

LEGISLATION DEALING WITH THE SEXUAL PSYCHOPATH

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THE Medico-Legal Society of Victoria has expressed a re-
current interest in the subject of the emotionally deviated
sexual offender going back to 1937, when several significant pro-
posals were made for legislation in this field. I propose at this
time to touch upon, first of all, a series of persisting paradoxes
that have characterized modern approaches to the sex deviate,
then to summarize quite briefly some of the chief developments
that have occurred in Australia relating to sexual psychopaths,
comparing these with certain of the trends in legislation in the
United States, and then, finally, to put to you several propo-
sitions that appear to be reasonable approaches in dealing with
the sexual offender.

First of all, relative to certain apparent anomalies in this
field, it is quite clear that the anxiety that has troubled man
in civilized societies has been directed at serious sexual deviates
—those who are, in our view, a real danger to the community.
It is an anomaly, I submit, that in the light of our concern most
of what we have done has concerned the minor, the insignificant,
the non-dangerous deviate. We have classed sexual offenders as
a single massive group and have focussed the greater part of
our attention upon those who, in fact, threaten the community
and the State's interest little or not at all.

Secondly, our legislation and policies as they have developed
in this field in regard to medical testimony raise nice questions
concerning the sort of medical-psychiatric problems we are really
interested in; that is, what sort of personality deviations are
involved in the sexual offender, and what kinds of authorities
in the medical field are most competent to make the medico-legal
appraisals of such deviations. Thirdly, in this field we have
relied upon the completely indeterminate sentence, that is,
commitment without a maximum limit. This has been without

very clear consensus as to whether our purpose is primarily one of protection of the community, whether it really reflects our punitive reactions to the "immoral" deviate, or whether our aim is to give psychiatric authorities plenty of time to apply whatever therapy they can to the sexual offender. Such indeterminate sentences imply, of course, a tremendous threat to the individual freedom of offenders, particularly of those minor deviates who are committed for what amounts in effect to life terms.

There is a fourth anomaly involved in our confused and equivocal emphasis upon special treatment of offenders who commit sex crimes. *Quaere*, should we employ a specialized institution set up for the particular purpose of dealing with this group, or is the proper type of facility an ordinary mental hospital or some sort of correctional institution? Those who have worked in this field are not in agreement. Beyond the question of where such treatment should be provided, there is the problem of the forms of treatment that should be given to sexually deviated offenders. Should he have psychiatric, surgical, pharmacological, or corrective handling in order to deal with his difficulties and to protect the community? There has been a naïve faith in the efficacy of legislation alone to resolve the subtle medical and legal problems involved in the handling of these offenders.

The anomalies to which I have referred above are peculiarly a part of experience in the United States. It may serve some purpose, however, to survey certain of the developments which have occurred in Australia and New Zealand before looking to comparisons in America. It appears that a preoccupation with the special problem of the "sex psychopath" developed earlier here than elsewhere. As early as 1920, and again in the following two years, the Prisons Board of New Zealand proposed the appointment of a committee to study the problems of sex offenders in that country, and in 1925 a committee of enquiry on mental defectives and sexual offenders reported on this subject, proposing three reforms:

1. That there should be expert medical reports before the sentencing of offenders who were accused of "unnatural offences" to discover whether some form of mental abnormality might account for the morbid character of the conduct with which they were charged.
2. That indeterminate sentences without maximum limit

should be applied to offenders who were found to be abnormal.

3. That whatever medical and surgical techniques might be deemed necessary or expedient for the good of such offenders or in the public interest should be applied to them.

It is interesting to note in the committee analysis and proposals as long ago as 1925 that, while the concern about the sexual offender quite clearly arose out of serious and dangerous sexual crimes, the legislation proposed made distinctions neither as to the kinds of sex offences to be dealt with specially, nor as to the psychological or psychiatric characteristics of such offenders that might be taken to justify indeterminate sentences.

I have referred above to the report of the Medico-Legal Society of Victoria in 1937, where there were formulated a number of conclusions of the Society in regard to dealing with sexual psychopaths. These policy views have been published in the *Proceedings* of the Society and will not be repeated here. It may be noted, however, that this report urged early legislation to deal with sexual deviates. It offered no discriminations as to types of sexual offenders who should receive special treatment through the correctional and psychiatric facilities that were contemplated. Nor were the mental and emotional conditions of the sexual offender emphasized in this report.

