure<sup>6</sup> the impact of this existence upon man, but the pressure of modern life-strife takes heavy toll. My thesis is that over the last twenty-five years—in the Violent Time—individual behavior has tended to take on the color of the macrocosm. Little men begin to make themselves (or are formed) in the image of the world. Of course, this is not true of millions of people. But every year, the number of nihilists increases. I argue that this phenomenon will continue its accelerated development. More men will become violent actors—minus conscience, without love, and full of hate. To speak psychologically, they will act psychopathically.<sup>7</sup> Their tendencies and acts will be anti-social, egotistic, disruptive, and outright criminal. Certain implications for the administration of the criminal law are obvious. But a little more discussion before I relate social situation to the criminal law.

Analysis of current mass media content indicates that the psychopathic type is a contemporary culture hero. Film images of the late James Dean and of Marlon Brando and other "rebels without a cause" are models of the clinical type.<sup>8</sup> Modern literature is another mirror of our cultural type. Dean Moriarity, the

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<sup>4</sup> Paul Goodman has written a compassionate analysis of the isolation of "us" in the time of technology. See Goodman, *Growing Up Absurd* (Vintage ed. 1962). Another excellent analysis of the current situation can be found in *Man Alone: Alienation in Modern Society* (Josephson, E. and M. (eds.) (Dell ed. 1962).

<sup>5</sup> For insights into the "why" of the fading of old ethical systems see Russell, *Human Society in Ethics and Politics* (Mentor ed. 1962). On the possibility of the birth of an important modern ethical system see Williams, *Irrational Man* (Doubleday Anchor ed. 1962).

<sup>6</sup> Behavioral scientists have, however, brought forth some interesting material illustrating my point. See Lifton, *Thought Reform and the Psychology of Totalism* (1963), and Lifton, *Psychological Effects of the Atomic Bomb in Hiroshima: The Theme of Death*, 1963. *J. of the American Academy of Arts and Sciences* (Daedalus) 462-497.

<sup>7</sup> In a very few pages I shall define this term in detail. In this paper I am concerned with the exaggerated, not the benign, form of this disorder. Examples of the benign form of the disorder are examined in Cleckley, *Mask of Sanity* (1955). It is here relevant to note that psychopathy is undoubtedly the most socially disruptive and costly form of personality aberration known to science.

<sup>8</sup> The psychopathology of a culture is often viewable at the local cinema.

protagonist of Jack Kerouac's million-copy seller, *On The Road*,<sup>9</sup> speeds the interstates in stolen cars, keeps bigamy aglow across the boundaries of the Mann Act, and loves to stomp anyone who offends his mad chivalry. He sweats—literally—with the fever of psychopathy. A current Broadway play, "One Flew Over the Cuckoo's Nest,"<sup>10</sup> portrays as hero a character who has been diagnosed a psychopath and committed to a mental institution. In his now famous *The Loneliness of the Long Distance Runner*,<sup>11</sup> Allan Sillitoe, one of England's Angry Young Men, puts these prophetic words in the mouth of his main character:

If the In-Laws (Society) are hoping to stop me making false moves, they're wasting their time. They might as well stand me up against a wall and let fly a dozen rifles. That's the only way they'll stop me and a few million others.<sup>12</sup>

The wierd carnivals of literature and film are first keys to the mental style of our age. Later, I shall use crime statistics and the psychological literature to develop completely the profile of the mental style.

But to put the thesis prior to the proof: Today the crime of choice is psychopathic crime—violet, senseless, impulsive, sick crime. Not crime dictated by economic need, but crime generated by the chemical calculus of psycho-socio-biological need. We are, in fact, in the midst of an epidemic of psychopathy. This epidemic has been promoted by a cluster of social, psychic, and biological elements operating in the field of modern existence. It is a safe estimate than 15% of all persons imprisoned in the United States are psychopathic personalities.<sup>13</sup> Our total prison population is about 200,000;<sup>14</sup> thus, we have at any one moment about 30,000 psychopaths in prison. Each of these persons in his lifetime will bill society about \$75,000<sup>15</sup> in control and damage

<sup>9</sup> Kerouac, *On the Road* (1957).

<sup>10</sup> The play is based on a 1962 novel of the same title by Ken Kesey.

<sup>11</sup> Sillitoe, *The Loneliness of the Long Distance Runner* (Signet ed. 1959).

<sup>12</sup> *Id.* at 10. Other contemporary novels concerned with psychopathic behavior are Burroughs, *Naked Lunch* (1962), Burgess, *A Clockwork Orange* (1962), Pynchon, *V.* (1962), Brossard, *The Bold Saboteurs* (1962), and Donleavy, *The Ginger Man* (1962).

<sup>13</sup> See Glueck, Sheldon & Eleanor, "Introduction" to Lindner's *Rebel Without A Cause, The Hypnoanalysis of a Criminal Psychopath*, IX (Evergreen ed. 1944).

<sup>14</sup> National Council on Crime and Delinquency, *A Study of the Adult Correctional Program in Kentucky* § 1.1 (1963).

<sup>15</sup> This figure is based on material in McCord, *Psychopathy and Delinquency* 192-3 (1956).

costs or a total of \$2,250,000,000 for the 30,000. This cost figure for these 30,000 is graphic, but we must realize that these people are recidivists without peer and are capable of all "without limit. They will steal, embezzle, forge checks, and make brutal sexual attacks. They will commit profit murder for as low as \$25."<sup>16</sup> Yet this 30,000 is a mock army compared to the Wermacht of psychopaths in being or in gestation outside of the prisons.<sup>17</sup>

Psychopathy is the crime problem of our time. If psychopathy is not analyzed, understood, and controlled, our cities will become nightmarish concrete catacombs patrolled by violent monsters. In commenting on this problem, I move from the personal case history of a specific psychopath to a clinical statement about the personality type, and, then, in the end, to proposals relevant to the legal control of psychopathic crime. This is not at all the traditional method of the legal analysis; however, it is a sad but simple fact that the pure logic of the law is inadequate in the face of the irrational algebra of personality. Rational jurisprudence cannot communicate with the criminal of the absurd.

## II. A SKETCH OF THE PROTOTYPE: THE CASE OF HERMAN DUKER<sup>18</sup>

*I'm crazy everywhere . . .  
dancing in moral turpitude.*

Mexico City Blues-Jack Kerouac

Herman Duker was a handsome and intelligent child who squashed kittens, axed turtles in half and attacked dogs with

<sup>16</sup> Abrahamsen, D., *Who Are the Guilty* 161 (1952).

<sup>17</sup> No one has attempted to measure the number of psychopaths in the United States. It has been estimated that 3% of the population of Denmark is psychopathic. See Eaton & Weil, *Culture and Mental Diseases* 139 (1955). Owing to cultural factors our rate might be as much as five times as great as that of Denmark. Newspapers and such fine books as Salisbury, *The Shook-up Generation* (1962), and Riccio, *All the Way Down* (1962) bastion my belief that psychopathy in our population is widespread especially among those under twenty-five. This is a significant item as by 1966 over one half of our population will be under age twenty-five. See N.Y. Times, Dec. 8, 1963 (Magazine) p. 47.

