

TOWARDS A RATIONAL THEORY OF CRIMINAL RESPONSIBILITY: THE PSYCHOPATHIC OFFENDER

PART ONE

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There is no figure in all of psychopathology as mysterious as the psychopath.

This is surprising when one considers what a secure hold this individual has on the popular imagination: most people find the psychopath at least as interesting as the psychotic and far more so than the neurotic. But comparatively little detailed, authoritative study has been made of psychopathy; and even that has produced diverse conclusions which are more than usually difficult to reconcile with one another, and out of which it is most difficult to fashion a coherent theory of psychopathic personality. It is impossible to secure expert agreement on what this individual is, what he does, how he became what he is — even what he should be called.¹

The popular literature is full of fear: the psychopath has always been the monster in a kind of medical horror story. More recently, he has been cast in the role of hero in a science fiction saga; his unique characteristics have inspired almost hysterical semi-scientific effusions in which he attains a god-like status, where he is portrayed as a great white shark in a helpless community, a ruthless super-human supremely well adapted to a ruthless world.²

The legal literature on the psychopath is exiguous. Some of it is as extraordinary as popular accounts.³ One wonders where lawyers, judges and others involved in the criminal process obtain information about the psychopath necessary for their work. Certainly, most expert testimony in criminal cases where the issue of psychopathy arises is unhelpful: it is

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¹ Sociopath or Psychopath? See generally the discussion *infra* at pp. 26 *et seq.*

² The writer-scientist has always been drawn to the enigma of psychopathic personality. One earlier article by Norman Mailer explored the concept of psychopathy as evidence of or the result of superior adaptation. Mailer foresees towards the end of the century a 'day of the psychopath' in which the contemporary medical model of psychopathy will have been replaced by an idea of the psychopathic way of life as something to be emulated. See Mailer, 'The White Negro' (1957) 4 *Dissent* 276. For an even more 'apocalyptic' view of psychopathy see Huntington, (1971) 18 *Playboy* 207.

³ See note 21.

usually either bewilderingly confusing and conflict-ridden or incomprehensibly sententious.

In this atmosphere of general, and especially legal, confusion it is intriguing for those interested in legal problems of criminal responsibility to discover that this individual, the psychopath, plays a central role in the scenario of perhaps the most significant debate in the jurisprudence of responsibility, that between those supporting something like the present system and those who urge radical change along positivist lines. This is an interesting paradox: artistically sculptured stepping-stones of argument have been laid in shifting, unfamiliar, treacherous sand.

Proposals to abandon the traditional concept of criminal responsibility occur in cycles. Nearly a century ago, Enrico Ferri inspired a movement to abandon the determination of criminal responsibility as a condition of criminal liability.⁴ That school of thought, which has come to be known as the positivist school, argued that a rational notion of responsibility should pay regard to the interests of society; it should concern itself not with the guilt of the offender but with his potential danger to the community. Individual Man may or may not be 'morally responsible' for his acts in classic terms, but he is socially responsible for them in virtue of his habitation in a society: 'Man is always responsible for every one of his acts, for the sole reason that he lives in society, and for as long as he does so'.⁵ The business of the criminal law, therefore, was to determine whether an individual was the perpetrator of an act and, if so, to apply to him measures of social defense planned with reference to his personality, psychology and the circumstances of the act, and calculated to restrain him from committing further crimes.

For lawyers the issue has lain dormant for half a century. But in the last decade it has once again been raised despite the lurking feeling that perhaps 'all that can usefully be said has been said'.⁶ One might have expected that a renewed positivist attack on the classic school of criminal law might be pursued with considerable analytic rigour embodying, particularly, the wealth of new insight available since the turn of the century into the science of human behaviour. Unfortunately, although both social scientists and legal philosophers remain in one way or another implacable foes of the notion of moral responsibility as it presently functions in the criminal law, nothing resembling resolution of the problem is in sight. Discussions of the criminal responsibility determination remain curiously unsatisfactory: the most prominent and influential of legal philosophers are in general ill-equipped and disinclined to

⁴ Ferri, E., *Sociologia Criminale* (5th ed, 1929).

⁵ Ferri, E., *Principii di Diritto Criminale* (1928), 237-8.

⁶ Leon Radzinowicz argues that all 'that can be said on the subject was said long ago'. Radzinowicz, L., (1966) *Ideology and Crime* 108.

support their *a priori* ratiocinations with properly organized empirical data or even accurately explicated concepts of the behavioural disciplines; while for their part, behavioural and social scientists seem to possess little sensitivity for the problems of ethics, morals and political theory which inform the issue of criminal responsibility.

The writings of Lady Barbara Wootton represent perhaps the most authoritative and influential attempt in the last few years to forge links in this important context between the 'two cultures'.⁷ As social scientist and legal magistrate her proposals for a solution to the problem brought about through 'social engineering' have achieved a great deal more acceptance than the radical nature of such proposals might suggest. In England, the introduction of the defense of diminished responsibility with its implicit problem of identifying degrees of responsibility, provided Wootton with an occasion for a systematic attack on criminal responsibility as a determinant of culpability. Wootton argued that since there are no scientific criteria for distinguishing between the sick and the wicked, the concept of moral responsibility should be abandoned. She predicted, in fact, that it would in due course 'wither away'. The question for society is not whether a man was or is criminally responsible but whether he would benefit by punishment.⁸ Accordingly, the responsibility determination and the whole concept of *mens rea* should be removed from the trial stage of the criminal justice system to the dispositional stage where it can better fulfil its exclusive function of assisting in the dispositional enquiry.

Thus Wootton advocates the adoption of a prudential concept of criminal responsibility — one which is positivist, forward-looking, and assists in the process of social defense by indicating the proper dispositional mode — and the abandonment of a concept of *moral* responsibility. Now a passing acquaintance with the literature on criminal responsibility might have led one to expect that the philosophical foundation for a proposal such as this must consist of a new vision of the criminal law in which its purpose is primarily crime prevention rather than the identification of wickedness and the allotment of blame and punishment. But Wootton's proposals do not rest upon a rigorous account of such an ideological shift and she is content to mention it in passing.⁹ Her

⁷ See Wootton, B., *Social Science and Social Pathology* (1959), and Wootton, 'Diminished Responsibility: A Layman's view', 76 *L.Q.R.* 224, Wootton, B., *Crime and the Criminal Law* (1963), Book Review (1968), 77, *Yale L.J.* 1019. Reference to C. P. Snow's two cultures is not quite accurate in this context. In a postscript to his essay 'The Two Cultures' Snow indicates that the social sciences are becoming something like a third culture. Incidentally, it is interesting to ponder what culture the science of law belongs to. See Snow C. P., *The Two Cultures: and a Second Look* (1963), 67.

⁸ (1960) 76 *L.Q.R.* 239.

⁹ (1968) 77 *Yale L.J.* 1033.

main argument for moving the responsibility determination from the trial stage to the dispositional stage is that in the former context the determination is simply unworkable:

In short, it is not only difficult to devise a test of volitional competence the validity of which can be objectively established: it is impossible.¹⁰

It is impossible to distinguish the sick from the evil or healthy because there are no reliable scientific criteria for doing so.

It is at this point that the shadowy figure of the psychopath makes his entrance. With the psychopathic personality the difficulties, even the illogicality of distinguishing the irresistible impulse from the unresisted impulse demonstrate for Wootton the impossibility of making a rational determination of criminal responsibility.

In this article I would like to attempt a demonstration that Lady Wootton's enumeration of what she sees as scientifically compelling reasons for abandoning criminal responsibility is based upon a wholly fallacious view of an important behavioural disorder. I believe that a simplistic account of sociopathic or psychopathic personality undermines her asseveration that the determination of responsibility is unworkable and leads her to place undue emphasis in her web of proposals upon the need to 'abandon responsibility' at the expense of a thorough elaboration of the role 'responsibility' should be expected to play in the dispositional hearing. I take here the position that even in what is the most difficult case, that of the psychopath, modern tests of criminal responsibility are coherent and workable. Therefore if it is sought to eliminate the traditional determination of responsibility in favour of an expanded dispositional procedure, such a change must be premised not upon the putative unreliability of responsibility criteria or the unworkability of the test itself but upon the evolution of new conceptions of the purposes of the criminal justice system. And finally, I am hopeful that my account of psychopathic disorder may be of heuristic value in pointing to considerations which support a positivist notion of responsibility even while proving erroneous the grounds cited by Lady Wootton in support of the same notion.

Psychopathy and Responsibility

A careful reading of Wootton's writings discloses two general problems with the responsibility enquiry as a culpability determinant; and in each case, the psychopathic personality poses the critical case. She argues that such criteria for the responsibility determination as are presently relied upon are unscientific, hence unreliable. She further argues that in the case of the 'volitionality' condition of responsibility the finding

¹⁰ *Ibid.*, 1027.

of non-responsibility is otiose: the attempt to deduce a proposition about responsibility solely from antisocial behaviour creates a circular argument and gives rise to undesirable paradoxes in the actual administration of the criminal law.