Three especially important matters were dealt with in the Society's recommendations: One, that there should be no special treatment measures in dealing with the sexual offender without a conviction for the crime involved. Two, that if special treatment measures were to be applied, they should be predicated upon studies conducted in a specialized clinic. And, three, that commitment should be to some sort of special institution where therapy for the sexual deviate could be carried out. It is significant that the proposals of that time looked forward to the application of a completely indeterminate sentence for the sexual deviate without regard to the nature of the sexual offence that he had committed.

The State of Victoria has displayed what one may well consider an admirable restraint in its legislation in avoiding the enactment of specialized legislation for the deviated sexual offender. There have developed no special correctional or medical facilities for this group. Moreover, Victoria has largely abandoned in

1957 the policy and premises of the completely indeterminate sentence without a maximum on the view that the interests of human liberty and personal freedom demand that maximum sentences should be imposed which are reasonably related to the seriousness and danger of the offences committed by the criminal. This has not been true in some of the other States of Australia. South Australia in its laws of 1940 to 1945 under Section 77A of the Criminal Law Consolidation Act did enact a statute relating to deviated sexual offenders. It did not provide, as this Society had very wisely proposed, for a special clinic for diagnostic purposes, nor for any specialized treatment facilities. It did establish the completely indeterminate sentence for offenders brought within its scope. In Queensland in 1944 a Committee of Inquiry relating to sex offenders and mental defectives, approving the policy in the South Australian legislation, proposed the segregation of individuals who were found incapable of controlling their sexual impulses. Provision was made for their treatment under indeterminate sentence legislation in Queensland. In 1951, Tasmania too followed the principles of indeterminate sentences for sexually deviated offenders.

Victoria considered the employment of an indeterminate sentence for a sex offender in the case of *R. v. Chapman* in 1947. On appeal the sentence imposed by the lower court was held improper, the court indicating that under the penal system and policy in this State no appropriate provisions had been made for the indeterminate commitment of sexual deviates. There appear to have been no other major developments in this State relating to sexually deviated criminals.

Let us turn now to what has happened in the United States since 1945. Legislative activity there has been more rapid and more comprehensive, more confusing and more complex, than in Australia. Some 22 States, nearly half of the United States, have enacted special legislation on the sexually aberrated criminal since 1945. Canada and Hawaii have also passed laws of a similar character. These represent, in general, a striking departure from some of our fundamental conceptions of a proper administration of justice. At several points they also deviate from basic premises of contemporary psychiatry. The legislation has provided some temporary quietus to public anxiety about sex crimes but it has accomplished little else. There has been an almost complete lack of enforcement, so that the public,

while relieved, has not been too greatly endangered by the laws which have been enacted.

As to the types of cases covered in the legislation, twelve States have enacted laws on the abnormal sex offender, designating the "sexual psychopath" or the "criminal sexual psychopath", as the object of special procedures. Others have referred more generally to the "psychopathic personality" or the "constitutional psychopathic personality", and one has referred to the mentally defective delinquent. Several States have avoided any special terminology, recognizing perhaps the diversity of psychiatric types involved in aberrated sexual behaviour. It is pertinent to remark the loose terminology that has been employed in our definitions of the sexually aberrated. The statutes apply such non-discriminating terms as "impulsive behaviour", "lack of customary standards of good judgment", "emotional instability", or "inability to control impulses". These are, of course, inferences and prognostications which are extremely difficult, if not impossible, to support either as a matter of psychiatry or of law. It is interesting further to observe that, in fact, the sorts of cases that come to the attention of the authorities are, for the most part, individuals who are not psychopathic in the traditional psychiatric sense. Among one hundred cases of sexual deviates studied in the State of New Jersey by the Menlo Park Diagnostic Centre, only nine were found who could properly be diagnosed as sexual psychopaths; the greater numbers were neurotic, 29 cases; 18 were found to be normal; 14 were schizoid personalities; 10 represented constitutional perversions, or such circumstantial influences as intoxication, the experienced of a one-sexed community, or prolonged abstinence; 8 were mental defectives; 4 were known homosexual deviates, and 2 had suffered organic brain disease. The legislation relating to "sexual psychopaths" had little relevance, it appeared, to the sorts of psychiatric problems which were brought before the courts as mentally abnormal sexual deviates.

