

THE PSYCHIATRIC APPROACH TO CRIME AND CORRECTION

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I

The psychiatrist has a peculiarly tolerant attitude toward criminal behavior, which is born out of his recognition of the welter of antisocial impulses occurring in noncriminal individuals. This has been known to wise men throughout the ages. Goethe said, "There is no crime of which I do not deem myself capable."¹

The psychoanalytic studies of normal individuals have revealed a quantum of aggression and hostility in everyone. Indeed, most persons have sadistic fantasies and murderous dreams. The fascination that newspaper accounts of crime, crime novels, and crime dramas have, for vast numbers of people, is surely dependent, in large measure, upon the ubiquity of antisocial impulses. The ease with which peaceable men can be transformed into relentless warriors is further evidence of this. People do not stop to consider the fact that evolution is a painfully slow process and that the child born in the modern aseptic delivery room is as savagely amoral as that produced by our neolithic progenitors. Indeed, socialization is, in many respects, as marvelous a phenomenon as physical growth itself.

The psychiatrist realizes that a psychological differentiation between the neurotic criminal, who heedlessly and persistently risks his freedom to acquire money illicitly, and the miser, who legitimately amasses a fortune and has a monument erected to his memory, may be a very fine one. The pedophile and the revered leader of the boys' club may be close relatives, indeed. The findings of Professor Kinsey's researches, showing the prevalence of deviant and legally-prohibited sexual behavior among all groups of the population,² were largely anticipated by psychiatrists. And Sutherland's studies of white-collar crime³ and surveys like that of Wallerstein and Wyle⁴ demonstrate the high incidence of lawlessness that occurs among individuals never convicted of crime and the general acceptance of such practices by large numbers of people.

Prior to the advent of modern dynamic psychiatry, great stress was laid upon heredity. Vague concepts like neuropathic tainting were given prominence. During the early decades of this century, sterilization laws for the mentally defective and certain groups of the insane, as well as for certain classes of criminals, chiefly major

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¹ See THEODOR REIK, *THE UNKNOWN MURDERER* 45 (Jones transl. 1945).

² ALFRED C. KINSEY, WARDWELL B. POMEROY, AND CLYDE E. MARTIN, *SEXUAL BEHAVIOR IN THE HUMAN MALE* (1948); ALFRED C. KINSEY ET AL., *SEXUAL BEHAVIOR IN THE HUMAN FEMALE* (1953).

³ EDWIN H. SUTHERLAND, *WHITE COLLAR CRIME* (1949).

⁴ Wallerstein & Wyle, *Our Law-Abiding Law-Breakers*, 25 *PROBATION* 107 (1947).

recidivists and sex offenders, were passed in many states.⁵ With the development of modern psychiatry, however, the pessimistic fatalism toward insanity resulting from the emphasis on the constitution gave way to an overzealous optimism in regard to the treatment of mental disorders. With it, there has developed an almost total disregard of heredity, since it does not lend itself to therapeutic efforts. Investigations making use of the twin method, by the psychiatrists Johannes Lange on crime,⁶ Rosanoff on juvenile delinquency,⁷ and Franz Kallmann on mental disorder and homosexuality,⁸ have not received the attention among behavioral scientists that they merit. Freud himself did not belittle the role of heredity. He often spoke of the important, though unfathomable role of the constitution in all types of mental disorder. But his method of intensive exploration of the individual, which has held the center of the stage in recent decades, is not suitable for studying the role of heredity.

These matters lead us to consideration of determinism versus free will and to that of criminal responsibility. It is in this area that psychiatrists generally differ most profoundly from members of the legal and correctional disciplines. Some psychiatrists applaud the pronouncement of Ernest Jones, who said, "By accepting the legal view of free will they [doctors] abandon the only fundamental canon of all science."⁹ Certainly, everyone who has worked in psychiatry must have been impressed with the vastly unequal opportunities afforded individuals to develop healthy egos. Furthermore, the degree of mental health that the individual possesses bears a direct relationship to the freedom of choice which he is able to exercise. A daily awareness of these facts gives psychiatrists an unusual tolerance for the vagaries of human behavior, whether it be criminal or noncriminal. In psychiatry, one's orientations must, in large measure, be deterministic.

It is surely scientifically unsound to hold that men must be divided into two distinct categories, the responsible and the irresponsible. There must be degrees of responsibility. Yet, as residents of the world of reality, we have to admit that the vast majority of men must be held responsible for their behavior. Even if certain philosophers conclude that man has no freedom of choice, such a construct must be established for practical living, just as the concept that all men are created equal must become an axiom of democratic societies. Apparently in testing the limits to which Freud would go in upholding determinism, he was asked whether a man should be held responsible for his dreams. The master retorted that if the dreamer was not responsible for his dreams, who should be.¹⁰

⁵ Cf., e.g., *Buck v. Bell*, 274 U.S. 200 (1927); *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

⁶ JOHANNES LANGE, *CRIME AND DESTINY* (1930).

⁷ A. J. Rosanoff, L. M. Handy, & I. A. Rosanoff, *Criminality and Delinquency in Twins*, 24 J. CRIM. L. & CRIMINOLOGY 923 (1934).

⁸ Kallmann, *Genetics of Psychoses: An Analysis of 1,232 Twin Index Families*, 2 AM. J. HUMAN GENETICS 385 (1950), *Twin and Sibship Study of Overt Male Homosexuality*, 4 *id.* at 136 (1952).

