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MacDonald: Psychiatry and the Criminal

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PSYCHIATRY AND THE CRIMINAL. By *John M. MacDonald*. Springfield, Illinois: Charles C. Thomas. 1958. Pp. 227. \$5.50.

Psychiatry is in an unenviable position because of the stereotype, too often a caricature, which has been created in the public mind by those who exploit the profession for purposes of public entertainment. The extreme claims made on its behalf by some of its less restrained practitioners has brought down upon it some justified ridicule, or at least disbelief. Furthermore, the device of judicial notice, because of its conservative nature and because of the unsettled status of psychiatry as a science, has understandably been withheld when it has been advocated that psychiatry be given freer play in the courtroom. This is a battlefield with no well-ordered line of battle, but one full of disordered ranks of participants of varied stature: jurists, clergymen, attorneys, psychiatrists, laymen who have read Karen Horney and Theodore Reik, and the do-it-yourself crowd.

It is a pleasant surprise, therefore, to run across a book written by a psychiatrist who declines to be a participant in the combat and who confines himself to the modest but meaningful pursuit of examining how the psychiatrist can, and should, work within the framework of the law *as it stands*. The book thus takes on a practical value not only for the practitioners involved but also for attorneys, judges, police and prosecution staffs. Mr. MacDonald is not crusading for a particular side or viewpoint. He is interested in justice and how his profession can best help to obtain it. Interested parties are free to use the findings he has accumulated through his experience as a psychiatrist working in the criminal courts.

A sample of chapter headings indicates the scope of the work: The Simulation of Insanity; Narcoanalysis and Criminal Law; Amnesia; Epilepsy and the Electroencephalogram; Alcoholism and the Law; The Sex Offender; The Juvenile Delinquent; Psychological Tests; The Psychiatrist in the Witness Stand; and Treatment and Punishment. Some of the chapters are more detailed than others; this appears a little disappointing until one realizes that Professor MacDonald limits his observations to his own experiences rather than taking a textbook approach to his subject.

As a responsible scientist, the author makes plain the limitations of

the processes and devices which the men of his profession employ, such as narcoanalysis and psychological tests. Furthermore, he shows an awareness of the rights of the criminally accused consistently manifested whenever these rights are involved in one of the processes of examination.

There are no fireworks on the subject of criminal responsibility. As a professional man, he advocates some modification of the "right-wrong" M'Naghten test, but, like many of his colleagues, he sees the pitfalls in the ambiguities of the "product" rule announced in *Durham v. United States*.¹ One authoritative commentator said of *Durham*: "The publications cited [in the opinion] contain serious errors. . . . Judge Bazelon's final conclusion is unfortunately based on the psychiatric vagaries found in some of these publications."² In regard to the "irresistible impulse" test, MacDonald issues a wry warning: "One should be careful to distinguish between an irresistible impulse and an impulse that was simply not resisted." He indicates a preference for the Scottish doctrine of diminished responsibility, which has been stated as follows:

"Formerly there were only two classes of prisoner, those who were completely responsible, and those who were completely irresponsible. Our law has now come to recognize in murder cases a third class, those who, while they may not merit the description of being insane, are nevertheless in such a condition as to reduce the quality of their act from murder to culpable homicide . . . there must be aberration or weakness of mind; there must be some form of mental unsoundness; there must be a state of mind bordering on, though not amounting to, insanity; there must be a mind so affected that responsibility is diminished from full responsibility to partial responsibility; the prisoner in question must be only partially responsible for his actions."³

The author's attitude is one of common sense. Although substantial insight into man's motives has developed in recent times, how can these motives ever be fully known and comprehended? Thus the jury, with its intuitive process, still has a role to play, especially because psychiatry and the law have differing ends. Justice Arnold said in *Holloway v. United States*:

"Legal tests of criminal insanity are not and cannot be the result of scientific analysis or objective judgment. . . . They must be based on the instinctive sense of justice of ordinary men. A complete reconciliation between the medical tests of criminal responsibility and the moral tests of criminal responsibility is impossible. The purposes are different; the assumptions behind the two standards are different."⁴

However, the fact of admission of scientific evidence does not guarantee

¹ (D.C. Cir. 1954) 214 F. (2d) 862.

² Wertham, "Psychoauthoritarianism and the Law," 22 UNIV. CHI. L. REV. 336 at 336 (1955).

³ Royal Commission on Capital Punishment Report 392 (1953).

⁴ (D.C. Cir. 1945) 148 F. (2d) 665 at 666-667.

that it will be accepted by the jury. One need only recall *Berry v. Chaplin*,⁵ a famous case dealing with a much more settled field of science, where the jury rejected the evidence of blood tests to disprove paternity. As for psychiatric evidence, the case of *Ross v. State*,⁶ decided in 1949, points out a similar hazard. The case was that of a murder trial which involved a plea of insanity at the time the murder of four people was committed by a San Antonio physician. A team of experts in psychiatry and mental disease testified that Ross, the doctor, was insane. No experts testified that he was sane, nor did the state offer any expert testimony, but it relied upon the testimony of peace officers involved in the arrest and upon character witnesses who knew the doctor. The trial jury had to decide whether Ross was so mentally deranged at the time of the killings as to make him incapable of distinguishing between right and wrong in his action, or whether he committed the crime under an irresistible impulse, which is lack of control rather than of understanding. It was reported: "Despite the unanimous medical testimony that Dr. Ross was insane and incapable of knowing right from wrong, the jury required only fifteen minutes of deliberation to reach their verdict, which was guilty with the penalty of death."⁷ The Texas Court of Criminal Appeals affirmed the conviction of Ross. However, on a subsequent separate trial, Dr. Ross was found insane.⁸

Admittedly, psychiatry has yet to attain the position of other sciences in terms of general acceptability, but the subsequent finding of insanity in the *Ross* case as contrasted with the fifteen-minute deliberation of the jury on *all* the evidence, including the expert psychiatric testimony, reveals that the jury is essentially a body of laymen with many deficiencies or misconceptions in their knowledge of the sciences.

However, the problem of adjustment between psychiatry and the law need not be an overly complicated one. First of all, the plain facts must be faced: we have learned a great deal about man's mind and his motivations since the *M'Naghten* case of over a century ago. This knowledge, or that part of it which is generally accepted, ought to be put to use in the process of securing justice for society and the individual. As long as the limits of psychiatry remain undefined and there is disagreement over the validity of known discoveries and developments, the law cannot commit itself to any broad statements of acceptance. It is evident that no formula comparable to that of the radar speedmeter is going to emerge in this field. Judges realize this, but are apt to err in the other direction, that is, to retard recognition of types of testimony which could be of use.

⁵ (Cal. Dist. Ct. App. 1946) 169 P. (2d) 442.

⁶ (Tex. Crim. App. 1948) 220 S.W. (2d) 137.

⁷ McCormick, "Science, Experts, and the Courts," 29 TEX. L. REV. 611 at 621 (1951).

⁸ *Ibid.*

What can be done is to work from the bottom up; in other words, to adjust the rules of evidence so as to enable the psychiatrist to testify in terms more relevant to our time and our new knowledge, and to give some legislative sanction to a broadening of judicial discretion, particularly in instructions to the jury. It is to the credit of some courts that this has already been done in practice, but more uniformity and recognition is needed. In the meantime, the criminal law must punish the evildoer, treat and correct those who are partially responsible, and provide for the proper care of the irresponsible. Mr. MacDonald's book will help in these tasks.

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