The sex psychopath laws in the United States have most seriously violated a fundamental legal precept—*nullum crimen sine lege*—there is no crime (and there should be no penalty) without the violation of law. In four jurisdictions a person can be adjudicated to the imprecisely defined status of a sexual psychopath without the facts of a crime being shown or even charged by the policing or prosecutory authorities, and in an additional seven jurisdictions it is sufficient that the court make

a finding of sex psychopathy and the need for treatment. A criminal charge has been made without a finding that an offence has in fact been committed. Action is generally taken through the submission of an affidavit by the prosecutor showing probable cause to believe that the person is a psychopath. In nine States, the commission of a crime is required as a basis for the adjudication and treatment of the offender as a psychopath. New Jersey was the first State, in 1950, to confine the application of its law to a certain number of the more serious and aggressive sexual crimes as the basis for an application of the law. That State has been followed by several other jurisdictions in the ensuing years.

The threat to individual liberties implicit in the indeterminate sentence in cases of alleged sexual psychopathy was recognized by the Supreme Court of the United States shortly after the enactment of the Minnesota statute. This was the case of *Minnesota ex rel. Pearson v. Probate Court of Ramsay County*, 205 Minn. 545, 287 N.W. 297, 60 S. Ct. 523, 309 U.S. 270. "Where the law, though fair on its face and impartial in its appearance, may be open to serious abuse . . . if the rights of the persons charged are not adequately safeguarded at every stage of the proceedings . . . so as to deprive the appellant of the due process to which he is entitled under the Constitution."

On the basis of the Minnesota decision, legislation in the various jurisdictions has generally been considered constitutional, however vague and threatening its implications for the defendant. Unfortunately, the injustice which may be done through what the court referred to as "serious abuses in administration" cannot be rectified except by appeal to the individual case. These appeals are very rarely taken by the defendants who are held under these laws. Considering the omnibus character of the statutes, it is clear individuals whose problems are quite minor so far as sexual deviation is concerned, may be held to be covered under the statutory terminology.

In the initiation of proceedings under these statutes the practice in a majority of our States is for the prosecuting officer to determine whether the alleged sexual offender should be studied to discover whether he is abnormal. There are a few jurisdictions in which the Court must remand such offenders for study. In most States there is a discretion in this respect. It is the apparent inclination of prosecutors to consider sex

psychopath statutes a useful tool to be applied only when to do so is convenient. They are disposed to employ the law where the State's case is too weak for a criminal conviction, but where an adjudication for sexual psychopathy may be had. Prosecutors are also affected in the application of the statutes by their personal interpretations of what sexual psychopathy means and their belief or disbelief in treatment of the condition. Where they disapprove the policy involved, they tend to employ the law very little or not at all. By and large the jurisdictions which have passed these laws do not apply them with any considerable frequency.

As to the determination of whether or not an individual charged with a sex crime is mentally aberrated so as to come under the statute, we find in most States the sort of provision that was enacted in Queensland, rather than that proposed by this Society in Victoria, namely, that one or more—usually two—medical authorities are required to study the defendant and testify as to whether or not he appears to be a psychopath. There are only two States, New Jersey and Vermont, which require an intensive study of the psychiatric condition of the offender in a State diagnostic facility. Vermont, however, has not established a centre for the purpose, while New Jersey has a very good diagnostic resort. In most States members of the staff of the State Mental Hospital testify as to whether or not they believe the defendant to be psychopathic.

Another peculiarity of our legislation in which there is considerable variation in policy relates to the place of commitment of those who are found to be sexually psychopathic. In the majority of the States with these laws, commitment is to a mental hospital, without regard to the fact that typically the psychopath is non-psychotic and that his problems and treatment needs are different from those of the majority of hospital patients. In the State of Washington a correctional facility must be employed rather than a mental institution. In a few other States the court may choose between a penal and a mental facility in dealing with these offenders.