⁹ Quoted in Szass, *Some Observations on the Relationship between Psychiatry and Law*, 175 ARCHIVES NEUROLOGY AND PSYCHIATRY 299 (1956).

¹⁰ Unpublished lecture of Dr. Gregory Zilboorg.

Nevertheless, in certain psychiatric groups, it has become a sign of modernity and scientific maturity to go all out for determinism, to believe that man is a helpless victim of his genes and his environment. To subscribe to this is a symbol that one is not dragging one's scientific heels. The more sage leaders of American psychiatry, however, have accepted the fact that man is not without freedom of choice. Professor John Whitehorn, a leading eclectic psychiatrist, wrote in 1953:¹¹

So far as I can see, there exists a range of freedom of choice between different possibilities in conduct or behavior. The range of freedom of choice appears to me to be much narrower than is implied in most of the exhortations to reform by "will-power," and the range of freedom of choice is particularly restricted in the condition that we characterize professionally as illness, but seldom if ever is the range of freedom reduced to zero, as is implied in a strictly deterministic view.

And Franz Alexander, who has been in the forefront of the psychoanalysts who have studied criminal behavior, recently said of the doctrine of strict determinism:¹²

The basic error in this whole reasoning is that it treats the conscious and unconscious portions of the personality as two completely isolated systems without any intercommunication, like the left hand is not knowing what the right hand is doing. This assumption is contrary to our knowledge. Slips of the tongue and other parapraxias are committed via our voluntary muscles, yet under the influence of unconscious motives. In such cases behavior is influenced by fully or partially unconscious motivations which infiltrate by various psychodynamic processes into territory otherwise under the control of the conscious ego. The intercommunication between the two systems, conscious and unconscious, however, is a two way traffic. Not only do unconscious processes influence conscious processes, but also conversely conscious processes influence the unconscious. . . . Punishment of careless drivers, even if their accidents are the result of unconscious motives, will increase almost every driver's sense of responsibility and consequently his vigilance over his movements. To eliminate punishment for accidents from traffic laws would undoubtedly result in an increase in accidents.

Although the whole range of behavior falls within the interest of psychiatry, its particular concern is with that behavior which results from mental disorder. There has been no psychiatric study which gives us a true measure of the incidence of psychiatric morbidity in the criminal population. There have, however, been statistical surveys which bear on this point. Dr. Winfred Overholser, while Commissioner of Mental Hygiene in Massachusetts, recorded the findings in the examinations carried out under the Briggs Law over a fourteen-year period, which showed that fifteen per cent of those examined were psychiatrically deviated to a significant extent.¹³ Bromberg and Thompson analyzed the findings in ten thousand consecutive cases examined in the Psychiatric Clinic of the Court of General Sessions in New York, and they reported significant psychiatric defects in twenty-two per cent of

¹¹ John Whitehorn, in *Psychiatry and the Law*, 1953 PROCEEDINGS OF THE AMERICAN PSYCHOPATHOLOGICAL ASSOCIATION 153 (1955).

¹² FRANZ ALEXANDER & HUGO STAUB, *THE CRIMINAL, THE JUDGE, AND THE PUBLIC* 129 (rev. ed. 1956).

¹³ Overholser, *The Briggs Law of Massachusetts*, 25 J. CRIM. L. & CRIMINOLOGY 859 (1935).

these defendants.¹⁴ Both studies found 1.5 per cent to be psychotic. But in the material for both studies, factors of selection were operative.

It is interesting that three psychiatrists, with extensive experience in criminal psychiatry and with different scientific orientations, entirely independent of one another, have expressed an identical opinion as to the incidence of psychiatric abnormality in the criminal population. The late Sir Norwood East, the very conservative leader of criminal psychiatry in England,¹⁵ Dr. Gregory Zilboorg,¹⁶ a leading psychoanalyst in this country, and the writer of this paper have all indicated that in their opinions, about eighty per cent of criminals are psychiatrically normal.

It is noteworthy that Franz Alexander and Hugo Staub in the first edition of their valuable book, *The Criminal, the Judge and the Public*, stated that the number of "normal criminals," the dysocial individuals who have identified with criminal superegos, was small.¹⁷ They were then writing on the basis of their European experience. In the recent new edition, however, after Dr. Alexander had been exposed to American culture for a quarter of a century—and surely it cannot be gainsaid that Chicago was the ideal place for such exposure—he expresses a different opinion: "The prevalence of the latter [normal criminal] group in the United States is beyond question."¹⁸

Some psychiatrists are loath to accept the view that a large proportion of criminals are not psychiatrically abnormal, particularly the recidivists. When one argues the point, they say, "But surely, nearly all murderers must be sick individuals." It seems to the writer that in dealing with these questions, consideration should be given to statistics on the racial incidence of crime. For example, in 1957, the homicide rate for negroes compared to whites in Baltimore was eleven times their incidence in the population.¹⁹ I know of no study, however, indicating a greatly higher psychiatric morbidity rate for negroes than for whites.

II

Both the treatment and the prevention of disease progresses haltingly until its pathology is established. In most instances, the great strides must wait upon the discovery of aetiology. As far as crime is concerned, whether it be normal criminality, which is essentially a social disease, or crime dependent on mental morbidity, its pathology is poorly understood and its aetiology is essentially unknown. We find ourselves in a position similar to that of the systematists of the eighteenth century; we must be satisfied largely with description and classification.

