

BOOK REVIEWS

SOCIETY, THE OFFENDER, AND THE PSYCHIATRIST. By F. A. Whitlock, Professor of Psychological Medicine in the University of Queensland, Australia. [Australia: University of Queensland Press, 20pp.].

Professor Whitlock's inaugural lecture on "Society, The Offender And The Psychiatrist" seeks to describe and discuss, the discourse and dischords, between law and psychiatry. In recent years several contributions have been made to generate more light on and reduce the heat of that inter-disciplinary dialogue. The most notable of those contributions is the Isaac Ray Award Lectures on "Law and Psychiatry" delivered by Professor Sheldon Glueck of Harvard Law School.

What are the reasons for the apparent incompatibility between law and psychiatry? Professor Whitlock identifies one of the reasons as the fundamental differences between the legal and medical approaches to a given problem.

The psychiatrist, being a doctor, will inevitably have some concern for the prisoner whom he will tend to regard as if he were his patient. His sympathies to some extent will be engaged on the prisoner's behalf although Professor Whitlock thinks this will not necessarily detract from the value of his assessment which should be dispassionate and impartial. He is more concerned with the prisoner as a human being and less concerned with his alleged offence.

The psychiatrist perceives his role to be to establish the clinical facts of the case, and on the basis of his findings to make a report which will state whether or not the prisoner is mentally ill and what relationship such illness has to the alleged offence. From his conclusions he may also feel that a certain type of disposal might be the best solution of the problem. He is not concerned with punishment as such, unless there is clear evidence that punishment will produce the desired result i.e. the avoidance of any further repetition of the offence.

Professor Whitlock thinks that the court, in contrast with the psychiatrist, is concerned with the assessment of guilt. The court represent society and is concerned with the protection of society. According to one view, to which Lords Devlin and Denning subscribe, the punishment of a criminal expresses the society's abhorrence of the crime. Professor Whitlock restates the familiar psychiatric theory that we wish to punish the criminal because by doing so we are expiating our own unconscious urges to wrong-doing by transferring our guilt on to the errant prisoner in the dock. There is the other objection that punishment for deterring or curing certain offenders is futile.

Next, Professor Whitlock takes serious objections to the adversary system. Of counsel for the prosecution and defence, Professor Whitlock says "we reach the epitome of partisanship which must be hostile to the unscientific assessment of truth." The professor goes on to say, "the psychiatrist may be forgiven if he hesitates before joining a contest in which science plays no part and in which his dispassionate attempts to discover the truth become submerge by the emotionally charged waves of oratory of the protagonists." For the same reason Professor Whitlock prefers the system, which prevails in some parts of the United States of America, of having certain classes of accused persons examined impartially by clinics attached to the courts. In that system, the accused and the prosecution are not precluded from engaging psychiatrists to testify on their behalves although we are told that this rarely occurs because, "both sides recognize that a full report prepared by an impartial investigation is of very much greater value than a partisan report prepared by psychiatrists whose experience may be much less than that of the psychiatrist in the court clinic."

Has the adversary system a rationale? It is possible to argue that the adversary system is erected on a sound foundation. This is that man's perception is inevitably distorted. That this distortion is mediated by a process whereby each distorted perception is subjected to scrutiny. In this way we are more likely to approximate to the truth. Does this theory equally apply to the evidence of the psychiatrist? It can be argued that it does because the psychiatrist's assessment of an accused is to some extent dictated by the psychiatrist's ideology. Psychiatrists subscribe to different schools of psychiatric thought. Some are more organically inclined while others are more deterministic. A deterministic psychiatrist is likely to regard the criminal law process as harsh and lacking in compassion. He may therefore compose his evidence in such a way as to move the accused away from the criminal law process to the hospital. It can be reasonably argued that in this situation, the adversary system is ideal in that it cuts the conflicting ideologies down to size.

Professor Whitlock tells us that s. 304A(i) of the Queensland Criminal Code enacts the defence of diminished responsibility in homicide cases. What is the rationale of the defence of diminished responsibility? Professor Whitlock seems to think it is "to limit capital punishment to certain classes of crime and to broaden the circumstances in which a man's mental condition might be a partial excuse for his offence." Professor Whitlock goes on to say, "In a State like Queensland, where capital punishment has been abolished, it is difficult to see what value the concept of diminished responsibility has in homicide cases. If a man's mental state is so abnormal as to cause him to commit murder, it seems immaterial whether he was wholly or partially irresponsible for his crime. In either case mental treatment and detention in hospital where such treatment can be given, seem to be the logical consequence of a verdict of insanity or diminished responsibility."

I think Professor Whitlock's thesis is open to criticism. We should see the insanity defence as an application of the policy that an offender should not be held to be responsible for a violation of the criminal where his freedom of will was nil. Where an offender's abnormality of mind does not deprive him completely of his freedom of will but only partially, then a case can be made for holding him responsible but to reduce his punishment accordingly. Professor Whitlock's misunderstanding of the law also seems to flow from his assumption that the purpose of the criminal law is to reform the individual whereas I know of no existing legal system which accepts that as the sole purpose of the criminal law. Nor do I think a good case for such a view can be made.