<sup>18</sup> Other interesting case histories are found in Playfair & Sington, *The Offenders* ch. 1 "Neville Heath" (1957); Symkal & Thorne, *Etiological Studies of Psychopathic Personality*, 7 J. of Clinical Psychology 299-316 (1951); and Lindner, *The 50 Minute Hour* ch. 4 "Destiny's Tot" (1962). For the psychopath as war criminal see Gilbert, *Herman Goering, Amiable Psychopath*, 43 J. of Abnormal and Social Psychology 211 (1948). It is important that one realizes that the psychopath is not only an outlaw; he is a political menace. For

. . . he is the embryonic Storm-Trooper; he is the disinherited, betrayed antagonist whose aggressions can be mobilized on the instant at which

(Continued on next page)

darts. In school, Herman bullied his classmates. He was expelled from a number of public schools; then he was put on the private school circuit, but his mad antics always led to expulsion. Early in his teens he was a loafer in Baltimore, Maryland's dock side wasteland of bars, pool rooms and all-night cafeterias. At seventeen he forged his mother's name to a check, cashed it and went to New York City. In that "city of night" he posed as a male prostitute, lured a homosexual clientele with his physical charms and then strong-armed their wallets away from them. When cold weather came on, Herman left Bryant and Central Parks and went into the apartment burglary business. At eighteen he was arrested in a stolen car, a pistol in his pocket. Nine months in the New York State Reformatory—then back in business. Tiring of New York, Herman went back to Baltimore where he immediately involved himself in a burglary for which he was sentenced to ten years in the Maryland State Reformatory. Herman escaped and made his way back to New York where within a few months he was again arrested. This time he was sent to the Elmira Reformatory where the prison psychiatrist discovered that Herman not only posed at times as a male prostitute, but was an active homosexual. Moreover, the psychiatrist diagnosed Herman as a psychopathic personality "as little able, on account of his psychopathic condition, to conform his conduct to social standards, as he would be able to walk in the air." After doing his time, Herman Duker was released from Elmira. Nothing else could be done. For Herman was legally sane—he had a very high IQ and in the cognitive sense, he knew right from wrong.

On April 20, 1931, in Baltimore, Herman Duker held-up John Anderson, a milk routeman. The milkman refused to turn over his receipts. Duker pulled out his pistol and shot and killed

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(Footnote continued from preceding page)

the properly-armed and frustration-evoking formula is communicated by that Leader under whose tinsel aegis license becomes law, secret and primitive desires become virtuous ambitions readily attained, and compulsive behavior formerly deemed punishable becomes the order of the day.

Lindner, *op. cit. supra* note 13, at 14. It was a band of psychopaths who lead the Nazi juggernaut and it was the psychopathy of the masses that the leaders played upon to gain and maintain power. We in the United States, as the last year has shown, are not immune to the psychopathic contagion. Vicious politics (no commentary needed) and a series of seemingly non-related incidents, *e.g.*, the Princeton student riot in May of 1963, the Roosevelt raceway riot in November, 1963, plus a myriad of less publicized and unpublicized acts are signs of the state of the mass psyche.

Anderson. Anderson had a wife and three children. A defiant and non-repentent Duker was tried and convicted of first degree murder. He received a death sentence which was commuted to a life sentence by Maryland's Governor, Albert Ritchie. Governor Ritchie could not understand how Duker could be held fully responsible for his crime. Trial judge Joseph Ulman stated that he knew that Duker was "mentally abnormal," but ruled that under the law he was legally responsible for his act. The Duker case nicely poses the particulars of our dilemma.<sup>19</sup> It should be kept in mind as we move from the realm of this concrete case to clinical theory and to matters of legal control.

### III. THE PSYCHOPATHIC PERSONALITY: THE CLINICAL CONCEPT

The psychopathic personality for which Herman Duker serves as prototype constitutes "a true clinical entity with a characteristic pattern of symptoms."<sup>20</sup> Psychopathy is a mental disorder accompanied by a well delineated syndrome of anti-social signs. Speaking specifically, psychopathy is a personality disorder, a form of malfunctioning which expresses itself in rigid, repetitive patterns of behavior. Yet, in the criminal psychopath, repeated criminal acts are but one aspect of his aberrant behavior. That is to say not all behavioral recidivists are psychopaths, but all psychopaths are recidivists. Psychopathic recidivism has singular roots, and it is basic to the understanding of my analysis that one realizes that repetition of criminal acts alone does not make a man a psychopath. There is more to his diagnosis.

In viewing the psychopath scientifically, differential diagnosis is our goal. Our question is: How is the psychopath to be distinguished from other offenders and the "normal" population? One clinician has quipped that the psychopath is readily distinguished from other types because in cases of psychopathy "the

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<sup>19</sup> For the full flavor of the *Duker* case, see Ulman, J., *A Judge Takes the Stand* (1933).

<sup>20</sup> This is a quote from the psychological literature approved by the court in *U.S. v. Currens*, 290 F.2d 751, 762 (3d Cir. 1961). The psychopathic type is recognized by the great majority of psychiatrists and psychologists. Sometimes the terms "sociopath" (see *Diagnostic and Statistical Manual of the American Psychiatric Ass'n* 1952) and "anti-social personality" (see Naves & Kolb, *Modern Clinical Psychiatry* (1962)) are used to describe the psychopathic type. The psychopath should in no way be confused with the so-called "sexual psychopath." The latter is not a recognized clinical type.

lid is off the id."<sup>21</sup> Id energy, the primitive dynamic of uncivilized life, dominates the life of the psychopath. He lives only at the level of primitive sensation; aggression and sensual satisfaction are his energizers, and he demands of the world instantaneous satisfaction. This characteristic "explains not only his behavior, but also the violent nature of his acts."<sup>22</sup> Further, the psychopath has a defective super-ego (conscience); he has never internalized the moral codes of his society; consequently, he has an incomplete contact with social reality. At times he may be detoured from predatory action, but never by his super-ego (conscience)—only by the threat of immediate (not potential) bodily harm. The psychopath lives by the strategy of the shortcut; thus, the lure of the short-order world—the world of crime. This Narcissus determines his life by the chemical quantifications of his biotic needs—"he cannot wait upon erotic gratification which convention demands should be preceded by the chase . . . he must rape. He cannot wait upon the development of prestige in society: his egoistic ambitions lead him to leap into headlines by daring performances."<sup>23</sup> He is a naked nerve among the thorny rosebushes.

The criminal psychopath is the sadistic child gened into Giant. At times he wears the mask of charm, but always in Genet style. Once excited or bored, his impulsive id takes over and mad improvisation is his style. Although the psychopath may at first perform a task with great intelligence, his future failure is predetermined by his psychic instability.<sup>24</sup> He is incapable of achieving long-range goals.

Occupational and educational instability in the psychopath are coupled with polymorphous perverse sexuality. His heterosexual sex life is a series of Don Juan episodes; and like Herman Duker, the psychopath is often an active homosexual or a male hustler, that is the passive paid partner of an active homosexual.

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<sup>21</sup> Chornyak, *Some Remarks on the Psychopathic Delinquent*, 97 *American J. of Psychiatry* 1331 (1941).

<sup>22</sup> Linder, *Rebel Without A Cause*, the hypnoanalysis of a criminal psychopath, IX (Evergreen ed. 1944).

<sup>23</sup> *Id.* at 3.

<sup>24</sup> This psychological truth partially accounts for the failure of Hermann Goering's Luftwaffe in World War II. It also may account for many other apparent "blunders" on the part of the Nazi elite.



Excess, narcissism, promiscuity and sadism are all acts in his circus of sexuality.