One of the greatest difficulties in psychiatry is its esoteric vocabulary. Its special

¹⁴ Bromberg & Thompson, *Relation of Psychosis, Mental Defect and Personality to Crime*, 28 *id.* at 70 (1937).

¹⁵ NORWOOD EAST (ED.), *THE ROOTS OF CRIME* 44 (1954).

¹⁶ GREGORY ZILBOORG, *THE PSYCHOLOGY OF THE CRIMINAL ACT AND PUNISHMENT* 43 (1954).

¹⁷ FRANZ ALEXANDER & HUGO STAUB, *THE CRIMINAL, THE JUDGE, AND THE PUBLIC* 209 (1931).

¹⁸ FRANZ ALEXANDER & HUGO STAUB, *THE CRIMINAL, THE JUDGE, AND THE PUBLIC* 11 (rev. ed. 1956).

¹⁹ DEPARTMENT OF POST MORTEM EXAMINERS OF MARYLAND, 18TH ANN. REP. 30 (1957).

terminology not only makes communications with other disciplines difficult, but its technical terms have varying connotations and, in some instances, even varying denotations for psychiatrists. In the writer's efforts to understand the criminals that he examines, he has grouped them under several categories. But no classification which he has come upon seems adequate. At present, he would suggest the following:

1. The normal criminal, the dysocial group made up of individuals who have identified with the asocial elements in our society, generally with morally and socially defective parental figures. They compose seventy-five to eighty per cent of criminals.

2. The accidental or occasional criminal, the individual with an essentially healthy superego who has become overwhelmed by a special set of circumstances. This is a very small group. On the basis of claims made by offenders and their families, this group would appear to be much larger than it actually is. Nearly every mother whose youthful son becomes involved in criminal behavior asserts that he is a good boy, but the momentary victim of bad associates. On investigation, one generally learns that he had for years been a serious school behavior problem and a well-known client of the juvenile court. The bank officials whom the writer has met in prison all had pretty shady reputations before their convictions.

3. The organically or constitutionally predisposed criminal, forming a disparate group which constitutes a small portion of the total number of criminals and is comprised of numerous subgroups: the intellectually defective, the postencephalitic, the epileptic, the senile deteriorative, the posttraumatic, etc. Of course, the vast majority of persons with these maladies are noncriminal.

The role of head injury in the genesis of antisocial behavior is unclear. The high incidence of head injury in the criminal population is probably related to their general heedlessness resulting in their being accident-prone, rather than being an important causative factor in their delinquency. Why individuals, presumably exposed to identical injurious agents develop varying resultant behavioral patterns is uncertain. The effect is probably dependent on the basic structure of the premorbid personality to a greater degree than on the exact nature and location of the injury.

4. The psychopathic or sociopathic criminal, the individual who is not psychotic (insane), but who indulges in irrational, antisocial behavior, probably resulting from hidden unconscious neurotic conflicts which constitute the driving dynamic force underlying his criminal conduct. This is a complex group, comprising ten to fifteen per cent of criminals. Among them are to be found some of the most malignant and recidivistic offenders. For purposes of exposition, it is desirable to attempt to isolate discrete subgroups based primarily on behavioral manifestations. Until there is a deeper understanding of the psychopathology and some knowledge of aetiological factors, no really satisfactory subclassification of this important criminal group can be devised.

There is the sociopathic type, described so fully in Hervey Cleckley's *Mask of*

Sanity.²⁰ They have shown evidences of life-long social maladjustment reaching back into early childhood. Dr. Robert Lindner used the very apt phrase, "rebel without cause," to describe them.²¹ They are in conflict with society in all areas. Benjamin Rush, the first psychiatrist in America and one of the signers of the Declaration of Independence, called the condition "anomia," a term derived from the Greek word for lawlessness.²² He postulated the existence of a congenital defect of the moral sense in conjunction with normal, or even superior, intellectual powers. English writers have designated these individuals "moral imbeciles" or "moral defectives."²³

They are often very bright, attractive, and superficially ingratiating. But this amiability is a skillful masking of an overwhelming hostility. They are socially irresponsible. Other persons are merely objects to be manipulated for their own hedonistic purposes. Distant goals are sacrificed for immediate expediency. It has been suggested that they possess a peculiar incapacity to conceptualize, particularly in regard to time. They possess no loyalties and are suspicious of others. Indeed, this incapacity for establishing satisfying and meaningful relationships with other individuals is their nuclear defect. This makes psychiatric treatment so difficult, for psychotherapy—to be effective—requires that the patient establish a significant degree of identification with the therapist.

There is no agreement as to the causative factors involved in the development of such a crippling personality deformity. The most plausible hypothesis is that these individuals were deprived of deep and nurturing parental affection during their earliest years of life and that, as children, they instinctively developed, as a defense against this deprivation, an aggressive, insensitive relationship toward other individuals. This lack of early love objects with whom strong identification could be established became the crucial defect in their personality development. Bender maintains that a very critical break in total family identification during the second, third and fourth years may produce the same personality distortion.²⁴ The same hypothesis has been advanced to account for the development of certain schizophrenic disorders. Indeed, the two conditions have marked similarities.