Wootton commits herself to the view that 'the psychopath is a critical case for those who would retain a distinction between the responsible and the irresponsible'.¹¹ A case which calls into play the 'volitional' rather than the 'cognitive' condition of responsibility is less scientific, less clear and precise. It is a case where the attempt to deduce a conclusion relating to culpability is manifestly illogical; and its administration is attended by grotesque and serious ironies:

So illogical a position can hardly, one would think, prove tenable for long. Hence the psychopath may well prove to be the thin end of the wedge which will ultimately shatter the whole ideal of moral responsibility as a factor in the treatment of antisocial personalities. The distinction between the thug and the psychopath may be given up as hopelessly elusive; and it may even happen that, just as the definition of responsibility has gradually spread far beyond the narrow intellectual boundaries of the M'Naghten formula, so will the concept of psychopathy spill over into wider and wider areas of delinquent behavior, sweeping away in its course any concept of moral or legal responsibility.¹²

I

The attempt to determine whether or not the psychopath is criminally responsible is 'unscientific', Wootton tells us, because a court cannot provide a scientific answer to the question whether an individual could control his actions. We can never know whether he *could not* have controlled his actions; all we know is that he *did not* control them. Science can recognize an increased propensity to criminal behaviour in an individual; it can categorize and differentiate types in the genus; and it can even describe the causes of this increased criminality. But it cannot tell us whether such an individual is responsible or not: to infer non-responsibility from increased propensity to crime is not a matter of scientific deduction, it is a 'sheer act of faith', because 'the evidence lies buried in another man's consciousness, into which no human being can enter'.¹³

I am leaving detailed comment on these assertions until later in this article; but some elucidation of the argument is appropriate here. Wootton does not make at all clear what she means by 'unscientific' in this context. One answer is provided in the peroration of one article where Wootton expatiates upon the special case of the psychopath: On the responsibility issue, 'neither logic nor common sense, neither science nor philosophy, can give firm answers. Behaviour is observable: culpa-

¹¹ Wootton, B., *Social Science and Social Pathology* (1959), 250.

¹² *Ibid.*, 251.

¹³ (1960) 76 *L.Q.R.* 232.

bility, I submit, is not — unless by God.¹⁴ Thus culpability and responsibility are 'unscientific' because they are not observable, not subject to empirical verification or proof. But then an inferential notion such as moral responsibility can never be observable in this sense; like propositions of ethics or metaphysics, it is, of its logical nature, conclusory — deduced from *other* facts which may be empirical, but which is not empirical itself. It relies, rather, upon certain assumptions which are not subject to empirical proof.

It is likely, however, that Wootton is referring to something more specific than this; for she distinguishes between the 'intellectual' and 'volitional' conditions of responsibility in this context, even though both involve culpability conclusions equally unverifiable. For Wootton, the M'Naghten Rules are more satisfactory than modern attempts to broaden them into a rule exculpating the individual whose conative mental processes are impaired: 'the intellectualist quality of the M'Naghten formula makes it, at least by comparison with suggested alternatives, . . . a model of clarity and precision . . .';¹⁵ and on M'Naghten in a later article: 'What, however, I think has been insufficiently appreciated (in suggestions for remedying the M'Naghten standard's exclusive reliance upon a cognitive standard) is that a volitional test raises practical difficulties far more formidable even than those involved in a purely cognitive formula.'¹⁶ And there is a real difference between cognitive and volitional tests:

But it is clear that in certain circumstances the limits of a man's knowledge and understanding can be convincingly demonstrated. Thus, if I am asked to translate a passage from Japanese into English it is indisputable that this is beyond my powers: everyone knows that merely trying harder will not make me any more successful. But if I assert that I have an uncontrollable impulse to break shop windows, in the nature of the case no proof of uncontrollability can be adduced. All that is known is that the impulse was not in fact controlled; and it is perfectly legitimate to hold the opinion that, had I tried a little harder, I might have conquered it. It is indeed apparent that some people, such as sadistic sexual perverts, suffer from temptations from which others are immune. But the fact that an impulse is unusual is no proof that it is irresistible. In short, it is not only difficult to devise a test of volitional competence the validity of which can be objectively established: it is impossible.¹⁷

Here, then, is another element in the compound of what Wootton means by 'unscientific'. The operation of compulsion upon the mind of the individual cannot be objectively established: proof will depend entirely upon the assertions of the subject himself. Presumably, then, responsibility conclusions are unreliable.

To sum up, tests of 'voluntariness' of behaviour for the purpose of measuring criminal responsibility involve concepts which are unobservable, impalpable, unobjective, empirically unverifiable and predicated upon ethical propositions and assumptions.

¹⁴ *Ibid.*, 235.

¹⁵ Wootton, B., *Social Science and Social Pathology* (1959), 229.

¹⁶ (1968) 77 *Yale L.J.* 1026.

¹⁷ *Ibid.*, 1026-27.

II

Not only is the process of determining criminal responsibility unscientific, Wootton asserts, but when it is sought to premise a finding of non-responsibility upon evidence of antisocial behaviour, then it is illogical too, as the product of circular reasoning. Wootton frequently warns against the trap of reasoning from criminal behaviour to the existence of an excusing condition and, from there, back to the criminal behaviour as thereby excused: this would be to reason that a man 'must have been mad to do it'.¹⁸ One of the great virtues of the M'Naghten test is that a defense of intellectual insufficiency can be tested by criteria external to the actions which it is invoked to excuse. But when we turn to the case of the psychopath, Wootton insists, we are faced with a responsibility conclusion reasoned from the very behaviour in respect of which the responsibility conclusion is relevant:

He is, in fact, par excellence, and without shame or qualification, the model of the circular process by which mental abnormality is inferred from antisocial behavior while antisocial behavior is explained by mental abnormality.¹⁹

Wootton argues that this reasoning is not only illogical but absurd as well: the psychopath adduces as evidence of his pathology the very behaviour which serves to condemn the normal individual; the more egregious his past behaviour, the more frequent and heinous his lapses, the more compelling is his denial of responsibility. As Wootton laconically puts it: 'The worse your conduct the better your chance.'²⁰

III

A central idea in Wootton's thinking is that the unsatisfactory nature of the responsibility test as a culpability determinant at the trial stage requires that it be removed to the dispositional stage of criminal procedure, in a form mutated, presumably, to remove those features which render it unsatisfactory at the trial stage. Her analysis of the test case of the psychopathic offender, which analysis I have outlined above, seems to me to rest upon at least three assumptions about the clinical nature of the diagnostic category known as psychopathy:

1. Implicit in the description of the ironies in allowing disposition of the responsibility issue to rest upon the wickedness of the prior pattern of antisocial behaviour is the assumption that the antisocial behaviour of the psychopath is indistinguishable from that of the normal individual.
2. The argument that it is illogical to predicate the exculpation of the psychopath upon his pattern of antisocial behaviour rests upon the

¹⁸ Wootton, B., *Social Science and Social Pathology* (1959), 231. See also (1960) 76 *L.Q.R.* 224, 235 (5).

¹⁹ Wootton, B., *Social Science* (1959), 250.

²⁰ (1960) 76 *L.Q.R.* 239.

assumption that the sole evidence or manifestation of psychopathic personality is a pattern of antisocial behaviour.

3. To argue that the disposition of the responsibility issue in the case of the psychopath is unscientific assumes that there is no objective evidence of psychopathic personality or of the compulsion engendered by the disorder, and that the impairment of behaviour controls is not empirically observable.

In this, the first Part of this article I turn to a detailed consideration of the mental disorder known as psychopathic personality. In so far as it is possible a synthesis of diverse viewpoints will be made, including that of the psychiatrist, the sociologist and the psychologist. The primary purpose of the exploration will be to determine whether the assumptions about psychopathy, so important in the positivist's case, are accurate.

The second Part will be an attempt to state conclusions. Are the Wootton assumptions about psychopathy correct? If not, what are the consequences for the contemporary positivist attack on traditional notions of criminal responsibility? Does the application of traditional principles of responsibility to the case of the psychopath produce the disabling incongruities discovered by Wootton? If not how, if at all, can the positivist position be maintained? Finally, in this Part I conclude by expressing a personal view on certain perennial issues raised by the foregoing discussion.

