

1955

Crime Law and Psychiatry

Henry Weihofen

Follow this and additional works at: <https://digitalrepository.unm.edu/nmq>

Recommended Citation

Weihofen, Henry. "Crime Law and Psychiatry." *New Mexico Quarterly* 25, 2 (1955). <https://digitalrepository.unm.edu/nmq/vol25/iss2/10>

This Contents is brought to you for free and open access by the University of New Mexico Press at UNM Digital Repository. It has been accepted for inclusion in New Mexico Quarterly by an authorized editor of UNM Digital Repository. For more information, please contact disc@unm.edu.

Henry Weihsfen

CRIME, LAW, AND PSYCHIATRY

WHEN A PERSON accused of crime pleads "not guilty by reason of insanity," the court is faced with a multiplicity of problems—fundamental philosophical problems of justice and responsibility, scientific questions of psychiatric diagnosis and prognosis, and the ultimate, grimly practical question of whether this man standing before the court should be acquitted, or should be sent to a mental hospital, or to a prison, or to the electric chair.

Let us consider an actual case — a case prominent on the front pages of New Mexico newspapers two years ago, the case of Allen White who shot and killed his Chinese wife, Aimee Bono, in an Albuquerque motel. They had been married for ten years and lived in Santa Fe. She was working and had become involved in an affair with her employer. The situation had reached a point where she was asking her husband for a divorce in order to marry her lover, and her husband was threatening to kill them both.

In January 1953 she ran away to San Francisco. Her husband looked for her frantically and he finally located her and persuaded her to come back. He drove to Albuquerque to meet her at the train but she wasn't aboard; the other man had reached her first, and had induced her to leave the train at Gallup and to drive with him to Albuquerque. White stayed in Albuquerque for two days, meeting all trains. Then he gave up and returned to Santa Fe. Soon she telephoned him, saying she was at the Zia Lodge on East Central Avenue in Albuquerque. White bought a revolver, borrowed a car from a friend, and drove to Albuquerque. He talked with his wife; he testified later that she abused him and used foul language. Finally he got up and bent over to kiss her good-bye. She responded, he said, by spitting in his face, whereupon he shot her five times.

White was fifty-eight years old at the time. His wife was twenty-five years younger. He had been married before, and divorced. He told one of the psychiatrists who examined him that he divorced his first wife because he found she had been having affairs with other men.

At his trial for murder he pleaded "not guilty by reason of insanity." There was evidence that he was a very nervous person who worked in a sort of frenzy, often late into the night. He talked expansively about the big things he had done, the responsible posts he had held, and the number of men he had had working under him. His father had died in a state mental hospital at the age of ninety-two. His mother had also been in an institution at one time.

Medical witnesses testified that spinal fluid tests showed both his protein count and his colloidal gold curve to be abnormal, and that in their opinion he was suffering from central nervous system syphilis. An expert called by the State, on the other hand, was of the opinion that he did not have neuro-syphilis. The doctors also disagreed as to whether he knew the nature and quality of the act he was committing, whether he knew right from wrong, and whether he was able to adhere to the right.

Dr. A. B. Stewart described him as a man "who is emotionally unstable, has never been a great success at anything, who has wandered about a good bit in his lifetime, who has tremendous difficulty in telling the truth, who has grandiose and expansive ideas . . . an individual who is basically a psychopath." Overlying the psychopathy was the syphilis of the central nervous system.

What should the law do with the defendant in a case like this? And how much help can psychiatry give us in deciding what to do? There are actually three quite different questions the court has to answer in such a case:

1. What really happened?
2. What was the defendant's mental condition?
3. What should be done with him?

I.

FIRST, what happened? What really occurred in Room 3 of the Zia Lodge that evening? *Did she spit in his face?* Had he bought the gun only, as he claimed, because he was afraid the other man might kill him, or was it for the premeditated purpose of killing his wife?

Psychiatry usually can offer no help on this aspect of a case. This is a job, not for Sigmund Freud, but for Sherlock Holmes. We have to rely on the police to develop the facts and on a jury to determine them where the evidence conflicts. If we look at it historically, this is a most extraordinary development. Until modern times this kind of question, which we now put to policemen and to jurymen, was considered so difficult that it could not be solved by any human intellect — so difficult that our primitive ancestors could only put it up to God.

