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THE M'NAGHTEN RULES AND MODERN CONCEPTS OF RESPONSIBILITY*

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[*In what follows the author has drawn from the Report of the Royal Commission on Capital Punishment; but responsibility for the views expressed is his alone.*]

We are nowadays becoming increasingly aware that there is such a thing as social pathology, and that there are diseases of the body politic which are not diseases of the individuals which compose them. This awareness has come to us through the study of individual psychology, of psychosomatic disorders, and disorders of interpersonal relationships. Many of the aberrations we observe seem to have been caused by no defect or disease of the individual sufferer, but by the fact that he was caught up in unfavourable circumstances, which themselves resulted from the nature of the society in which he lives. An obvious example is juvenile delinquency: a certain amount of delinquency is traceable to disorders and defects of the individual, such as mental deficiency and epilepsy; but in the majority of cases the failure seems to be mainly caused by social inadequacies, disturbances in home life, deficiencies in training, lack of normal outlets, and factors of such kinds.

It is useless to maintain that these social evils are no concern of psychiatry and should be reserved for the economist and sociologist. Their effects are constantly to be seen by the psychiatrist in his daily work; and those of us who believe that the State exists for the welfare of the individual must also believe that, from the study of individuals and the conditions in which they thrive or break down, general directives for the planning of social organization must also be derived.

It is against such a broad background that one best approaches the peculiar problems of criminal responsibility. For many years legal and medical views on this subject have been diametrically opposed. How is it, one may ask, that two groups of professionally trained minds have found it so impossible to understand one another that they can hardly enter a discussion together without unnecessary affect? How is it, with all the growth of knowledge of the working of the human mind, that we are still burdened with a doctrine of criminal responsibility which is more than a century out of date, while other civilized countries have progressed far beyond us? We are faced with an example of social pathology, and the history of the illness and the present status should prove interesting.

When in 1843 M'Naghten shot at and killed Sir Robert Peel's secretary, believing the man to be his master, his case was not decided by the M'Naghten Rules, nor was he found guilty of the act charged. These Rules and the form of the verdict in the case of insane killers were refinements introduced after his time. When it had been shown in evidence that M'Naghten suffered from a number of delusions of persecution, and that the killing had been inspired by these delusions, the judge did not even leave the verdict to the consideration of the jury, but directed them to find him not guilty. At that time Broadmoor did not exist, and, though by an Act of 1800 criminal lunatics had a special legal status, arrangements for their security and care were not, perhaps, very satisfactory. The public reaction could hardly have been greater if the killer had got off scot-free. It culminated in a debate in the House of Lords, where five questions were put to those of its members who were judges; and the replies of 14 of the 15 judges to the questions constitute the Rules.

The M'Naghten Rules

The answer to the first question states that persons who labour under partial delusions only, and are not in other respects insane, who know, moreover, that their act is contrary to the law of the land, are nevertheless punishable for that act.

The second and third questions were answered together, and constitute the M'Naghten Rules as we know them to-day. They state that every man is to be presumed sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary is proved to the satisfaction of the jury, "and that to establish a defence on the ground of insanity it must be clearly proved that, at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong." The answer goes on to say that the party's knowledge of right and wrong should be put to the jury with reference to the act charged, rather than generally. "If the accused was conscious that the act was one that he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable."

It is noteworthy that since the formulation of the Rules an element of increased rigidity has been introduced by subsequent decisions. The judges who formulated the Rules seem to have recognized the distinction between subjective right and wrong in the mind of an accused person and objective right and wrong as defined by the law of the land, and to have held the former to be the criterion. A man who believed that another was the incarnation of Satan, and that he was commanded by God to kill him, would seem to be excused by the

*A lecture given at Maudsley Hospital on December 9, 1953.

original formulation, though not by the Rules as they are administered to-day. A later decision in the Appeal Court has laid it down that if a man knows his act is against the law it is enough.

The answer to the fourth question states the extent to which a delusional belief may constitute a defence, in the case of persons suffering from partial delusions only and not in other respects insane. "We think," runs the answer, "he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if under the influence of his delusion he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

The answer to the fifth question is of no interest, as it merely defines the circumstances under which a medical witness, who has heard the evidence in court, may give evidence about the responsibility of the accused.