Psychopathic Personality as a Clinical Entity

For lawyers, the concept of psychopathic personality has never been a carefully delineated diagnostic category. It is perhaps little more than a synonym for an entrenched pattern of antisocial behaviour which is intuitively felt to be the product of some unidentifiable and intangible abnormality. The legal literature on psychopathy is scant and that which does exist is often misinformed and inaccurate.²¹

But lawyers are hardly to blame for this undesirable state. For it is only recently that psychiatrists themselves have used the label to refer to a clear cut reaction type. Until that moment it formed a mere 'waste-

²¹ Careful search of the Index to Legal Periodicals reveals very few articles dealing with the psychopath. Some pieces concerned with more general issues of criminology or criminal responsibility touch upon the phenomenon of psychopathy in passing. On the whole, lawyers tend to make very little effort to differentiate the psychopath from other habitual offenders: thus, the proportion of psychopaths in a prison population is estimated in one article to be fifty per cent; in another, thirty per cent. See Symposium, (1965) 34 *U. Cinn. L. Rev.* 1; Batt, 'The New Outlaw' (1964) 52 *K.Y.L.J.* 497; Saxe, *Psychiatry, Sociopathy and the XYY Syndrome* (1970) 6 *Tulsa L.J.* 243. Batt's article is a fearful diatribe. The writer claims in almost hysterical tones that the United States is in the grip of an epidemic of psychopathy. For really dangerous psychopaths he urges use of the death penalty.

basket' category in which were cast a wide assortment of disorders having very little in common: individuals with schizoid traits and those with cyclothymic (that is, manic-depressive) or paranoid tendencies, sexual deviates of all types, and perhaps most misleadingly, groups of psychoneurotics with antisocial 'acting-out' behaviour patterns — disorders, in fact, emanating from each of the three general diagnostic categories, psychosis, neurosis and personality disorder.

In 1952 the term 'psychopathic personality' was discarded in a revision of the nomenclature, and the general expression 'personality disorder' was substituted. In the new analysis the sub-group heading 'sociopathic personality' contains those who were formerly referred to as 'psychopaths' or 'constitutional psychopaths': those 'chronically antisocial individuals who are always in trouble, profiting neither from experience nor punishment, and maintaining no real loyalties to any person, group or code.'²² In place of the expression 'sociopathic personality, antisocial reaction', I have chosen to utilize the old term 'psychopath' merely for the sake of vividness and clarity.

1. *Diagnostic Criteria*

The mental condition of the psychopath is clearly to be differentiated from that of the types in the other two categories of mental disorder. The psychopath does not share the delusional system of the psychotic. His behaviour may seem, in fact, to be entirely rational; he may even give evidence of unusual abilities and qualities and present considerable charm and intelligence. There seems to be no irrationality in his thought, either at the verbal or theoretical level; nor is there a trace of the hallucinatory or delusional idea foundation upon which the psychotic builds his often rational thought processes. The psychopath is, again, clinically quite distinct from the psychoneurotic. His antisocial behaviour is not accompanied by the characteristic anxiety, guilt, remorse, phobic dread, and disturbing obsessive thoughts which inform the behaviour of the psychoneurotic.²³

How can we describe the behaviour of the psychopath? First, there is substantial agreement about which specific areas of behaviour and attitude should be characterized as psychopathic. There is a consensus here which is all the more striking in contrast to the relative anarchy which obtains in the matter of interpretation of these symptoms and the attempt to find a cause for the disorder.

Nowhere in the literature is there so vivid and complete a description

²² Am. Psychiat. Assoc., Mental Hospital Service, Washington D.C., *Diagnostic and Statistical Manual, Mental Disorders* (1952).

²³ Cleckley, H., *The Mask of Sanity* (2nd ed. 1950), 283-4, Karpman, 'The Myth of the Psychopathic Personality' (1948) 104 *Am. J. of Psychiat.* 523-4.

of the psychopath as in a classic work by Dr Hervey Cleckley, *The Mask of Sanity*. In a series of colourful vignettes, a larger portrait of a unique individual²⁴ emerges.

He is utterly unreliable: from a very early age he is constantly in trouble, first with his family and teachers, later with the police and the courts. It is not uncommon for older psychopaths to have been arrested hundreds of times. Most of the offenses are minor ones: they consist of bizarre, outlandish, buffoonish behaviour which is of considerable annoyance to the community but only in rare cases of distinct and palpable danger. There are, of course, some cases of homicides and other violent felonies committed by psychopaths, but they are atypical and often committed by psychopaths suffering from another discrete mental disorder with sadistic manifestations.²⁵ Some writers distinguish between the parasitic psychopath and the aggressive psychopath, noting that the latter is in the distinct minority.²⁶ More often, the individual is simply irresponsible or unreliable.

The sequence of antisocial behaviour is characteristic and predictable: the forging of cheques, constant theft, swindling projects of some sophistication, irresponsible but non-violent sexual impropriety such as acts of bigamy and inappropriate marriage.²⁷

Many psychopaths are alcoholics or indulge heavily in alcohol without being actually addicted. Cleckley notes that these individuals drink not, like the neurotic alcoholic, to evade the onslaught of anxiety and emotional stress or to solve problems, but rather as a means to release behaviour of the worst kind.²⁸ Here, as elsewhere, he manifests confidence rather than anxiety. Indeed, he is burdened with so little anxiety, that he may seem supremely poised in situations where normal people might be expected to betray some nervous stress. This helps to reinforce

²⁴ Cleckley, H., *The Mask of Sanity* (1950). This work is the classic in the field.

²⁵ Cleckley and most others recognise that it is only a small proportion of psychopaths who commit murder and other serious crimes. However, those psychopaths who are dangerous are the most dangerous and ruthless of all criminals: and they are more likely to repeat, unlike other murderers.

²⁶ Karpman, 'Psychopathy in the Scheme of Human Typology' (1946) 103 *J. of Nervous and Mental Diseases* 276, 285-6.

²⁷ Cleckley, H. 'Psychopathic States', 575. Continued variations upon the theme are to be found in most of the case histories in *The Mask of Sanity*. Mention of the sexual behaviour of the psychopath brings to mind the notorious legislative creature, the sexual psychopath. It is a matter of common knowledge, nowadays, that psychiatrists are in agreement that there is no such thing as a sexual psychopath. He is called a 'sexual psychopath' merely, one presumes, because he is a habitual offender or a dangerous offender, or both, and because his crimes are sexually oriented. Cleckley believes that most psychopaths have a heterosexual orientation. Those psychopaths who indulge in homosexual and other deviant sexual behaviour do so not through the operation of irresistible sexual impulses but through the absence of normal compunction and restraint and the prospect of financial reward.

Cleckley, H., *The Mask of Sanity* (1950), 575.

²⁸ Cleckley, H., 'Psychopathic States', 567-76.

the common impression of an individual very much in command of his own destiny.²⁹

His disregard for the truth is total. When charged with some piece of bad behaviour, he will with all apparent sincerity, candour and astonished innocence deny any part in the matter. And when ultimately faced with unmistakable evidence of his guilt he can smoothly modulate to a cogent and plausible account of his lack of culpability: if possible, he will blame others or claim his behaviour was accidental or dismiss the whole episode as ultimately inconsequential. Or he may express contrition: with complete sincerity and apparent frankness, with insight into his failings and constructive and reasonable plans for the future, all delivered with disarming poise uncoloured by the slight overemphasis and glibness characteristic of the clever liar, he pleads for another chance and expresses horror that he has been such a burden to such forgiving and understanding friends.³⁰ Within an hour of such a conversation he may be found in a state of complete degradation, insensible with alcohol, in the lowest dives of the city; or caught in the commission of his characteristic crimes. The sequence of events is utterly predictable and tedious in its regularity.

There is one strange thing. The psychopath's performance is so masterly that one begins to wonder whether it really is a performance at all. Expressing a firm purpose of future good behaviour he gives his 'word of honour' on a particular matter; and this, he confidently expects, will put an end to those unreasonable lingering doubts which his interrogator seems to harbour. The psychopath seems genuinely astonished when his word as a gentleman is accorded scant respect even though he may have given and promptly broken his word fifty times in the past. It is this kind of behaviour which prompts the notion that the psychopath is not a cunning manipulator but the victim of an attenuated organ of social sensibility.³¹

Like his behaviour, the psychopath's lying is in one sense thoughtless and unpurposive. Whether or not there is a chance that he can get away with a falsehood, he will coolly and without any sign of perturbation continue to maintain the lie. So often, accurate insight into what people want from him and general rationality and intelligence are combined with an astonishing inability to foresee the inevitable consequences of actions. Psychopaths lie, for instance, even when they must know (if we can assume they have addressed themselves to the matter at all) that

²⁹ Cleckley, H., *The Mask of Sanity*, 359.

³⁰ Cleckley, H., 'Psychopathic States', 572.

