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Psychiatry and the Dilemmas of Crime, by Seymour L. Halleck

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PSYCHIATRY AND THE DILEMMAS OF CRIME. By Seymour L. Halleck, M.D. New York: Harper & Row, 1967.

At this point in time, public concern about crime and social disorder verges on a state of panic. These fear reactions are making their mark on legislators, and the community is in grave risk of initiating regressive responses which will further delay a rational approach to criminal behavior. Thus, Dr. Halleck's book arrives at a moment when its insights are much needed. It provides the reader with an overall view of criminal behavior as a "natural phenomenon" to be studied from the standpoint of the "advantages it offers to the criminal," as well as the consequences it involves for society. In other words, rather than merely describing criminal behavior and moralizing about it, the author demonstrates its function as an adaptive response to a multitude of causal factors. If those concerned with crime and social disorder are serious about their desire to modify as well as control these serious social problems, they *must* deal with the substance of Dr. Halleck's arguments.

The author presents us with a refreshingly objective approach to the phenomenology of criminal behavior. He avoids the tendency to make unwitting value judgments about criminal behavior and criminals, and assiduously sticks to the area of his principal competence: the analysis of the internal psychological forces in a given criminal, and the way in which they impinge upon his social environment. Dr. Halleck's knowledge and perspective are derived from considerable experience in working directly with criminals in the federal as well as state correctional departments. His theoretical approach cannot be faulted for lack of knowledge about either substantive criminal law or psychiatric theory and principle, and he demonstrates a thorough-going awareness of the literature of criminology and sociology. He delineates explicitly the role conflicts which psychiatrists encounter when they work in the legal context and demonstrates the manner in which such role confusion often causes bizarre results both in court and in correctional institutions.[1]

Most of those working in correctional settings lack the training and competence of Dr. Halleck, which in part accounts for the unwillingness of corrections departments to modify treatment techniques. This recalcitrance closes a vicious circle and makes it difficult or impossible to recruit the more competent psychiatrists to work in this field. In addition,

1. Though it is often alleged that the treatment techniques of psychiatry have failed to alleviate criminal behavior, any reasonable analysis of the past leads to the flat conclusion that we have hardly ever utilized the knowledge we now possess, nor have we experimented with any new techniques for dealing with criminal behavior.

competence such as Dr. Halleck's is very expensive and therefore corrections departments have not yet been willing to hire the more skilled members of the therapeutic community. While it may be legitimately argued that other community needs are of higher priority, if we do so we may not then say that treatment techniques have failed. Rather we should acknowledge our unwillingness to provide adequate services. These facts are well delineated in this volume.

Halleck's book has certain attributes which made it difficult for this reviewer to evaluate it accurately. Because of the author's lucid style and his straightforward way of presenting knotty theoretical materials, I had a tendency to become somewhat bored with the basic concepts presented, with which I was highly familiar. It is the same reaction one has when reading several of the classics in the field of psychiatric theory. While reading such a book one has the sensation that "nothing new is presented."[2] If I am correct, this is a strong recommendation of the book for all those interested in learning about the causes of criminal behavior.

One point which Dr. Halleck appropriately emphasizes, is the social responsibility of psychiatrists to use their medical skills in order "to prevent emotionally disturbed offenders from hurting others and a moral responsibility to try to prevent any persons from hurting themselves." In other words, the role of the psychiatrist should not solely involve him with the patient and his needs, but should also draw him into the context of dealing with community problems. I heartily concur with Dr. Halleck and disagree vigorously with psychiatrists who view their role as being exclusively related to the problems of individual treatment. Such an attitude is short-sighted and at marked variance with current views on the community approach to mental illness.

Few, if any, of the books on criminal behavior written by psychiatrists possess the scope of this volume. The Isaac Ray Lectures, given by prominent psychiatrists, many of whom have worked in correctional settings, have never synthesized the breadth of material found in this book.[3] They tended to deal with such matters as psychiatric testimony,

2. For example, this is the reaction most people will have upon reading Anna Freud's classical study on *The Ego and the Mechanisms of Defense* (A. FREUD, THE EGO AND THE MECHANISMS OF DEFENSE (1937)). That volume, a pioneering scientific study of psychological protective mechanisms, is so beautifully written that it presents complex ideas with a simplicity which at first glance invites contempt. However, let the reader attempt to describe what he has read.