The judges were called on to state what the law was in 1843, and not what the law should be. The effect of their ruling was such that M'Naghten himself would have been otherwise judged than he had been. The state of public opinion at the time was such as to demand a tightening up of the law, and this is a thing which lawyers are never loath to do. Nevertheless the effect of the Rules has been to stabilize the law at the time of 1843 into being the law of the country for all time. This is an event without equal in the history of English common law. For the law of murder is common law, and not statute law, and the common law is a growing organism. With the M'Naghten Rules that branch of the common law which relates to the criminal responsibility of mentally abnormal persons was suddenly frozen, and all further growth and development were prevented. In the interval the world has changed almost beyond recognition; psychiatry has grown from infancy into adolescence. But the law has stayed where it was. It has learned nothing and it has forgotten nothing.

The question why this has been so is interesting. In themselves the M'Naghten Rules have no authority. Even now it is only the answer to the second and third questions that has the force of law. The Rules were made in the abstract, as it were. The judges were not called on to exercise any recognizable judicial function, and were speaking merely as theoretical experts. The authority of their Rules was, in itself, no more than the authority of a textbook or treatise on the law. All the authority the Rules now have has been given to them subsequently in actual cases to which they have been applied.

Discontent with the Rules

Medical men have never been content with the Rules, even at the time of their formulation, and have constantly striven against them. But even lawyers have found them unsatisfactory. The most notable of these lawyers was undoubtedly Stephen, who eighty years ago had a better understanding of the nature of mental disease and the way it might affect responsibility than most of his present-day colleagues have now. The doctrine, that a delusional idea should excuse only that which it would also excuse if the idea were true in fact, he exposed for the nonsense it is by pointing out that the evidential value of a delusion is that it is "in all cases the result of a disease of the brain, which interferes more or less with every function of the mind, which falsifies all the emotions, alters in an unaccountable way the natural weight of motives of conduct, weakens the will . . ." Stephen tried to introduce a way of interpreting the Rules which would bring them into conformity with clinical facts, but he was not successful. In course of time the interpretation of the Rules, in those cases in which they are specifically applied, has become stricter rather than more liberal; and their correct interpretation has now become very rigid indeed.

Their Clinical and Forensic Consequences

For a man to be excused, on the ground of insanity, for a criminal act of any kind he must be so mentally diseased that he either does not know the nature and quality of his act or does not know that it is wrong. "Wrong" means "against the law of England," and not against the law of God or against the moral convictions of the actor. Not knowing "the nature and quality of the act" has also been clearly defined; it means to be grossly mistaken about the physical nature of the act. In the words of Mr. Justice Cassels in the Straffen trial: "If a person was charged with having manually strangled some person, and the jury was satisfied that when he strangled that person he thought he was squeezing the juice out of an orange, that would be a failure to know the nature and quality of his act."

No one, doctor or lawyer, has disputed that, in the strict interpretation of the Rules, such as is alone sanctioned by the law, the great majority of insane people are not insane enough to come under their dispensation. From the clinical point of view only those are "M'Naghten mad" (to borrow a useful phrase from Dr. Desmond Curran) who are suffering from a gross disorder of consciousness, such as is seen in a post-epileptic twilight state, an organic delirium, or the gravest degrees of dementia or mental defect. The conscience of the medical man is affronted by the suggestion that the melancholic woman who kills her child, the paranoid schizophrenic who kills his imagined persecutor, should be regarded as responsible for acts which are the immediate consequence of their illness.

This attitude is universal among medical men. Those psychiatrists who support the modern application of the M'Naghten Rules do so on the ground that they work, or are made to work, so as to conform with our ideas of justice, that, in fact, they are not so strictly applied as to exclude the melancholic or the schizophrenic.

The discontent of medical men with the M'Naghten Rules has not been generally shared by men of law. Nearly all of the judges and lawyers who gave evidence to the recent Royal Commission on Capital Punishment were against any modification of the Rules and wished to see them retained as they were. The lawyer's attitude to the Rules was stated pithily by Lord Bramwell in 1874, in opposing a draft Bill drawn up by Stephen. His phrase has deservedly become immortal. "I think," he said, "that, although the present law lays down such a definition of madness, that nobody is hardly ever really mad enough to be within it, yet it is a logical and good definition."