From the above sketch, one can see that the psychopath is the complete DeSade. Yet, he is more than a moral insolvent—he is the “rebel without a cause.” His level of aggression easily vaults to apogee and he is so constituted as to be able to mobilize with no countdown. He is a one-man revolution, and he is psychically armed for instantaneous total war. Authority is his anathema; rules are made to rout. He is after the pearls of the world and he is not going to bother with the opening of the oysters. Aggression is his army and he is out to sack the world. Ostensively, his guilt is enormous. Yet, he sees himself as guiltless. It is the world that has wronged him; he has only used counter-force. He will swear to this five minutes after he has forcibly raped an old woman whom he has never seen before. He is the victim. Unlike the neurotic, he does not fret over his deeds. He is semantically incapable of understanding the rights of others. He has never heard of the social contract. He steals, lies, rapes, and kills without remorse. His theme might be: no one cares, no one cries, nothing belongs to folks who die.

The final fundament of his character is his lovelessness. The psychopath is incapable of developing true love relations.<sup>25</sup> Other persons are for him objects—objects to be exploited and manipulated. He cannot touch his fellow man; he is a victimizer of other human beings—a toyer with the lives of others. An offer of affection made to the psychopath will not bring on real reciprocity. For a time, he may pose as a friend, but when the moment of truth comes the psychopath departs. This failure to build and maintain affection relations along with his failure to feel real guilt distinguishes the psychopath from other personalities who reveal their antisocial character by delinquent behavior.<sup>26</sup> To capsulize: the psychopath is a nay-saying, animalistic, hostile, guiltless, exploitative, egocentric, loveless, unrepenting one-man commando corps. Descriptive diagnosis, however, is not the end

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<sup>25</sup> Redl and Wineman have compiled a fine study on the inability of the psychopath to develop affect relationships. See Redl & Wineman, *Children Who Hate* (1962).

<sup>26</sup> For instance, neurotic offenders such as pyromaniacs and kleptomaniacs who can build affect relations and who are often overwhelmed by guilt. On this point see Abrahamseen, *op. cit. supra* note 16, at 149.

all of analysis. To construct criteria of control, we must understand the agents that author this personality type.

#### IV. A THEORY OF APPROXIMATE CAUSE: PRECIPITATING THE PERSONALITY PATTERN

Fashions in the analysis of the etiology of crime depend upon what professionals are at any point in time the accepted shamans of society. I am here using professional as a synonym for the "pure" type of professional who sticks to his own knitting and has little to do with other scientific disciplines. This to-each-his-own type of research when contrasted with a "sociopsychosomatic"<sup>27</sup> approach is minor music. For the "sociopsychosomatic" method quests for enlightenment by studying man in process. The body system of the offender, his psychological network, his social surroundings and his social acts are all objects of scrutiny. And this scrutiny calls for the use of the techniques of many disciplines. However, over the years, research on the psychopathic personality type has crusted around the "then" current intellectual cores in fashion. Still, a review of the fashions permits us to view fruitfully the topic from the advantageous point of the multiplied perspective.

##### A. *The somatic approach*

In 1911, Cesare Lombroso, an Italian physician, published a book titled *Crime, Its Causes and Remedies*. In this book, Lombroso discussed a criminal type which when described seems to be identical with the psychopath. Lombroso named this type the "born criminal"; he could be distinguished by his observable physical abnormality. This type was the product of mangled heredity—a genetic depot of biological taint. Later researchers such as Hooton<sup>28</sup> and Sheldon<sup>29</sup> working with the gross body type concept have also emphasized the biological theory of criminal creation. But the gross physical approach and the theory of hereditary taint have never been scientifically linked with the psychopath. In fact, psychopaths cannot be picked out by observing their body type, nor does the geneological line of the psycho-

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<sup>27</sup> I am indebted to Prof. Harold Lasswell for this word.

<sup>28</sup> Hooton, *The American Criminal, An Anthropological Study* (1939).

<sup>29</sup> Glueck & Sheldon, *Varieties of Delinquent Youth XXX* (1949).

path reveal a higher frequency of hereditary defects than that of the normal population.

Inquiry into the body system of the psychopath, however, has produced facts that apparently can be used to contrast him with the biological norm. Electroencephalograph analysis registers the truth that 50% of all psychopaths have abnormal brain wave patterns.<sup>30</sup> This is a telling sign as only 5-10% of the general population exhibits abnormal EEG patterning.<sup>31</sup> This demonstrates that brain system abnormality is present in a large percentage of psychopaths. Support for the validity of the thrust of these studies is found in the observed truth that psychopathic behavior is markedly similar to that acted out by people suffering from traumatic head injuries, epilepsy, encephalitis, and chorea. Autopsy has not uncovered any quantitative difference in the neural structure of the psychopath, but there is much evidence that a "qualitative difference exists."<sup>32</sup>

Auxiliary evidence reinforces the results of brain pattern analysis. This information was gained by measuring respiratory, circulatory and other specific bodily processes aside from the brain activity. Physiology has established that in the usual adult human bodily processes adhere to a specific, repetitive pattern. But not so in the psychopath. Dr. Robert Lindner discovered that the psychopath's bodily processes are "arrhythmic" and that the psychopath is more "delicately poised" than other men.<sup>33</sup> These "arrhythmic" physiological processes support and complement the psychological processes of the psychopath. A hair-trigger physiological set permits rapid mobilization of the body for aggression and other forms of impulsive activity.

Present somatic proof dubs the psychopath as a deviant from the biological norm, but the source of this deviation is not clear. Heredity and trauma are possibilities. In addition, changes in body function may come as the consequence of a chemical change promoted by environmental stress. By this I mean that the

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<sup>30</sup> Ostrow & Ostrow, *Bilaterally Synchronous Paroxysmal Slow Activity in the Encephalograms of Non-Epileptics*, 103 J. of Nervous and Mental Disease 346-358 (1946).

<sup>31</sup> Noyes & Kolb, *Modern Clinical Psychiatry* 228 (1963).

<sup>32</sup> Lindner, *op. cit. supra* note 22, at 10.

<sup>33</sup> Lindner, *Experimental Studies in Constitutional Psychopathic Inferiority* (pts. 1-2), 3 J. of Criminal Psychopathology 252 (1942); 4 J. of Criminal Psychopathology 484 (1943).

tensions of living may bring on the bodily changes by way of a chemical alteration. These changes may be the organism's way of meeting the difficulties of his life. The psychopathic self builds a protection system as he learns early in life that he is without allies.

Although somatic differences exist, it is no certainty that the body state is responsible for creation of the psychopath. A somatic theory of causation may explain certain cases of psychopathy, but I suggest that in most instances there exists a subtle inter-play among soma, psyche, and social milieu. To fill out the puzzle of psychopathic genesis, we examine the plats of psyche and society.

Saga says that in the fifteenth century, Frederick the Second of Germany performed a ghoulish experiment. He set up an unusual nursery—a group of babies were raised at court. They were fed, bathed, clothed, and kept warm. Only one thing was withheld. They were given no love—all died. Lack of love may kill,<sup>34</sup> but if it does not cause death, it can canker the human personality. Psychiatry and psychoanalysis have shown us how important the first years of life are in shaping the human personality. And these two behavioral approaches have given us their own particular hypothesis on the making of the psychopath. This hypothesis is concerned with personality development within the nucleus of the family.

Dr. Lauretta Bender for ten years studied psychopathic children at the children's ward of the Bellevue Hospital.<sup>35</sup> She has stated that the cause of psychopathy in the children studied was "emotional deprivation" in the period of infancy. Deprivation occurred when (1) there was no parent-child relationship, *e.g.*, when the child had been institutionalized as an orphan; (2) when a severe schism had occurred in the parent-child relationship.