3. J. BIGGS, THE GUILTY MIND: PSYCHIATRY AND THE LAW OF HOMICIDE (1955); M. GUTTMACHER, THE MIND OF THE MURDERER (1960); W. OVERHOLSER, THE PSYCHIATRIST AND THE LAW (1953); P. ROCHE, THE CRIMINAL MIND (1958); H. WEIHOFEN, THE URGE TO PUNISH (1956); G. ZILBOORG, THE PSYCHOLOGY OF THE CRIMINAL ACT AND PUNISHMENT (1954).

motives of criminality, problems of the substantive definition of crimes, and the historical relationship of psychiatry to the criminal law. Dr. Halleck covers all of these subjects and, in addition, explores the sociological implications of psychiatric theory to the science of criminology. Thus, his volume recommends itself for its synthetic approach as well as for its treatment of specific issues.

With the exception of Dr. Philip Q. Roche, few other American psychiatrists writing about corrections have had extensive and in depth experience with actual correctional situations. There are several European psychiatrists such as Sturüp in Denmark,[4] and Jones in England,[5] who have spent their professional careers working with correctional problems and have written extensively on the subject. It is the reviewer's impression, however, that these authors lack the kind of skill which has permitted Dr. Halleck to penetrate so deeply into the psychological dynamisms related to criminal behavior.

Dr. Halleck's book raises many questions concerning how psychological theory can be introduced into appropriate relationships with law and legal personnel. As he points out, the most common point of contact is in the context of expert testimony in criminal trials involving the insanity defense. In a section called "The Urge to Testify"[6] Halleck explores the nature of this contact and views it as largely abortive in its impact. While the reviewer would agree with the conclusion, it does not lead him to the same judgment about appropriateness. Here I believe that Halleck lacks perspective as to the way legal processes change. He does not adequately credit the impact of trial cases on legislative action. Court incidents which focus attention upon expert witnesses and their views about sentencing and treatment often help shape legislation. This reviewer has had several experiences with legislatures which support this contention. In effect, demonstration of the negative utility of a rule or procedure may foster change in the community's technique for handling deviant behavior. The fact that a certain procedural device fails to accomplish its desired purpose is evidence which can bring about change. Also, failure to make such demonstrations leaves open the omnipresent opportunity for the "explanation" that the expert does not "know" what he is talking about because he has never participated in the process. For this reason, as a matter of social process, it appears necessary that these negative demonstrations be made with respect to procedural devices as well as substantive rules of law.

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4. G. STURÜP, TREATING THE "UNTREATABLE" (1968).
5. M. JONES, THE THERAPEUTIC COMMUNITY (1953).
6. S. HALLECK, PSYCHIATRY AND THE DILEMMAS OF CRIME 221 (1967) (hereinafter cited as HALLECK).

It is my impression that more often than not the so-called "battle of expert witnesses" is a battle of "inexperts"; inexpert lawyers and inexpert psychiatrists groping at the issues of each other's domain, which neither understand. The end result is a potpourri of irrelevancies. The actual issues in the trial are not truly confronted nor considered. I fully agree with Dr. Halleck in his contention that the expert should always "say how it is." While there are some jurisdictions in which this is procedurally difficult or impossible, usually it is the expert's lack of sophistication about the legal process which causes his chopped-up and circumstantial presentation. If he knew more about the legal procedures involved, he would be able to say what he thought and thus put the matter where it belongs—in the hands of the factfinders. Often he does not even understand that he is not the factfinder, and much of his dissatisfaction results from this basic misapprehension of role. This fact, coupled with the historical accretion of procedures and ideas which shunt criminal procedures far from their original purposes, results in many deficiencies in the process by which lawyers and courts attempt to utilize psychiatric information.

There is no doubt whatever that the earliest purpose of all "criminal law" was to deliver retributive punishment to those who broke the law. Punishments were simple expressions of the biological response to hit and hurt anyone who had caused either fear or injury. It has been many years since any criminal law philosopher would acknowledge that the law deliberately retains this function. Generally, retribution is hidden away in what, to me, is largely a psychological rationalization: "We need to punish you in order to prevent others from doing as you have done." Thus the concept of deterrence is utilized as a rationalization for the unacknowledged desire to be retributive. If we as a society continue to wish to be retributive, then we should acknowledge this wish and go about it more directly, for there are easier and cheaper ways to carry it out than those we now utilize.