Arguments Against Modification

The principal arguments which have been advanced by lawyers against any modification of the Rules can be briefly stated. Rules of some kind are necessary, it is said, because without the guidance of rules the jury would be fumbling in the dark or would become entangled in a mesh of psychiatric verbiage. If rules there must be, then these Rules are as good as any; and it is found easy to point out many and grave defects in any modification which anyone is so rash as to try to set down in precise terms. The weight which should be given to these arguments is very doubtful. There is, for instance, reason to think that when juries retire to consider the responsibility of a mentally abnormal accused person they do in fact address them-

selves to the question whether or not he is insane, in the ordinary lay sense of the term, and then, if they think he is, decide that he must therefore come within the Rules, whatever those Rules do in fact say.

However, the arguments advanced by lawyers in support of the Rules do not seem to be as important as the motivations which suggest them. The insane person who is legally not responsible for his criminal act and is excused thereby from suffering the consequences is a privileged person; and it is natural and proper that lawyers should feel that privilege of this kind is an anomaly, essentially highly undesirable, and that the class of those who benefit from it should be as narrowly and strictly limited as possible. From this point of view it is to some extent irrelevant that an insane criminal is not immune to the consequences of his criminal acts, but suffers consequences different in kind from those which fall to the lot of responsible people. In the case of murder, the privilege of escape from death, even though the alternative is to be immured for life, is still felt to be so very great that it offends against the idea that all persons should be equal before the law. If this country were once to abolish the death penalty, then the anomalous privilege would cease to exist; and I think the attitude of lawyers would become a very different one.

It is from their different motivations that the conflicts between medicine and the law, which are such an obnoxious feature of many criminal trials, arise. The medical man is by the nature of his profession predisposed to aid the sick man, to secure recognition for his illness and its consequences, and to defend him from the reproach that abnormalities of behaviour caused by illness are to be attributed to wickedness. The lawyer looks at matters very differently; and for him the ideals of justice and of equality between man and man before the law are paramount.

From the lawyer's point of view there are great advantages in having rules which are narrow and strict. By their means one can be almost sure of preventing any particular person from successfully claiming non-responsibility, if one so wishes, whatever the evidence may be. Sir Norwood East, a forensic psychiatrist of the greatest experience, and a warm supporter of the Rules, put it this way in his evidence to the Royal Commission: "If the judge is perfectly satisfied in his own mind that the man is insane, he is quite likely to stretch the M'Naghten Rules, and does stretch them so far that they may not be used at all . . . but . . . judges were ready to apply the M'Naghten Rules strictly if there was in their opinion doubt or reason to think that the person was not insane." That this was the general practice was confirmed by all other witnesses with court experience.

Administration of the Rules

This is how the matter now stands. In the majority of cases which come before the courts the M'Naghten Rules are a dead letter; in a minority of cases they are applied in their full rigour. Notorious cases, in which much public feeling was aroused, and in which they were strictly applied, are the cases of Heath, Haigh, and Straffen. The person who decides whether the Rules shall be applied strictly, loosely, or not at all is the trial judge. If he applies the Rules strictly in his summing up to the jury, and in consequence a lunatic is found to be responsible, the lunatic and his legal representatives have no redress, other than through the administrative action of the Home Secretary. No appeal to a higher court will help, as the Court of Appeal is bound by the law and its own previous decisions to support the strict application of the Rules made by the trial judge. If, however, the judge does not apply the Rules, or only applies them loosely, then if the defence of insanity succeeds there will be no appeal, no review of his summing-up, and if it fails the accused will have no reason to complain of the lenience with which the Rules were applied. This is, of course, a very satisfactory position for judges, as it amounts to a sort of "heads-I-win-tails-you-lose." In borderline cases it permits them to make reasonably sure that only those persons "get off" (as the lawyer calls it) who they think should get off. But for others, who have less confidence than the judges in the reliability of their opinions about who is and who is not insane, the position is less satisfactory.

Apart from the criticisms which can be made of the Rules themselves, grave complaint may be made of the method of their administration.