Lawyers are the butt of a lot of jokes and jibes; most of you know Carl Sandburg's poem about how a hearse-horse laughs hauling a lawyer away. Permit a lawyer to turn the other cheek and suggest that as a matter of fact, non-lawyers have an inordinate respect for law, and faith in law. Our culture is saturated with law. Almost everything we do has a legal cast. All transactions assume legal forms, and law regulates almost everything. This has become so fixed in the patterns of our thinking and acting that we may forget that, throughout most of history, social control has been exercised mainly by other sanctions than what we call law. In last year's research lecture, Professor Leslie Spier, speaking on "Some Aspects of the Nature of Culture," pointed out that all peoples are unwitting slaves to patterns of logic, of ideals, and of aims that are pre-determined by their particular culture, and that many of these operate without any legal machinery whatever.

Among many peoples, including some of our New Mexico Indians, a man must not look at his mother-in-law. Husbands in all cultures may see some merit in this, but some peoples carry it

rather far. Among one Australian group, from the time a man becomes engaged to a girl, he and the girl's mother must not look upon each other, or hear each other speak, or even hear the other's name mentioned. If they do, they will promptly grow prematurely old and die.

Whatever you may think of the rule itself, notice with what neat efficiency it operates. Violate it and you die. No legal or political machinery is needed, no judges, no detectives, no policemen or other roundsmen of the law. We, who live in the age of automation and glory in it, have to go to primitive cultures to find a legal system that works automatically.

Among higher civilizations, the sanction is attributed not so much to a mystical impersonal power, or to ghosts (as in Hamlet, for example), but to the anger and vengeance of the gods. The gods will render barren or impotent the person who is guilty of adultery or incest; or they will punish the whole community by a plague or a drought or a flood. King David, we are told, brought down a pestilence by daring to commit what Jehovah at that time apparently regarded as a most abhorrent offense—he took a census of the people.

Right through the Middle Ages law relied on mechanical-magical modes of trial: by battle, by ordeal, or by compurgation. The issue was decided not by resort to human reason, but by an appeal for divine intervention. Providence was counted on to give the battle to the side of the right or to provide a sign or miracle in the ordeal. By compurgation, the accused brought in a required number of witnesses to swear, not that they had any knowledge of the facts, but that they *believed* his story, the theory being that no one would be likely to risk divine wrath by swearing a false oath.

Probably no practice is more common at a certain stage of cultural development than that of testing the truth or falsity of a case by a certain magico-religious process—eating a piece of bread, handling hot iron, dipping the hand into boiling water,

walking over ploughshares, or braving wild beasts like Daniel in the lions' den.

While our ancestors call this magic, or the workings of God, much of it might also be called sound psychology. It is understandable that a guilty man would be more likely to choke on the bread than the innocent, simply because his nerves are shaken. In trial by battle the wrong-doer will, perhaps, be unnerved by the fact that God has been called upon to give the victory to the right, while the righteous man's strength will be as the strength of ten, we hope, because his heart is pure.

Today, we determine the issues in a case by the exercise of human intelligence, instead of plaguing God to do the job for us. "The common law," said Lord Coke, "is nothing else but reason." Not belief, not blind faith, but reason. That represents a great step forward.

In the task of determining the facts and the legal issues of a case, we still do not put the whole burden on the judge and jury. The main burden is on the parties. In a book written a few years ago, I said that a judicial trial is not a search for The Truth. That statement astounded and outraged at least one eminent psychiatrist. But what I was saying was that in a trial we rely on the adversary procedure, by which the two parties are expected to bring forth the evidence; and the function of the judge or jury is to weigh the evidence produced and determine on which side the preponderance lies. If one party produces the greater weight of evidence, he is entitled to judgment, even though the judge may suspect that the other side failed to produce all the evidence it might have produced and that if all the facts were known the picture would look very different. The court has no machinery for digging up the facts for itself.

R. Austin Freeman, author of the Dr. Thorndyke detective stories and himself a physician and medical jurist, puts the point very well in a story in which an elderly English solicitor is speaking to a young doctor:

"The scientific outlook," says the solicitor, "is radically differ-

ent from the legal. New Mexico Quarterly, Vol. 25 [1955], Iss. 2, Art. 10 The man of science relies on his own knowledge and observation and judgment, and disregards testimony. A man comes to you and tells you he is blind in one eye. Do you accept his statement? Not in the least. You proceed to test his eyesight with some infernal apparatus of colored glasses, and you find that he can see perfectly well with both eyes. Then you decide that he is not blind in one eye; that is to say, you reject his testimony in favor of facts of your own ascertaining."

[Doctor] "But surely that is the rational method of coming to a conclusion?"

[Solicitor] "In science, no doubt. Not in law. A court of law must decide according to the evidence which is before it; and that evidence is of the nature of sworn testimony."

