

ate what he describes as "the suspicion and hostility that currently characterize and permeate American labor relations" (p. 4). Where he has undertaken such an appraisal in a particular phase ("Evaluation of the Grievance Procedure," pp. 300-302), he has shown understanding and courage. Despite this omission, his contribution is most constructive and helpful, even, or perhaps especially, to us lawyers, despite no more than a few scattered footnotes. As a labor-law teacher and arbitrator, I am happy to have this book in my library.

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**The Psychology of the Criminal Act and Punishment.** By Gregory Zilboorg, M.D. New York: Harcourt, Brace & Co., 1954. Pp. 141. \$3.50.

This book on the psychology of criminal acts and punishment proceeds from a simple psychological premise: society's reaction to crime is explained by a fundamental conflict, "the eternal struggle between the striving to punish and the yearning to understand and forgive."<sup>1</sup> But the whole complex of facts concerning crime and punishment, psychiatry and law, cannot be explained or understood on the basis of an "eternal" psychological struggle. This view is romantic, not scientific. Neither contemporary research, nor general history, nor the history of law, nor the history of psychiatry afford any proof of it. The progress of criminal law has certainly not taken place on any such subjective basis. In this book the broad, concrete social and economic historical forces are suppressed—or perhaps repressed. Divisions within society either do not exist or are explained by divisions "within one and the same person."<sup>2</sup> The purely subjective approach puts social problems in a false focus.

The author contrasts two quotations from Mr. Justice Holmes. In the one Holmes praises science;<sup>3</sup> in the other he refers to the necessity of punishment.<sup>4</sup> The author finds between the two quotations "not only a flagrant contradiction, but a true confusion."<sup>5</sup> Holmes's stand, however, is very clear. It is the author who is confused when he seeks solutions "in the inner psychology of the problem." He sees emotional problems where there are social problems. Primarily legal decisions do not express individual emotions, though these may enter incidentally. Fundamentally, legal decisions represent social forces and interests. The whole overemphasis on psychology as the basic consideration is misleading, and serves to divert attention from the social environment in which all psychological forces operate. The author of this book

<sup>1</sup> P. 4.

<sup>2</sup> Pp. 4-5.

<sup>3</sup> P. 5.

<sup>4</sup> P. 6.

<sup>5</sup> P. 7.

sees a "fundamental contradiction," a "fundamental conflict," within the mind, and he tries to justify this position by saying that we live in a "psychological age."<sup>6</sup> I doubt whether the future historian will so characterize the era of cold wars, child murderers and the atom and hydrogen bombs.

The *McNaghten* rule is the author's *bête noire*. He calls it "the monster of the earnest psychiatrist" and claims that it prevents the psychiatrist "from introducing into the court-room true understanding of human psychology and of the psychology of the criminal act."<sup>7</sup> He offers no proof for this sweeping assertion. He does not seem to have read the juridical literature on the subject—in part excellent; nor does he know the history of the rule and the testing it has undergone in legal practice. He does not mention its good points—one of them being its flexibility. He states that he has "never heard or read any definition of the meaning of these words [the nature and quality of the act]."<sup>8</sup> That he could have remedied easily in any good library. According to his view, the common sense and common justice of the jury should be replaced by the power and the dogma of the expert. Is not the expert, objectively speaking, part of the social context subject to all its prejudices of status, class, race and nationality? For example, many of the large and outstanding private and university psychiatric hospitals do not admit Negroes as patients. Are we to assume that when a Negro is accused of a crime, they suddenly become objective and impartial?

The *McNaghten* rule has proved to be a democratic rule. The author presents a sort of psychoauthoritarianism. It would be a calamity if the stereotyped generalities of this type of subjective psychology would gain entrance to legal practice. Harm enough is being done by it at present in the field of prevention, where psychological individualism stands in the way of concrete, prophylactic social action against external harm. At any rate, the whole emphasis placed on the *McNaghten* rule, as if the central problem were one of definition, is highly misleading. It serves to divert attention from the concrete problems and difficulties of present-day forensic psychiatry.