1. They are inequitable as between case and case. In the cases of some wrongdoers they are applied rigorously, in the cases of others loosely or not at all. Some mentally abnormal persons have their responsibility adjudged by different standards from those which are applied to others.

2. They are inequitable as between judge and witness. The judge is free to ignore the Rules if he so wishes, but if he so wishes he can always tie the medical witness down to them as strictly as he likes.

3. By applying or not applying the Rules in his directions to the jury the judge can exercise a large measure of control on the jury's decision. The judge, and not the jury, becomes the arbiter on what is supposedly a matter of fact.

4. The Rules are not applied candidly. If the work were to be done candidly, the judge would point out to the jury that "nobody is hardly ever really mad enough" to be covered by the Rules, and that, by that standard, the great majority of patients certified insane and permanent inmates of mental hospitals would be regarded as responsible. Once juries grasped this fact they would draw their own conclusions.

Influence on Psychiatric Evidence

The worst effect of the Rules from the medical standpoint has still to be mentioned. This is their influence, in disputed cases, on the way in which psychiatric evidence is taken and the medical witness is examined and cross-examined. As the only thing that matters is whether or not the mental abnormality of the accused passes the M'Naghten test, the really important clinical aspects get passed over. No attempt is made to show in any detail in what way the accused was mentally abnormal, or what was the significance of the abnormality in the chain of cause and effect which led to the crime. The judge's summing-up in the Straffen case shows to what lengths the law goes in assigning relevance to what are, from the medical point of view, trivial, insignificant, or even wholly metaphysical and speculative aspects of the case, and to what extent the dynamics of the crime are dealt with as irrelevant. The facts in the Straffen case need only the briefest recapitulation. The killer was a feeble-minded youth who, on the occasion of a previous murder, had been found unfit to plead because of his mental deficiency. Some years later he escaped from Broadmoor, where he had been confined, and in a few hours of liberty committed another murder.

On this second occasion he was found fit to plead, and the question arose at his trial whether he was medico-legally responsible. In his address to the jury Mr. Justice Cassels said: "Ask yourselves whether you are satisfied by the defence that at the time when he did that murder he was insane within the meaning of the criminal law; not that he was feeble-minded; not that he had a lack of moral sense; not that he had no feeling for his victim or her relatives; not that he had no remorse; not that he may be weak in his judgment; not that he fails to appreciate the consequences of his act; but was he insane through a defect of reason caused by disease of the mind, so that either he did not know the nature and quality of his act, or if he did know it, he did not know that it was wrong?"

The fact that such an attitude is the one required by the law prevents the proper presentation of psychiatric evidence; it impedes scientific advance in the understanding of the relation between mental abnormality and crime; and it throws a barrier in the way of education of the public and of officers of the law in what our scientific knowledge and understanding already are. This is the lesion in social organization to which the curious concatenation of events which followed the M'Naghten case has now led.

Let us see how far we have arrived with the analysis of a specimen of social pathology. In 1843 the common law was evolving by its natural slow process of development. However, knowledge of insanity was very rudimentary, and the fear of madness and the mad much greater than now. There was also then no great public assurance that a non-responsible killer was automatically rendered socially innocuous. A horrifying murder focused public attention on a largely illusory danger. The public response was, of course, emotional and irrational, and was directed against persons rather than organizational defects. What amounted to legislation, though it was not recognized as such, was completed in a hurry, without considering what was the real nature of the problem. A solution of the wrong problem having been found, it was imposed, and became a kind of permanent splint on a growing structure. Having once been imposed, vested interests grew up to keep it in place. Its effects are to mete out an unequal justice, to prevent honest and unemotional inquiry, and to prejudice the relations between medicine and the law.

Other Countries

An essential part in studies of pathology is played by the control case. We have seen where we have been taken in this country; how have they got on in other countries where there was no M'Naghten and there have been no M'Naghten Rules? The nearest country at hand is Scotland. In Scottish law, the M'Naghten Rules have exerted a certain effect, in directing the way in which judges will ask juries to decide the responsibility of an accused person; but in the important group of homicides the whole position is transformed by the existence of the doctrine of diminished responsibility. This doctrine is particularly suitably applied to the borderline cases which in English law cause so much difficulty. The doctrine of diminished responsibility has arisen over the course of 100 years by a process of natural growth in the common law and depends on no statute. In answer to a charge of murder the accused may put forward a defence of diminished responsibility and will then be called on to prove that, though not insane, he yet suffered from mental weakness or abnormality bordering on insanity to such an extent that his responsibility was substantially diminished. Mental deficiency, post-traumatic personality change, even a severe neurotic state, may be adequate medical grounds to substantiate diminished responsibility.