Looking to the treatment methods that are employed for sexual deviates, our correctional facilities deal with this group for the most part no differently from other types of criminals. In mental hospitals their situation is not significantly better. The treatment modalities that are sometimes considered to be of potential value in dealing with sex offenders are group therapy

and psychiatric counselling, neither of which is generally available to any significant extent for psychopaths in the ordinary State mental hospital. We do not have enough psychiatrists. Furthermore, we lack the techniques and the understanding to deal effectively with sexual psychopaths.

One of the more interesting developments in the sex psychopath legislation has occurred in three jurisdictions where a finding that the individual is a psychopath constitutes a complete legal defence to any criminal action for the offence involved. In effect, they have gone all the way in equating sexual psychopathy to the insanities as a defence to crime. This is without reference to the M'Naghten rules as to the mental states that may ordinarily be raised in exculpation. A majority of jurisdictions, however, do not allow a defence on the basis of sexual psychopathy. If the defendant is committed to a hospital without a conviction, he may later be returned to court for action on the criminal charge. In practice this is at the discretion of the prosecutor.

One of the most characteristic provisions in the sex deviate legislation is the use of the completely indeterminate commitment: the individual is sentenced for an unlimited term, however minor and innocuous his offence may be. Since 1950, however, five States have accepted the principle of a maximum term, providing generally that the maximum may not exceed that previously applicable under the penal law for the particular crime involved. Therefore, if the sexual crime was very serious, the individual might be retained for public protection and treatment over an extended period of time. If his offence was minor, on the other hand, he could be detained only briefly. Release under such laws is characteristically conditional upon a successful treatment of the offender's condition. Some of the Statutes speak in terms of cure or the unlikelihood of the repetition of his crime.

Since 1950 a new trend has developed in American legislation dealing with the sex offender. Statutes in Wyoming, Florida, Utah and Virginia, and the revision of earlier laws in California, Illinois and Wisconsin, have taken a different and more conservative course:

1. The concentration in the new legislation has been on more serious rather than minor sex criminals.
2. New legislation has required conviction of an offence

before specialized medical-correctional treatment might be applied.

3. It has established maximum terms rather than completely indeterminate sentences.
4. There has been some new stress upon supervision and treatment in the community through probation, parole, and psychiatric clinics.
5. Finally, certain definite criteria have been established for a determination of sexual and psychiatric aberration as the basis for special treatment measures. Those criteria have developed quite largely from the work of the Group for the Advancement of Psychiatry. The Group has concluded that the cases requiring psychiatric attention are those that express in their sexual conduct a pattern of repetitive-compulsive behaviour together with violence or an age disparity between a child victim and an adult aggressor. These criteria were adopted in the New Jersey and Wyoming legislation. They have also been included in the Model Penal Code of the American Law Institute as a basis of prolonged correctional measures.

In conclusion, let me consider what may be deemed a reasonable approach to the problem of the sexual offender. It should be observed first that a majority of sex offenders with prior criminal histories have been convicted of other types of crimes and that for the most part such offenders are not seriously repetitive. There is fundamental error in the common view of sex offenders as a group entirely distinct and homogeneous that should be handled uniformly under comprehensive sex legislation. As with other criminals, discrimination is required in dealing with sexual offenders. A majority of them are minor deviates, offering little threat to the community. The late Alfred Kinsey indicated that 95 per cent of the violators of sex laws are of non-aggressive character such as exhibitionists, voyeurs, frotteurs and passive homosexuals. Most sex deviates, in spite of popular conceptions to the contrary, are under-sexed individuals who, in attempting to attest their manhood, resort to offences of little harm to the community. A majority of them should be considered no more than public and mental health problems and should be handled as such. For those who require prosecution as public nuisances, we cannot do more than apply probation, fines, or short gaol terms in the hope of some deter-

rence. Indeterminate sentences should not be applied to individuals who have committed minor sex offences, however annoying they may be.

In terms of personal liberty, cost to the State, and our ignorance of effective therapeutic methods, we cannot treat effectively the large numbers of minor sexual deviates in the modern community. We may deal with some of them, so far as we can, through ordinary public health measures.

A second class is composed of major sex criminals who are normal. Many cases of rape, for example, are "normal" crimes, as man is basically aggressive and in some measure sadistic, and as women are passive and masochistic. Normal rapists must generally be sent to prison. Certainly they do not belong in a specialized psychiatric facility. Prison, to be sure, serves little more than a deterrent purpose in their cases.