It is in infancy that the socialization process begins; it is the point of balance for the future. To become a social animal, the infant must establish an affection relation with an adult. Usually

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<sup>34</sup> See Christofeel, "Some Foetal and Early Infantile Reactions" 1939 *Imago* 24.

<sup>35</sup> Dr. Bender's analysis can be found in Lindner & Seliger, "Psychopathic Behavior Disorders in Children," *Handbook of Correctional Psychology* 360 (1947).

it is the mother who is adult party to this affection transaction. But a father or parent substitute will serve as well if a true contact is made and the adult invests his affections in the arrangement. The adult-child affection bond leads the child through the identification process—the child imitates the adult. The adult's standards become the child's standards. Parents who have been adequately socialized can rear children who will abide by the social contract.

But in the family of the psychopath, all is snafu. Often the psychopath is an illegitimate or an unwanted child.<sup>36</sup> The mother because of the fact of birth—she not wanting the child—often develops a negative attitude toward the child. For her, the child is a burden. The mother has no interest in socializing the child and she, herself, is many times an anti-social person. She has little love to give and the child has no socialized mother to identify with. Conditions may provide a father who may be reasonably socialized or another adult may be able to provide the proper identification image; but if this escape does not exist, the child is already sentenced. Dr. Robert Lindner's research demonstrates that injury to the child can come about, even when the mother is a protective person or a weak, pathetically passive type, although she herself is not openly anti-social.<sup>37</sup> In these instances, the father is the instrument of injury. He will generally have a violent temper, be alcoholic, be promiscuous, be inconsistent in the application of his authority, and will be brutal and abusive toward the child. He is no model for healthy identification. He does not teach the child trust, tenderness, and affection. He gives him a sick image to emulate. In this dismal swamp named sweetly and absurdly—family—the only law the child learns is that of the jungle. He becomes the tiger in the playground. By the family you shall know them.

### B. *Theory of the Macrocasm*

Those who mark the family as the assembly line for that human warhead, the psychopath, usually walk right up to the door of truth, but fail to enter. They seem to be afraid to leave the children's ward and enter the world. They do not see that the ". . . world is in an uproar. The danger zone is everywhere. Just

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<sup>36</sup> Noyes & Kolb, *op. cit. supra* note 30, at 460.

<sup>37</sup> See the mother described in Lindner, *op. cit. supra* note 22.

read your paper and you'll see. Just exactly what keep worryin' me" (popular song). What goes on in the family is simply symptomatic of what goes on outside. The family is the classic unit for transmitting cultural concepts to the child, and today it is not so much that the family has miraculously changed, rather that the culture has changed and is changing. And with the change in the cultural macrocosm, the family microcosm changes. Today, all is institutionalized: education, recreation, wealth and even vengeance. The family is limited in its functions and the children of the family draw their values more from the world around them than they do from the antiquated codes of their parents.<sup>38</sup>

Nature and nurture may contribute to the fabrication of the psychopath, but for them we cannot forsake the study of the impact of environment on the character structure of man. Most theorists in studying the origins of the psychopath have suggested that the infantile development thesis demonstrates that the psychopath fails to develop very little conscience (super-ego) during his infant years. This I think is so. But I suggest that some other mechanism is today at work which subverts even many of these personalities that have received a modicum of socialization. This mechanism can exist because we are all psychopaths under the skin. We have repressed our primitive aims in return for certain social satisfactions—protection, order, and security. It is a trade. Man gives up his madness for culture. But enter the element of social and psychological injustice. When psychological security is threatened, the controls disintegrate and there is a regression—man turns back to his infancy. Back to the time before he was culturized. He reacts as a baby would—with the force of biologically determined need. But one difference—the adult or adolescent has the musculature and skills of violence that the child does not possess. Social instability and over-repression of biological needs bring out the psychopath in many men. What I say is that a great number of people although ostensibly socialized (they have not shown marked behavioral deviation) will react in crisis or under acute stress in a psychopathic manner.

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<sup>38</sup> The writings of David Riesman, Eric Fromm, N. O. Brown, C. Wright Mills, Seymour Lipset, Hannah Ahrendt, Norman Mailer and other culture critics skillfully present portraits of the new world.

This thesis has not been verified by rigorous research for obvious reasons (time and expense). However, close reading of the daily press, the uniform crime reports, and attention to the mass media produces documentary support of high quality for my proposition.

I indicated in the first pages of this paper some of the symptoms and causes of the current inhuman condition. I now reiterate and expand on these statements.

Living complexity, total government, mass manipulation of values by power institutions, the threat of automation and cybernation, over-population, unequal distribution of wealth, hot and cold war crises, and all the other stresses of modern life place a gigantic demand on the Self (the Ego). The Self is shrinking. For in life status now replaces essence and we are all in at least one sense replaceable parts. There will always be someone to fill your spot. In this world old absolutes (the Christian Ethic for instance) have broken down in the age of existentialism and science. Success is the new code. One "makes it"—succeeds—by coming to the world with a set of masks, a bag of tricks, and no conscience.<sup>39</sup> A once outlaw ethic, the code of Hip, is no longer underground. "Kicks" and "cool" and other out-group words are now part of the everyday vocabulary. These terms have their roots in the culture of the disaffiliated. And this type of new ethic is the ethos of our era.

There is much news that shows that Hip is an international ethic. Adolescent behavior clearly signifies the fall of old values and the grip of new life styles.<sup>40</sup> Everywhere adolescents are becoming more psychopathic. Item: Daytona Beach, Florida—4,000 teenage car racing addicts riot in the city's streets when barred from dragging up and down and around the streets of the city.<sup>41</sup> Event: New York City, 15 year old polio-crippled beaten and stabbed to death by a violent gang.<sup>42</sup> The killers did not know their victim. Item: Paris, "Blousons Noirs" smash up cafe

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<sup>39</sup> Classic commentaries on the new code are Mailer, "Reflections on Hip," *Advertisements for Myself* (1959); and Krim, "Making It," *Views of a Near-sighted Cannoneer* (1961).

<sup>40</sup> Interesting commentaries on adolescent hipsterism and psychopathy are Salisbury, *The Shook-Up Generation* (1958), and Riccio, *All the Way Down* (1962).

<sup>41</sup> Fyvel, *The Troublemakers* 27 (1962).

<sup>42</sup> Yablonsky, *The Violent Gang* 9 (1962).

for "kicks."<sup>43</sup> Everyday's newspaper reports similar events; many of the same sort go unreported. Every nation and every city has its delegates to this world congress of psychopathic violence. In Japan, they are called the "tai yozoku," children of the sun; the Russians call them "bezprizornye"; New Yorkers know the collective type as "turf gangs"; in Los Angeles there are the "Pachuchos"; Australia has its "bodgies"; and England its "Teddy Boys." Only the name is different, the custom is the same—violence. The advent of the adolescent rat packs with the clustering together of separate psychopaths is no new event, but Mass Society with all its structural defects multiplies the impact of the phenomenon. In fact, the situation I sketch is so common that we have nearly lost the chance of controlling this plague. Crime statistics perfect this record of gloom.