³¹ Cleckley, *The Psychopath Viewed Practically* in Lindner R. and Seliger R., *Handbook of Correctional Psychology* (1947), 395, 407. On the psychopath's lack of social Self see the discussion *infra* at p. 43.

they will shortly and inevitably be found out. One psychopathic girl, expelled from one school and sent away to another, forged report cards and sent them to her father as evidence of her good new adjustment; at the same time it was clear to her that she would be found out when the real reports fell into her father's hands in a day or two. Cleckley tells of a psychopathic husband who, divorced by his wife, described in a letter to her some insurance policies which he was sending to provide for her and the children. There were none, of course; but he must have been well aware that he would soon be found to be lying, and he had nothing to gain materially.³² In cases like this it may be that the psychopath is showing a conceptual confusion between the spoken word and the accomplished deed. Cleckley sees this kind of behaviour as a key to the proper interpretation which should be made of psychopathic behaviour in general, and it leads him to formulate a theory of psychopathy as a semantic disorder.³³ We shall presently consider this in more detail. For the present we should note that there is a sense in which the behaviour of the psychopath is irrational; and in some cases this lack of insight and sensitivity to his own interest can be remarkable. Cleckley gives a final illustration:

This exercise of execrable judgment is not particularly modified by experience, however chastening his experiences may be. Few more impressive examples of this could be offered from the records of humanity than the familiar one of the psychopath who, in full possession of his rational faculties, has gone through the almost indescribably distasteful confinement of many months with delusional and disturbed psychotic patients and, after fretting and counting the days until the time of his release, proceeds at once to get drunk and create disorder which he thoroughly understands will cause him to be returned without delay to the detested wards.³⁴

Psychopathic behaviour is unmarked by careful consideration of the consequences of actions; and it is usually inadequately motivated. Very often, the petty theft or forging of a small cheque is committed at a time when the subject is quite free of financial care, and where no discernible motive is present. It is as if the psychopath is the victim of the smallest momentary whim:

Objective stimuli (value of the object, specific conscious need, etc.) are, as in compulsive (or impulsive) stealing, inadequate to account of the psychopath's acts. Evidence of any vividly felt urge symbolizing a disguised but specifically channelized instinctive drive, is not readily available in the psychopath's wide range of inappropriate and self-defeating behavior. This is not to say that his acts do not have (unconscious) purpose or that psychopathologic causal factors do not exist. It seems to me probable that there is such dynamic cause and purpose. The point to be made here is that (granting such psychopathology) it must in the psychopath be far more complex, extensive, deeply rooted, and less resisted.³⁵

³² Cleckley, H., 'Psychopathic States', 363.

³³ *Ibid*, 395-408.

³⁴ *Ibid*, 368.

³⁵ *Ibid*, 365. This is, as we shall see, one obvious way to distinguish the behaviour of the psychopath from that of the mentally "normal" criminal. See Part Two.

The antisocial behaviour of the psychopath is perpetrated in a spirit of egocentricity and complete disregard for the feelings and welfare of others. This spirit imbues, also, his private life and his most intimate dealings with people.³⁶ He is pathologically incapable of genuine love; but can bestow casual, ephemeral affection as well as the mere physical ministrations attending his role as husband or parent. Much of this, even, is elaborate simulation or simply another expression of his egocentric whim to enhance his self-esteem. He is, in a very general way, emotionally impoverished; and his frequent success in attracting strong and enduring love and loyalty is witness not to his possession of such qualities of personality but merely to his astute and convincing assertion of them.³⁷

2. *Interpretation and Etiology*

A strong measure of agreement is possible in discussing the diagnostic criteria or symptoms of the psychopath. Everyone knows what a psychopath is. But the consensus begins to dissolve when a descriptive interpretation of these symptoms is attempted. What is left is a great variety of approaches and viewpoints.

J. C. Pritchard's early concept of 'moral insanity' evoked a vivid and accurate image of the psychopath's behaviour and was in theoretical accord with notions of faculty psychology which enjoyed currency in the middle of the nineteenth century.³⁸ In 1835 Pritchard described patients in whom

the moral and active principles of the mind are strongly perverted or depraved; the power of the self-government is lost or greatly impaired and the individual is found to be incapable not of talking or reasoning upon any subject proposed to him, but of conducting himself with decency and propriety in the business of life.³⁹

There is a strong whiff of more recent and fashionable accounts here. But despite the perspicuity of Pritchard's portrait, the notion of 'moral insanity' was abandoned everywhere but in Great Britain by about the turn of the century, a victim both of psychiatrists' objections that it mistakenly included unrecognized cases of mania and early paresis and (in another way, of course) the sententious observation of a professor of medical jurisprudence that 'the only disease to which moral nature is subject is sin'.⁴⁰ At this time the familiar terms 'constitutional psychopath', 'psychopathic inferiority' and 'psychopathic personality' were adopted as expressions of a general view that the causes of psychopathy

³⁶ *Ibid.*, 370.

³⁷ *Ibid.*, 372-74.

³⁸ Pritchard, J., *A Treatise on Insanity* (1835). On the historical development of the concept of psychopathy, see generally Maughs, *A Concept of Psychopathy and Psychopathic Personality* (1941) 2 *J. of Criminal Psychopathology* 329.

³⁹ *Ibid.*, 465.

⁴⁰ Dr. Ordonaux, quoted in Maughs, *supra*, 465.

were primarily constitutional and genetic. These biological views of psychopathy, bitterly excoriated for decades in the flush of enthusiasm for environmental theories of personality development, have sounded echoes in recent years. There is growing evidence of a significant incidence of abnormal brain waves in the population of habitual criminals.⁴¹ Much publicized in recent years and increasingly found in the legal literature is the evidence of abnormal XYY chromosomal makeup in criminal repeaters.⁴²

I

In the early years of the century, psychopathic disorder remained substantially undifferentiated from other disorders. Under the new heading of constitutional psychopathy were aligned personality disorders of many different types including quite distinct psychoneurotic disorders; this of course impeded the process of delineation of the primary psychopathic type. Evidence of this obscurity is to be found in much of the literature of the day, not only in accounts of the psychopathic state itself but also in analyses of cognate deviant behaviour.⁴³

⁴¹ For a general account which clarifies the procedure, see Silverman, 'Electroencephalography: Use in Penologic Practice' in Lindner, R. and Seliger, R., *Handbook of Correctional Psychology* (1947), 72. Early studies of the correlation between psychopathy and abnormal brain waves tend to be inconclusive. Some suggest that a significant proportion of psychopaths show abnormal electroencephalographic tracings: Gotlieb, Ashby and Knott, 'Studies in Primary Behaviour Disorders and Psychopathic Personality; Inheritance of Electrocortical Activity' (1947), 103 *Am. J. Psychiat.* 823; Silverman, 'The Electroencephalogram of Criminals' (1944), 52 *Arch. Neurol. and Psychiat.* 38. Other studies do not report this higher incidence: See, e.g., Simon, O'Leary and Ryan, 'Cerebral Dysrhythmia and Psychopathic Personalities' (1946), 56 *Arch. Neurol. and Psychiat.* 677. The weight of the most recent studies supports the hypothesis that there is a correlation of some significance between the two variables. See, for example, Bonkalo, 'Electroencephalography in Criminology' (1967), 12 *Can. Psychiat. Ass. J.* 281, an article which reviews some practical and theoretical aspects of the use of EEG in criminology and discusses the relatively high incidence among murderers of clinical epilepsy and persons with EEG's showing epileptic implications; De Romanis and Liberati, 'Electroencephalographic Modification in Psychoneurotics and Psychopathic Subjects' (1966), 1 *Rivista di Psichiatri* 241.

⁴² Recent legal literature contains a great deal of material on this subject. Main interest has centred on the question of criminal responsibility of those who can assert that biological abnormality is responsible for their criminality. See, for example, Note, Criminal Law: 'The XYY Chromosomal Complement and Criminal Conduct' (1969) 22 *Okl. L.R.* 287; Burke, 'XYY Syndrome: Genetics Behaviour and the Law' (1969) 46 *Denver L.J.* 261; 'XYY Chromosomal Abnormality: Use and Misuse in the Legal Process' (1972) 9 *Harvard Journal of Legislation* 469; Note: 'XYY Syndrome: A Challenge to our System of Criminal Responsibility' (1970) 16 *New York Law Forum* 232; Kittrie, 'Will the XYY Syndrome abolish Guilt' (1971) 35 *Federal Probation* 26.