Dr. Zilboorg seems to have a negative attitude toward the concept of law. He pleads for "deeper psychological understanding" without realizing that facts come first—or *should* come first—always. First one has to find out whether the defendant is really guilty of the act; the *why* comes later, in each individual case as well as historically. He mentions a British case taken from newspaper clippings where a murder is committed by a patient in a psychiatric hospital.<sup>9</sup> He is horrified that the case of a mental patient should be legally investigated. If he were aware of what happens much nearer home, he would praise the fact that such a murder committed inside a mental hospital *is* investigated legally and from outside rather than being hushed up,

<sup>6</sup> *Ibid.*

<sup>8</sup> P. 16.

<sup>7</sup> P. 10.

<sup>9</sup> P. 12.

as has happened in cases of which I have personal knowledge. In such cases the responsibility for the murder does not necessarily lie in the mental illness of the patient; it may lie in maladministration and social neglect in the hospital. Were such cases put before a jury it might be better for both psychiatry and the law and result in better care for the mentally ill. Such social implications and considerations, however, seem to be outside the author's scope of interest. Without them the value of the law cannot be understood.

In reading this book, one is led increasingly into error. The author points to "the essential fact of the conflict between law and psychiatry,"<sup>10</sup> and asserts that "the machinery of justice" suffers from this conflict—which he sees as a purely "psychological" one.<sup>11</sup> But he misrepresents the function of both law and psychiatry in court. He says, "[T]he law's business is to keep its punitive promises and not wax sentimental by way of scientific understanding."<sup>12</sup> That is not the case. The law's business is to protect society and safeguard the individual, and great jurists have pointed out that it needs science for this task. Why should it be assumed that really scientific understanding leads to sentimentality? The author seems to confuse sentimentality with sympathy. In the same way, he says that the job of the forensic psychiatrist "is to delve into the deeper motives, the inner substance of the act for which the defendant is standing trial."<sup>13</sup> Not at all! The psychiatrist must first ascertain facts and use them within the limits of the functions assigned to him by the court. If it takes him a year or two to ascertain these "deeper motives," it is of no use to the court—or to the defendant.

When two observers like the author and myself look at the same subject and come to totally different conclusions, one must ask first of all whether they are really looking at the same thing. From this book it is evident that the author has had no experience with the routine examination of criminals in court clinics, in prison wards of psychiatric hospitals, or in mental hygiene clinics to which large numbers of offenders, adult and juvenile, have been sent. He evidently has had no extensive experience conferring with probation officers. He remains on a high plane, looking down on these lowly phenomena from above. Experience in any large court would show that the majority of defendants either see no lawyer or have only the most cursory contact with one, have no trials, and are often rushed through sentencing. The only officials they see much of are probation officers, whose very important work the author looks upon with disdain, saying that "[they] cannot offer a sufficiently detailed study of the accused."<sup>14</sup> He advocates cake when it is hard to get bread! It would seem that he is not sufficiently aware of how the other half lives, and for that reason his generalizations about the whole of society

<sup>10</sup> P. 14.

<sup>11</sup> P. 15.

<sup>12</sup> P. 14.

<sup>13</sup> *Ibid.*

<sup>14</sup> P. 87.

with respect to medico-legal problems become unrealistic. A comparison suggests itself. If one takes the average income of a whole population, one arrives at an interesting figure. It can be used for abstract theorizing on economy and for political propaganda speeches. But it tells us less than nothing about the reality in which the individual lives, for there are small groups who have incomes tremendously above this average, and very large groups living way below it. Neither social life nor psychiatry can be understood from such generalizations.

Instead of presenting our knowledge of the concrete facts of psychiatric criminology, we are led to believe that there is some mystical "inner obstacle" which places the solution of the difficulties "far out of our reach."<sup>15</sup> In other words, in this book disregard of concrete outer obstacles to which we should devote our attention goes hand in hand with pessimism about the possibilities of active reform and progress. "One is loath to suggest any specific," the author says, for "our penal system . . . seems to be deeply entrenched in the instinctual psychology of our human community."<sup>16</sup> That certainly will discourage students of law from attempting anything new and/or constructive!