Now, this will not strike scientists — nor probably anyone else except lawyers — as a sensible way of ascertaining facts. But courts, as traditionally organized, have no "infernal apparatus" with which to test the prisoner in the dock. They have no investigators or laboratories, no means of any kind for developing evidence on their own initiative.

But I am glad to be able to say that some steps are being taken to change the traditional method of trial in some situations, so as to approximate more closely a scientific investigation. One such situation is that where the mental condition of the accused is questioned. And that brings me to the second issue I said was raised in such a case as that of Allen White.

II.

IF WE HAVE answered the question, "What happened?", and have decided that the accused did commit the homicide under circumstances that ordinarily would constitute a crime, we come to the defense that this defendant is "not guilty by reason of insanity," — that is, that he was so mentally disordered at the time he committed the act that he didn't have the requisite criminal intent, and should be committed to a hospital and treated for illness, rather than punished for crime.

Here is a question where psychiatry certainly can help. But the traditional legal procedure doesn't permit psychiatric evidence to be presented in court in the impartial way that ought to characterize a scientific inquiry. Under the adversary method of trial each party has the right to present its own alleged experts. The scientist appears in court in the role of hired helper to one of the parties. It may happen that the "experts" on the one side are all notorious quacks. But if they are old hands at sparring with lawyers on the witness stand, they may make a better impression on the jury than a more cautious and more competent doctor who doesn't happen to have a flair for courtroom dramatics. Even the clearest case, where practically every unbiased and competent psychiatrist would agree, may be presented to the jury by three real experts testifying on the one side, and three charlatans on the other. The jury, unable to distinguish sheep from goats, in disgust may throw out all the medical evidence and rely on their asserted "common sense."

The remedy for this situation would seem to be fairly obvious: give the jury the benefit of qualified, impartial, expert opinion. And I am glad to say that a noticeable trend is under way to do just that.

The simplest way is to authorize the trial courts to appoint their own experts in proper cases to examine the person and report. About half the states now permit this.

Even better are statutes, now found in at least eighteen states, permitting the court in a criminal case, when the defendant pleads "not guilty by reason of insanity," to postpone the trial and send him to the state mental hospital for thirty days' examination and observation. Neither side is denied the right to put on its own experts. But experience shows that when there is a conflict of opinion juries almost invariably accept the conclusion of the hospital as against that of partisan expert witnesses.

I have argued for this kind of law for twenty years, and have gathered statistics showing how it works in the states that have it. The amazing thing I found is the extent to which juries accept

the hospital's findings. In Ohio, for example, over a period of twenty years, out of 894 cases, the hospital's findings were rejected by the jury in only three. In Maine, during thirty years, the jury accepted the hospital's finding in all but one of 208 cases diagnosed by the Bangor State Hospital. Those figures are typical.

As a result, lawyers have learned that it is usually hopeless to contest the hospital's report. When the hospital says that the defendant is sane, defense counsel have learned that they might as well drop the insanity defense. Conversely, if the hospital reports him insane and irresponsible, prosecutors have learned that they may as well accept that conclusion and let him be committed as insane rather than try to send him to prison. And for every criminal trial thus saved, the state saves several thousand dollars of expense.

Massachusetts, since 1921, has had what is called the "Briggs Law." When a person is indicted for a capital offense, or for repeated crime, the State Department of Mental Health is notified, and the Department has him examined to determine his mental condition. This has two important advantages: (1) The examination is conducted by impartial experts selected by a professional department of the administrative branch of the government; (2) The examination is made of all persons who fall within the legal categories, and so it does not depend on the defendant's lawyer or friends to recognize the possibility of mental disorder and to be willing to plead it.

This law, too, has worked very well. Usually, the Department's report is accepted by both sides. Twenty years after the law was adopted, Dr. Winfred Overholser said, "The battles of experts . . . have become almost unknown in Massachusetts, and in every instance that has come to the author's attention the report of the examiners has been sustained by the jury."

A fourth device is the psychiatric clinic attached to the court. Juvenile courts in eleven cities and trial courts in six others have psychiatric clinics.

The unique thing about this device is that it is an integral part of the court administration. The clinic staff has daily contact with the judges and prosecutors, as well as with defense counsel. This makes possible an informal exchange of ideas and attitudes about general problems as well as specific ones. One beneficial result is that the judge absorbs a certain amount of education in psychiatric concepts.