By a recent decision psychopathic personality, by itself, has been held to be insufficient. If the jury find the responsibility of the accused was diminished in this way, then he will be found guilty not of murder but of culpable homicide, and will be sentenced to imprisonment for a period, usually several years, which is decided by the judge. In practice this law is found to be very effective and is strongly supported by all Scottish lawyers. Although there is no arbitrary system of rules, such as the M'Naghten Rules, to help the jury to decide whether or not responsibility is diminished, it is said that juries find no particular difficulty in deciding one way or the other.

The doctrine of diminished responsibility has also found its way into the legal systems of other lands—India and Pakistan, Western Australia, South Africa and Southern Rhodesia, and certain of the United States of America. In these countries diminished responsibility will suffice in some for a sentence of life imprisonment instead of a sentence of death, or for the recording instead of the pronouncing of a sentence of death, or for a recommendation for mercy from the jury, or for reduction of the degree of murder from first to second degree.

In no other European countries than our own is any legal definition of the degree of insanity which shall exclude responsibility found necessary; and the decision whether the mental abnormality of the accused was sufficient to relieve him of the liability to punishment is in effect left to the jury to decide on medical and other evidence.

In the Scandinavian countries forensic psychiatry presents an altogether different picture from that in the English-speaking world. In Sweden, for instance, evidence on the psychiatric aspects of a crime is given almost exclusively by specialists in the service of the State. Psychiatrists act as counsellors in the courts—that is, as subsidiary judges and aids to the trial judge himself. The courts may ask for a psychiatric examination of the accused, not only if it is suspected that the crime was committed in a mentally abnormal state, but also if medical evidence is needed to help decide what penal treatment would be the most appropriate. No legal definition of psychiatric non-responsibility is used as a yardstick, and, quite simply, the perpetrator of a crime is excused from punishment if the crime was committed under the influence of psychosis, or mental deficiency, or another mental abnormality of such a fundamental nature that it must be considered to be on a par with psychosis.

Thus the severer sequelae of brain injuries, encephalitis, etc., and very severe forms of psychopathy will be so considered, especially if they have already in the past interfered with a normal social life; for instance, by causing repeated admission to a mental hospital. The very concept of non-responsibility is hardly taken into account, the real grounds for excusing a man from punishment being that, in his case, punishment is an irrational method of treating him, his proper treatment, whether therapeutic or solely custodial, being best left in medical hands. The administrative method of dealing with such cases is not different from that employed for other patients who are a social danger but have not committed crimes, and admission to an ordinary and not a special criminal psychiatric hospital is the mode of disposal.

What is true of Sweden is also largely true of Denmark and Norway. Capital punishment does not exist in these lands, which means that conflicts between legal and medical viewpoints in an acute form and with maximum publicity do not occur. Medical opinion almost always prevails in the courts, but its effect is often to add to any sentence of punishment, which may itself be reduced on psychiatric grounds or wholly omitted, a further period of subjection to safety measures. The effect of this is greatly to diminish the enthusiasm with which the defence will be inclined to seek for psychiatric examination. The psychotic subject is not sentenced to any form of punishment, but will be sent to a hospital. Psychopaths tend to be regarded as responsible for their acts, but may be subjected to safety measures in lieu of or in addition to any punishment.

The Meaning of "Responsibility"

In Scandinavia, therefore, we arrive at the opposite pole from that at which we are placed in this country. The pragmatic solution of the question, "What are we to do with this man?" is regarded as the important task, rather than the theoretical solution of the question, "How are we to adjudge this crime?" This brings us to the important problem of what it is we mean when we talk about "responsibility."