Sociopaths seemingly do not learn by experience, since despite admonitions and punishments, they continue their same pattern of objectionable conduct. This is one of the characteristics that suggests that their disorder is essentially neurotic, since the repetitive element is constantly present in disturbances that are neurotic in origin. Many of the check forgers, swindlers, and confidence men are recruited from their ranks. Dr. Cleckley maintains that these individuals are no better able to conform

²⁰ HERVEY CLECKLEY, *THE MASK OF SANITY* (3d ed. 1955).

²¹ See ROBERT M. LINDNER, *REBEL WITHOUT A CAUSE* (1944).

²² See J. C. BUCKNILL & D. H. TUKE, *A MANUAL OF PSYCHOLOGICAL MEDICINE* (1858).

²³ See J. C. PRITCHARD, *TREATISE ON INSANITY* (1835); CURTAN, *A Psychiatric Approach to the Offender*, in EAST (Ed.), *op. cit. supra* note 15, at 27, 39.

²⁴ Bender, *Psychopathic Behavior Disorders in Children*, in ROBERT M. LINDNER & ROBERT V. SELIGER (Eds.), *HANDBOOK OF CORRECTIONAL PSYCHOLOGY* 360, 362 (1947).

to society's demands than are the frankly psychotic and that, therefore, it would be only just to treat them as irresponsible.

Karpman has published important studies on these character disorders.²⁵ He divides them into primary and symptomatic psychopaths. He finds the latter to be in great preponderance—these are the neurotic characters who act out their basic conflicts against society. Their unbearable tension and anxiety is temporarily abated by their antisocial acts. The smaller group, the primary psychopaths, he terms anethopaths. They are the completely amoral, conscienceless individuals who have a grossly deficient superego development. They seem incapable of developing anxiety, even in their dreams. Karpman cannot find significant psychogenetic factors in the backgrounds of many of the anethopaths. In his opinion, their malfunction, in all probability, is the result of an organic brain defect.

There are, of course, many other types of psychopathic offenders.²⁶ Among them are the violently aggressive and sadistic criminals. In most instances, they have been subjected to harsh cruelties during their formative years in the guise of parental discipline. Life is for them not a very precious commodity—neither their own nor that of other persons.

Most of the sexual offenders, too, are neurotic criminals. It is believed that their abnormalities generally stem from subtly distorting emotional relationships with parental figures in early life. Both the abnormally seductive mother and the mother who is forbiddingly punitive and suppressive may cripple her son in his sexual development. It is now well-recognized by criminologists that many crimes that appear to be nonsexual in nature originate in psychosexual pathology. The number of offenses of this type is probably far greater than we realize.

There is a subcategory of offenders whose crimes arise from what are known as personality trait disturbances who also belong in the large, heterogeneous group of neurotic offenders. Chief among them are the passive-aggressive personalities. In this group, one finds the unusually passive, long-suffering, and nonprotesting people who occasionally, under apparently slight provocation, explode with volcanic force.

Franz Alexander, again, has written widely and informatively on the group of offenders, originally described by Freud, who engage in antisocial behavior in order to achieve punishment at the hands of the law.²⁷ These are individuals who are in constant conflict with themselves because of intense guilt feelings over some deeply-buried early-life experience or emotional attitude which is below the level of consciousness. Punishment by the authorities for an offense, which is frequently symbolically related to the source of their guilt, gives them surcease from their relentless self-condemnation. Their crimes are often marked by a clumsy stupidity which

²⁵ Karpman, *The Myth of the Psychopathic Personality*, 104 AM. J. PSYCHIATRY 523.

²⁶ See Guttmacher, *Diagnosis and Etiology of Psychopathic Personalities as Perceived in Our Time*, in CURRENT PROBLEMS IN PSYCHIATRIC DIAGNOSIS 139 (1953).

²⁷ FRANZ ALEXANDER, FUNDAMENTALS OF PSYCHOANALYSIS 238 (1948); 4 SIGMUND FREUD, COLLECTED PAPERS 342 (1949).

makes their apprehension easy and certain. They enjoy peace of mind while under incarceration, which is lacking when living in the community. Doubtless offenders of this type exist, but in this author's experience, they are relatively rare.

The writer has been impressed by another small group of neurotic offenders who appear to court capture by the authorities. These are immature individuals who feel helpless before their own antisocial impulses and compulsions and have a real fear of them. Like the small child who runs to his parents to fix things, they turn to the authorities, feeling that in some magical way, they can help them gain control. This type of reaction is most likely to occur in sex offenders.

Heedlessness, although fundamentally self-destructive in nature, does not necessarily originate from an inner need for punishment. Great segments of the population display an amazing degree of heedlessness in their daily living, which stems from an inability or unwillingness to face issues realistically. In every city, long queues form on the day that old automobile licenses expire, waiting for hours to buy new ones, despite the fact that at the cost of a few pennies, they could have received them well in advance by mail. And one need only consider the number of persons living precariously beyond their means, who lose the many possessions they are purchasing on the installment plan as soon as they are without a job. In professional gambling, the gambler is more likely to lose than to win. Some people are psychologically motivated in their incessant gambling by a need to punish and destroy themselves. But there is little reason to believe that most excessive gamblers are of this type. A more frequent dynamic pattern in the neurotic gambler is his need to triumph over others and to achieve disproportionate and immediate rewards from what he sees as his small investment.

5. The psychotic criminal, the individual whose antisocial behavior is a symptom of his insanity. He suffers from one of the major mental disorders. These insanities are marked by regressive behavior in which the ego is overwhelmed by primitive aggressive drives. These may be directed against himself or against others. As bizarre and as unintelligible as much of insane behavior appears to be, it has an economic utility for the individual. Were we wise enough, its meaning and significance could in every instance be deciphered.