In the last five years crime in the United States has increased four times as much as the population.<sup>44</sup> And since 1958 it has been made statistically clear that the modal age for offenders has dropped significantly. Most arrests are made in the age bracket sixteen—twenty-one.<sup>45</sup> And every year, arrests of those under eighteen increases at a frightening pace. For example, in 1962, arrests of those under eighteen increased 9% over 1961.<sup>46</sup>

Magnitude of crime in isolation is no natural link to psychopathic crime. Data on current crime trends does, however, provide the attachment. Since World War II, crimes of violence (typically psychopathic crime) are up 30%.<sup>47</sup> By crimes of violence I mean rape, murder, robbery, and aggravated assault. Selecting 1962 and the years 1959-1961 as periods for scrutiny, we see that in 1962 rape was up three per cent over the average for the 1959-1961 period. Robbery in 1962 was up nine per cent when compared with the 1959-1961 period, and aggravated assault was up eight per cent in 1962 when compared with the 1959-1961 period.<sup>48</sup> A proper comparison in the murder rate change cannot be specifically made from the information con-

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<sup>43</sup> Fyvel, *op. cit. supra* note 39, at 28-9.

<sup>44</sup> Hoover, *Crime in the U.S.* (Uniform Crime Reports) 1 (1962).

<sup>45</sup> *Id.* at 94-95.

<sup>46</sup> The N.Y. Times for Sept. 20, 1963, reported that crime in Great Britain in the seventeen to twenty-one age bracket increased 15.2% in 1962 in comparison to 1961.

<sup>47</sup> Tappan, *Crime, Justice and Correction* 39 (1960).

<sup>48</sup> Hoover, *op. cit. supra* note 42, at 2.



tained in the Uniform Crime Reports. Yet, murder in the United States has put on a new mask. This crime historically has occurred within the family unit or among unmarried lovers. Now according to the Uniform Crime Reports, there seems to be a growing group of murders involving "altercations outside the family which resulted in killings which revealed little motivation or appeared to be acts of emotional or insane rage."<sup>49</sup> My belief is that this brand of murder is the by-product of our current psychopathic ethos.

Eyering more closely the Uniform Crime Report, I find facts to perfect the picture. Persons under age eighteen in the year 1962, were responsible for 25% of the arrests for robbery, 19% of the arrests for forcible rape, and 13% of the arrests for aggravated assault.<sup>50</sup> Working from the facts of crime and the facts of Atom Age existence, I argue that the Mass Milieu as well as body states and child development generate the psychopathic personality; and more importantly, that today psychopaths are being created at a fantastically accelerated rate. Admittedly, there has never been the necessary research done on the etiology of the psychopath. However, I believe a "sociopsychosomatic" approach would provide scientifically verified answers. But, even without that research, our total present knowledge of the making of the psychopath is adequate as an operating hypothesis. Faced with the unabortable pregnancy of the present, the question is: what do we do?

## V. DEALING WITH THE PSYCHOPATH

### A. *The Dilemma*

Today, we do not deal with the psychopath. We blunder on and wonder why miracles do not happen. So-labelled "ideas" of crime control are in the greatest part based on mystic memory traces of phylogenetic evolution. In other words, Deuteronomy is not dead; many eyes do not pity and we in fact want "hand for hand." Many find it hard to think beyond revenge; thus, we play tit for tat, sentence for crime.<sup>51</sup> As a first offender, the psychopath may receive a light jail sentence for a small crime; this is how Herman Duker first met the law. Later, for a more serious offense

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<sup>49</sup> Hoover, *op. cit. supra* note 42, at 7.

<sup>50</sup> Hoover, *op. cit. supra* note 42, at 18.

<sup>51</sup> An incisive interpretation of the psychology of this attitude is made in Alexander & Staub, *The Criminal, The Judge, and the Public* (Collier ed. 1962).

he goes to the state penitentiary where society supposes he will repent and be miraculously molded into a "good citizen" by the "good book." This is truly a grim fairy tale. What happens is that the Duker ilk hits a prison and immediately "preys on the other inmates, such as youths and unsophisticated offenders without serious criminal traits."<sup>52</sup> This is fact because our prisons are psychological melting pots where, stirred together, you find inmates who "range from the first offender sentenced for non-violent crime to the habitual, psychopathic criminal."<sup>53</sup> This is the situation in the Kentucky Reformatory and in the great majority of penal institutions in the United States. Usually the psychopath is the initiator of inmate rebellion and instability. Earl Ward who led the Jackson Prison riot was a criminal psychopath.

It may be difficult to conjure up sympathy for a criminal who is brutalized by another criminal. Yet, the most smug citizens should be disturbed by the following facts which fairly represent the general situation in this country. Again, I refer to the Kentucky situation, not for the purpose of pistol whipping a lame cat, but to point up a national tragedy. There are 1,300 prisoners at Kentucky's Eddyville Penitentiary. The following chart indicates the crimes for which these men are sentenced.<sup>54</sup>

*Crimes of Inmates Present on July 1, 1961*

<i>Crime</i>	<i>Number</i>
Murder or Manslaughter .....	204
Assault or Malicious Cutting, etc. ....	117
Carrying Concealed Weapon .....	13
Rape or Attempted Rape .....	70
Other Sex Offenses .....	30
Burglary or Breaking and Entering .....	285
Robbery .....	264
Embezzlement or Fraudulent Checks, etc. ....	141
Larceny or Receiving Stolen Property, etc. ....	93
Auto Larceny or Operating Vehicle Without Consent .....	17
Livestock Stealing .....	8

<sup>52</sup> National Council on Crime and Delinquency, *A Study of the Adult Correctional Program in Kentucky* § 5.27 (1963).

<sup>53</sup> *Id.* at § 5.23.

<sup>54</sup> National Council on Crime and Delinquency, *supra* note 50, at § 4.18.

Non-Support or Desertion of Wife or Child .....	37
Narcotics .....	7
Miscellaneous Others .....	14
TOTAL .....	<u>1,300</u>

Now, the facts of horror.

In an average of two years, three months, all these men except those serving life terms will be returning to the community, either to lead law abiding lives or commit *further deprivations on life and property*. On the basis of the present system in existence in Kentucky's correctional institutions, and the lack of realistic treatment facilities and personnel, it can be reasonably predicted that many will come out embittered and be more likely to commit more serious crimes than before. The resulting damage to the public in terms of property loss, to say nothing of personal injury and loss of human lives, will far transcend the cost of making the improvements necessary to provide reasonable care and treatment for Kentucky's offenders.<sup>55</sup>

One Department of Corrections employee once told me that 30% of these men at the reformatory are psychopaths. It is a cinch bet that they will not be returning to civilian existence "to lead law abiding lives." We know that psychopaths are convicted of an average of seven crimes, twice as many as all other offenders; but judging from case histories compiled and knowledge that most crimes go undetected or unsolved,<sup>56</sup> it is probably a certain truth that the psychopath commits anywhere from 25 up to 100 criminal offenses in his lifetime. The psychopath is the recidivist without peer. And prison only makes the "rebel without a cause" more rebellious and over-energizes his hate for authority. A prison term only compounds his antipathy to society. Our current concepts of control cost us large bundles of tax dollars and give us nothing. Not even protection!

Concerned behavioral scientists have recognized the fact that we are doing nothing to control the psychopath. These behavioral scientists have proposed that the psychopath be isolated from society and rehabilitated in a therapeutic setting. This thinking is based on the fact that there are treatment measures

<sup>55</sup> *Id.* § 4.17.

