

Criminal Justice and Violence

JONAS B. ROBITSCHER, J.D., M.D.*

Violence has become our preoccupation, but violence represents forces which are larger than life—powerful, unmotivated, unexpected—we do not find it easy to study it and understand it.

What can we usefully say about violence?

First, I think we can decide that it is an essential part not only of the universe around us but also of our own selves. Both external nature and internal nature—the nature within our skins—are violent. The birth and death of galaxies, eruptions on the sun, the production of the earth's mountains through the action of volcanoes—these are manifestations of nature's violence, but man carries within himself evidences of the violence in nature with which he must come to terms. Such processes that affect him as his birth, his death, his heart attacks and strokes, cancer, bacterial invaders, are all evidence of violence in man's internal milieu. Even before man has contributed his portion of overt violence—war, murder, rape, assault, torture—the world has demonstrated the ubiquity of violence.

We cannot expect to get very far distanced from violence. Man ever since his jungle beginnings—or earlier, from his start in primordial ooze—has lived on the edge of violence, and his ventures into new areas, which we sometimes see as progress, across new seas, through the air, into space, have been at the expense of disaster and death.

One of mankind's deep-rooted fantasies, expressed in fairy stories and children's tales, is that there can be a life without violence. The rich imagery of violence in fairy tales—which represent the accumulation of the imaginings of generations of tale tellers—is resolved in the happy conclusion in which all the actors "live happily ever after." The Land of Oz is a place where all sorts of apparently violent things occur, but since there is no death (except for witches) there is always reparation, and the effect of the violence is negated. The religions of the East stress the attainment of peaceful states in which not only violence but strong feelings are superseded by calm mystical states, and Western religion postulates a Heaven in which all is serene. But most of us do not expect to find a violence-free atmosphere in this world; we long for the times when there will be no violence, but we learn to accommodate ourselves to a violent environment.

During the last century, under the influence of Social Darwinism—the expectation that man was engaged on an upward evolutionary course that would lead him to Universal Peace and Prosperity within a foreseeable period of time—many, or most, civilized people anticipated that violence could be eliminated. The good citizens of 1875 could look back a hundred years to a time when thugs and highwaymen were commonplace, they could congratulate themselves on increasingly high standards of law and order, and they could look forward to even greater containment of the unlawful and the unruly in man in the time to come. One Victorian who was not so sure that upward progress was inevitable was Sigmund Freud. In one of his last books, a book in which he continued to try to apply psychoanalytic principles to man in the mass, an extension from his earlier

* Dr. Robitscher is Henry R. Luce Professor of Law and the Behavioral Sciences, Emory University School of Law, and a Councilor of the AAPL.

study of individual man, he gave his truly pessimistic view of man's ability to control his own evil genius.¹

Man is innately violent, said Freud. The evil in man that Freud saw—although he was anti-religious—brings basic psychoanalytic theory close to the traditional religious view of Original Sin. Man is born with ugly impulses—pleasure in the pain of others, enjoyment of destruction, a need to be preeminent even to the ultimate harm of rivals. Not in this life will he ever reach a point at which some of these impulses will not exert some influence on him, but he has discovered ways in which he can tame and contain those impulses. Religion has developed ways of dealing with the evil in man by his giving himself to a Higher Power and adhering to religious precepts which represent the rules and commandments of that power by prayer, by following the example of religious leaders and teachers, by working for peace with the hope of future rewards, by working for humility and other virtues. Without the promise of future rewards in Heaven, psychoanalysis states that there are similar ways of dealing with psychic evil. The first is to bring unconscious evil impulses into consciousness, and this is analogous to the religious recognition of sin. The second is the recognition that there are more long-term satisfactions to be achieved on this earth by practicing restraint and by promoting constructive measures than by allowing destructive or hostile impulses to run their course. The third is by the integration into the conscience of the individual the moral attitudes and precepts of mother and father or other authoritarian figures. We could elaborate on these theories and give other ways in which psychoanalytic theory explains why civilized man curbs his impulses in the interests of society, in the interest of his relationship to his libidinal objects, and in his own self-interest without reference to the reward and punishment system that religion provides, but the point here is the shared belief in the Freudian psychological system and the traditional religious system that evil in man is curbed by man's needs to be at peace with himself and loved and respected by others and by his hopes of future gain, in this world or the next.