Finally, there are major and emotionally deviated sex criminals who are dangerous to the public, a very small proportion of the sex offender population. One part of this group is made up of psychotics who suffer from sufficiently serious aberrations to justify certification to ordinary mental hospitals along with other psychotics. Their sexual deviations are only an aspect of their general patterns of mental disorder. There is another group of offenders who are less than psychotic: psychopaths, psychoneurotics, compulsives, organically diseased, and other disordered types. It is this relatively small group that constitutes the real problem of the deviated sexual offender. They constitute only a small fraction of the criminals who suffer from serious emotional and psychiatric difficulties, but who are not psychotic. They do not belong in mental hospitals of the traditional type where, in general, they cannot secure intensive and specialized therapy. The writer believes, too, that deviated sex offenders should not be held in institutions specifically designed for sexual deviates because their emotional problems are not unique or distinct. They suffer difficulties analogous to those afflicting other types of offenders. No sharp line of psychiatric distinction can be drawn between the sexual criminal and the arsonist. In many burglars, kleptomaniacs and murderers the psychiatric motivations are similar to those found in sex offenders. What we need are specialized medical-correctional facilities for all those offenders who are not insane but who require intensive psychiatric and correctional therapeutic measures. It appears that in spite of the legislation that has been enacted in a

number of States looking to the development of specialized institutions for the sex deviate, no such facilities have been established or are likely to be. On the other hand, two institutions have recently been opened, one in Patuxent, Maryland, and one in Vaccaville, California, which deal more generally with medical-psychiatric deviates. Denmark also has such an institution, at Herstedvester. We lack sufficient resources to permit an exclusive emphasis upon sexual offenders, however.

In conclusion, the writer would support the position taken by this Society in 1937 on the need to establish a psychiatric clinic for the diagnosis of mental aberrations. Such a clinic should not be focussed merely upon sexual aberrations but upon all varieties of major criminals who are suspected of serious deviations, psychotic or less than psychotic. The work of any such clinic, it is believed, should be defined by specific criteria, established in the law, as to the circumstances justifying specialized treatment of non-psychotic individuals. The writer believes also that we ought not to follow the illusory ideal of the indeterminate sentence, either for sex offenders or other criminals, but should adopt the policy recently established in Victoria of using maximum terms gauged to the seriousness of the offence and the danger which the defendant poses to the community. It is further reiterated that it would be desirable to establish an institution of a psychiatric and correctional character within the correctional department. Such a facility should emphasize medical, psychological and psychiatric techniques for research and treatment of individuals who are less than psychotic, without regard to whether or not they are sex offenders.

A major thrust of future development in corrections should lie in this area. Psychiatrists in the United States believe that some 15 to 25 per cent of the prison population require the specialized treatment that such an institution could provide. These individuals need a programme that is not only correctional but medical and psychiatric as well, orientated to the specialized needs of this group, if we are to do a reasonably decent job of reformation whenever that is possible.

Finally, in dealing with sexual or other offenders, whether or not they are emotionally deviated, it is clear that we should expand our probation and parole resources to increase the effectiveness of treatment in the community. It is there that we are most likely to achieve lasting, reformatory results.

Discussion

MR. JUSTICE BARRY said: I am quite sure I speak for all who are here this evening when I congratulate Professor Tappan upon his address. He has brought a refreshing blast of common sense to a subject which is usually discussed in an atmosphere at least made musty by emotionalism and contaminated by prejudice. His insistence upon the necessity of paying proper regard to the legitimate liberties of the individual is a refreshing approach. This is a field in which the lawyers have not done much more than resort to the traditional punitive methods. Regrettably, it is a field in which the psychiatrists have, with some notable exceptions, failed lamentably. They have undertaken to do things which they are not equipped to do; and they have failed to tackle with vision and intelligence those things which they are equipped to do. They may well utter the words of the General Confession and ask forgiveness for those things they have done which they ought not to have done, and for those things they ought to have done which they have not done. What we want from them are not dogmatic assertions of doubtful validity concerning social theories and postulates, but knowledge and techniques that may enable us to lessen human misery, for crime usually results in sorrow for both victim and criminal. The problem is one in which discussion is usually very much obscured by emotional preconceptions. At least this Society, in the discussion to which Professor Tappan referred, did endeavour to approach it on a scientific basis. As Professor Tappan has indicated, the Society failed to achieve this, however, and I think the reason for the failure was that it committed the unforgivable sin of over-inclusion. It failed to define clearly what kinds of sexual offenders were the subject of the discussion. I imagine that the main speakers and the subsequent speakers on that occasion had in mind a not very clearly realized image of a sexual offender of the kind that represents in fact a very small proportion of the number of people who would be covered by the wide terms of legislation aimed at sexual psychopaths. Unnecessary width of definition, resulting in the inclusion of many offenders who are not psychopaths, has unhappily been a feature of legislation in U.S.A. and in three States of this Commonwealth. It is good to hear from a person of Professor Tappan's authority and standing that by far the largest proportion of sexual offenders are offenders against