Only one and a half to two per cent of criminals are definitely psychotic. There is, of course, no sharp dividing line between health and disease. At what point the psychological disorganization of the individual reaches sufficient proportions to be designated a psychosis is a matter of judgment. This problem presents its greatest difficulty in cases of short-lived psychosis. There are cases of temporary insanity. Alcoholic delirium and confusional states associated with epilepsy are widely recognized as such. Combat psychiatrists saw men who succumbed under great stress for brief periods successfully mobilize their psychological defenses and rapidly regain their stability.

III

A diagnosis and classification of offenders along such lines is of real value because of its usefulness in disposition. Psychiatrists are unanimous in the belief that disposition must be individualized and that the focus must be on the offender rather than on the offense. They recognize, however, the dilemma to which such an emphasis inevitably leads.

The writer recently asked the Danish psychiatrist, Dr. George Sturup, the very able director of the institution for recidivistic and psychopathic criminals at Herstedvester, for his views on American penology. He said that its two most serious defects were the inequality of sentences and the huge size of our institutions. He did not see how good morale could be effected in a convict given ten years for robbery, when the man in a neighboring cell, convicted of the same offense, was serving a sentence of two years. Admittedly, this is an almost insuperable obstacle. To accept such a disparity in sentences, the criminal must recognize its rationale and its justice. And how rarely can he be made to see this. Psychiatrists would also agree with Dr. Sturup's strictures on the gargantuan proportions of most of our penal institutions. Two decades ago, it was the vogue in the United States to build huge psychiatric hospitals for the purposes of economy and efficiency. But now, the tide is running in the opposite direction. It is felt that in these great hospitals, patients lost their individuality and their ability to identify with the institution to a large degree. Dr. Sturup feels that three hundred inmates is maximum size for efficiency in both psychiatric and penal institutions.

The barren coldness of our great prisons is a manifestation of the basic philosophy behind our whole system of punishment. Its keynotes are fear and deprivation. It has its roots in moralistic and religious principles. Penitentiaries were intended to produce penitence in the wicked, who were kept in complete isolation in order to facilitate the production of this desired state of mind. Pride and vanity were evils that were antipathetic to reformation; hence, the lock-step and the prison stripes. Gluttony was taken care of with bread and water, slothfulness by useless repetitive activity like that of the treadmill, venery by isolation from sexual objects. Men were to be intimidated from repeating their antisocial behavior by the fear of the jailer's whip and of having to live again in such an environment. The noncriminal members of the community were deterred from wickedness by the fear of being subjected to it. Much of this has survived. There have been certain humane changes, but the basic philosophy has changed very little. Our reportedly mounting crime rate and our undeniably high rate of recidivism gives us reason to pause. How sound is this philosophy? It is perhaps outmoded, as outmoded as the "hell fire and brimstone" religion of old, with its concentration on fear.

The writer does not suggest that it is possible to do away with penal sanctions. For certain individuals, imprisonment undoubtedly has some curative value. There is every reason to believe that such offenses as income tax evasion and illicit gambling would increase tremendously if there were not the possibility of receiving a prison

sentence. But, the writer does believe that there is much more faith in the power of the fear of imprisonment than is merited. Moreover, there is, he believes, far more value given to the long sentence as a deterrent than is justified. Surely long sentences are desirable as a means of incapacitating serious criminals whose behavior is unmodifiable, but their value as deterrents is unproven. Many adults, living for the moment, are almost as incapable as the child in conceptualizing long periods of time, and criminals are generally recruited from their ranks. Persons most likely to be particularly impressed by the threat of prolonged imprisonment are not likely to be involved in criminal behavior.

The sole value of long sentences lies in the isolation of criminals from the community thereby effected. There is a tendency on the part of seriously aggressive criminals to become less dangerous with advancing years. Crimes of aggression are essentially crimes of youth. Whether the beneficial change with the years is attributable to the natural loss of restless energy that marks aging or results from a retarded emotional maturing, which some believe characteristic of delinquents, is uncertain. The improvement in the conduct of the young delinquent after a long prison sentence, however, is probably a natural phenomenon rather than a specific response to his incarceration, which rather tends in many cases primarily to increase his resentment toward society.

If there is any common denominator for the minds of criminals, it is their inability to face reality squarely and their ability to rationalize. The feeling that "in some magical way, I'll get away with it; I won't get caught this time," pervades their thinking. But, perhaps, this is not so unrealistic, after all, when one realizes that only one-fourth of major crimes reported to the police are followed by convictions. Cesare Beccaria's emphasis, two centuries ago, on the deterrent effects of certainty of capture and certainty of conviction,²⁸ is as sound today as it was then. The deterrent effect of greatly improved law enforcement has been too little appreciated.

One of the main purposes of the law—perhaps its chief one—is to create a sense of security in individuals, to give them peace of mind. In criminal law, this is achieved by the conviction of the offender. Certainly, the need for vengeance still exists. It springs from the reflex response toward retaliation when one is struck and the unconscious realization by the conformist of how he has sacrificed to restrain his own asocial impulses. This is the chief demand made of him by the process of socialization. In order to continue his sacrifices, he demands expiation from violators. There is, however, no justification in the law's pandering to the primitive demands of the mob when it cruelly cries for blood. This weakens rather than strengthens the individual's sense of security.