⁴³ There is one particularly interesting example. At about this time public concern with the issue of opiate addiction prompted studies of the causes of addiction. The most influential of these agreed that since the overwhelming majority of addicts were psychopathic personalities, addiction itself should be construed as the symptomatic response of an individual afflicted with a 'predisposition' to addiction. See Kolb, 'Types and Characteristics of Drug Addicts' (1925), 9 *Mental Hygiene* 300; Kolb and Ossenfort, 'The Treatment of Drug Addiction at the Lexington Hospital' (1938), 8 *J. of the Southern Medical Association* 31; Felix, 'Some Comments on the Psychopathology of Drug Addiction' (1939), 23 *Mental*

The reaction to this was perhaps predictable. By dint of considerable scholarly labour psychopathic personality was differentiated from other disorders and types and subtypes of the genus were identified.⁴⁴ But in the process of division and categorization, the urgent need to reduce a heterogeneous mass to workable proportions blurred the perception of the original primary psychopathic type: some divisional criteria seem to apply to most if not all psychopaths, while others seem not to apply to any type but rather to persons with profoundly different emotional problems.⁴⁵ The best view is, perhaps, that these lucubrations are of dubious value to those seeking an organized view of psychopathy.

They were helpful in one way because they provoked one more taxonomic essay. From about 1935 onward Benjamin Karpman emphasized in his writings the need to carefully distinguish the true or primary psychopath (which he named the anaethopath) from other types manifesting in general the same symptoms.⁴⁶ His point was that although the symptoms of psychopathy had been identified with some clarity, no attempt had been made to differentiate these symptoms from those found in other disorders. It is not of much significance or value to assert that psychopaths are emotionally rigid, or egoistic, or that their behaviour is unmodifiable, if these symptoms cannot be distinguished from the emotional rigidity found in other disorders, the egoism of the hysteric or the maniac, or from the unmodifiable behaviour of the paranoiac, schizophrenic, the maniac or the epileptic. Conventional psychiatry was unable to give a meaningful account of the psychopath because it was not sufficiently differential and moved at the superficial descriptive level. And in the absence of interpretive or analytic descriptions there is no insight into the motivations of behaviour.

Hygiene 567; Felix, 'An Appraisal of the Personality Types of the Addict' (1944), 100 *Am. J. of Psychiat.* 462. However, as Lindesmith has pointed out, if psychopathic personality is the heterogeneous entity most psychiatrists describe, calling addicts psychopaths fails to further the analysis at all; and in the absence of control studies and other methodological tools, there is nothing to prevent speculation that such an all-embracing diagnostic entity is of substantial incidence in the community at large, perhaps of no less incidence than among the special population of opiate addicts. Lindesmith, 'The Drug Addict as a Psychopath' (1940), 5 *Am. Sociological Review* 914; Lindesmith, 'A Sociological Theory of Drug Addiction' 43 *Am. J. of Sociology* 593 (1938); Lindesmith A., *Opiate Addiction* (1947), 149.

⁴⁴ Kraepelin, E., *Psychiatrie* (1915); Schneider, K., *Die Psychopathischen Persönlichkeiten* (1934).

⁴⁵ Cleckley, H., 'Psychopathic States', 570.

⁴⁶ Karpman, 'Myth of Psychopathic Personality' (1948), 104 *Am. J. of Psychiat.* 523; Karpman, 'On the Need for Separating Psychopathy into 2 Distinct Clinical Types: Symptomatic and Idiopathic' (1941), *J. Crim. Psychopath* 112; Karpman, 'The Principles and Aims of Criminal Psychopathology' (1940), 1 *J. of Criminal Psychopathology* 187; Karpman, 'A Yardstick for Measuring Psychopathy' (1946), 10 *Federal Probation* 26; Karpman, 'Psychopathy in Scheme of Human Typology' (1946), 103 *J. of Nervous and Mental Disease* 276; Karpman B., *The Individual Criminal* (1935).

II

Reasonably precise identification of the primary psychopath generated a new attempt to describe the etiology of the disorder. The orientation of these new theories was dynamic rather than static, environmental rather than constitutional or genetic. Here, although the details of the psychogenesis of the disorder are still matters for debate, some agreement on the basic kinds of influences which in early life catalyze the development of psychopathic traits has been reached.

The dynamic analysis of the psychopath asserts that influences in the early period of personality development, most prominently elements of severe emotional deprivation, result in impaired and inadequate ego functioning in later life. This takes the specific form of impaired reality-testing functioning and the persistence of fantasy within the personality; this may be combined with a failure of the ego or part of the ego to deliquesce and later harden in the form of a superego. Thus the superego of the psychopath may be weak or inappropriate.

Bromberg has made a lucid explication of the dynamics of the onset of the disorder.⁴⁷ He argues that 'the surface phenomena of "egotism" and "emotional callousness" so prominent in the adult psychopath are defensive reactions against his early rejection built into the character trait of egocentricity'.⁴⁸ Essentially, the psychopath's response to the real world is an infantile one. Children normally overcome the adversities of the real world through the magical action of fantasy. However as the normal human individual matures and tests his fantasy powers against reality, he tends to experience less emotional comfort through the wish-fulfilment solution to real problems and therefore abandons the magical fantastical response in favour of more or less diligent and pragmatic acquisition of skills and knowledge. But the psychopath has been conditioned by early emotional rejection to live 'as if . . . rejected by society and denied success in adult life'.⁴⁹ As with children, emotional gratification continues to be derived from the fantastical and magical solution to real problems. This is manifested in the characteristic egocentricity and felt omnipotence of the psychopath: he acts out his omnipotence fantasies in schemes of incredible grandiosity and selfishness, the tantrums and rages of the emotionally sensitive child reactivated in adult life by the memories and unconscious force of infantile rejection. And in the end he deals society a morbid and costly retribution.⁵⁰

⁴⁷ Bromberg, W., *Crime and the Mind* (1948), 53.

⁴⁸ *Ibid.*, 105.

⁴⁹ *Ibid.*

⁵⁰ Phyllis Greenacre has formed the clinical judgment that this impairment of reality testing processes is the product of quite overt attempts on the part of parents to protect the child from the consequences of his actions, and to systematically colour in the mind of the child his perceptions of his own behaviour so that they conform with the parents' own notions of ideal behaviour. The child is

The process of ego development in the young psychopath is also impaired in another way. Early rejection and emotional deprivation denies the child an appropriate parental figure with whom to identify. He fails to introject either parental image into his own ego structure: the result is a weak super-ego formation, and, in the adult, a radically defective social conscience. If Melaine Klein's hypothesis that a nascent super-ego is formed during the first year of life is accepted,⁵¹ it would seem that lack of palpable parental figures during this time could lay a foundation for psychopathic behaviour later in life. Or, even if superficially satisfactory parental figures were present, serious personality flaws in those figures, such as narcissism in the mother, could delay the process of individuation and separation of the child. Phyllis Greenacre has observed that these conditions can produce an effect upon the developing super-ego similar to that engendered by emotional deprivation.⁵²

III

There is substantial agreement that the cause of both failure in reality testing and inadequate super-ego is emotional deprivation in early years particularly in the first three years of life. Laretta Bender has theorized that psychopathic personality is to be laid at the feet of either a complete lack of a parental figure or serious ruptures in the continuity of a particular parent-infant relationship.⁵³ Her experiments and clinical judgments strongly support the dynamic theories of psychopathic personality. For Bender, what is significant about the psychopath is his inability to form relationships of any depth and profundity and to identify with others. She observed that certain children who for the first two or three years of life (or for extended periods within that period) were deprived of parental sources of emotional comfort, children such as those in institutions where there are few, if any, affectional ties, or others who have been transferred from one foster home to another, suffered critical defects in their ability to form relationships, to identify themselves with others, and, consequently, defects in conceptualization of social and emotional problems. The damage was radical and permanent:

shielded from knowledge of its own shortcomings; failures are denied, concealed or explained away. Such experiences perpetuate in later life the narcissistic fantasies of magical omnipotence which are generated in childhood. And they seem to account for the characteristic tact and manipulative mastery of many psychopaths, a by-product of the need to be pleasing to the parents. See Greenacre, 'The Conscience of the Psychopath' (1945), 15 *Am. J. of Orthopsychiatry* 495.

⁵¹ Klein, M., *Psychoanalysis of Children* (1932).

⁵² Disruption in the normal processes of separation and individuation of the infant magnifies the distortion of the externalized ideational representatives of the parents which form the rudimentary precursor of the super-ego. The greater the threat posed by these terrifying projected parental images, the greater the hostility shown by the child; hence the ambivalence towards the parents and towards all authority. For an account of work of Greenacre see *infra* at p. 39.

⁵³ Bender, 'Psychopathic Behavior Disorders in Children' in Lindner, R. and Seliger, R., *Handbook of Correctional Psychology* (1947), 360.