At first, the court clinic concentrated its attention on the child referred by the Juvenile Court — the child who was already in rather serious trouble. But we soon saw that by that time it was usually very late to accomplish much. It's too much to expect a probation officer in a few months to straighten out a twisted, shattered personality, the product of fourteen or sixteen years of living in a frustrating, embittering, or demoralizing environment. Preventive work, we saw, would have to start much earlier because the seeds of most mental disorders, of vice and crime, of alcoholism and perversion, of brutality, hatred, miserliness, and innumerable other unlovely traits are all sown in the very first years of childhood.

So the child guidance clinic came into existence, with a multi-disciplined attack on the problem by psychiatrists, psychologists, and social workers. The focal point of the problem shifted from trying to "reform" the incorrigible youth, to seeking out and treating deviational characteristics among younger children through community services such as the schools and the social agencies and through educational programs at the community level. As a result of the increasing stress placed on social work, we've had to increase the ratio of social workers to psychiatrists and psychologists in such clinics.

These and other joint efforts by which law, psychiatry, psychology, and social work are cooperating in attacking the problems of crime and antisocial behavior constitute, in my opinion, the most fruitful development now going on in this field. The American Law Institute is now engaged in the formidable task of

writing a model criminal code and it is doing so with the help of experts from the other disciplines.

All this is really part of a broader development, a new "field theory" based on a new concept of the relationship of personality to culture, the concept that interaction is constantly going on between the individual and his society, each shaping the other. A writer on social work has said that the greatest enrichment that social work has enjoyed has come from psychiatry. I believe psychiatrists would say the enrichment has been mutual. And on behalf of the law, I am willing to predict that the infiltration of psychiatric and social work concepts into criminal law administration will one day be recognized as overshadowing all other current developments in criminal law.

III.

SO PERVERSIVE has this infiltration become that some psychiatrists are now arguing that they alone should decide insanity cases. They have proposed that the insanity issue be taken away from judges and juries, and handed over to a commission of psychiatrists, perhaps with the help of a criminologist or penologist.

In the case of Allen White, the jury found him sane and convicted him; the State Supreme Court reversed the conviction for errors in the instructions; and on a second trial he was convicted again. At this writing an appeal from that conviction is pending in the Supreme Court.

Under the proposal for a psychiatric determination, the function of the judge and jury in such a case would be limited to deciding whether the accused committed the act charged. If found that he did, the decision of whether he was sane at the time, and whether a punitive-correctional or a medical-custodial disposition is appropriate, would be left to the commission of experts. They would decide the issue on the basis of scientific observation and examination, instead of on the histrionic sort of

performance that goes on in a courtroom. The psychiatrists would decide not only the second of the three questions I said was involved in these cases, namely, "What was the defendant's mental condition?" but also the third, "What should be done with him?"

But whether a defendant should be punished for his criminal act or acquitted on the ground of insanity, is not solely or even primarily a medical question. Let us grant that the psychiatrists can diagnose the defendant's mental condition; they can say that he is not abnormal, or that he is; that he is suffering from schizophrenia, or a manic-depressive psychosis, or a neurosis. But after they have made their diagnosis, the law's question still remains — what do we do with him? Should he be held responsible? That is to say, should society demand that he suffer the same punishment as any normal offender? Or should he be regarded as morally and legally blameless because of his mental condition?

The question the law faces, "What ought we to do with him?" is not only a different question from the psychiatric question, "What is his mental condition?" It is a different *kind* of question. The law's question is ethical and moral, involving as it does the question of whether it is "just" to punish a man whose capacity for malicious intent was perhaps impaired. It is sociological and penological; What is the purpose of punishment, anyway, and would that purpose be served by punishing this individual? Do we punish criminals because of some categorical imperative of the moral law that "he who sins must suffer"? Or because punishment will deter the criminal from repeating his offense? Or will reform him? Or serve as an example to deter others?

Responsibility, as one writer observed years ago, "is not a quality of the person who has inflicted the pain, but a demand on the part of others that he shall suffer." Whether a person should suffer for his antisocial act is not a question that a commission of doctors is particularly qualified to answer.

There are still other factors involved. Law must deal with

people and with conditions as they are and must be content with such means as lie at hand.

First, law must deal with *people* as they are. Psychiatrists can concentrate on the offender as a patient; but the law must consider not only the individual offender, but the demands of society as a whole. If we were to adopt the extreme views of some psychiatrists that criminals are more to be pitied than censured, the public's sense of "justice" might be outraged. As Dr. Franz Alexander has argued, when a defendant escapes whom people think deserves punishment, they may lose faith in the whole social structure and may relax their own inhibitions. "If he escapes his just deserts," they may tend to think, "why should I continue to obey the law?" Law cannot divorce itself very far from public sentiment, its most fundamental sanction, even where the sentiment may be wrong. To be effective in action, law must command at least a "minimum of social-psychological support," as Jellinek, the German jurist, put it. The failure of the "noble experiment" of prohibition is an outstanding example of how a legal rule that lacks such support can undermine respect for all law.