Psychiatrists would temper and, as far as is practical, replace the negative pattern of fear and repression which has dominated penology with the positive approach of treatment. This would have as its chief goal the production of insight in the convict—that is, an effective knowledge of oneself—an essential to real self-mastery.

²⁸ CESARE BONESANA BECCARIA, AN ESSAY ON CRIME AND PUNISHMENT 73, 93 (W. C. Little ed. 1872).

It would also aim to give him direction and guidance. This would necessitate a radical revision of prison ideology. As Franz Alexander has recently put it:²⁹

One cannot apply successfully all three penological principles at the same time—retaliation, intimidation, and reconstruction—as is done at present in our institutions. . . . One cannot make the prisoner hate his authorities, fear them and at the same time expect the prisoner to trust them and accept from them advice and guidance.

For the first and by far the largest group of offenders in our classification—the normal criminals—chief hope for reformation for those who are incarcerated must lie in the general rehabilitative forces of the institution. Psychiatric institutions make great use of occupational therapy. Constructive work-therapy and industrial training should play a vital role in prisons. Moving coal from one end of the jail yard to the other in wheelbarrows is surely no great improvement over the penitentiary treadmills of the eighteenth century. The commitment of a passive, motiveless, borderline mental defective to a penal institution for six months, because he has failed to work to support his family, and then forcing him to remain idle the whole time is a stupid mockery.

Of the special therapies, group psychotherapy for selected normal criminals should prove to be of great value. It was found to be successful in the Army Rehabilitation Centers during the war. In group psychotherapy, ten to twelve individuals meet under a professionally-trained leader, whose role is chiefly that of catalyst, and a great variety of topics are brought up spontaneously for discussion. Ventilation of gripes and grievances against society and the institution is encouraged. The chief value in this therapy, particularly for delinquents, is the social judgment of one's peers. The offender feels that judges, wardens, and other official big-shots do not belong in his world, their condemnations seem hollow. But when fellow prisoners condemn him for his attitudes and his behavior, it carries a powerful impact.

The second group—the occasional or accidental criminals—makes ideal probation material. It is often necessary to enlist the help of community social agencies in his cause.

The third group—the organically or constitutionally predisposed criminals—is disparate, and the treatment of its members must be based primarily on the causative factor involved. The role of intellectual deficiency as a primary crime factor is now given far less importance than formerly. Some investigators maintain that the intellectual level of the criminal population is not below that of the general population. There is, however, a small group of recidivists living in urban centers who are ill-equipped to compete legitimately with normal persons because of their deficiency. They are more likely to have a high nuisance value than to be dangerous. They adjust admirably in a farm-type prison colony. Most of the senile-deteriorative group have been involved in sex offenses with children. This may come as a

²⁹ FRANZ ALEXANDER & HUGO STAUB, *THE CRIMINAL, THE JUDGE, AND THE PUBLIC* 239 (rev. ed. 1956).

very early manifestation of their organic deterioration. Even though it may be difficult to prove that they are irresponsible under the *M'Naghten* rules,³⁰ they belong in a mental hospital, rather than in a penal institution. If they have family members with a sense of social responsibility, it is often possible to keep them at home under strict surveillance.

The fourth group—the psychopathic or sociopathic criminals—presents the most difficult treatment challenge. Many of them are inveterate recidivists, no matter how they have been dealt with during incarceration. Although most of them accept the realities of the prison situation and adjust to it, there is a small nucleus that forms the most difficult disciplinary segment of the prison population. The legal disposition of the psychopath is at present in a state of confusion. There is a growing tendency on the part of the law to isolate them from the general stream of criminals, recognizing that although they are not committable as insane, they are mentally and emotionally abnormal. Half of the states now have sexual psychopath statutes,³¹ some of them providing for commitment to a psychiatric hospital. Many hospital administrators, however, are opposed to having psychopathic offenders sent to their institutions. They present a difficult custodial problem and are very recalcitrant to treatment.

They occasion special confusion in the District of Columbia, which employs as the test of criminal responsibility the *Durham* rule,³² which states that if the defendant has a mental disease and his alleged criminal act is a product of it, he is insane. There is disagreement among psychiatrists, however, as to whether psychopathy should be considered a mental disease or merely a character deformity. The Royal Commission on Capital Punishment and the tentative draft of the Model Penal Code of the American Law Institute, both attempt specifically to exclude psychopathy as a cause of criminal irresponsibility.³³ Yet, under the standard system of classification of the American Psychiatric Association, this is one of the subgroups under "Mental Disorder."³⁴ The distinction between mental disease and mental disorder offers a real problem for semantic specialists.

Maryland now handles this problem in a rather unique way. Instead of a special sexual psychopath statute, it has enacted a defective delinquent statute, which is broader in scope.³⁵ It seemed to the writer and other members of the commission which drafted this statute, wise to consider all the emotionally-maladjusted criminals as a unit, rather than to isolate only those guilty of sexual offenses. The statute specifies that the intellectually-defective and the emotionally-unbalanced criminals who

³⁰ See *M'Naghten's Case*, 10 Clark & F. 200, 8 Eng. Rep. 718 (1843).

³¹ For more detailed discussion of these statutes, see Comment, *Use of the Indeterminant Sentence in Crime Prevention and Rehabilitation*, 7 DUKE L. J. 65, 72-80 (1958).