For the English lawyer the meaning of the word is clear. For the lawyer "responsible" means only "liable by the law of England to be convicted and punished for a criminal act." This meaning is, for our present purposes, entirely useless, as it is entirely arbitrary. What we have to do is to decide whether any scientific meaning can be given to the word "responsible." As the ordinary man uses the word, an ethical judgment is implicit, and what he really means is that a "responsible" man is one whom one can properly hold responsible, whom one can call to account for his acts.

To the mind of the ordinary man, the lunatic is certainly non-responsible, and the average healthy citizen is as certainly responsible. Doubts and difficulties arise, however, when the mentally abnormal but not grossly insane individual is considered. Furthermore, we may usefully ask

whether the insane patient is to be regarded as non-responsible for all his acts. Is he non-responsible when he cleans his teeth in the morning instead of at night before he goes to bed? Is he to be regarded as responsible if he resolutely refuses to have his brain damaged by leucotomy? And is the normal man always to be regarded as responsible? As a case in point, when he cowers whimpering at the bottom of a trench when he has received the order to advance under fire? Is it in conformity with our principles of justice to sentence such a man to imprisonment for cowardice?

If medical men are to be required to give evidence about diminished responsibility it would be possible to use the concept of causation to help the ends of justice. If it seemed that illness or defect or disease had entered as a material element into the causation of the crime, there would be so much reason to regard responsibility as diminished. Even then there would be difficulties. In the case of Raven, who butchered his parents-in-law, there were strong reasons for regarding him as epileptic, but the crime could be interpreted as a cold-blooded one, motivated on the desire for material gain. Unless we are to take the stand that the whole personality is involved in every crime and that any existing abnormality is inevitably involved in its causation, we are liable to land in difficulties, and be called on to make decisions which are bound in some degree to be arbitrary.

Finally, how are we to regard the psychopath? If defects of intelligence are to be allowed weight, are we justified in excluding defects of personality? Is there any satisfactory distinction to be made between the psychopathic criminal and the criminal of bad character? When giving evidence before the Royal Commission the prison medical officers were asked to say what was the difference between a "thug" and a psychopath; and the answer came, "A thug is a thug because he wants to be a thug; a psychopath cannot help it." I confess myself that I cannot see either the force or the practical usefulness of this distinction. Can the thug help wanting to be a thug? And is the man who does a deed of shame to be regarded as abnormal if he subsequently regrets it, but to be regarded as normal and a criminal if he subsequently glories in it or views it with indifference?

An Unscientific Approach

These considerations lead one to the view that attempts to measure the responsibility of others are essentially unscientific. There is nothing objective about the idea which could possibly provide a standard of measurement. Even as a value judgment, responsibility offers extraordinary difficulties. I suspect that when we give opinions about the responsibility of others we are really reporting on our own states of mind. Perhaps we are doing little more than identifying ourselves with the criminal and asking ourselves whether or not we could have been guilty of his crime. If we then feel that we could have done it only after going mad, we may give one sort of answer; if we feel that we could have done it, but only by suppressing the whole of our better nature, then we shall give another sort of answer. Responsibility, it is worth noting, does have some meaning subjectively, in our judgments on our own actions. It is only when we apply the concept to the actions of others that it breaks down.

No theory of mental medicine could develop without the working hypothesis of determinism. When a man acts in a given way at a certain time under a particular set of circumstances we must assume, if we are going to understand his conduct at all, that it was determined by such things as his own make-up, his physical and mental state at the time, and the circumstances and his appreciation of them. The "free will," on which both law and religion are based, proves a heuristically sterile idea. If we attempt to inject it into our analysis of causation it only introduces an element of the unknowable. If we are to inquire at all we must assume that the processes of inquiry will eventually enable us to answer the questions we put; and we are precluded from supposing that there are decisive causes, producing observable effects, which are for ever beyond the reach of inquiry.

Now if every act which a man performs is determined by his own nature on the one side and circumstances on the other, then no other way of acting was open to him. The application of such concepts as responsibility, innocence, and guilt becomes nonsensical. In psychiatry we do very well without them. It may be important to discover whether a patient feels guilty, but we find no need to say, ourselves, he is guilty. If we refrain from making use of such judgments of value, not only is it easier to understand our patient's behaviour, and to predict what that behaviour will be in future circumstances, but our personal rapport with the patient is easier too.