Secondly, I said law must deal with *conditions* as they are. Even if we grant that most or all criminals ought to be given therapy rather than punishment, there is always the problem of wherewithal. The amount of money that the legislature has available is usually not enough to provide all the services that *ought* to be provided, even for the law-abiding. That's certainly true in New Mexico. Can we ask the legislature to provide a more generous rehabilitative policy toward criminals than toward other socially maladjusted groups?

What I have been saying applies to all cases where the defendant's sanity is in issue. Special problems arise where it appears that he is not "insane" within the test of criminal responsibility, but seems to belong to that ill-defined and baffling group usually called psychopaths, or, more currently, sociopaths. These are

people who do not have a major psychosis and they are not mentally retarded. Yet many of them repeatedly commit anti-social acts which have no adequate motivation and for which they show no remorse; they tend to be superficial personalities, insincere, irresponsible, and untruthful; they seem to have no capacity for affection for other people; their sexual conduct is impersonal, trivial, and poorly integrated; their lives seem to have no plan, no purpose.

The kind of person we are talking about is illustrated in what is perhaps the most important recent case on the subject, *U. S. v. Durham*, decided by the Court of Appeals of the District of Columbia last year. I shan't trouble you with the legal point involved. What we are interested in here is the personality of the defendant, Monte Durham, who, together with three other young men, had been caught burglarizing the Georgetown home of Mr. Donald Hiss.

Monte Durham was twenty-two years old, the youngest of three sons. His brothers were stable, productive members of society. His mother testified that up to the age of twelve Monte was a model boy; then he became ill from rheumatic fever, and his personality changed. He got into difficulties with his school teachers and at the age of fifteen left school. With an I.Q. of 85, his intelligence was unimpressive.

Durham's career shows an interesting pattern: the commission of an offense; escape by physical flight; and attempts at suicide, or half-hearted or pretended suicide, immediately after he is caught.

His first offense, committed soon after he left school, was driving a car without the owner's consent. The juvenile court placed him on probation. When he was sixteen he enlisted in the Navy, but Navy doctors concluded that he "suffers from a profound personality disorder" and so he was discharged. At seventeen he married, and fathered a child, but his wife soon left him. While working as a truck driver he embezzled money from his em-

ployer. Two months later he stole a car. Four months after that he attempted suicide and in consequence found himself making the first of a series of visits to St. Elizabeths Hospital. The hospital discharged him two months later with a diagnosis of "without psychosis, sociopathic personality."

Within three months he was convicted of passing bad checks. In jail he again attempted suicide, and so was readmitted to St. Elizabeths. He was there fifteen months, when he was discharged as recovered, and remanded to jail.

After a year in jail he was paroled but quickly violated the terms of the parole by leaving the District of Columbia without permission, and with another man's wife, paying their way by again passing bad checks. He was apprehended, found to be of unsound mind, and again sent to St. Elizabeths for some fifteen months. Two months after his release he was caught burglarizing the house of Donald Hiss.

In jail he made another suicide attempt and was thereupon once more remanded for psychiatric examination. Two experienced psychiatrists reported him to be of unsound mind. The court found him to be "so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense." Accordingly, St. Elizabeths Hospital again extended its less-than-eager welcome to Monte Durham. After sixteen months of hospital care the hospital certified that he was now "mentally competent to stand trial." The diagnosis was "sociopathic personality disturbance, anti-social reaction."

And so in March 1953 the case came on for trial. Durham was convicted, but the conviction was reversed by the Court of Appeals in a very important decision laying down a new rule for determining when a mentally disordered offender should be deemed criminally irresponsible. This "Durham case rule" is such a significant new departure in the law that I am making it the subject of a series of lectures which I am to deliver in Philadelphia late this year. It cannot adequately be dealt with here.

On a new trial in 1955 Durham was convicted again. He apparently lacked financial means to perfect an appeal, and I assume that the conviction now has become final.

But we are not so much concerned with the actual disposition of this particular case as we are with the general problem: what *should* be done with such a person? In and out of prison, in and out of the hospital, obviously society has been getting nowhere and accomplishing nothing with Monte Durham. The fact that he is now in prison may satisfy that punitive urge that most of us feel and that we like to call our sense of "justice." But the maximum term for housebreaking and larceny is fairly short, and when Durham has served his term and been released, what shall we have accomplished toward making a law-abiding citizen of him and protecting society from further antisocial behavior?