Surely society is in the center of the questions of forensic psychiatry. But the author of this book speaks of "society as a whole, which is the most metaphysical entity known [sic]."<sup>17</sup> Can it be that Freud's teaching has deteriorated to such an extent? If we psychiatrists are to be of any help to the legal profession in its dealing with anti-social people, we cannot adopt any such asocial position. An asocial psychiatry becomes inevitably an anti-social psychiatry. Law and justice, according to the author, are "rooted in the intuitive depths of public morality."<sup>18</sup> As psychiatrists we should know a little more about where law and justice stem from, if we want really to understand individuals with guilt feelings. It is as though Freud had never written his book *Totem and Taboo*; he certainly did not seek recourse in "intuitive depths"! To do so is mysticism, closely related to the "blood and soil" ideas of Rosenberg's *The Myth of the Twentieth Century*. It is evidence of a contempt for society, for the common man, for the jury and "the man in the street who knows nothing about human motives."<sup>19</sup>

It is now twenty years since I appeared as a psychiatric witness for the defense of Albert Fish, a mass murderer and child rapist of whom I had made a psychiatric study. Prior to my clinical investigation, the real story of Albert Fish had been practically unknown. I published a complete account of this case, devoting to it a full chapter in my book, *The Show of Violence*,<sup>20</sup> published in 1949. This is the *only* clinical case Dr. Zilboorg describes in any

<sup>15</sup> P. 15.<sup>15</sup> P. 21.<sup>16</sup> Pp. 84-85.<sup>16</sup> P. 31.<sup>17</sup> P. 19.<sup>20</sup> Wertham, *The Show of Violence* (1949).

detail. Evidently he has no fully studied cases of his own. He departs from accepted scientific literary custom by giving no literary reference. (This I do not mind, for appropriation, like imitation, is surely the most sincere form of flattery.) Instead, he introduces the case by saying, "I recall in this connection a case of a frightful crime . . . ,"<sup>21</sup> giving the reader the impression that this is all his original work. (Later he introduces another case, a briefer one, again not his own work, in the same misleading way: "I think in this connection of a woman psychotic. . . .")<sup>22</sup>

Here, where one is dealing with concrete data and not with huge generalizations, the author's method becomes particularly apparent. Not only does he get important facts entirely wrong; he misses the real significance of the case. He writes that Fish's "illusion [sic!] was of many years' standing."<sup>23</sup> Fish had no illusions. He was a psychotic with *delusions*. The author writes correctly that a psychiatric expert for the prosecution, a man with many years' experience, stated under oath that coprophagia was no sign of abnormality; but he characterizes this expert as honest, and a "conscientious witness" and says his misstatement is an "error."<sup>24</sup> The facts were somewhat different. At that time this expert was fighting for his professional—or rather, his political—life. He was then the chief psychiatrist of the city of New York. The Commissioner of Hospitals of a reform administration accused him openly of "sinister political affiliations" especially in connection with his handling of court cases, with the result that this expert did not dare to sue for libel and resigned under fire in the midst of an investigation into his professional conduct in similar cases. He was not at all "a victim of the pressure of public opinion" in the Fish case, as Dr. Zilboorg asserts.<sup>25</sup> On the contrary, the public believed that Fish was insane. When Fish bought a butcher knife, a cleaver and a saw, Dr. Zilboorg states, "He had no particular thought or plans at the time." This is contrary to the facts. Fish had very definite sadistic thoughts at the time, nor was this anything new for him. The author writes further that while in the death house Fish "remained totally dull and unresponsive."<sup>26</sup> This is another of those sweeping statements, un-psychiatric and careless of true fact, which no promise of deeper understanding later in the book (never fulfilled) can redeem. Fish conferred with his counsel in the death house; he wrote lengthy documents (some of which I have); he sent out messages to me; he exposed himself sexually during a religious ceremony, etc. No total unresponsiveness there!

