BOOK REVIEWS

PSYCHIATRY AND THE CRIMINAL. By John M. MacDonald, M.D. Springfield, Illinois: Charles C. Thomas, 1957. Pp. xi, 227. $5.50.

Twenty years ago the late George Dession predicted that "the infiltration of psychiatry—and of psychiatrists—into the administration of criminal law" would one day be recognized as "overshadowing all other contemporary phenomena" in its influence on the evolution of criminal justice.[1] If this prophecy has not already come true it is certain that it soon will. The increasing participation of psychiatrists, clinical psychologists and psychiatric social workers in many phases of the educational, welfare and correctional activities of government is clear. The profound influence they have exerted on child training is familiar. It is taken for granted that no major criminal trial will be complete unless at least one phychiatrist has appeared on the scene. Indeed, the criminal trial itself is becoming increasingly obsolete as a method of sifting out mentally irresponsible offenders. The issue of mental illness is more and more often determined by the examination and reports of court appointed impartial experts, the staff of a state mental institution, or the personnel of a clinic attached to the court. In the better juvenile courts psychiatric techniques are almost routine procedure. The same is true of family courts. In correctional institutions psychiatry is an accepted measure of classification, rehabilitation and pre-parole preparation. Less publicity is given the role of the psychiatrist in civil cases, yet he is probably called as an expert witness in at least twenty civil cases for each criminal one. Interesting and difficult psychiatric problems for both lawyers and psychiatrists also arise in workmen's compensation, divorce, testamentary, contract, adoption, and guardianship cases. In addition, the emphasis of contemporary psychiatry and psychology upon unconscious determinants of behavior has stimulated a re-examination by lawyers of those legal assumptions that were influenced by earlier, but now discarded, concepts and perspectives of these disciplines. Finally, psychiatry has sensitized us all to the complexity of our own motivations, whether as law-makers, clients or complainants, prosecutors or defenders, jurors or judges, or otherwise.

Dr. MacDonald as Assistant Medical Director of the Colorado Psychopathic Hospital and as Consulting Psychiatrist to the District Courts of Colorado has had an opportunity to see and participate in some of these developments at first hand. Although his purpose in

1. Dession, Psychiatry and the Conditioning of Criminal Justice, 47 Yale L. J. 319 (1938).

writing this book "is to provide a practical guide to the psychiatric examination of the suspected criminal"[2] and although it "is intended for the physician rather than the attorney"[3] his book is not without interest to the legal profession. His chapters on The Simulation of Insanity, Narcoanalysis, Amnesia, Epilepsy and the Electroencephalogram, The Psychopathic Offender, Alcoholism, The Sex Offender, Psychological Tests, and The Psychiatrist in the Witness Stand contain many shrewd and wise insights suggestive for the lawyer. Unfortunately, his references to the legal literature are neither up to date, exhaustive, nor selective.

Dr. MacDonald hopes that his book will serve to stimulate more psychiatrists to enter the forensic field. Most lawyers will join heartily in this wish. There is a much broader issue, however, that is not discussed in the book and one that advocates of interdisciplinary collaboration rarely consider. What Dr. MacDonald is doing is exhorting his medical colleagues to participate in the making of sanctioning decisions on behalf of the community at large. They are being asked to function outside the private relation of physician and patient in situations in which a person who presents psychiatric problems also happens to be in conflict with others to such an extent that the community is involved, either at present or prospectively. In these situations, a significant interaction between the goals, perspectives and value orientations of psychiatrists and community decision-makers takes place. The psychiatrist is therapy oriented and otherwise professionally conditioned to think of his prime obligation as one to his patient. There can be no quarrel with this and no difficulties arise so long as the patient is not also a party to a sanctioning proceeding or otherwise in serious conflict with others. When the latter occurs, however, complications develop. When a psychiatrist functions as an expert witness to a court or as a recommending agent to a correctional authority he is stepping into a role and assuming a function somewhat different—and perhaps more exacting—than those involved in his private practice. He moves outside the private relation of physician and patient. He has to consider something quite different from the question whether a voluntary patient needs and may benefit from the help he can give. He must take the interests of the community as a whole into account and has to realize that his recommendation will likely be followed by legal coercion without regard to the wishes of the patient. The community, of course, is interested in the patient and in health and therapy generally. Its resources, however, are limited and must be used selectively. It also

2. P. vii.

3. Ibid.

has a great range of other interests and if total community policy is to be served a rather complex arbitration may be involved.