Of course there is an omnipresent need in the criminal law to protect society from the "dangerous," and this need will always have relevance. The incapacitation of all persons who have committed dangerous acts and who continue to be dangerous must remain a central purpose of criminal law procedures and a necessary ingredient of their validity.

But concomitant with the maturing process of a society, the free expression of aggression is proscribed more and more, even in the service of "punishment." Simultaneously there is a mounting desire to "understand" the criminal motive and, in progressively widening circumstances, to relieve the malefactor of legal guilt and the imposition of mere retribution. One may trace the latter development in religious doctrines

and philosophical discussions as well as in criminal codes. Because of the persistent unconscious and hidden fear of those who cause social harm, the conflicting impulses of "understanding" and punishment often result in legal as well as social confusion. This confusion is reflected in the anomalous development of the defense of not guilty by reason of insanity side by side with the concept of diminished responsibility and *mens rea.*[7]

It is my impression that as the criminal law evolves some new element is often grafted onto an already complex structure without a consideration of what the purpose of the change shall be, and confusion ensues. In the face of such confusion we should not be surprised that non-lawyers, when they encounter the legal system, suffer great pangs of anxiety emanating from their lack of comprehension about the circumstances in which they find themselves. If the lawyers appear not to understand clearly what they are doing, an outsider has no hope of doing so. We find a good example of this phenomenon in relation to the issue of competence to stand trial when the defense of insanity may also be relevant. Here judges, lawyers, and expert witnesses alike, frequently if not usually, confuse the two factual issues, and pandemonium necessarily follows. Halleck generally distinguishes these two legal issues,[8] but he could have demonstrated more clearly how the two matters relate conceptually to each other. Had he provided more legal and philosophical perspective, there would have been a higher degree of explicitness for the non-lawyer reader when he dealt with them substantively. While he decries the confusion which exists in this area of law, he does not fully elucidate why the confusion exists. Only for the reader who knows the history of the concept, is the substance of the discussion fully meaningful.

Another criticism I have of the book, and most others like it, is that it provides too few suggestions for positive change. One cannot disagree with the basic proposition that the utilization of behavioral experts has been confused and often useless in the past. However, few ideas are proffered as to how we might proceed from current practices to others more valuable. These problems relate to the educational status of the experts currently working in the criminal court setting. In my opinion there is no chance for bringing changes there until large numbers of the personnel working in law understand something of the nature of the problems. This will probably not occur until current and future

7. It should be quite clear, that when conditions exist which can render a person not guilty by reason of insanity, a person cannot possess the appropriate *mens rea* to be found guilty of the substantive crime. This anomaly has been delineated clearly only recently. See A. GOLDSTEIN, THE INSANITY DEFENSE ch. 12 & 13 (1967) and Dixon, *A Legacy of Hadfield, M'Naghten and Maclean*, 31 AUSTL. L.J. 255-66 (1957). When these divergent purposes meet in the context of substantive law, confusion ensues.

8. HALLECK 226.

generations of law students have been subjected to a different kind of educational experience. As with all social change, society must be educated as to the complexities of a problem before it will accept modifications which on their face appear dangerous. Current political discussions about crime and social unrest seem to illustrate this point. The assassination of several political leaders has been sufficient to stimulate a markedly regressive reaction about how to treat criminals. This response demonstrates the truism that the civilized veneer of society is very thin indeed and, while not surprising, it must be taken into account when we consider changes in legal procedure or definition. It leads me to the conviction that it is important for psychiatrists to participate in the legal process even when we do not accomplish the immediate results we might wish. The long range educational impact of such participation is vitally important to the process of social and legal evolution.

The principal value of this book lies in its expert delineation of the *causes* of criminal and anti-social behavior, and it should be very useful to those who seek to understand these matters. Then slowly, through work in courts, correctional systems, and other social agencies, the idea may slowly emerge that the greatest security for society rests in a system of criminal law which is based essentially on three propositions:

First, the *appropriate* incapacitation of individuals in relation to social judgment of the degree of dangerousness for as long as that dangerousness continues must be embodied in the system.