This is the point at which the Scandinavian system has arrived. The whole idea of responsibility, even the idea of diminished responsibility, is there gradually dropping out of use as being unnecessary for practical purposes. The question is asked instead, will the criminal be benefited by punishment?

Punishment

This brings us to the questions what is punishment, and how is it justified. Punishment, I take it, consists in making special arrangements to secure that certain modes of behaviour shall be succeeded by disagreeable consequences. Its corollary is the provision of rewards for desired behaviour. The two together are merely a way of conditioning stimuli, a procedure which is valuable, even necessary, in the training of animals and children as well as of adults. The aims of punishment are often said to be deterrent, reformatory, and retributive. The first two of these three are clearly connected with training, and justify as pragmatically useful the application of punishment to non-responsible as well as responsible beings. Something quite different is involved in retribution.

Retribution seems to involve the idea of making a payment. Its justification is purely emotional, and has a basis in the group psychology of the society which requires the payment and the individual psychology of the offender who has to make it. There seems to be an emotional need for it on both sides, and an equally emotional feeling that, once punishment has been undergone, the ill deed has been wiped off the slate as it were, and can be forgotten. The retributive element in punishment is very often condemned by rationalists; but it must not be forgotten that it is the element which balances offences with appropriate punishments, and will not permit an excessive punishment for a minor misdeed. It is in regard to our feeling that the non-responsible person should be excused retribution, that responsibility becomes important for justice.

How, then, are we to reconcile these antagonists, the line of thought that teaches us that responsibility is almost meaningless from an objective viewpoint, and the thought that shows that some people are to be dealt with differently from others? A compromise might be made along the following lines.

Abnormality of Crime

Statistically, crime is abnormal in the sense of being unusual. For it to occur there must have been something unusual either in the criminal or in the circumstances which motivated the crime. If a man finds half a crown on the floor of his office, picks it up, and keeps it, what is statistically unusual is the combination of circumstances. The man himself is not particularly likely to be unusual; in fact, it is the man who would make some effort to find the loser who would be the unusual one. The great majority of minor offences—trying to smuggle some trifle through the customs, riding a bicycle after dark without a light, and so on—are of this kind. It would be highly uneconomic, in the application of deterrent measures, to bother oneself about the possible abnormalities in the wrongdoer. He may be adjudged as average, and subjected to the procedure appropriate to the average case. If, however, we find that X is now being tried for his thirtieth offence of

indecently exposing himself, the evidence is overwhelming that it is not the circumstances which are unusual but the man. We might then very properly apply the Scandinavian system of trying to say what is the best way of handling the man, and abandon methods of treating him which would be appropriate only to the average case.

What is so obviously true of the recidivist criminal may also be very often true of the single very abnormal crime. Murder, in the statistical sense, is highly abnormal; in England and Wales there are only about 150 murders a year. Murder is also in a majority of cases the act of a man who is mentally ill. In this country, over the course of fifty years, in 22% of murders known to the police the suspect committed suicide. Of murderers brought to trial at Assizes, 14% were found unfit to plead. Of those found guilty of the act charged 39% were found guilty but insane. Of those sentenced to death 4% were respited to Broadmoor, and a further 42% had their sentences commuted to penal servitude, in a proportion of cases on psychiatric grounds. It is then hardly surprising that no one has been able to produce any convincing evidence that capital punishment acts as a deterrent for such a pathological event.

Conclusion

At the present stage in the development of criminal law, we are half-way between the irreconcilable aims of fitting the punishment to the crime and fitting the punishment to the criminal. It would not seem possible to abandon either aim entirely and replace it by the other. But it should not be beyond the reach of inquiry to find the principles of classification which would provide the basis of a just and efficient penology, to find the means of distinguishing the crimes in which the element of personal deviation is large from those in which it is small, to classify the kinds of deviation and measure their degree, and to work out the means of treatment of the causes, both in individuals and in societies, which lead to crime.