conventions governing objectionable but not dangerous behaviour which have been embodied in form of law. An exhibitionist or frotteur is undoubtedly a nuisance, but he should be dealt with for his offensive conduct and not upon the basis that he is a person likely to commit an atrocious sexual crime. If anything has emerged from the researches that have been made, it is that the exhibitionists and such lesser sexual offenders rarely proceed beyond the conduct which gives them satisfaction and which involves no violent interference with other citizens. It is hard to convince even sensible people of this, and the public who react to sensational newspaper presentations in obedience to the fears engendered by their stereotyped image of a sexual fiend are a very long way from accepting it. Now this is not surprising, because grave and atrocious crimes committed by demented or abnormal creatures touch to the security of the community very closely, and it is not a matter for wonder that the image of a monster which is evoked when the expression "sexual criminal" is used, should result in vigorous demands for punitive action or indefinite detention. In such a frame of mind the community is not likely to be discriminating. It is therefore of great value that Professor Tappan's voice should be raised authoritatively tonight to ask that we should give second thoughts to this problem, and to remind us that by far the largest proportion of the people who are loosely classed as sexual criminals are not necessarily any greater potential dangers to the community than the person who is guilty of a minor infraction of the criminal law. The problem of the sexual offender is one that has occasioned very great concern in America, and also very great concern here, and I am glad that Professor Tappan finds it possible to congratulate us upon retaining some vestiges of sanity. We are bound to do what we can to uphold public morals, and to some the question of the maintenance of public morality may be far more important than the mere disposition of the individual. But the fundamental problem is really a problem of disposition; of determining what should be done with an offender. In most cases, there is no very serious problem in the proof of guilt. Most exhibitionists and most frotteurs admit their offences; it is only in rare cases that there is a defence of "not guilty", and in those cases very often the defence is well founded, or at least the court should be upon its guard, because in the instances where the offence is denied, often there is some sound reason for the denial, such as a mis-

taken identification or a too fertile feminine imagination which has misinterpreted innocent happenings. Professor Tappan is, I regret to say, under a misapprehension as to what the state of affairs is at Pentridge. There is at present no effective psychiatric clinic there. Maybe there will be at some future date, but at the present time there is no psychiatric clinic at Pentridge. Further, under the penal system of Victoria no greater progress has been made in the problem which homosexual prisoners present than has been made in America. As far as I know vigilance on the part of the prison staff and segregation are the only steps that can be taken here.

Decent citizens find incest abhorrent, but we should realize that incest in this community is much more extensive than the convictions in the Courts indicate. It is not uncommon in country districts, and there are grounds for thinking that it is not uncommon, too, among the local Italian communities. Usually, the Italians who are convicted for incest, and who receive very heavy sentences, are people who are otherwise completely law-abiding. Commonly they have no previous convictions, and they are well-behaved prisoners. They work very hard and are amenable to prison discipline, but while they are incarcerated the taxpayer is supporting not only the prisoner but also the large families which they have compulsorily left without means of support.

Now, obviously, incest is something to be repressed. Prohibition of incest seems to be one of the fundamentals of social organization. Every primitive community has a prohibition against it, but it must be remembered that in primitive communities incest does not mean intercourse between persons immediately related; it means intercourse between members of a particular clan or a particular totem. The subject is too wide for discussion now, but it seems to be deep-rooted in the human mind that incest must be prohibited. My personal view is that it is socially essential that incest between near relations such as parent and child and brother and sister should be prohibited and repressed by all proper measures, but it is permissible to doubt the rationality of some of the degrees of consanguinity and affinity set out in Section 44 of the Marriage Act 1928.