These two systems that rely on a theory of original or innate sin have been challenged in recent years by some ethnologists, anthropologists, and sociologists who have put forth an opposing theory—that violence is culturally, not psychically or biologically, determined.

According to this theory the infant enters into this world with his mind and will a blank slate on which his culture can inscribe cues either of sociability or of aggression, for we conceptualize violent behavior as the outcome of impulses of aggression.

In popular writing, two men have come to represent the two contrary points of view, that violence is learned and that violence is innate behavior. Ashley Montagu in *Culture and the Evolution of Man* feels that in the course of human development the power of instinctual drives has gradually withered away, and that basic instincts like aggression have gradually been supplanted in many by "an adaptively more effective means of meeting the challenges of the environment, namely, by enhancing the development of the intelligence. . . ."²

In another work, Montagu specifically opposes the Freudian idea of an aggressive instinct:

The evidence concerning the biosocial nature of man, as we know it today, does not support the notion of an aggressive, death, or destructive instinct in man. In fact, the whole notion of predetermined forms of behavior in man is outmoded, for man's uniqueness, among other things, lies in the fact that he is free of all those predeterminants which condition the behavior of nonhuman organisms. . . . The evidence indicates quite clearly that everything human beings do *as human beings* they have had to learn from other human beings. . . . So far as the development, by evolutionary means, of aggressive tendencies in man is concerned, the idea can be thoroughly dismissed.³

The evidence is today overwhelming that in order to become an adequate, healthy, cooperative, loving human being it is necessary to be loved. No child is born hostile or aggressive. It becomes so only when its desires to be loved and to love are frustrated, that is, when its expected satisfactions are thwarted—and the thwarting of an expected satisfaction is the definition of frustration. This is what Freud failed to perceive. What he took to be inborn hostility is, in fact, an acquired form of behavior following upon the frustration of the organism's satisfactions.⁴

Robert Ardrey, on the other hand, believes that aggression and its accompanying violence are innate; he quotes a two-hundred-year-old observation by David Hume: "Should a traveler give an account of men who were entirely divested of avarice, ambition, and revenge; who knew no pleasure but friendship, generosity, and public spirit, we should immediately detect the falsehood and prove him a liar with the same certitude as if he had stuffed his narration with centaurs and dragons."⁵

The two theories, Montagu's and Ardrey's, are not entirely incompatible. I would agree with Ardrey that man's aggression is innate, but I think that Montagu's insistence that frustration and other cultural determinants are *the* cause of aggression can be altered to a recognition that they are *a* cause and a stimulator of aggression.

The reason why these two concepts of the cause of aggression are important is that depending on which one we accept we see violent behavior as either easy or difficult to control. If we accept Montagu's view, changes in our culture—the deemphasis of warfare games and cowboy and Indians games for small boys, to take one obvious example—can be a partial answer to problems of violence and aggression in society; bringing up children without frustrations might be another part of the answer to the problem. If we take the other view, we conclude that the possibility of violence is always with us, that only recognizing it, taking it into consideration, being eternally at war with this instinct—or some of its manifestations—will keep us in command of the problem.

Freud took this latter view, and he was not very optimistic about our chance of success. He felt that the barbarian horde was always just beyond our enclaves of civilization, pressing in on us. He felt we could contain excess aggressivity and maintain a civilized society, but we did this by curbing our impulses, both sexual and aggressive, and as a result we paid a price in nervous tension and neurotic symptoms; that is the meaning of the title of his provocative late book, *Civilization and its Discontents*, which was originally titled "Unhappiness in Civilization."⁶

Freud postulated both a constructive side of man, which has love as its source and its manifestation, which wants to combine single human individuals into couples and after that into families, races, peoples, and nations, and a natural aggressive instinct, the hostility of each against all and of all against each, which opposes this "programme of civilization."⁷

If we review history we find that violence has always been socially countenanced—in wars, which are usually seen as just by at least some of the participants, in torture, in religious persecution, and in racial persecution, among other manifestations. Some of the earliest remains of prehistoric man show skull deformities that may have resulted from violence practiced on humans by other humans. Early cultures in both the Old and the New Worlds have emphasized human sacrifices to the gods—a violent means of propitiating the forces of nature which do violence to man, thus, a violence used to prevent the imposition of violence. We find also that violence has always been subject to stricture, and that a system of criminal justice is one mechanism by which society curbs that violence which it finds insufferable. The criminal justice system is a means of avoiding individual retribution—it serves to prevent feuds by interposing an agency, the state, as a third party in the mutual hostilities of individuals. The Code of Hammurabi, our earliest comprehensive legal code, can be seen both as a great advance over individual retributive justice and tribal custom—it expressly prohibited blood feud, marriage by

capture, and private retribution—and as a very primitive mechanism, at least to modern eyes, because it relied on the legal exercise of much violence to combat violence in the community.