During this year's session of the New Mexico legislature a bill was introduced that would have required committing "sexual psychopaths"—in quotation marks because this is a classification unknown to psychiatric nosology and found only in statutes—a bill committing persons so labelled to the state mental hospital for life, or until safe to be released. A good many states have such laws. The New Mexico bill was copied from the Colorado act.

I testified against this bill, for a number of reasons. One of them was the consideration I have already mentioned. Our state hospital is crowded now. The school for mental defectives at Los Lunas has a waiting list of over five hundred; how long a wait that means can be understood only when you realize that the institution has admitted and cared for only 328 patients in the last twenty-six years. We have thousands of unfortunates in this state who need mental care; hundreds of families who are being ruined, financially, physically, and mentally, by having to care for a helpless idiot or imbecile in the home, because there is no other place for him. Are sex offenders to have first call? Why? Because they are more dangerous, someone may suggest. The short answer to that is that they are not more dangerous than

other criminals. Secondly, dangerousness is no argument for sending them to the hospital instead of to prison.

There is a vast amount of misunderstanding about sex offenders. First, we tend to lump them all together, as if "sex offenders" made up a separate and homogeneous group. That is not at all true. The opposite is true. There is as much difference between the typical exhibitionist and the typical rapist as there is between the shoplifter and the safe-cracker.

Secondly, a lot of people assume that sex offenders normally progress from minor offenses such as exhibitionism to serious offenses such as rape. That almost never happens. The exhibitionist is acting out an intrapsychic conflict. He exhibits himself to relieve some intolerable state of anxiety and tension. This works, for him, and he sticks to it; he couldn't be persuaded to try something else. (I say "he," because this is a peculiarity of men, almost never seen in women.)

Thirdly, there is the widespread belief that sex offenses are rampant today — that there has been a sudden, alarming rise in the number of sex crimes. No careful investigation shows any such trend. What *has* increased and stimulated public alarm, is the number of articles in the popular magazines about sex problems.

Finally, there is the general belief that sex offenders are habitual, and tend to repeat their crimes again and again. That isn't so. In the FBI Uniform Crime Reports, rape and "other sex offenses" are almost always found near the bottom of the list of twenty-seven offenses listed, in order of recidivism. Some exhibitionists and some pedophiles do tend to repeat their crimes, but most sex offenders do not.

To channel sexual and other psychopaths into mental hospitals instead of into prisons is more likely to convert the hospitals into prisons than to do the psychopaths any good.

On the other hand, it is true that the psychopath is likely to be cursed with a temperament that makes it impossible for him

to take prison life philosophically. The ordinary prison regime does not work with him, and he is as much a headache for the prison authorities as for the hospital. The big riot at Jackson Prison in Michigan three years ago was almost wholly limited to the South Side of the prison, which housed those who were most unstable and incorrigible. The leader, Earl Ward, had a high I.Q. but was rated as a "homicidal psychopath" who had twice been committed to state hospitals when he was young. His first lieutenant, "Crazy Jake," had for years been living up to his nickname.

Probably the best solution for such persons is a special institution, intermediary between a prison and a hospital, providing not only adequate modern therapy but also a chance of learning a trade and a certain amount of amusement. If the legislature would want to consider spending the money to start such a program, one might favor it, providing it did not mean cutting down too severely on some other social services. But merely to pass a law which would crowd the state hospital with sexual psychopaths, by committing them for life, in the same legislative session that cut \$75,000 off the hospital's budget request, would have been no solution at all.

IV.

WE COULD eliminate a very large part of this whole problem of deciding whether the defendant was "insane" at the time of the crime if we would take a step that I believe we ought to take for a lot of additional reasons. That is to abolish the death penalty.

The insanity defense is almost never raised except in murder cases. A defendant charged with anything less than a capital offense usually prefers to take his chances on receiving a prison sentence which will run for only a limited number of years, rather than enter an insanity plea which if successful will get him committed to the state hospital indefinitely. At least the doubtful cases and the cases of outright malingering would pretty certainly

be reduced if the only difference between acquittal by reason of insanity and conviction would be commitment to a mental hospital instead of a prison. Not even that difference exists in states where persons so acquitted are nevertheless sent to the *prison*, but confined in a psychiatric ward.

It is time we Americans realized that we have probably the most ferocious penal policy in the whole civilized world. Most other civilized countries have not only abolished the death penalty but have also reduced prison sentences far below the terms we hand out here. Holland has not executed any criminals since 1860, Belgium since 1863, Norway since 1875 and Denmark since 1892. And even in this country, six states stand out against the general American trend, by having abolished the death penalty.