The developmental processes in the personality become fixated at the earliest stage; there are no satisfactions derived from human experiences and no anxieties because there are no conflicts. The ego is defective and there is no superego. After a certain period this fixation in the development of the personality can no longer be overcome or corrected because a therapeutic or transference relationship cannot be obtained . . . Prevention is possible by avoiding such deprivation in the early infantile period and insuring against critical breaks in the continuity of close personal relationships in a family circle, from the early weeks of life until the child is well out of the infantile period and in the middle childhood period.⁵⁴

There is a great deal to be said in support of Bender's clinical experiences. Everyone is familiar with the 'no love' experiments — some going back as far as the fifteenth century — in which infants were given meticulous physical attention but no affection or demonstration of love. The invariable result in such cases is suffering, profound and quite visible, which hardens into deterioration of the mind and personality and may sometimes result in death.⁵⁵

One critical comment on this may be appropriate. It is significant that Bender's subjects suffered radical impairment of almost all mental functions.⁵⁶ There is, as it were, far more wrong with institutionalized or emotionally deprived children than there is with psychopaths: low intelligence, for example, and the characteristic random behaviour, unorganized at all levels. For this reason, Bender may not have identified the specific causes of psychopathic disorder: that is, she has not identified a set of conditions which are sufficient and *necessary* to produce psychopathy. Emotional deprivation produces a radical personality and mental dysfunction in which psychopathic patterns of behaviour are discernible, but it remains to be demonstrated what elements of emotional deprivation cause psychopathic tendencies and which produce extraneous (for our purposes) manifestations such as impaired intelligence. This suggests, at least, that more precise identification or isolation of causal factors is necessary in order to render a proper account of adult psychopathic behaviour; and that quite distinct family situations — possibly radically different from Bender's institutionalized environment — in which different deleterious influences are at work, can produce the same result.⁵⁷

There are, nevertheless, aspects of Bender's study which suggest rather striking parallels between the kind of dysfunction wrought by institutional emotional deprivation and our general picture of the psychopath. As part of the general cognitive or intellectual debility of the deprived child there is the failure to properly conceptualize notions of time and the future.

⁵⁴ *Ibid.*, 362.

⁵⁵ *Ibid.*, 363. Anna Freud's experiments with children during the war indicated that serious personality disorders in children might be prevented by creating in the institution a relationship for the child, a surrogate mother who would give her attention more or less exclusively to two or three children. Freud A., *Infants Without Families* (1944).

⁵⁶ Bender, *supra*, in *Handbook of Correctional Psychology* (1947), 366, 370-1.

⁵⁷ See *infra* at pp. 39ff.

Bender is quite specific about this:

There is an inability to conceptualize, particularly significant in regard to time. They have no concept of time, so that they never keep pace with any schedule, have no attention span, cannot recall past experience and cannot benefit from past experience or be motivated to future goals. This lack of time concept is a striking feature in the defective organization of the personality structure or patterned behavior.⁵⁸

Phyllis Greenacre, in her enlightening discussion of super-ego development,⁵⁹ observes that super-ego formation from the ashes of the oedipus complex takes place at a time when, among other things, there is a special reinforcement and sharpening of the child's sense of the future and the realization that the gratification of immediate desires can be postponed or waived in the interest of future and superior satisfactions. Both this and Bender's observations are interesting because they point to a relation between super-ego development and a certain type of cognitive process and because they help to explain one of the most puzzling behavioural manifestations of the psychopath, the complete absence of insight into his own functioning of one otherwise so rational and apparently coherent. And the confluence of the two ideas supports Bender's theory of the source of psychopathy in infantile emotional deprivation.

Another helpful feature of Bender's work is that it contains a clue to the curious capacity of the psychopath to manipulate others, even those with a great deal of experience with other psychopathic individuals. The psychopath is a complete paradox: he combines astonishing insight into the emotional life of others with not a whit of self-understanding. He can talk with utter conviction of love, loyalty, fidelity. He can move others to form deep relationships with him infused with noble human qualities. Yet he, himself, contains no trace of emotional substance: and whenever the vicissitudes of human relations demand understanding, compassion, loyalty or selflessness from him, he has nothing to offer.

One is reminded of Cleckley's image of the 'mask of sanity', in which all the outward features of the personality are intact, in which the thought processes retain their normal aspect and the individual can present a solid and substantial image to the world; but behind which there is nothing; a baffling vacuum. There is not the slightest flaw in the mask of sanity: 'one usually finds verbal and facial expressions, tones of voice and all the other signs we have come to regard as implying conviction and emotion and the normal experiencing of life as we know it ourselves and as we assume it to be in others.'⁶⁰ For Cleckley, the only explanation which adequately accounts for the phenomenon is that the psychopath is not a complete man at all but something suggesting 'a subtly constructed

⁵⁸ Bender, *supra*, 364.

⁵⁹ Greenacre, 'The Conscience of the Psychopath' (1945), 15 *Am. J. of Orthopsychiatry* 495.

⁶⁰ Cleckley, H., 'Psychopathic States', 398.

reflex machine which can mimic the human personality perfectly'.⁶¹ The dramatic performance is impeccable, producing not only specimens of good human reasoning but also appropriate simulations of normal human emotion in response to the varied stimuli of life. It is so perfect that one considers perhaps it is not a performance at all, but the inanimate functioning of a machine of prodigious complexity.

But Cleckley is fundamentally at a loss to account for this: the supreme mastery which the psychopath, someone in whom affective relations have been dissociated from mental life, and who for that reason should presumably possess only a ghostly understanding of these matters, can exercise over emotional life as a tool for manipulating people.⁶² Bender, however, posits an instinctual urge in children to behave like human beings. In an attempt to understand what other children are experiencing, the psychopathic child copies and imitates the behaviour and responses of his playmates. His behaviour is thus determined, not by the complex unconscious processes of identification, the impact of object relations, or anxiety and the symbolic life, but by a simple overt process of imitation.⁶³

For Bender, this provides the best clue to the proper care and training of psychopathic children:

They should be placed in a benign institutional set-up, organized with well routinized and patterned social and educational activities, in small groups of children where they can fall into a routine and imitate other children.⁶⁴

Whether or not this suggestion is sound,⁶⁵ and whether or not Bender's postulate of the drive to behave like a human being is ultimately helpful,⁶⁶ there is no mistaking the congruence of the analyses of Bender and Cleckley with their interpretation of psychopathic behaviour as 'imitation'.

The similarity in the choice of organizing concept made by Bender and Cleckley provides important support for Bender's etiological analysis.

⁶¹ *Ibid.*

⁶² See Cleckley, H., *The Mask of Sanity*, ch. 58.

⁶³ Bender, *supra*, 364.

⁶⁴ *Ibid.*, 364.

⁶⁵ I cannot help thinking the idea is basically unsound. Anyone who thoroughly understands the psychopath will not be inclined to place much reliance upon this treatment for long range prospects of rehabilitation. Far from getting to the core of his problem in an attempt to reunite into the integrated personality the dissociated affective life, it simply provides the psychopath with the means to perfect his manipulative arts, all the better to prey upon the community. The more opportunities he has to imitate, the better he will be able to attune himself to the idea which appeals, the plea which strikes its target and the approach which inspires fatal confidence.

⁶⁶ It is also doubtful whether Bender's postulate is meaningful or helpful: since children cannot have a perception of normal conduct apart from the example of their peers, the desire to behave like a human being can be nothing more than a desire to imitate others. Bender's explanatory hypothesis is therefore logically circular. See Part Two.

There is a need therefore for closer investigation of the correlation between emotional deprivation and psychopathy. There is one difficulty: if Cleckley is studied with the notion in mind that the kind of behaviour he describes is attributable to an emotionally deprived childhood, then we must account for the fact that of the many psychopathic case histories that Cleckley reports, very few indeed indicate a family background resembling those which Bender describes. The discrepancy is so glaring that one is tempted to either reject Bender's interpretation of her observations, or to conclude the writers are simply talking about different mental disorders. Very few of Cleckley's patients came from emotionally deprived backgrounds; most, indeed, grew up in circumstances of considerable affluence where children were given what appeared to Cleckley normal love and affection. Conspicuously, an inordinate number came from homes in which the father, and often other members of the family as well, had attained considerable influence and position in the community. To Cleckley, it is paradoxical that the childhood of his subjects so far from appearing pathogenic and emotionally deprived, was blessed with advantages denied most of their contemporaries.⁶⁷ Bender's hypothesis of emotional deprivation as a cause of psychopathy would seem utterly disharmonious with the facts as Cleckley and others have reported them.

But there is an interesting way of reconciling the two reports. The abnormally large number of psychopaths originating from influential homes is the fact that provides the clue. Phyllis Greenacre had noted with some surprise that many of her psychopathic patients possessed family backgrounds of this kind and was moved to explore the nature of their early background in some detail. She formed the conclusion that Cleckley had not subjected this aspect of his patients to careful examination (although, in fairness to Cleckley it can be said that the contrast between the apparent normality of the backgrounds of his patients and their present extraordinary behaviour might justify an emphasis upon the latter). Greenacre noted that in the homes of psychopathic children, fathers, influential and respected figures in their communities, were often remote and fear-inspiring from the child's point of view.⁶⁸ In many cases the mother was a contrast in personality, indulgent, pleasure loving and narcissistic. Such parents are more than ordinarily dependent upon the approval and admiration of contemporaries. Children of these individuals are, despite appearances, not greatly loved: what appears to be love is in reality indulgence and narcissistic self-gratification on the part of the parents. The value attached to external appearances

⁶⁷ Cleckley, H., 'Psychopathic States'. Evidence of Cleckley's sense that it is important for an understanding of the disorder, to observe that the background of subjects is usually very favourable is to be found in most of the case histories.