While considerably more lenient than the Assyrian law, which made great use of corporal punishments which shock modern sensibilities, the great code of Hammurabi still depended on *lex talionis*, the law of retaliation. A part of the body was removed or mutilated if this was an appropriate punishment to fit the crime: the hand that struck a father was cut off, the eye that pried into secrets was put out. The death penalty was freely exacted, for various forms of theft and piracy, civil disorder, the shirking of service to the state, and criminal negligence; it was also the fate of those who falsely accused another of a capital crime. Four types of capital punishment were designed to be retribution for various types of offenses—hanging, burning, impaling, and drowning. The law of retaliation was used to achieve a kind of poetic justice that is far removed from our concepts of individual justice: if a debtor's son was held as a pledge for a debt by a creditor and negligently treated in a manner that led to his death, the punishment would be the death not of the offending creditor but of his son; if a man was guilty of manslaughter in the death of another's daughter, his own daughter might be put to death; if a builder's negligence caused the death of the son of the man for whom he had built, the builder's son would be the subject of the death penalty. We do not know how the Sumerians dealt with willful murder—the relevant code provisions have not survived—but we do know that unintended killings that did not involve negligence were not punished; we know also that a deserted wife who remarried was not punished for her bigamy if she could demonstrate that poverty required the remarriage, and that if a passer-by was gored by an ox, the owner would be punished only if the ox had been known to have been a vicious beast. A major form of punishment was monetary compensation—retribution—paid not as a fine to the state but to the victim or his family; this is a kind of punishment we are experimenting with today as a proposed novel method of securing justice.

Whether violence be naturally occurring or socially conditioned, it has been a ubiquitous problem, a problem that man has attempted to deal with by making the punishment of violence a matter of societal rather than private concern.

The great code of Hammurabi and all the many codes of criminal justice which have succeeded it have these attributes in common:

(1) They remove the retribution for violent behavior from the province of the individual and make it a function of the state.

(2) They impose a definite set of regulations so that transgressions can be recognized as such.

(3) They are intended to deter potential transgressors, to reform present transgressors, and to immobilize the potential for further harm of those present aggressors who still present a threat. (Much of our present dissatisfaction with the criminal justice system stems from our requirement that it fulfill all these aims and others. We expect the criminal justice system to satisfy society's desire for revenge, to teach a lesson to the criminal, to rehabilitate the criminal, to segregate the criminal from society, and to provide an example for others.)

(4) They attain these ends largely by severe and repressive measures which themselves have the potential for developing violent reactions. Thus prisons are not only reformatory, they are also schools for crime. And we are in the tragic position of finding it necessary to use modalities of reform which will add to the problem, because they are repressive and repression encourages violence.

The criminal justice system is now facing more severe criticism than it has ever faced before. A rising crime rate and our increased awareness through newspapers and television of violence in our society lead some to blame the criminal justice system for its ineffectuality or to go further and to see it as a major cause of crime. Social critics argue

about the purpose of the criminal justice system—to reform? to prevent? to punish? to rehabilitate?—and some critics see it as a means of enforcing social conformity even though the deviant behavior it attempts to check may be an expression of political protest rather than an antisocial activity. We question the purposes of the system, the product of the system, the methods of the system.

One of the first problems of any system of criminal justice is its method of distinguishing excusable from inexcusable violence. We have labeled Lieutenant Calley's violence as inexcusable, but the dropping of atomic bombs on Hiroshima and Nagasaki are considered justifiable decisions of military authority. When the police or other authorities use excess force to wound or kill and claim either self-defense or the need to prevent escape, we need to evaluate the intent of the authority. In all cases in which criminals claim a disordered mental state, we must find if that state justifies an otherwise illegal act.