Some of the psychological details which the author takes from my original examination (as the reader can verify from the record) are certainly interesting; but he omits some of the most important. Fish was sent to a psychiatric

<sup>21</sup> P. 23.<sup>24</sup> Ibid.<sup>22</sup> P. 64.<sup>25</sup> Ibid.<sup>23</sup> P. 23.<sup>26</sup> P. 58.

hospital for observation not once, but twice. Each time the examination was most perfunctory, the observation almost nil, the report cursory and wrong. For this reason the hospital authorities had to cover up at the trial, going so far as to keep one of the psychiatrists who knew the truth out of the city so that he could not be subpoenaed and forced to testify. The author fails to mention that Fish killed many children, and violated at least a hundred.<sup>27</sup> Instead of a truly scientific formulation, he sums Fish up as "no longer a man [sic!]" and as a "flicker of soul encased somewhere in a frame of self-propelled cruel nothingness [sic!]."<sup>28</sup> This is bad literature—and certainly not good psychiatry. That is not how a doctor should sum up an ill person, either humanely or scientifically. No wonder that he comes to the conclusion that "all these things cannot be understood, still less can such tragedies be prevented, unless we understand that a detailed developmental history of the personality in question is required."<sup>29</sup> Nonsense! These cruel murders could have been easily prevented if during his hospitalization, Fish had been properly examined, investigated and sent to an institution for the criminally insane. Speaking purely as a private practitioner, the author evidently has no idea of these everyday psychiatric routines which are based on scientific methods and well-tried clinical practices. The law enforcement agencies and the legal profession did their duty in the Fish case by arresting him and by sending him to psychiatric hospitals for observation. The psychiatrists whom the author considers so far ahead of the lawyers first failed the community, then tried later deliberately to deceive it. Incidentally, the "lack of funds"<sup>30</sup> which the author mentions had nothing to do with this. There were ample funds; but they did not reach the proper places.

The author refers to the Greenlease case,<sup>31</sup> about which there is certainly a great deal a psychiatrist could say. But he stresses the "indifference" of the murderers as evidenced by Mrs. Heady's reading of a love comic book. Reading a comic book does not indicate indifference. He does not realize that these murderers, like comic book heroes, figure out how to escape punishment, figure out that many have done so, and take a calculated risk that they won't make a mistake. The claim made glibly by the author that "the indifference of the criminal to penalty . . . is more the rule than the exception," is psychologically completely false and contradicted by those who have really studied many criminals, including murderers. The author throughout this treatise shows contempt for examination and diagnosis, that is, for fact-finding, without which any prevention, cure or aid to the court is impossible. Instead, he relies on speculative interpretations. (It is revealing that he

<sup>27</sup> Wertham, *op. cit. supra* note 20, at 73.

<sup>28</sup> P. 63.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> P. 30.

attributes a "prejudice against psychiatry"<sup>32</sup> to, of all people, Harold Laski—whose life showed both an active and a very helpful interest in the subject. The quotation from Laski's letter shows not prejudice, but common sense.)

Dr. Zilboorg does not see the role of hostility and violence in present-day society in proper, concrete perspective. He universalizes hostility with the aid of the much-abused term "aggression," finds it "on the golf course" as well as "in the murderer's den," and "between psychiatry and the law."<sup>33</sup> In this way the real issues become distorted, and hostility and violence are condoned rather than combatted through education.

For the author, crime is the acting out of an instinct. This is a simple, obscurantist and reactionary view, entirely devoid of proof. No wonder lawyers shy away from such supposedly deep—actually very superficial—explanations. For him life unfolds as one long struggle with the aggressive instinct. It is a negative, actually nihilistic, philosophy. Even when discussing the effect of war on crime, he disregards entirely the economic and social dislocations and deprivations.<sup>34</sup>

One misses entirely in this book an understanding of the dynamic relationships between the Unconscious, the Conscious, and social forces. Why some people act out criminal fantasies while others do not is less "mysterious" than the author would have us believe. It seems mysterious only if we do not see the human being as an entity. To say that people give in "to the pressure of their fantasies and impulses"<sup>35</sup> is not enough. Rationalizations which are socially determined find no place in his speculations, though they are as important as impulses. So he arrives at the conclusion that "no clear-cut definitions, no crisp, succinct descriptions are possible."<sup>36</sup> How can such a statement be made? Without such definitions and descriptions the clinical science of psychiatry would not be possible.