Second, treatment programs should be aimed completely at rehabilitation. By this I mean that treatment programs should seek to minimize the personality and social deterioration of those under their jurisdictions, and every effort should be made, within the limits of resource availability, to modify the social and emotional factors which cause the anti-social behavior. This approach encompasses whatever deterrent potential may exist for that individual as well as for others. We must remember that, in the last analysis, deterrence is a totally personal process. Appropriate rehabilitation *is* a deterrent to an individual and the image of this kind of treatment system will affect whatever general deterrent result there may be, as well.

Third, procedures for treating criminals should do everything possible to bring into high visibility society's and the criminal's unconscious attitudes toward the proscribed behavior. This approach is the only way in which society's retributive impulses and the criminal's self-serving need to be punished can be handled. Otherwise there is an inevitable tendency for the law to develop covert goals responsive to these unconscious forces. In so doing, society facilitates the omnipresent need on the part of many deviant persons to use the punishment potential of the law to balance their

own psychic economy. A reading of Dr. Halleck's descriptions of the motives for deviant behavior readily demonstrates the importance of this principle.

It should be obvious that this kind of individualization in the application of the criminal code demands expert skill. It verges on the trite to repeat that the most difficult task a criminal court judge faces is to carry out his sentencing function. It is most ironic that at present most judges have no training whatever for fulfilling this important function. Recently a few jurisdictions, for example California, have moved toward placing this function in the hands of a diagnostic and treatment authority. Under such plans, except in the case of short term prisoners, the sentencing discretion is removed from the judge and placed with the diagnosticians in the Corrections Department who make the treatment decisions. Programs are individually tailored to fit the psychodynamic needs of the prisoner and the security problems he poses for the community commensurate with the treatment options realistically available to the community. This approach would remove the impetuous and disparate sentencing so characteristic of the current system and is surely the only sensible way we may proceed.[9]

While judges properly concern themselves with the issue of equitable application of the law, they are in no position to implement the treatment goals. Because the "sense of justice" relates in high degree to many subjective elements in the prisoner, it cannot be adequately dealt with solely by the judiciary. For this reason there is a vastly higher potential for making the kinds of personalized interpretations needed to evoke a sense of justice, when they are made by experts. Such a treatment body, as mentioned, functions within a single frame of reference, and can directly implement and interpret the judiciary's decisions with respect to the individual prisoners involved.

There is a rapidly growing trend in the law schools of this country to develop this kind of teaching. It has arisen in the context of "education for professionalism."[10] This trend has been in response to an increasing awareness that law students, when they leave the better law schools of the United States, have little preparation to deal with the knotty problems of involvement as members of the professional community. The programs supported by the OEO, as well as others with more direct educational

9. A further example of this concern is to be found in the model sentencing act promulgated by the National Council on Crime and Delinquency. See S. RUBIN, PSYCHIATRY AND THE CRIMINAL LAW ch. 9 (1965). Under their suggested procedure, the judge may set only a maximum sentence, and the treatment program is formulated by the diagnostic experts in the corrections department.

10. For my discussion of this subject see Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CINN. L. REV. 93-166 (1968).

concerns, for example some of the projects funded by the Ford Foundation, contain the premise that students must have a guided experience of involvement with clients and their emotions. I vigorously support this view, and believe it will be one of the dominant concerns of the future. Then materials such as Dr. Halleck's will come into their own, to be incorporated in ways which will render them most useful.

In summary, Dr. Halleck has given us an excellent panoramic view of the ways in which psychiatrists may involve themselves in the substance and procedure of the law as it deals with criminal deviation. His views accurately reflect contemporary approaches to the motivational and social forces which produce such deviancy. While he does not, in my view, adequately set such approaches in full perspective in relation to the philosophy of the criminal law, the book is in a form which will readily facilitate others doing so. Some of his concepts regarding change I do not share, and I relate those matters to questions of perspective which I described. However, I must conclude by saying that this book is one of the most effective yet written on the subject of criminal behavior. It effectively demonstrates the potential which the psychiatric profession has for providing highly useful information to lawyers and the law.

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