<sup>56</sup> See Sutherland & Creese, *Criminology* 25-50 (1960).

available. Adult psychopaths have been treated by hypnoanalysis, psychoanalysis, drug therapy, and other varieties of psychotherapy. Group and community therapies are the methods of the moment and appear to have success potential.<sup>57</sup> These therapies aim at providing a re-socializing milieu. Emphasis is removed from the individual level of patient and therapist. The idea is to create a larger environment in which the psychopath's attitudes can be changed. The family situation is reproduced—rather, the psychopath for the first time gets a family—the group or the members of the therapeutic community. Social pressures and techniques are used to lead the psychopath into identifying with others who give emotionally to him. The psychopath is thus integrated into a human group. No longer is he man alone. Although individual methods of therapy have proved to be only minimally effective, milieu therapy offers a practical hope.

Those behavioral experts interested in the problem realize that advocating therapy is not enough. To promote their program they have urged that we re-order legal theory as the first move in devising a contrivance for control.<sup>58</sup> Their pincer movement has been aimed at the traditional criminal law test of insanity as embodied in the M'Naghten rule. For under M'Naughten, the psychopath is held to be criminally responsible and, as M'Naughten prevails in this country, the psychopath nearly everywhere is responsible for his crimes and subject to the usual processes of criminal justice.<sup>59</sup> Cognitively, the psychopath can distinguish between right and wrong, and often, like Herman Duker, he will have an excellent intelligence. Intellectually capable but emotionally inept is the psychopath—he knows what society expects; and yet, he can do nothing to conform his conduct to social expectations.

Those who advocate renouncing M'Naughten and the use of a more modern theory which recognizes the inability to control conduct as a criterion for non-responsibility are looking toward the day when psychology, medicine and sociology as equals with

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<sup>57</sup> Relevant books on these therapies are Beukenkamp, *Fortunate Strangers: An Experience In Group Psychotherapy* (1959); Bach, *Intensive Group Psychotherapy* (1962); and Jones, *The Therapeutic Community* (1953).

<sup>58</sup> See as an example of this thinking, Guttmacher, "The Psychiatric Approach to Crime and Correction," 112-141, *Criminal Psychology*, (Nice ed. 1962).

<sup>59</sup> See Cleckley, *Mask of Sanity* "Legal Competency and Criminal Responsibility" 514-528 (1955).

the law will be concerned with the fate of the criminal. Yet, at present, as Judge John S. Palmore of the Kentucky Court of Appeals has said, "In both public attitude and institutional facilities we are unready as yet to implement the *inevitable*. It is high time, however, that we scout ahead, if only in the mind's eye."<sup>60</sup> I am in full accord with the scouting ahead, but unfortunately, there are all types of the *inevitable*, and the psychopath is one of them. I fear that we will have come and we will have gone before "public attitude" and the resistance of many jurists and lawyers abates and admits the inevitable new philosophy of rehabilitation to the arena of control. A first step toward a solution is a psychological one. We must avoid philosophic debate about the merits of retribution and rehabilitation. The strategy I suggest will taboo emotional debates about free-will, determinism, humanitarianism, deterrence and right and wrong; and in the end, will save us billions of dollars. We must forget philosophy for the instant; an alliance is needed, a popular front of all men with good sense whether they philosophically agree or not. Our fundamental concept must be *social danger*.<sup>61</sup> From the rational perspective of protection, our concern must be more with the criminal than with the crime. What is his personality structure? What is the probability that he will repeat his offense or go on to more horrible crimes? *What he has done may not be nearly as important as what he is capable of doing*. Diagnostic techniques and clinical interview today permit us to separate the psychopath from other criminal types. Clearly, the psychopath is not only an ambulatory mental patient, but more than that he is a walking revolutionist. We cannot wait for a brave new enlightened age! Self-protection must be served.

### B. A Plan

Each state or a group of states acting together by way of interstate compact should establish maximum security therapeutical communities for adult psychopaths. Informed professionals, lawyers, and behavioral experts should cooperate in preparation of

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<sup>60</sup> *Newsome v. Commonwealth*, 366 S.W.2d 174, 180 (Ky. 1963).

<sup>61</sup> This is a fundamental concept of the Soviet criminal law. Often it has been associated with political danger; however, I have no desire to move the principle in a political direction. On the Soviet concept see Hazard, *Law and Social Change* 89 (1953).

the legislation needed to establish these communities. Maryland<sup>62</sup> and California<sup>63</sup> have already established therapeutic centers for abnormal offenders but not specifically for the psychopath. California assigns a number of mentally and physically abnormal prisoners to its Medical Facility, while Maryland segregates so-called "defective delinquents" and assigns them to the Patuxent Institute. These two states have taken a progressive approach to penology. However, their efforts are overly idealistic. The groups that they try to treat are too heterogeneous. We must be practical, if we are unable to be utopian. Trying to treat all abnormals will mean that your therapeutic community will soon become a dumping ground similar to our state mental hospitals. Therapy gives way to custody. True, in Maryland, the sentence to Patuxent is an "indeterminate" one—the socially dangerous one is out of circulation. But in a pamphlet written by the director of the Patuxent Institute it is admitted that the Institute's professional staff is small (one psychiatrist, two psychologists, and occasionally a psychiatric social worker); "therapy constitutes only a fraction of their regular work day."<sup>64</sup> Only about 160 persons are in therapy at any one time. The Patuxent staff is courageous and dedicated—good samaritans of group therapy—but expected to work miracles with bread and water. This mis-step must be avoided. Any treatment facility should be staffed so that there is a true opportunity for the application of modern therapies. It is not so necessary that we have white pre-stressed concrete architectural triumphs to house the prisoner as it is that we have a proper ratio of therapists to inmates.

Once a control institute is established, I suggest the following administration of control process. Legal procedures preserving the fundamentals of our current system should still be used in determining whether or not the psychopath committed the crime with which he is charged.<sup>65</sup> First, there should be a trial on the fact of the crime. The question is: did X perform the act? Proper proof of the commission of the crime, of course, must come

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<sup>62</sup> See Md. Ann. Code art. 31b (1951).

<sup>63</sup> See Cal. Code (Penal) ch. 8, §§ 6100-6107 (Deering 1959).

<sup>64</sup> Boslow, *Methods and Experiences in Group Treatment of Defective Delinquents in Maryland 1961* (unpagged pamphlet in the author's files).

<sup>65</sup> My analysis is, to a great extent, based on the procedures operating in relation to the Maryland "defective delinquent" statute. See Md. Ann. Code art 31b, §§ 5-11.

before my suggested procedures would be used.<sup>66</sup> If psychopathy is suspected, sentencing should be suspended. Hints of psychopathy will often be contained in the defendant's past delinquent history. Moreover, diagnostic tests of a simple nature might be administered to all persons accused of felonies.<sup>67</sup> These tests could ferret out many who might not otherwise be suspected. A program of diagnosis in this instance can only be serviceable as long as judges, prosecutors and attached behavioral science personnel are aware of the psychopathic syndrome. Here the burden is on the staff of the control institute to provide a pamphlet for those involved in the administration of justice.<sup>68</sup> This pamphlet should describe the psychopath in terms that a layman can comprehend. Various ways of initiating the process exist. The judge on his own initiative might call for examination. Or the state's attorney or defense counsel might request an examination of the defendant. An offender suspected of psychopathy should be sent to the control institute for examination. If the offender is found to be a psychopath, he should be granted a separate trial on the issue of psychopathy. Ideally, this trial would be held before a panel composed of a judge and a behavioral science specialist, either a psychologist or psychiatrist. The offender should be guaranteed the right to an examination by a psychiatrist or psychologist of his selection with the state financing the examination when the offender is indigent.

Upon the finding by the court of psychopathy, the fate of the psychopath could be determined according to the following general principles.