And the experience of these jurisdictions gives no evidence that abolition leads to more crime. Of the eight states having the lowest murder rate in the United States, five have no death penalty. The state with the very lowest murder rate is Maine, which abolished capital punishment in 1870.

These figures should not surprise us. Surely we know enough of the emotional and irrational promptings of human behavior to know that a man impelled to kill probably isn't going to calmly weigh that impulse against the likelihood of a given punishment. He does not make up his mind after a logical debate with himself on the pros and cons of killing. Warden Hugh Christie of Oakalla Prison Farm in Canada has said, "Over the twenty-odd years I have been in the business, I have seen a lot of delinquents and criminals and I do not know one that would not use a gun because of any idea that he might get the death penalty."

"The criminal's fear of the gallows," he said, "is a fairy story built up by well-meaning people to deter others. We could build up just as effective a hoax about the horrors of prison life if it were our wish."

Certainly we have done our uttermost to build up the horrors

of the death penalty, not only in fairy stories, but in times past also in grisly reality. The condemned have been flayed alive, buried alive, torn to pieces by wild animals, broken on the wheel, burnt at the stake, boiled, be-headed, strangled, crucified. Unsatisfied to kill a man only once and too quickly, men have devised ingenious ways of killing by inches. The Sultan Mechemmed cut men in the middle, through the diaphragm, so that they would die two deaths at once. A fourteenth century Duke of Milan was able to make the act of killing last for forty days.

In the iron coffin of Lissa the doomed man lay for days, waiting for death from the pressure of the heavy lid which moved down upon him with almost imperceptible slowness. No less lingering was death in the iron cages of Louis XI, in which a person could neither sit, stand, nor lie down.

In an old book called *The Chronicles of Newgate* there is a whole chapter on executions. I shall spare you from more than two sentences: The murderer Ravaillac "was burned piecemeal, flesh was torn from him by red hot pincers, scalding oil and molten lead were poured upon his bleeding wounds. He was drawn and dismembered by horses while still alive, and only received his *coup de grace* from the sticks and knives of the hellish bystanders who rushed in to finish more savagely what the executioner had been unable to complete."

We have become revolted by such barbarities and have abolished them. But if even those torturous and public executions didn't frighten people into being good, what reason have we for thinking they will be frightened by capital punishment imposed without unnecessary cruelty and without public display? Human motivation is complex; often it is largely unconscious, so that the person does not himself know the real reason why he acts as he does. We need a lot more scientific research in the efficacy of various kinds of punishment. The results might surprise us. They might show that there is no ground for the smug assumption that iron-fisted punishment deters many people. They might

even show that severe punishment not only does not deter, but even contributes to aggressive behavior.

Psychiatrists have left this kind of investigation largely to the sociologists and penologists. But students of the mind should find interesting this phenomenon of at least half the population's continuing to repeat the stock arguments in favor of capital punishment, although there is no evidence to support them. There must be some unconscious roots to this urge to punish, some sadistic impulses, and perhaps some unconscious guilts. We are all cursed with the compulsion to punish in others what we deny or repress in ourselves.

These unpleasant suggestions most of us prefer not to examine. We like instead to regard this thirst for vengeance as a highly moral feeling. We even piously quote Scripture: "An eye for an eye and a tooth for a tooth." But what that says, as the Archbishop of Canterbury pointed out, was that one must not exact *more* than an eye for an eye. "It was not an exhortation that you should exact an equivalent, but it said that if somebody has knocked your tooth out, morality requires that you do no more than knock one of his out. It is a restraint on the passions of mankind . . . no Christian law says you must exact equivalent penalty. Indeed, Christianity works on the other principle, that whatever the crime, you should seek to remedy it by the operation of redemption and love."

Capital punishment lowers the moral standard of the whole community. In a criminal case where human life is at stake the whole trial is sensationalized. "There seems to be released among us a perverted curiosity verging on mass sadism which crowds the trial courts and surrounds the place of execution. Unhappy and unpleasant emotions are stirred in most of us."

Viscount Templewood, testifying before the British Royal Commission on Capital Punishment a few years ago, said, "It makes people gloat over crime and I think, however much you safeguard the actual carrying out of executions, they also pander

to those morbid feelings that lie very near the surface in most of us and that would be much better repressed."