The author states that "it is not enough to be correct or accurate."<sup>37</sup> Maybe it is not enough; but it is a basic requirement. No doubt the most important single symptom in the whole field of forensic psychiatry is the delusion. About delusions this author makes this inaccurate statement: "When an unconscious fantasy breaks out into consciousness and stays there on the same basis as it had lived previously in the unconscious, the individual in question will tell you, or think to himself, of these fantasies, sometimes mistaking them for facts; then these fantasies become delusions."<sup>38</sup> This is *not* what delusions are and that is not how you can designate them or prove them to a psychiatrist, to a court or to a jury. Let me juxtapose here a proper formulation for comparison:

<sup>32</sup> P. 36.

<sup>33</sup> P. 38.

<sup>34</sup> Pp. 50-51.

<sup>35</sup> P. 52.

<sup>36</sup> *Ibid.*

<sup>37</sup> P. xi.

<sup>38</sup> Pp. 52-53.

It is a question of delusional *thinking*, which is a special form of morbid thinking. Delusional ideas are unfounded; that is to say, they have no foundation in reality; but in order to be delusions these ideas must be demonstrably untrue. No single idea is delusional in and by itself. It is untrue only in relation to the subject who holds it, to his knowledge and reasoning power.

Delusional ideas and delusional reasoning are unreachable by ordinary logical methods. One cannot demonstrate to the patient who holds them that they are not amenable to logical reasoning. But delusional thinking is not just an accidental, casual insufficiency of logic or misconception; it arises from a deep inner emotional need. In order to be a delusion, it must have an influence on the behavior and life of the one who holds it. And the point involved cannot be just a minor one, such as whether oysters are better in New York or in Baltimore, but must be a matter of serious consequence for the patient's orientation about his own position and that of others. Delusion is not the opposite of logic, but the distortion of logic.<sup>39</sup>

This formulation, because it is realistic and accurate, can be discussed with psychiatrists and has convinced juries. The author's statement—"[w]hy certain delusions continue to remain delusions and others are acted out in behavior, the present-day psycho-pathologist is unable to answer"<sup>40</sup>—is obsolete. The sequence of the catathymic crisis and other conditions shows that the relation between thought, fantasy and delusion on the one hand and action on the other is not unexplainable, but can be elucidated by careful investigation. We can even make prognostic statements about certain violent acts.

One reason for the confusion of this book is that the author tries to explain history and social facts using abnormal psychology alone. That is like looking at the stars through a microscope. For example, he sees the progress of forensic psychiatry as a "psychological struggle," "an intrapsychic struggle," "a struggle in the hearts and the minds of the jurist and the doctor."<sup>41</sup> No thought here of the concrete social and political struggles which brought about progress through the blood and sweat of living people. He does not see that the jury system itself was an enormous historical achievement, and that at present juries if unconfused by experts or not whipped up by partisan pleading are one of the main guards of the safety of the community and of the civil liberties of the individual. In the suggestion of the Royal Commission on Capital Punishment that in capital cases more responsibility be placed on the jury, the author looks for and finds a speculative "psychological reason"<sup>42</sup> instead of realizing the whole historical context of this important step.

When referring to anti-social behavior, the author inevitably becomes enmeshed in contradictions. He writes: "His [the criminal's] transgressions look antisocial, but in actuality they are but self-centered acts of aggression without any regard for society at all."<sup>43</sup> Does this mean his act is *not* antisocial? And

<sup>39</sup> Wertham, *op. cit.* supra note 20, at 168-69.

<sup>40</sup> P. 53.

<sup>42</sup> P. 70.

<sup>41</sup> P. 69.

<sup>43</sup> P. 76.



is it of any help at all to describe a trial as a "duel between two narcissisms: defense and prosecution"?<sup>44</sup> Such a formulation completely leaves out the complex social forces and interests often represented by the two sides. Take the trial and execution of Sacco and Vanzetti. There was nothing "narcissistic" about that. It was political bias, class bias and race prejudice. To overlook all that and try to explain the case by the supposed narcissism of the prosecution and the defense counsel certainly does not help to understand the case.