TREATMENT OF PERIPHERAL VASCULAR DISEASE IN OLD AGE*

BY

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With increasing age the incidence of atherosclerosis rises, and more old people die from the resultant occlusion of an important blood vessel than from any other cause. Information about the incidence of a significant degree of atherosclerosis is difficult to obtain, but when the peripheral arteries of the legs are involved a definite symptom, intermittent claudication, may arise and can be recorded. Gavey (1949) found that this symptom was present in 1.1% of 360 persons over the age of 70. Droller and Pemberton (1953) encountered it in approximately 6% of "elderly" people, although it was disabling in only 1.5%. Since, however, this complaint will usually arise only in those able to walk far or fast, it is probable that an even larger number of old people have a diminished blood supply to the lower limbs. In many who are admitted to hospital for other reasons, examination will reveal cold feet, nutritional changes, or absent pulses at the ankle. Some may present with gangrene. Old people, moreover, take less exercise, are often confined to bed, and may suffer from bouts of congestive heart failure. They are thus especially liable to develop venous thrombosis. The prevention and amelioration of these consequences of peripheral vascular disease in the elderly are clearly important problems.

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Aetiology of Atherosclerosis

This vast and controversial subject is discussed only so far as it is relevant to the possible prevention or improvement of the pathological state which underlies peripheral arterial disease. The condition known as senile medial calcification (Mönckeberg's sclerosis) is of little interest in this connexion, as it leads to rigidity but not to narrowing of the arteries affected. Atherosclerosis is found with unexpected frequency in conditions associated with hypercholesterolaemia, such as diabetes, myxoedema, nephrosis, and essential familial hypercholesterolaemia. Gofman (1951) has shown that the serum cholesterol is bound to protein and that the lipoprotein molecules vary in size. By using the ultracentrifuge, he has been able to demonstrate that patients with diseases predisposing to atherosclerosis and those who have suffered a coronary thrombosis have present in their blood serum a relatively unstable lipoprotein molecule. Its relative concentration can be reduced by dietary restriction of cholesterol and fats.

Isotope studies have shown that some of the cholesterol present in the blood is derived from the acetate residues which result from normal fat, carbohydrate, and protein metabolism. It seems likely, therefore, that it is not only the cholesterol content of foodstuffs which is important but also the total calorie intake. There is strong supporting evidence that a high dietary intake of fat is linked with atherosclerosis, and there is some evidence that lipaemia is a factor in the causation of thrombosis. Duguid (1954) has, however, shed doubt on the association of the most important consequence of atherosclerosis—namely, arterial narrowing with a high cholesterol intake. Once symptoms due to atherosclerosis have developed it is in any case probably too late to advise dietary restriction, but it would nevertheless seem wise to recommend a low-fat diet to the elderly and the obese.

Kountz (1951) has claimed that advanced atherosclerosis is frequently associated with evidence of *hypothyroidism* and that the administration of thyroid extract is accompanied by a decrease in the incidence of the manifestations of atherosclerosis. There is little evidence to support this view, but it is probably true that mild hypothyroidism in the elderly is easily overlooked and may be a predisposing factor in arterial degeneration.

It is of the greatest importance to detect *diabetes mellitus*. The symptoms of this disorder in the elderly are often unimpressive, and patients may be seen for the first time with a gangrenous extremity. The disease is known to increase the rate of progress of atherosclerosis at all ages and it probably also gives rise to specific vascular changes which Lundbæk (1954) has termed "diabetic angiopathy." A high proportion of elderly diabetics suffer from occlusive vascular disease of the lower extremities. Lundbæk detected its presence in 50% of diabetics over the age of 60 and Semple (1953) in 42% of 100 diabetics with a mean age of 63. Of 52 consecutive cases of gangrene admitted to medical and surgical units, about half suffered from diabetes mellitus. Since the typical lesion is in the smaller vessels, gangrene in these patients can usually be treated conservatively and high amputation is rarely justified.

Clinical Features of Obstructive Arterial Disease in the Elderly.—The symptoms and signs of a diminished blood supply to the lower limbs are essentially the same at all ages. Their relative frequency, however, differs. Thus a young vigorous patient suffering from thromboangiitis obliterans is far more likely to complain of intermittent claudication than an old man whose capacity for exercise is limited by osteoarthritis or angina of effort. These patients are often admitted to hospital with the signs of thrombosis in a main artery or with small necrotic patches on the toes or heels. Usually they give a long history of persistently