The driving force behind the movement for abolition of capital punishment has been popular, democratic government. Only Fascism halted the trend in countries like Italy, Austria, and Germany. Democracy has fostered it, in Europe, in South America, in Australia — everywhere except in the United States. Only in this country is there no organized political movement for abolition. No American state has abolished the death penalty since 1917. It isn't even a subject of political discussion here, as it is in England and Canada right now. Here it is a subject for high school debaters — nothing more. As long as abolition has no political champion, no organized voice in the forum of public discussion, the failure of American opinion to move along with the current of civilized thinking will have to be explained by the behavioral scientists.

V.

THE WORLD you and I live in is a new world. And what is most new about it is the very prevalence of newness, the changing scale and scope of change itself, so that as J. Robert Oppenheimer said, "the world alters as we walk in it, so that the years of a man's life measure not some small growth or rearrangement or moderation of what he learned in childhood, but a great upheaval."

This upheaval, this speed-up in the metabolism of science, is no accident. It is the result of deliberate policy. Never before in the history of the world has there been such emphasis as today on research. It permeates every aspect of modern living. And the policy is paying, in an unending stream of new processes and new products. To take only one example, more than 50 per cent of all sales in the pharmaceutical industry are of drugs that were unknown only ten years ago.

In psychiatry, we all know the revolutionary advances that have

been made since Freud developed the psychoanalytic method. In the book Dr. Guttmacher and I wrote, we said that a lawyer who had practiced his profession at the end of the nineteenth century, if suddenly transferred to a modern court, would feel quite at home. But "the psychiatrist of half a century ago . . . would be hopelessly lost and confused in a modern psychiatric clinic . . . the whole concept of mental health and mental disorder has been revolutionized."

That was written only three years ago. But already, if I were rewriting that passage, I should want to emphasize even newer developments, not so much in psychoanalysis, as in biochemistry and neurophysiology. "Wonder drugs" are performing their wonders for mental no less than for physical illnesses.

Penicillin has been found to be effective to kill the spirochetes of syphilis in the brain. Insulin can relieve perhaps 70 per cent of the victims of schizophrenia, the most common and most tragic form of psychosis, if they are treated within the first three months of an attack.

At an Institute in Psychiatry and Neurology in which I participated last spring, we had a report on tests that had just been made of the effectiveness of two newer drugs, Chlorpromazine and Reserpine. Both promise to give excellent results in reintegrating schizophrenic disorganization. Chlorpromazine is generally effective in relaxing all kinds of nervous and anxiety states, from manic outbursts to d.t.'s. It has also been found to have a lot of other uses, from curing the Pope of hiccoughs to calming Indians hopped up in a peyote session. For patients who need the opposite kind of treatment — that is, who need to be lifted out of severe depression — Meratran, another new medicine, is showing great promise.

Electrically induced epileptic fits can remedy a severe mental depression. Lobotomy, the cutting of portions of the prefrontal lobes of the brain, has yielded some impressive results; in England, nearly ten thousand such operations have been performed,

allowing about one-third of those previously classed as incurable to leave the hospitals.

Epilepsy, which has always been considered incurable, can now be controlled in some 80 per cent of the cases by increasingly efficient chemical anticonvulsant drugs, and sometimes by brain surgery.

As a result of this use of drugs and other new methods, the mental hospitals are able today to cure and release patients at a record rate. Earlier this year the Governor of California told a conference of mental health workers from the western states that whereas in 1947, 14.5 out of 100 patients of the state mental hospitals were discharged, in 1954 the rate rose to 22.4. The same reasons explain why our own New Mexico State Hospital last year showed a decrease in the number of patients in the hospital, at the same time that admissions went up 20 per cent. Over half of the patients admitted to Las Vegas are able to be released within ninety days, and almost 90 per cent are out within nine months.

The criminal field lies open to any number of new lines of research. For example, it is now known that crimes of impulsive violence are committed mostly by young persons whose electrical brain waves, as measured by the electroencephalograph, show a defect in normal brain maturation for their age. Of repeated offenders, 34 per cent had abnormal electroencephalograms.

In our understanding of crime and mental disorder, as in a thousand other fields of inquiry, it is quite possible that we stand today just on the threshold of knowledge. We can see stretching out before us avenues of research along which lies buried a fabulous wealth of knowledge. If we can avoid blowing ourselves to atomic dust and if we can keep the bigots among us from closing off those avenues, we can create a world incomparably better than mankind has yet known. Reducing crime and improving the administration of criminal justice are only

two among many boons we should be able to reap from the unprecedented progress of knowledge during our own century.

But the research worker's reward lies not only in what his work may contribute to the material improvement of the world, but also in the satisfaction and sense of fulfillment it gives to him as an individual, in the knowledge that each new grain of truth he may uncover "is packed, like radium, with whole worlds of light."