³² See *Durham v. United States*, 214 F.2d 862 (D.C. Cir. 1954).

³³ ROYAL COMM'N ON CAPITAL PUNISHMENT, REPORT 139 (1953); MODEL PENAL CODE 160 (Tent. Draft No. 4, 1955).

³⁴ AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL 85 (1952).

³⁵ MD. ANN. CODE art. 31B, §§ 1 *et seq.* (Supp. 1957). For general discussion of these statutes, see Comment, *supra* note 32, at 80-85.

have demonstrated a propensity to become involved in criminal behavior which is dangerous to society and who are not insane may, upon conviction and sentencing, be sent to the Patuxent Institution. There, they are carefully studied by psychological and psychiatric techniques to determine whether, in the opinion of the professional staff of the Institution, which is directed by a psychiatrist, they should be diagnosed as defective delinquents. If the decision is affirmative, their counsel may seek independent psychiatric opinion at the expense of the state. The issue of defective delinquency is then tried before the court as a civil issue. If a defendant is found to be a defective delinquent, the original sentence is revoked and he is indeterminate committed to the Patuxent Institution. There, he is given specialized treatment which emphasizes group psychotherapeutic techniques, although individual therapy and other methods of treatment are also employed. If and when the institutional Board of Review feels that he is ready to live outside of the Institution, he is released on a probationary status. During this period, he continues to see a psychiatrist regularly. Whenever possible, he continues treatment under the therapist who worked with him in the Institution.

Maryland's defective delinquent statute gives recognition to several salient realities: there are degrees of responsibility and abnormality, and not just the sane and insane; certain offenders are impelled to carry out antisocial acts because of mental abnormality which does not meet the criteria of psychosis or legal insanity; these individuals can be most effectively treated in a special type of institution which has the salutary features of a hospital and the necessary features of a penal institution; and, above all, the cornerstone of the criminal law is the protection of society.

Of course, some of those committed to such an institution will have to remain incarcerated for a very long period—in some instances, for life. Under the ordinary determinate sentence, one is often forced to release men with malignant characterological defects, who, one knows, will soon again be involved in dangerous crime. Many of the defective delinquents have personality traits which render their treatment very difficult; chief among these are: basic distrust of everyone, an incapacity for establishing meaningful relations with others, and a need for immediate gratification of impulses. Yet, Alexander, who has had wide experience in dealing with these patients and is an outstanding therapist, considers the neurotic character to be closer than the ordinary psychoneurotic patient to the normal individual and favorable material for therapy.³⁶

The fifth group—the psychotic criminals—presents no real difficulty as to disposition. They are sent to the criminal division of state psychiatric hospitals for appropriate psychiatric treatment. In passing, however, the writer might observe that invariably this is the most unattractive, ill-equipped, and poorly-staffed division of our state psychiatric hospitals.

The method of commitment of these psychotic offenders varies greatly. Because

³⁶ FRANZ ALEXANDER & HUGO STAUB, *THE CRIMINAL, THE JUDGE, AND THE PUBLIC* 102 (rev. ed. 1956).

of the general dissatisfaction with the *M'Naghten* rules of responsibility found among psychiatrists as well as among many leaders of the bench and bar, and in order to prevent the injustices these rules may occasion, there is a growing tendency in this country and in England to commit summarily to hospitals even mildly psychotic defendants and never to bring them to criminal trial. Although this is, in many respects, desirable, it is not wholly unobjectionable. This procedure automatically stops the investigative efforts of the police. And although it results in sending a psychotic person to the hospital, there may be no real certainty that he was the perpetrator of the particular crime. A complete trial of the issue involved, therefore, gives the public a greater feeling of security that open-handed justice has been done. Moreover, there are some psychotic offenders, particularly those who are paranoid, who prefer to have their day in open court and are more easily handled during their hospitalization if they have had it. Of course, no one would advocate the mockery of subjecting a grossly insane defendant to a criminal trial.

IV

There are certain principles in regard to the treatment of criminals upon which there would be general agreement among psychiatrists. The value of prevention over treatment of criminality would be emphasized. Criminals rarely come from homes in which there was strong parental affection and kindly, consistent discipline. Loyalty to a cohesive family group, in which there was clearly present the attitude of one for all and all for one, is a powerful force against delinquent behavior. Combatting the great social scourges of poverty, overpopulation, and social and job inequality are necessary steps in crime prevention. A school system with special facilities for diagnosing and efficiently handling children with learning and behavioral difficulties is essential. Adequate recreational facilities in urban areas, so that children can dissipate their energies in constructive rather than destructive activities is of proven value. The role of crime and horror programs, presented through mass media, in the production of juvenile delinquency is, as yet, unknown. That it might be great must be admitted; but this is far from proven. It offers an important subject for carefully controlled research. Whether the down-graded valuation of human life and the insecurity that comes with wars and the concentration on weapons of destruction are responsible for the reported increase in violent crimes committed by youths today is also a significant subject for study.

Juvenile courts should have adequately-staffed psychiatric clinics⁷ attached to them for the purposes of diagnosis and the treatment of selected cases. Juvenile court judges should be specialists, trained in the behavioral sciences. Probation officers should have special training and should have case loads sufficiently small to permit them to work intensively with the delinquents and their families. Training schools for delinquents should be small, with large, competent staffs trained in group therapy. All communities should have access to special psychiatric institutions for the care and treatment of children who are severely disturbed emotionally.