The author makes a great deal of "the flattening and dulling of the emotional tone"; of the "absence of emotion; of 'affect' as we say"; "the dulling of the emotions"; "the emotions are flattened and dull."<sup>45</sup> These are too-well-worn clichés from the older books of psychiatry. As far as nonpsychotic criminals are concerned, application of such phrases is usually based on insufficient or faulty observation and examination. Such errors are apt to be made by those inexperienced in the examination of large numbers of offenders. Youthful offenders in particular may *appear* to have "flattened" emotions—though this term is superficial, mechanical and questionable; but careful study reveals this to be untrue. On account of their immaturity these youthful offenders, especially murderers, are just unable to digest and work out their overwhelming experiences, and this may make them *seem* to be indifferent. Other statements show lack of logic as well as of scientific spirit. For example, "It has not been proved that the systematic burning of witches finally eradicated witchcraft on this earth; I doubt whether it can be proved that crime is eliminated by punishment."<sup>46</sup> The difference, of course, is that witchcraft doesn't exist, while crime does.

In his discussion of the psychology of "our prosecuting attorneys and sentencing judges,"<sup>47</sup> the author relies heavily on oversimplification and preconceived patterns of psychopathology. He does not even attempt any concrete proof for his pronouncements. Among other things, he leaves out the most important aspect, the corruption-through-power. This often stunts the guilt feelings which he considers ubiquitous. But the law, much more realistic and democratic than this treatise, takes this into account and tries to prevent or remedy it through the development of progressive legal safeguards. In his discussion of punishment the author also leaves out one of the most important aspects; namely, that punishment is public condemnation of crime. In the history of civilization the educational value of this factor has been immense.<sup>48</sup>

Whether the human being be judge, criminal or ordinary citizen, the author isolates him from his social matrix. And within the human being he isolates the instinctual part from its personal connections. Of course that leads to

<sup>44</sup> P. 82.<sup>46</sup> P. 95.<sup>45</sup> P. 67.<sup>47</sup> P. 94.<sup>48</sup> Cf. Wertham, *Nine Men Speak to You*, 178 *Nation* 497 (June 12, 1954).

faulty scientific results. For instance, he says:<sup>49</sup> “[H]uman beings under conditions of wars . . . find themselves fully at the mercy of their basest and most brutal instincts.” This is a good illustration of the danger of the exaggeration of an instinct-centered philosophy. Normal human beings are not “fully at the mercy of” their instincts, brutal, base or otherwise. To assert that they are is to excuse cruel behavior, instead of explaining and helping to prevent it. I have examined and treated many veterans from several wars, some of whom had done cruel things. What they were “at the mercy of” was not their instincts, but social forces far beyond their control.

In this book the desire for—and therefore the possibilities of—rehabilitation of the average offender are underestimated. This is primarily a result of the crucial mistake of putting the neurotic and the criminal in the same categories, as when he writes:<sup>50</sup> “[B]oth in the neurotic and the thief or murderer there must be a will in the direction of rehabilitation.”

For the author the contrast between psychiatry and law results from the fact that psychiatry leads to the individual, whereas the law represents only society. Thus he comes to the anarchistic conclusion that<sup>51</sup> “[t]he contrast is very strong, the conflict almost fatal.” Although it is true that the law “claims to represent society,” it does not claim that society is “always greater and more valuable than the part (the individual).”<sup>52</sup> Any good district attorney represents *all* the people—including the individual accused. Nor is the assumption correct that psychiatry represents only the individual and not society’s interest as well. If I testify in a murder case for the defendant whom I have examined, I am helping not only this individual but also society, which cannot possibly protect itself if it treats the sick and the well with the same methods. The legal profession, in my experience, is far more receptive to this modern point of view than the author seems to realize.