⁶⁸ Greenacre, 'The Conscience of the Psychopath' (1945), 15 *Am. J. of Orthopsychiatry* 495.

relegates the child to a display role in which there is an obsessional interest in formal good behaviour as a means for the parents to gain external approval. And the eminence of the father reinforced by parents' attitudes creates a situation in which the children are treated as though they cannot fail:—

They are habitually on show, and failures are either denied, concealed, or explained away. Thus they are robbed of the full measure of reality testing, and performance even in the earliest years becomes measured largely by its appearance rather than by its intrinsic accomplishment. One sees in miniature the attitudes which later are so characteristic of the psychopath, i.e. what *seems* to be is more valued than what is. This characteristic together with the essential emotional impoverishment, tends to create a very thin stage-property vision of reality in which the facade at any given time is the prime consideration.⁶⁹

From this develops the ambivalent attitude to the parental authority figures and to authority in general. During the oedipal period, the contradictory maternal indulgence and paternal austerity tend to bind the child unduly to the mother, promoting the formation of particularly unreal and gauzy ideals. The boy remains in a prolonged emotional subjugation to the mother and never clearly comes through the oedipal period. Many psychopaths in their later life seem to be repeatedly enacting this stage of their life in one relationship after another.

In this way, the child is emotionally deprived. And although the deprivation takes place quite differently from that described by Bender, the ultimate effect is the same: a psychopathic personality unable to clearly distinguish reality from fantasy and possessed of the characteristic gossamer super-ego.

IV

A curious feature of psychopathic behaviour identified in much of the literature is the confusion the psychopath manifests between the word and the act. For some this provides a clue to an appropriate organizing concept.

Cleckley observed that many psychopaths appeared honestly puzzled that their protestations of intended reform and promises of better behaviour are met with scepticism. As mentioned earlier, many give their word of honour on a promise and without discernible trace of duplicity seem astonished when this does not put an end to the matter.⁷⁰ Helene Deutsch identifies this phenomenon as the characteristic behaviour of the 'as if' personality. Thus psychopaths behave *as if* a stated intention were already an accomplished fact; a promise already kept; an expression of regret for past sins adequate compensation to his victims.⁷¹ Rejection

⁶⁹ *Ibid.*, 499.

⁷⁰ Cleckley, H., 'Psychopathic States', 363.

⁷¹ Deutsch, 'Some Forms of Emotional Disturbance and their Relationships to the Schizophrenic' (1942), 11 *Psychoanal. Quart.* 301.

of a psychopath's word he can only regard as incomprehensible caprice on the part of others and his astonishment is wholly ingenuous.

Greenacre categorizes this behaviour as part of the psychopath's lack of emotional depth: a substitution of gesture, word or symbol for the actual accomplishment of the act. For example, such a patient:

who may have "borrowed" money without asking, states that he intends to repay, and then acts exactly as though the restitution were already accomplished, and is righteously outraged when he is called to account. If punished, he not infrequently regards the punishment as unfair in view of his having behaved so properly, and is no way deterred from a repetition of the same situation. It is characteristic, too, of such patients that they rarely deliberately evade punishment except by flight, though they cleverly talk themselves out of many predicaments by their plausibility.⁷²

This psychopathic predilection for and reliance upon verbal magic is, for Greenacre, another manifestation of a universal infantile quality: the demand for results by magic. Here, the willingness to 'take a chance' and the confident expectation of good fortune in the planning of behaviour are explained in the same way. This view accords, it will be recalled, with that of Bromberg, who described psychopathic behaviour as infantile in its reliance upon magical solutions to problems.⁷³ Incidentally, Greenacre's references to punishment and deterrence are of importance in discussions of legal responsibility. These are matters we shall take up later.⁷⁴

Cleckley has formulated an intriguing and widely quoted theory which attempts to interpret the behaviour of the psychopath around a focal concept of speech disorder.⁷⁵ This is not so much an etiological account of psychopathy as an attempt to give a meaningful order to palpable diagnostic criteria, which for all their tangibility remain quite enigmatic.

The theory may be clarified by a comparison with the disease of semantic aphasia. Here the subject, while able to speak coherently and with superficial observance of grammatical and syntactical conventions, is not able to communicate because he has no concept of the meaning of words. He simply does not understand what he has put into linguistic form. With this in mind one might conceive of the psychopath as suffering from a *semantic* disorder; Cleckley calls it semantic dementia. Thus all the purposiveness and significance of life striving and all subjective experience is disordered without obvious damage to the outer appearance or superficial reactions of the personality.⁷⁶

Cleckley is not at all clear as to how much weight should be attached to the comparison with semantic aphasia. He does warn us that semantic

⁷² Greenacre, *supra*, 496.

⁷³ See discussion, *supra*, at p. 34.

⁷⁴ *Infra* in Part Two, 10 M.U.L.R. vol. 2.

⁷⁵ Cleckley, H., *The Mask of Sanity*, Ch. 58.

⁷⁶ *Ibid*, 407.

aphasia is a very different disease.⁷⁷ Yet his conclusion is that it is helpful to regard psychopathy as a semantic personality disorder, and that the analogy with aphasia is an enlightening one. What is not clear is the extent to which we can legitimately focus upon the speech or language of the psychopath as in some way providing the key to his disorder; and to what extent Cleckley is simply trying to clarify his fundamental theory of the 'mask of sanity'. It is difficult to see how the analogy with semantic aphasia illustrates that psychopathy is in any way a *semantic* disorder as opposed to one in which all behavioural manifestations including, presumably, speech, are in some manner 'empty' (as the speech of the semantic aphasic is empty) of affective content. What interest is there in singling out the emptiness of the psychopath's language from that of his behaviour in general? In fact, the analogy with semantic aphasia is far from perfect: the aphasic has lost his grip on language completely; he is unaware not only of the emotive function of words but also of their referential function (if I may employ the venerable dichotomy of Ogden and Richards).⁷⁸ But the psychopath is capable of responding intelligently to questions like: what is the time? how old are you? where is the cat? He uses language meaningfully in terms of its symbolic or referential function. It is when he comes to employ words such as love, loyalty, trust, honesty and so on, that we sense that most of the meaning of his language is lost to him. Not only does he possess only the faintest understanding of the referents of such words and the power of their emotional substance, but he cannot be moved when such words are used 'on' him. Only one of the emotive functions of words is open to him: he can effectively use emotion-laden words to move others to his will.

V

In the public eye, the mark of the psychopath is his antisocial reaction. He is identified by his social behaviour. One might therefore expect to find that what is wrong with such an individual pertains to his capacity for social interaction and, perhaps, to his social relations in general. Harrison Gough has offered a sociological theory of psychopathy which is of considerable interest for several reasons.⁷⁹ First, it lends itself to a degree of empirical verification in contrast to the dynamic theories where any verification is fortuitous rather than systematic and refutability merely a wishful dream entertained by frustrated social scientists. Secondly, it accommodates the known facts of psychopathy to a remarkable degree;

⁷⁷ *Ibid.*, 585. See also Cleckley, 'The Psychopath viewed Practically' in Lindner, R. and Seliger, R., *Handbook of Correctional Psychology* (1947), 395. Cleckley's interpretation of psychopathic disorder as a 'semantic' personality disorder has remained substantially unchanged over the years.

⁷⁸ Ogden, C. and Richards, I., *The Meaning of Meaning* (8th ed. 1947).

⁷⁹ Gough, 'A Sociological Theory of Psychopathy' (1948), 53 *Am. J. of Sociology* 359.

it therefore complements the dynamic and psychoanalytic theories rather than denies them. Whereas dynamic theories focus upon the inner mental dynamic for an account of the disorder, the sociological theory holds, as one might imagine, that the interpretive key is the psychopath's social action.⁸⁰ Both theories provide systematic explanations for a common set of observed facts. They may therefore be regarded as alternative explanations of certain phenomena, or even as exegeses of each other; although this last point raises an intractable and polemic issue of primacy which is better left undisturbed.