Professor Tappan's discussion tonight directs attention, of course, to the futility of our punitive machinery. How useful and effective are our punitive approaches to the problems of aberrant behaviour? Doubts concerning their usefulness and

effectiveness arise more readily when the sexual offender is under discussion. Where someone has used violence to gain his ends, whether the end happens to be the robbery of money or a female's chastity, then it seems a just and fair retaliation to impose some form of corporal discomfort upon him. Where the aberrant or anti-social conduct is plainly related to a diseased or deviant sexual impulse then the position is by no means as plain, and that is the reason why twenty years ago the judges in this community were asking for special institutions. Punishment is usually ineffective, for it is notorious that the rate of recidivism is high. Now, in theory special institutions should be designed to investigate the offender for the purpose of seeing whether there is some therapeutic method for the correction of his disability, and for treating him if there is. If the institution is to be of such a kind as Professor Tappan has described as all too common in the United States, namely, a place where offenders are to be sent to be held in custody indefinitely with no therapeutic treatment at all, then I share the prejudice against them that the speaker has voiced. The real question to which we should address ourselves is whether there can be devised through the aid of those much-abused people, the psychiatrists, techniques for discovering tendencies of a kind which are likely to manifest themselves in genuine social harm. If the psychiatrist can produce techniques which will enable us to say, "This man, if he is not held in protective custody, will undoubtedly do an act which will work grave or irreparable harm on a member of the community", we are justified in taking away his liberty, not punitively but protectively, but as a correlative it is necessary that we should make available all reasonable methods to correct the tendencies which require that he should be held in protective custody. Undoubtedly, the problem is of very great complexity, but it is made even more complex by the emotional and prejudiced way in which it is generally approached. I think the Society is fortunate that at this meeting Professor Tappan has brought sound common sense and a respect for human liberties to the discussion of it.

DR. A. J. M. SINCLAIR said that the psychopath represents one of the psychiatrists' failures. The psychopath was an intelligent, nice, glib person, for whom it was impossible to feel the emotional reactions of other people. He was incapable of feeling what other people felt when he was in contact with them or operating

with them. His condition was probably constitutional and not produced by emotional conflict. In the field of sexual deviation the psychopath was completely insensitive to the reactions of other people.

The sexual psychopath represented a very small proportion of the total of psychopaths. Some psychiatrists felt that the psychopath could not be treated. In any case, only a few of them could, if kept under psychiatric care, for a substantial time, be influenced for the better. If the psychiatrist were asked two questions in relation to a case in which his opinion was sought by a judge: "What do you really think about this individual, and what can you really do for him?", there would be fewer cases handed over to the psychiatrist, but those few might derive some benefit.

In reply, PROFESSOR TAPPAN said: The first question concerns incest. Since we live in a system where, I take it, we will not be ready for some time to provide young girls to jaded men as their appetites and interests change, I think our real solution is to do what we can in the way of deterrence. Incest serves no social, moral, legal or medical purpose so far as I know. It is something we must deter to the extent that we can, regardless of the nationality or racial group that is involved, and I take it if your defendant is convicted and receives a substantial sentence, that is about all he can expect.

I wish to thank Mr. Justice Barry for his comments, which illuminated some of the things that I wished to say and could not say as well as he did. I think there are no issues there to which I need speak.

The problem of the purposes of punishment that the learned judge has raised, I should like very much to talk about, but somewhere between ninety minutes and two hours would be required to deal with it in any but the most superficial way. I think it better, therefore, if I leave the subject alone entirely. A mere statement of opinion on what we are attempting to achieve is of little value, but I do suggest that our objectives are multiple and, furthermore, that what we try to accomplish should vary with the sorts of individuals involved and the risks that they present to the community.

The final issue related to problems of the homosexual. I believe that both the British Royal Commission and the American Law Institute (the latter in its Model Penal Code, now under development) have adopted the view that unless the

homosexual is aggressive and dangerous, unless he commits violence upon the person of another or seduces juveniles, his conduct ought not to be criminal. One cannot hope to resolve the problems of this large group either in our prisons or hospitals. Consensual homosexuals do not present a serious danger to the peace and welfare of the community.