Psychopaths convicted of a non-violent crime could be sentenced to the control institute for the usual statutory sentence or perhaps a period of 5 years. Moreover, a sentence called a

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<sup>66</sup> The requisite of an overt act of social danger before application of a criminal sanction is basic to our system. It is clear that this feature should be retained. Until there is a criminal act there should be no possibility of criminal sanctions. However, remedial civil "sanctions" (mandatory therapy for example) could be imposed without the person "sanctioned" actually performing a socially dangerous act. But the use of the "civil sanction" should be under close judicial control.

<sup>67</sup> Rorshach, TAT and other psychological tests are valuable detection aids.

<sup>68</sup> Again, we can learn from the Soviet experience. Soviet experts in forensic medicine provide diagnostic manuals for use by legal personnel. See Berman, *Justice in the Soviet Union* 323 (1963).

"measure for security" could be added to the original sentence.<sup>69</sup> This "measure of security" would be no longer than one-half of the original sentence. It would be a means of prolonging the treatment period in cases in which the control institute's staff feels that with more time rehabilitation could be effected. Once rehabilitated, the psychopath could be released; he need not serve out his original sentence. The procedure for release would be analogous to the current parole process. A special review board functioning like a parole board and acting upon the advice of the staff or director of the control institute would make decisions on release.

If during the treatment period it is determined that the psychopath will not benefit from treatment, he may be transferred to a security institution to serve out his sentence. Those non-violent offenders who serve out their period of control at the institute, but who are not rehabilitated would be released to society.

In dealing with the psychopath convicted of a non-violent offense, I have axed out a rough adjustment which should satisfy the competing philosophies of the schools of retribution and rehabilitation. The traditional idea of the sentence as a period of isolation from society is maintained; there is no out-of-prison rehabilitation procedure even for psychopaths who might conceivably be treated in this way. Further, the control period, in the main, is geared to the community's view of the severity of the offense and, in addition, a "measure for security" may be attached. Rehabilitation and a release procedure are also operating elements in the program of control. Clearly, compromise is not a functional ideal from anyone's perspective of opinion. Some dangerous psychopaths will return to society. But after all, the art of compromise is elemental in a civilized society. It is what we must operate with in a world where men of good motive differ. Up to this instant, I have talked of compromise, and now it may seem that I have run from that harbor onto the rocks of controversy. But "hear me for my cause."

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<sup>69</sup> The "measure of security" is an innovation of the Swedish system of correction and rehabilitation. See Sellen, *The Treatment of Offenders in Sweden*, XII Fed. Prob. 14, 17 (1948).



I propose a differential treatment for violent offenders. Again, my intent is to compromise a concord with reality, a treaty with the facts of our situation. My proposal: a psychopath convicted of murder should receive a mandatory death sentence. Moreover, any psychopath convicted of two crimes of violence during his lifetime should receive the same penalty. In the case of a first offender who is convicted of a crime of violence other than murder, he should be treated "ab initio" as any non-violent offender except that if he cannot be rehabilitated, he too would be subject to the death penalty. Finally, any psychopath who has been released from the control institute and who later commits a crime of violence should also be subject to the death penalty. The use of the death penalty would be enforced upon the order of the court that originally sentenced the offender. Death may be a finality that even those favoring retribution cannot philosophically swallow. In lieu of death, psychopaths convicted of crimes of violence could be walled up in a maximum security—marginal maintenance compound. In this compound, life would continue for them, but at the lowest pitch—no therapy, no expensive recreation, none of the new penology. Neither alternative as posited is pleasant, but crime and life are raw!

The objections to my proposal are obvious. First, wouldn't an indeterminate sentence to the control institute protect society just as well and doesn't it preclude the taking of human life? In a utopian era where there are no fiscal facts of existence and resources can be allocated to solve all problems, an indeterminate sentence might be used. But the boulder in the present's path is the fact that any state's control institute would have a limited budget; and thus, staff and physical facility would be relatively fixed. And it is a scientific truth that at present only 40-50% of all psychopaths can be rehabilitated.<sup>70</sup> This means that many would never leave the control center. Under the indeterminate sentence practice, the control institute would become a dumping ground. Therapy would ultimately give way to pure custody. The situation would be exactly that of our state mental hospitals. Of course, as indicated before, those failing to respond to treatment could be removed to a maximum security—marginal maintenance facility. But I object to this on grounds that will soon be

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<sup>70</sup> McCord, *op. cit. supra* note 15, at 84.

made clear. It is again a matter of the vital application of resources. The second objection to my proposal certain to be raised relates to the use of the death penalty. Personally, capital punishment is anathema to me. Yet, it can in special instances be defended, and its application, as I suggest, is rationally defensible. Roughly, there is a connection between the behavior of the psychopath and his amenability to treatment. The more violent his acts, the more warped his personality. And the more warped his personality, the slimmer the chances of rehabilitation. The psychopaths who murder, rape, brutally assault, and rob have served notice that they are dealers in social danger. Many of these brutal violators will be members of that bevy of their kind who defy the finest ingenuity of therapy. Further, much of our society is psychologically conditioned to deal drastically with these offenders. Again, I seek the balance between retribution and real rehabilitation. Also, I do not honestly believe that a cleaned up Devil's Island approach such as that of maximum security—minimum maintenance Isolation Acres is any more defensible than the death penalty. George Bernard Shaw's words reflect my point of view:

At present you torment them for a fixed period, at the end of which they are set free to resume their operations with a savage grudge against the community which has tormented them. That is stupid. Nothing is gained by punishing people who cannot help themselves, and on whom deterrence is thrown away. Releasing them is like releasing the tigers from the zoo to find their next meal in the nearest children's playing ground. . . . If people are fit to live, let them live under decent human conditions. If they are not fit to live, kill them in a decent humane way.<sup>71</sup>

My personal "lust for life" guides me to reject the death penalty when a person murders his or her spouse during a period of personal despair. But my instinct for self-preservation dominates my social thought in the case of the psychopath. And this force leads me to be concerned with practical projects rather than philosophical consistency.

Earlier I noted that we are living not only in the age of atomic anxiety but in the age of the psychopath. These grotesques are

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<sup>71</sup> Shaw, *The Crime of Imprisonment* 50-51 (1946).

coming in being by the millions. The adult psychopath army is by comparison a fraction of the mass of psychopaths that is our atomic inheritance. Our future rides upon what we do to deter the child psychopath. Treating the mature psychopath is minor medicine. An epidemic is-a-breeding! We must put our resources where they will give us the greatest social return. The resources we do not expend on the adult psychopaths who are poor rehabilitation risks can be used in the treatment of child and adolescent psychopaths. Put bluntly, it is a matter of cost accounting. Not choosing to be idealists, we are forced to be efficient.

Today, for about \$7,000, we can socialize a child psychopath.<sup>72</sup> Using milieu therapy, Pioneer House in Detroit, Wiltwyck School in New York, and other institutions have socialized large numbers of psychopathic children. An adult psychopath costs us about \$75,000, without a dollar spent on therapy and not a move toward his socialization.<sup>73</sup> Frankly, I think it rational to sacrifice one peril-loaded unsalvageable to save seven to ten children. This is the humanitarian way as well as the only rational project. We define ourselves by our deeds, not by our thoughts. Psychic humanitarianism is an obsessional ritual for the easing of personal anxiety. Abstract love for man is obscene. To be committed to man and life is to be forced to choose. In "The Time of Your Life," William Saroyan puts it as I see it:

In the time of your life, live. . . . Seek goodness everywhere, and when it is found, bring it out of its hiding place and let it be free and unashamed. . . . Ignore the obvious, for it is unworthy of the clear eye and the kindly heart. . . . Remember that every man is a variation of yourself. No man's guilt is not yours. . . . Have no shame in being kindly and gentle, but if the time comes in the time of your life to kill, kill and have no regret. In the time of your life, live—so that in that wondrous time you shall not add to the misery and sorrow of the world. . . .<sup>74</sup>

The use of the death penalty in dealing with adult psychopaths will permit us to put our resources where they will do the

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<sup>72</sup> McCord, *op. cit. supra* note 15, at 192.