Gough begins with the proposition that the analysis of social behaviour is an heuristic approach to the study of behavioural disorders. The definition and diagnosis of disorders such as paranoia and schizophrenia depends upon sociological manifestations; *a fortiori* a disorder such as psychopathy lends itself to this kind of analysis. The crucial sociological concept which Gough employs to clarify psychopathic disorder is that of the development of Self through the process of role-playing. The sociologist George Herbert Mead has given the most thorough account of this process of developing the self-concept and Gough attempts to illumine psychopathy by measuring the behaviour of the psychopath against Mead's norm.⁸¹ The social being of an individual, that part of him which provides a link to the community can be called the Self, and is itself a product of social interaction. This catalytic social interaction has a special nature: it takes place when the individual is aware of the responses of others to himself; that is, when he is able to look upon himself as an object to which or to whom others respond. The capacity to look upon himself as an object requires a concomitant capacity to take the place of others in observing himself, to play roles as it were. As Mead puts it:

The self arises in conduct, when the individual becomes a social object in experience to himself. This takes place when the individual assumes the attitude or uses the gesture which another individual would use and responds to it himself, or tends to so respond.⁸²

As these experiences multiply, groups of them calcify into areas of self-conception and, in time, the rhythm and monotony in the patterns of experience allow them to eburnate into a durable concept of the 'generalized other', which represents social reality as seen by the self.⁸³ All species of social interaction, therefore, such as adaptation, cooperation,

⁸⁰ *Ibid*, 359.

⁸¹ Mead, G., *Mind, Self, and Society* (1934). See also: Mead, 'A Behavioristic Account of the Significant Symbol' (1922), 19 *J. of Philosophy* 157. There is a useful discussion of the concept of Self and the contribution of George Herbert Mead in Faris, 'The Social Psychology of George Mead' (1937), 43 *Am. J. of Sociology* 391.

⁸² Mead, 'A Behavioristic Account of the Significant Symbol' (1922), 19 *J. of Philosophy* 160.

⁸³ Mead, G., *Mind, Self, and Society* (1934), 150-54.

observance of formal rules, and even simple understanding are functions of these self-experiences or role-playing experiences.

Certain fundamental propositions follow from this account of the development of the Self; they lay a foundation for Gough's sociological theory of psychopathy:

This role-taking ability provides a technique for self-understanding and self-control. Learned prohibitions (and all social interdictions must be learned) may be observed by "telling one's self" not to behave in a certain way. Or speech may be editorially "reviewed" as it is emitted, and the inadmissible deleted. Role-playing, putting one's self in another's position, enables a person to predict the other's behaviour. Finally, role-playing ability makes one sensitive in advance to reactions of others; such prescience may then deter or modify the unexpressed action.⁸⁴

Thus, for Gough, the idea of role-playing (as with Cleckley, the idea of a semantic disorder) represents the embracing concept which synthesizes all the observed phenomena of psychopathy into a coherent system. The psychopath is pathologically deficient in role-playing abilities.⁸⁵ (The paradox is apparent, not real.) He is unable to foresee the consequences of his actions and their social implications because he cannot judge his own behaviour from another's standpoint. He cannot experience the social emotions — embarrassment, contrition, loyalty, the sense of belonging — because he cannot see himself as an object in social experience. He cannot comprehend external disapproval and cannot see the justice of punishment because this involves perception of his behaviour from a societal standpoint. He violates societal norms because he is unable to see his own wants as disharmonious with the interests of society. And he cannot form emotional relationships of any profundity because he cannot identify himself with another or another's viewpoint.⁸⁶

One virtue of Gough's key concept of role-playing, one not shared by Cleckley's notion of semantic personality disorder, is that it accommodates so much of what is known about psychopathy.⁸⁷ Another virtue is that to some extent it is empirically verifiable: it presents an interpretation of diagnostic criteria to which therapy can meaningfully address itself, and it makes some claim to being refutable.⁸⁸

There are notable points of harmony between the character of psychopathy and the vicissitudes of the development of the social Self. Gough has made some of the points;⁸⁹ at least two others are worth making to illustrate the congruence of the sociological and psychodynamic view. The concept of Self, and looking upon one's self as an object, is remark-

⁸⁴ Gough, 'A Sociological Theory of Psychopathy' (1948), 53 *Am. J. of Sociology* 363.

⁸⁵ *Ibid.*, 363.

⁸⁶ *Ibid.*, 363-64.

⁸⁷ *Ibid.*, 363.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*, 364-65.

ably consistent with Greenacre's notion of the impeded process of individuation and separation of children deprived of parental figures who are sources of emotional comfort and deprived of the stimulus to see themselves as separate from their parents.⁹⁰ More remarkable even, is the echo which Gough's thesis finds in Cleckley's account of psychopathic behaviour: Cleckley professes himself baffled by the psychopath's lack of insight into his own functioning, given his perfect orientation, reasoning powers and freedom from delusion. In describing his intuitive response, he unwittingly paraphrases Gough with astonishing accuracy:

He has absolutely no capacity to see himself as others see him. To be more accurate one should say that he has no ability to know how others feel when they see him or to experience subjectively anything comparable about the situation.⁹¹

The sense of *deja vu* here is overwhelming!

Cleckley, of course, fails to move from this datum to a conclusion that there is a functional impairment of the Self and the social being; rather he infers a dissociation of all major affective content in the psychopath's behaviour and interprets this as semantic dementia. Gough's hypothesis has as good a claim to accommodating the parameters of Cleckley's unmatched descriptive analysis of the psychopath within its conceptual scheme; and it does so with impressive symmetry and parsimony.

Gough asserts that some empirical verification of his hypothesis is possible.⁹² If the venerable criteria of Karl Popper are applied, his ratiocinations lay greater claim to the status of 'scientific theory' than do the various psychodynamic interpretations.⁹³ Gough speculates that adoption of the role-playing concept permits certain verifying predictions to be made:

One such deduction would be that on the "Chapin Test of Social Insight" (F. Stuart Chapin, "Preliminary Standardization of a Social Insight Scale," *American Sociological Review*, VII (1942), 214-25) diagnosed psychopaths would secure lower scores than controls matched for intelligence and education. Another would be that an effective scale could be empirically developed to screen psychopaths from normals by use of questions on the responses of hypothetical individuals and groups in described situations. Such a scale would not need to include any ethical or moral decisions or judgments about what would be "right" and "wrong". It would merely ask the subject to predict what such-and-such a person or group would do under such-and-such conditions.⁹⁴

In child psychopaths radical changes in the immediate environment stimulates the role-playing capacity. Rogers has noticed that the behaviour of problem children changes dramatically upon being moved from one

⁹⁰ Greenacre, *supra* note 50, at 499.

⁹¹ Cleckley, H., *The Mask of Sanity*, 375.

⁹² Gough, *supra* note 84, at 363.

⁹³ Popper, K., *Science and Human Behaviour*.

⁹⁴ Gough, *supra*, (1948), 53 *Am. J. of Sociology* 363, n. 34.

foster home to another. They adjust comparatively well when first transferred but after some time passes delinquent behaviour breaks out afresh.⁹⁵ Apparently, a new home awakens interest and attention, and, so long as this positive attitude persists practice in role-playing continues. Gough argues that it might be predicted as a test of his theory that frequent transfers (up to a certain maximum) would yield more improvement in behaviour than continued habitation in a constant regime.⁹⁶ It is significant, therefore, that one clinical psychologist has stated in a manual of practice: 'Then when everything seems to have reached a maximum of satisfactory adjustment, the social worker should remove the case to another home.'⁹⁷ Again, the perceptive reader of Cleckley's book would have noted that in many of his case histories one finds a pattern of improvement after radical change. For example, a talented girl psychopath, expelled from school, was admitted to a new one in a distant community; there was improvement and behaviour of exemplary promise; in a few months, there was a gradual return to behaviour as egregious as ever. Cleckley emphasizes that psychopathic behaviour is not uniformly bad. Psychopaths do behave and perform well during certain periods: and often these smooth periods are contemporaneous with radical changes in life situation.⁹⁸

Finally Gough's theory accords with findings that in the treatment of psychopaths, the creation of a permissive environment may be salutary. Gough speculates that 'this attitude of the therapist sets up an artificial situation in which failures are not punished, thus giving the subject opportunity to try out new roles without fear of requital.'⁹⁹

The theory in general opens up much new ground to explore constructively. Gough's achievement is considerable. His attempt to fuse the many descriptive statements about psychopathy by means of a coherent and parsimonious hypothetical concept is as compelling as any in the whole literature.

⁹⁵ Rogers, C., *The Clinical Treatment of the Problem Child* (1939) Ch. IV.

⁹⁶ Gough, *supra*, (1948), 53 *Am. J. of Sociology* 363, 364-5.

⁹⁷ Porteus, S., *The Practice of Clinical Psychology* (1941), 264.

⁹⁸ Cleckley, H., *The Mask of Sanity*, 360-1.

⁹⁹ Gough, *supra*, 365.