

BOOK REVIEW

THE PSYCHOLOGY OF THE CRIMINAL ACT AND PUNISHMENT. By Gregory Zilboorg, M.D. New York: Harcourt, Brace and Company. Pp. ix, 141. \$4.50.

In 1952, the American Psychiatric Association established the Isaac Ray Award, to be given annually for the most worthy "contribution to the improvement of the relations of Law and Psychiatry." Dr. Gregory Zilboorg, the recipient for 1953, eminently deserved the distinction on grounds of his previous contributions, but this volume, containing his Isaac Ray lectures, delivered at Yale University, contributes more misunderstanding than improvement to the relations of law and psychiatry.

The trouble is that Dr. Zilboorg is no lawyer. This is certainly no reflection on him as a psychiatrist. But it is disastrous when he undertakes to offer criticism and advice on criminal law. It leads him into expressing outraged astonishment on learning that a lawsuit is not a search for "truth" but only a weighing of the evidence presented by the parties, misusing legal terms such as "premeditation," and failing to comprehend the distinction between mental disorder *per se* and mental disorder of such a kind as will render one legally irresponsible for crime.

As the title indicates, much of this book is about criminal punishment. Dr. Zilboorg argues ably that punishment does not eliminate crime. He also calls attention to some sources of the drive to punish that we may not always be aware of, such as aggressive feelings against the accused on the part of the prosecutor, the judge, and the jury. His attacks on punishment and punitive measures are so intemperate, however, that one gets the impression he opposes all punitive measures. It is only on more careful reading that one notes it is "rigid" punishment, or punishment "pure and simple," that he denounces, and from a passing reference in the last chapter we gather that he does approve of "restorative" punishment.

Throughout the seven chapters, Dr. Zilboorg throws out various observations and propositions, some of which are piquant and provocative. Others will strike some readers as shallow, dubious, or clearly wrong. The M'Naghten rule, we are told, "intends to apply purely moralistic criteria to a clinical or scientific problem. . . ." (p. 17). The "duel" between the defense and the prosecution in the modern courtroom seems "to have its psychological roots in the ancient form of justice by combat and revenge." (p. 99). In this duel, the two "enemies" "are not

intent on saving anybody (not even the defendant, I am tempted to say) but only on winning their own battle, on annihilating their adversary." The defendant "all too often stands a perfect chance of being forgotten, since he is but a tool in the duel between two narcissisms: defense and prosecution." (pp. 81, 82).

Cursory animadversions of this sort are the more regrettable in that some of the subjects touched upon deserve thoughtful psychological study. Lawyers' partisanship and the "need to win" is an example. The consequences of the degree of affect that the lawyer brings to his client's cause—in the reaction of his client, the jury, the judge, opposing counsel and himself—present a complex psychological problem. But the investigator would have to comprehend what really goes on in a lawsuit. For example, whereas Dr. Zilboorg sees in the clash of opposing counsel a duel between "enemies" bent on annihilating each other, David Riesman, who knows something of law and of psychology, points out, "The 'rules of the game' of the law are so set up that lawyers can appear to fight hard without irretrievably hurting each other. . . ." The same rules permit lawyers to act on Shakespeare's injunction to "strive mightily but eat and drink as friends." This kind of fraternal relationship is not only in the interest of rational and civilized adjudication, but in the client's interest also. Too much emotional identification with the client may only harm his case. In a labor dispute, the management lawyer who matches his client's fervor in damning the union "agitators" on the other side, instead of calmly trying to effect a solution the parties can live with, may impress the client with his "loyalty," but he may also cause him a costly and wholly needless breakdown in labor relations.

There is one criticism Dr. Zilboorg makes of the criminal law that lawyers have probably never heard before. It is that we bring the criminal to justice too quickly. (Our motive: "to get rid of the evildoer as quickly as possible in order to forget the deed itself." p. 87). Most of us had rather thought the law erred on the other side. We have heard criticism enough of the law's delays, but never before, I believe, of its undue dispatch. Dr. Zilboorg illustrates his point—and apparently rests it, for he offers no other evidence—with the trial of one Bellingham, held in England in 1812.

The law is also criticized because it acts only after the fact. Lawyers and judges might reply that, lacking prophetic vision, we cannot do otherwise; we cannot label a man a murderer until he has acted. Zilboorg seems to imply that such vision can be ours if we will only consult a psychiatrist. He tells us (p. 64) of a case in which a psychiatrist testified

1. RIESMAN, *INDIVIDUALISM RECONSIDERED* 457 (1954).

that a certain woman, before the court on commitment proceedings, had an illness such that if not committed, she might very well kill her husband. The judge nevertheless let her go free. Two days later, sure enough, she was back, charged with having killed her husband. But while the moral we are supposed to draw from this is obvious enough, I doubt whether Dr. Zilboorg would really contend that the case is typical. Certainly most psychiatrists would disclaim any such prescience for themselves.

Throughout the book, there are repeated references to the "hostility" of lawyers toward psychiatrists, to the "chasm," the "immense canyon," between them. This hostility against psychiatrists that Dr. Zilboorg feels so keenly is, I am sure, not more than half real: lawyers feel that only the *other side's* experts are incompetent or venal. But even if only half the hostility the author sees actually exists, it is too much, and we should be working to eliminate it.

Dr. Zilboorg does make two valuable suggestions to this end: (1) "If young lawyers were afforded the opportunity to have so-called 'lie-detector' or 'narco-analytic' interviews with mentally healthy and mentally ill people, such interviews to be conducted jointly with an experienced psychiatrist," they would understand what psychiatrists mean by human personality, as a totality which is in constant motion and commotion, and also what is meant by "alteration of personality"; (2) "Both the lawyer and the psychiatrist must have a clear conception of human aggression—conscious and unconscious." (p. 44). And he follows this up with an excellent chapter explaining the operation of aggression, especially as it manifests itself in criminal conduct.

That sort of thing is valuable. Understanding between the two professions can be helped by psychiatrists' explaining psychiatric concepts to lawyers, and by lawyers explaining legal concepts and legal procedure to psychiatrists. A few rare individuals at home in both disciplines might venture a synthesized critique covering both. But criticisms of legal doctrines and procedure by psychiatrists untrained in the law will not foster mutual understanding any more than would diatribes by psychiatrically ignorant lawyers abusing psycho-analysts for their ideas about the *ego* and the *id*, death wishes, returning to the womb, and penis-envy.

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