As a remedy for the assumed state of affairs, he seems to see nothing but “the newer psychology, which looks into the psychological depth of man.” The individual, torn from his social context, is not an ideal. Of course criminal behavior shows that there are conflicts between the demands of society and the wishes of individuals. But in an over-all view, the remedy lies in our working for a state of affairs in which the interests of society and of the individual become more and more identical.<sup>53</sup> There can be no doubt that in a well-ordered society these interests *will* be identical.

The author discusses the Broadmoor institution in England. He views it “as a testimony of strange things that might come about more often and in many more places if we only dared to face the true psychological secret of

<sup>49</sup> P. 96.

<sup>51</sup> P. 101.

<sup>50</sup> P. 98.

<sup>52</sup> *Ibid.*

<sup>53</sup> Consult Wertham, *Why Men Commit Murder?* N.Y. Times Magazine 8 (August 8, 1954).

criminal behavior. . . ."<sup>54</sup> Not at all. The inmates of Broadmoor are mentally ill, and Broadmoor is merely a decent mental hospital. It is in marked contrast to some institutions for the criminally insane closer to home not mentioned by the author, which will never be reformed if we are going to be satisfied merely with looking for "true psychological secrets."

The author objects to the fact that in court cases the psychiatric expert is treated "as a hireling."<sup>55</sup> This is not the fault of the lawyers; it is the psychiatric expert who makes a "hireling" of himself. We are told in this book that the psychiatrist is met with suspicion. The reverse is true nowadays, however, and this storming of open doors by psychiatric spokesmen is becoming a little tiresome. Those who have to deal with criminal cases are apt to look up to the psychiatrist (often too much so); they are willing to listen; they seek answers to their questions—and they are entitled to far more concrete, factual and usable answers than they will find in this book. What are lawyers supposed to make of this sentence:<sup>56</sup> "The psychiatrist is asked about the legal insanity and responsibility of a given person"? Lawyers know this is not true. Only courts and juries answer and decide such questions. The psychiatrist is asked to give an account of his examination of the defendant, to describe the methods he has used, to relate what the defendant told him in his (the defendant's) own words, to give his findings in detail and in summary. He is also asked to fit his psychiatric opinion into the legal definitions obtaining in the particular court.

The focus of the author's objection to current usages in psychiatric testimony<sup>57</sup> is wrong. He seems to advocate that "no qualified expert may appear for any one side in a criminal trial"—an often-repeated formalistic reform that does not go at all to the root of the matter. If I am asked to determine whether a patient is sick, and I find that he is sick, why shouldn't I be on the side of the patient? If a patient suffers from a genuine illness, I fight for him. If he is ill, I say so. The difficulties of the situation lie elsewhere. They are obscured by such statements as "[p]sychiatry is predestined to reject . . . legal tests"<sup>58</sup> or "psychiatry cannot really take sides."<sup>59</sup>

Early this year I was asked to examine and testify for one Paul Pfeffer, twenty-one years old. He was tried for murder in the first degree. The question about which I was consulted was whether the confession was voluntary. After careful study, I found that Pfeffer had not confessed voluntarily, that the confession was illegitimately obtained by physical maltreatment of the defendant at the police station, and that it consisted in large part of "yes" answers extorted from him through infliction of pain. I so testified at the trial. At least Pfeffer got only life imprisonment, not death. Recently his innocence

<sup>54</sup> P. 104.<sup>57</sup> P. 113.<sup>55</sup> P. 106.<sup>58</sup> P. 118.<sup>56</sup> P. 112.<sup>59</sup> P. 119.

has been established through the confession of another man; he has been released from jail and is about to be completely exonerated.<sup>60</sup> Why should a man like Pfeffer be deprived of his democratic right to be examined by a psychiatrist of his own choosing? And why should I be deprived of my right to examine him, especially since a state-employed psychiatrist had said that he did not want to be involved in such a case? To say that "modern psychiatry has discovered that the deeper motivations for criminal behavior are aggression which is not fully integrated and socialized . . . and narcissism"<sup>61</sup> is no help. What does this mean, stripped of the fancy verbiage, except that the criminal is criminal because he is criminal? Modern psychiatry has much more to contribute than that! It can help in prevention of crime, for one thing, which is a subject neglected by the author just as he neglects the most important aspect of all forensic psychiatry, namely, why crimes committed by mentally ill people should be judged differently from those committed by people who are mentally healthy.