Suppose, for example, that the psychiatrist is called upon to examine and report on a person he has never previously seen. After an examination typical under the circumstances, the psychiatrist is satisfied that this person qualifies as a potentially dangerous and aggressive psychopathic sex offender, although he has so far committed no overt offenses beyond indecent exposure. Here again are problems of conflicting values. The community, if it has enacted one of the recent types of sex offender laws, has manifested some interest in the prevention of seriously aggressive sexual offenses and some willingness to rely on expert prophecy. On the other hand, the same community would usually be very loath to authorize the infliction of severe sanctions on suspicion alone. This interest in civil liberty is indicated by the requirements for a conviction of an attempt to commit a crime. Proof of mere intent to commit a crime or of a propensity to do so is not enough. There must also be proof of some overt action reasonably adapted to that end and carried to a point where there is a dangerous probability of success. In the example given of the sex offender many medically oriented people would be less troubled by the application of the sanction of indeterminate commitment to a hospital than would many who are litigation oriented.

This suggests another interesting question. Should the laws that undertake to designate classes of persons subject to sanctions speak in psychiatric or nonpsychiatric terms? And, in what terms should the psychiatric witness be questioned and in what terms should he speak? In other words, should the psychiatrist be asked whether a person is neurotic, psychopathic, psychotic or normal? Or, should he be asked questions such as the following: What is the probability that this person will behave in such and such a fashion in the future, specifying the sorts of situations the answer assumes he will face? What is the probability that such situations will occur? On what past events are these estimates based? What opportunities have psychiatrists had to validate estimates of this sort? These questions are raised because the verbal categories used by psychiatrists in describing patients in the therapeutic context may involve value judgments which, while consistent with community policy in that context, may not be consistent with community policy in the context of community sanctioning. The difference, of course, stems from the absence of coercion in the private practice situation and its omniprescence in the legal one. In other words, if medical diagnostic and prognostic terms are uncritically used in the sanctioning process they are likely to cloak a host of value judgments of a quite different order than they do in private practice. If a person is labeled "psychotic" this is likely

to be taken to mean that he should be committed to a hospital and released only when, thanks to shock therapy, other treatment, or sheer passage of time he is diagnosed as no longer "disturbed." If he is arrested for some minor sex offense and is called a "psychiatrically deviate personality" this is likely to be taken to mean something more than that he has problems and would benefit from psychotherapy. He may well be committed for an indeterminate period to a custodial institution whether or not it is in fact in a position to treat him. If an accused pleads irresponsibility and is called "neurotic" or "psychopathic" this is likely to be taken to mean that he should receive the maximum retributive sentence.

Dr. MacDonald is certainly aware that it is important for the psychiatrist who participates in the sanctioning process to look at his own value judgments and his own terminology in the light of their implications for the broader social scene. I wish he had made it more explicit in his book. In any event, the expanding knowledge of psychiatry and the increasing participation of psychiatrists in the formation of community policy can only serve to make community decisions more enlightened and more capable of realistic application.

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THE RULE AGAINST PERPETUITIES. By W. Barton Leach and Owen Tudor. Boston: Little, Brown & Company, 1957. Pp. xiii, 265, 1957 Cumulative Supplement. $10.00.

An addict of material on the rule against perpetuities who purchases any new treatise without looking beyond the cover is doomed to disappointment if he believes he has an entirely new work on the subject in this particular book. As is clearly stated on the title page this treatise is: "Reprinted from American Law of Property with Appendices on Perpetuities Reform by Statute Since 1947 and Cumulative Supplement Prepared by the Authors."

The American Law of Property[1] has been comprehensively reviewed by a large number of legal scholars including a former classmate of mine, Bertel M. Sparks, Professor of Law at New York University.[2] For this reason I would consider it merely "gilding the lily" if I were to undertake an extensive analysis of the textual portion of the work under review. However, there are certain parts of the text that should be called to the attention of those who may not be familiar with the parent work.

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1. 7 vols. Casner ed. (1952).

2. 28 N.Y.U.L. Rev. 1052 (1953).