<sup>73</sup> My estimate is based on material contained in McCord, *op. cit. supra* note 15, at 123.

<sup>74</sup> Saroyan, *The William Saroyan Reader* 376 (1958).

most good. Even to maintain an isolation institute for these adult offenders would be inhumane and we would be sacrificing the future of several children. We must face the fierce truth that we cannot redeem all sinners. Society will not pay the bill. Unfortunately, we must then improvise. To increase the amount of money available to control child and adolescent psychopathy, we should not only follow my suggested program, but should also use a rational program of parole to cut the cost of caring for "normal" offenders. With such effective and inexpensive therapies as the Synanon Technique,<sup>75</sup> many of these normal offenders can be returned to society after a short time in a correctional institution.

Now in limiting the pathological development of the psychopathic child, our first act must be one of identification. There are many cues to the condition. Behavior is the easiest to spot. Recall the case of Herman Duker who squashed kittens, bullied his playmates, and attacked dogs with darts. Duker is the archetype. The young psychopath will be known as a "bad" child before he enters school. At school, he will be called a "problem" child. Only the tag changes, he is still the evolving psychopath. His behavior will disrupt that community socializing process we call education. No longer are his crimes merely spitting out his spinach, kicking the cat, or biting mommie. He will refuse to obey his teachers, he will begin to steal from his schoolmates, he will not study, and he will become a truant—he is a "problem" child.

Behavior should make the teacher wary. Teachers just like judges and prosecutors should be briefed on the symptoms of psychopathy. Projective tests should be administered to children who are behavioral problems. If the tests point to psychopathy, a psychiatrist or psychologist should be called upon to make a complete personality analysis. Diagnosis should create no great legal problems. Under the law, children are classified as juveniles, and the usual legal procedures are inapplicable.<sup>76</sup> Juvenile courts could exercise their authority over children who have either

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<sup>75</sup> The Synanon approach is a form of community therapy used in the attempted rehabilitation of narcotic addicts. For details on this therapy see Sternberg, *Synanon House—A Consideration of Its Implications for American Correction*, 54 J. Crim. L., C. & P.S. 447 (1963); Yablorsky, *The Violent Gang* (1962).

<sup>76</sup> See a typical statute: Ky. Rev. Stat. ch. 28 (1962).

committed actual criminal acts or who are community (including the school community) behavior problems. Parents should certainly be asked to consent to an examination of the child. But if consent is not given, custody of the child could be transferred to the juvenile court by an appropriate procedure.<sup>77</sup>

Once having diagnosed a child as psychopathic, the question of treatment arises. Individual therapy with a psychiatrist or clinical psychologist is a possibility; however, the most effective therapy is milieu therapy. This means that the child will have to be removed from his home. Removal is necessary in most cases, as the ethos of the home environment runs counter to the aims of therapy. The parents may send the child to a private institute if they can afford to do so. If not, the child should go to a state maintained child center. This state maintained center should treat psychopaths up to age sixteen. The older juveniles should be separated from the younger ones. As at the Wiltwyck School in New York, there should be a "working" ratio of staff to the patient population. At Wiltwyck, the ratio is nearly one to one.<sup>78</sup>

As stated before, the therapy of choice would probably be milieu therapy. This method of treatment was devised by August Aichorn immediately after World War I to treat children at an Austrian delinquent center. Aichorn made a keen intuitive estimate of what the hostile, unloved psychopathic child needs. Aichorn schooled his staff to slowly compensate for the affectional aridity of these children's lives. At the beginning of the treatment process, no pressure was put on the child. There were scheduled meals and events, but no child was required to conform to the community's rhythm. As long as he remained within the geographical limits of the center, the child could be as socially nomadic as he desired. Even acts of aggression were met in an unusual way. The staff would stop fights. Yet, the members of the staff neither reprimanded nor punished. This permissive treatment amazed the child. As Aichorn said:

The lack of affection in the early environment had led them first to hate and later to dissocial behavior. A child tries to repay deprivation and enforced pain by doing something

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<sup>77</sup> If a procedure similar to that suggested here had been in operation, Lee Harvey Oswald would never have been in *any way* connected with the death of President John F. Kennedy.

<sup>78</sup> McCord, *op. cit. supra* note 15, at 123.

that will bring pain to another, and thus achieve pleasure for himself. In the institution, aggression which had proved effective in the old environment did not bring forth the expected and desired response.<sup>79</sup>

In fact, Aichorn's staff purposefully set up situations that frustrated the child; thus eliciting his aggression. Yet the staff continued to respond to hostile acts with minimal intensity. Failing to get the expected response, the child decided that his attitude toward life was of no use. He needed a new strategy. At this point Aichorn would begin to make demands on the boy. He was building on the need for a new strategy of life and the bonds of affection established between the boys and the staff. The rules of society and its rewards were demonstrated to the boys. These boys re-educated in a socializing environment developed a conscience, developed control of their aggressive impulses, and all of them subsequently made a good adjustment to the outside world.

In the United States, Chicago's Orthogenic School, Detroit's Pioneer House, and New York's Wiltwyck School have all used the Aichorn milieu approach. Every community activity is made a part of the therapeutic process. All of these projects have succeeded. I cite the Wiltwyck experience as a specific instance of the general success. In 1953, Wiltwyck children were compared with those from the usual reformatory institution.<sup>80</sup> The psychopathic children at Wiltwyck had gone through a change for the better! Those at traditional authoritarian reformatories changed for the worse. At Wiltwyck, aggression is reduced, frustrations are overcome, reality is tested, the child does develop a conscience and does learn to love. At the traditional reform school, the child becomes more pathological. A psychopathic child is an ulcerated organism. He cannot get well in a vat of acid—the traditional reformatory is acid pit and often salt mine.

The use of an Aichorn-Type method would save us and our culture's children from the devilmare possibilities of a psychopathic future. At a cost of about \$7,000-\$10,000 per child, we can inoculate our society against the Carmine Plague. This all can be said; it remains to be done.

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<sup>79</sup> Aichorn, *Wayward Youth* 135 (1955).

<sup>80</sup> See McCord & McCord, *Two Approaches to the Cure of Delinquents*, 44 *J. Crim. L., C. & P.S.* 442 (1953).

## VI. THE UNCONDITIONAL ALTERNATIVE

Prophecy is usually the province of the paranoid, and here I accept the danger of being re-classified. I say that if we do not begin to act upon what we know about psychopathy and culture's role in the genesis of psychopathy, we will cede the world to the sick. The receivers will be the Herman Dukers, the Adolph Hitlers, the Herman Goerings, the Adolph Eichmanns and the Joe Valachis. Yes, the psychopath will be the primary beneficiary and will direct the bone dance. It will be one grand manic ballet. George Orwell in 1984 said that "if you want a picture of the future, imagine a boot stamping on a human face—forever."<sup>81</sup> Orwell was not fancying up an imaginary future—he was predicting the possible.

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<sup>81</sup> Lindner, *Fifty Minute Hour* 119 (1956).