He is afraid that his view "may sound simple and almost mechanical (though) it is neither mechanical nor simple. Yet it is all quite mysterious."<sup>62</sup> It is all that: too simple, too mechanical, and at the same time unnecessarily mysterious. He says, for instance:<sup>63</sup> "If too great an amount of aggression is turned inward, as the saying goes, we may have to do with a suicide; if it is turned outward, we may deal with a murder." That sounds simple indeed; but that is not where the problem ends—it is where it begins. If a seven-year-old little boy commits a clear-cut, premeditated homicide, does it contribute anything to say that too great an amount of his aggression was turned outward? Nor does it help to repeat: "If the destructive hostility [is there any hostility that is *not* destructive?] is turned against the person himself, it is a suicide; if it is directed against another person, it is murder."

Throughout the book, we hope for facts only to find interpretations—or rather the promise of interpretations. Fitting the facts of a case into the legal definition of insanity does them much less violence than fitting them into such preconceived psychological formulas. The author writes as if all "criminals" had something psychologically in common that characterizes them. This is the Superman attitude of the expert toward those persons in our society who have the misfortune to become criminals. It is a kind of psychological Lombrosoism, looking into criminals' unconscious aggressions instead of at their ears. Certainly it is not a constructive development of Freud's work.

The author's strictures against the hypothetical question<sup>64</sup> are both old and irrelevant. He finds it "immoral"! Here is another of the fundamental

<sup>60</sup> Wertham, *Trial by Violence*, 179 *Nation* 12 (July 3, 1954).

<sup>61</sup> P. 120.

<sup>62</sup> P. 50.

<sup>63</sup> P. 51.

<sup>64</sup> Pp. 125-26.

errors of this book. The hypothetical question is part of the rules of evidence, and these rules cannot be changed from the desk of a psychiatrist. They are legal safeguards which have a long history and will develop further with the development of legal practice and theory. As a matter of fact, at present it would be dangerous to change the rules of evidence regarding the hypothetical question. It would open the door to just such high-handed speculations as this book presents. It is evident that the author has no real conception of the importance of what is verifiable fact and what is merely opinion. If we condoned what he seems to advocate, both clinically and legally established facts would play a small role. If all the emphasis is on interpretation and opinion, and not on facts, a panel of three psychiatrists—an old suggestion which he makes again<sup>65</sup>—is no better than one psychiatrist. It only multiplies the confusion.

Despite the broad generalizations contained in the book, there is not a single practical bit of advice here for either the lawyer or the psychiatrist. Toward the end of the book we read something about the classification of criminals. This is a subject about which the legal profession has a right to expect some sensible information from a psychiatrist. So what does our author say? "Criminals should be classified on the basis of their psychological propensities and the inner structure of their personalities."<sup>66</sup> Let the reader suppose for a moment that he has committed some offense. Would he entrust himself to the writer of this book (or any other psychiatrist) to decide whether his inner personality structure is such that he is "unredeemable" and must stay in jail "for the rest of (his) life,"<sup>67</sup> or whether his inner structure gets a passing mark? The author makes a dangerous plea for more power for the psychiatrist—not the power of science but the power of judgment. This would be a departure from democracy.

To predict the future of this book is not difficult. It has the highest endorsements: it is "the Isaac Ray Award book" of the American Psychiatric Association; it embodies lectures given under the auspices of both the School of Law and the School of Medicine of Yale University. This shows that it is not just an isolated expression, but one that fits in well with a great deal that is written and practiced today. It is not a book but a trend. Young psychiatrists will learn it; lawyers will be swayed by it. Certainly no review can stem this tide of psychoauthoritarianism. It is so much easier to speculate abstractly about "autonomous, impulsive, aggressive drives"<sup>68</sup> than it is to face the truth about social problems of crime and delinquency.

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<sup>65</sup> P. 125.

<sup>67</sup> P. 128.

<sup>66</sup> P. 129.

<sup>68</sup> P. 130.

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