Adult criminal courts should have psychiatric clinics attached to them, so that sentencing judges can have the benefit of psychiatric and psychological studies in selected cases before disposition. The focus of such reports must be on the basic character structure of the defendant, with special attention directed toward his treatability and the social threat afforded by his release into the community. Pre-empting judicial functions must be sedulously avoided. The preservation of the "father figure," wisely and justly punishing transgressors, is worthy of preservation by society. The clinic report should not deal with the guilt or innocence, the general deterrent effect on community members of the punishment of the defendant, nor the attention to be paid to the demands of the community for retaliation. As yet, the psychological disciplines have no definitive knowledge to contribute on these issues, and they are best left solely to the discretion of judicial authority.

Probation and parole officers should have special training in social case-work techniques. Several of the larger communities are now offering didactic courses and seminars in psychology and psychiatry for probation officers.

As far as this writer knows, there are, as yet, no psychiatric out-patient departments specifically designed for treating defendants while on probation. Were there such a facility, it would be possible to recommend probation in certain cases in which this is now not practical. As a rule, hospital out-patient departments will treat these patients, but they are, to a certain extent, stigmatized and are not eagerly welcomed. Moreover, attendance in nearly all clinics must take place during the week's working hours, which may seriously interfere with the work adjustment of these individuals, who are already laboring under a handicap. A clinic to treat probationers successfully must operate during evening hours. Moreover, junior residents and the advanced students, who generally form the nucleus of out-patient therapists, are not equipped to minister to such patients. They are difficult to treat and require skilled and experienced therapists for both individual and group psychotherapy. To obtain the maximum number of successes in treatment, it would be necessary to employ specially-equipped probation officers as the clinic staff social workers. Selection of probationers for out-patient psychotherapy would be limited to those cases which the psychiatrist, advising the court on disposition, considered favorable treatment prospects.

In regard to the treatment of individuals incarcerated in penal institutions, psychiatry would emphasize individualization. Attempts over the years to crush the rebellious spirit by lock-step, prison uniforms, prohibition of personal decorations in cells, referring to inmates by number, etc., have apparently failed. The building of huge institutions is in line with this policy. To be sure, they can be more economically run. But, if it be true that their size offers an obstacle to their primary objective—rehabilitation—their economy of operation would prove to be illusory. It is our experience that most criminals have marked feelings of inferiority, and building up their self-image rather than tearing it down further seems the desirable goal in the vast majority of cases.

Needless to say, there is need of intensive psychological and psychiatric study of prisoners after they have entered the prison system, so that they can be assigned to the proper facilities to meet their specific needs. Literacy training and physical rehabilitation are to be taken for granted. Those with aptitudes for acquiring special industrial skills should be given instructions. The success in this area achieved at Walkill Prison in New York is noteworthy.

Certain prisoners should be chosen for special training in group living. This has been highly developed by Dr. George Sturup in the institution for serious offenders at Herstedvester, Denmark. There, the less than two hundred inmates are divided into groups of fifteen to twenty. Each individual group lives in the same dormitory, works in the same shop, and eats together in the small dining room. The group has its own custodial officers. Group therapy sessions are held daily. There develops mutually sustained pressure by members of the group toward social conformity during twenty-four hours of the day. Hedonism gives way gradually to communalism.

Undoubtedly, behavioral scientists would advocate the use of indeterminate sentences as far as is practical. No individual can be gifted with divine prescience. The value of the indeterminate sentence is, in large measure, dependent upon an accurate determination by institutional staffs and releasing authorities of the prisoner's adjustment and changes in attitude during his incarceration. That an acceptable degree of excellence by these staff personnel is seldom available must be admitted.

Radical treatment methods of criminals have been tried sporadically. The reports of the few lobotomies performed have not been favorable. Electroshock has also been used, but with no lasting benefits reported. Even on theoretical grounds, improvement could be hoped for only with the use of intensive electroshock therapy, necessitating the use of a great number of treatments given in close succession. This has been used in treating schizophrenics. It produces a temporary regression of the individual to an infantile level, with incontinence, almost complete loss of memory, etc. It is not without danger of permanent brain damage. According to its advocates, it breaks up old thought patterns and facilitates the creation of new attitudes. Hypnotherapy has also been used in treating criminals. Its value lies not so much in the creation of new, powerfully suggested modes of behavior, as in uncovering the basic dynamics behind the criminal acts of certain character neurotics.

Tranquilizing drugs are being rather widely tried. They are of great value in the handling of certain tense, restless, and rebellious prisoners. It also often makes them more receptive to group therapy and individual psychotherapy when they are available.

Castration has been employed in Europe for decades in the treatment of sexual offenders.³⁷ Many of the reports have been very favorable. The general attitude among medical and legal leaders in this country, however, is that it is cruel and inhumane punishment. Furthermore, scientific objection has been registered against it on theoretical grounds. If sex offenses are the response of character neurotics to

³⁷ See M. S. GUTTMACHER, *SEX OFFENSES* 105 (1951).

deep-seated conflicts, removal of the gonads should not cure them, but rather lead to their expression through different channels. One must admit, however, that our knowledge of sexual pathology is as yet very uncertain. But to the writer, it seems unwise to shut our minds completely to the possible good that may result from the use of castration in the rare and very cautiously selected case. Perhaps it is, after all, more humane than permanent incarceration for the dangerous recidivistic sex offender.