This effort to distinguish between excusable and inexcusable acts leads to a need to determine the mental state of a perpetrator of an act. We have noted that as long ago as the code of Hammurabi the unintended killing not involving negligence has not been punished. The intention, not the effect, of the deed has been taken into consideration. The Anglo-Saxon legal system for one thousand years has insisted that those who commit crimes but who are out of their senses—lunatics was an old term, and psychotics a more modern one—may in some cases be excused for their deeds by reason of insanity.

Cesare Lombroso was the Italian criminologist who put forth the theory in the middle of the eighteenth century that criminals suffered from a reversion to a primitive physical state, that they had not evolved to or had degenerated from the high state of most of us, and that from their ear lobes and skull proportions criminality could be imputed to them. He developed his theory during his work as a psychiatrist. Eventually he won fame as a criminal anthropologist.

Lombroso was a humanitarian: his theories, which have since been disproved, were prompted by his wish to aid criminals. He felt that if society understood that criminals had less free choice than others—that they had been born in a degenerated condition which facilitated their reversion to primitivism and that by their ear lobes or such they showed their degeneracy—then society would deal with them more paternalistically and more humanely.

Ironically, however, reforming efforts backfired, and his work was eagerly seized on by those who wanted to consider the criminal a lost cause, incapable of improvement because fated genetically to commit crimes or perform violent acts, a race apart. His theory has been used to justify segregation, neglect, and lack of rehabilitative efforts for prisoners.

Modern psychoanalysis seems to be telling us two different things about aggression. First, it sees aggression as innate. Just as man is born with a sexual or loving drive energy, he is born with an aggressive drive energy. This aggressive drive has a potential for destructiveness, although it can be used for, and is necessary for, constructive purposes—exploration, object seeking, acquiring and mastering are only a few examples of the usefulness of aggressive drive energy. But psychoanalytic theory also sees aggression as modifiable by the interactions of the individual and his environment and ultimately capable of being manifested in various ways—overt belligerent behavior, feelings of belligerence, unconscious aggressive impulses, and overt, affective, and unconscious non-belligerent forms of aggression.

The Freudian view can be distinguished from the Lombrosan view because man is seen as capable of changing, developing, reforming. By the use of analysis and self-analysis the unconscious can become conscious. Life experiences can modify the expectations and responses of the individual. The individual is not a fixed entity as in the Lombrosan position; man is seen as having more dignity, more sense of responsibility for his own actions than in the Lombrosan view. Freudian theory opens the promise of a therapeutic approach since man is modifiable.

But aggression and the potential for violence are innate—in contradiction to the Montagu theory that violence represents learned behavior—and even with the most peaceable models the child will feel upsurgings of violence and rebellion. Since many of the influences on the individual are unconscious, they are not within the control of the individual, so the Freudian view seems to lend support to two contradictory conclusions—(1) that behavior should not be punished, since it is to some extent, often a large extent, unconsciously motivated and so predetermined, and (2) that behavior should be punished, since the determinism is not complete. (Indeed, the excusing of criminal responsibility might become a determinant that would lead to more violent and criminal behavior.) Some followers of Freud have felt that all criminal activities should be treated as symptoms of mental illness; Freud himself seems, although perhaps not very logically, to have expected from himself much individual responsibility for control of his own actions and to expect as much from relatives, cohorts, and patients.

Freud at one time attempted to solve this riddle by stating that by looking back at the causes of an action we can understand why that action occurred—we can see all of its determinants and see that the action was overdetermined (Waelder suggests that multidetermined is a better term and a better concept)⁸—but that in the present and looking forward there are choices that can be made, and that an action is not foreordained.

So long as we trace the development from its final outcome backwards, the chain of events appears continuous, and we feel we have gained an insight which is completely satisfactory or even exhaustive. But if we proceed the reverse way, if we start from the premise . . . and try to follow these up to the final result, then we no longer get the impression of an inevitable sequence of events which could not have been otherwise determined. We notice at once that there might have been another result, and that we might have been just as well able to understand and explain the latter. . . . Even supposing that we have a complete knowledge of the aetiological facts that decide a given result, nevertheless what we know about them is only their quality, and not their relative strength. . . .⁹

Freud's view is not entirely consistent, but it is comprehensive, and possibly the fault is not Freud's but the fault of the complexity of life, which cannot be lived without paradoxes and contradictions. He seems to be saying: in the treatment room a patient's irrationality is not dealt with from a judgmental point of view. Instead, the attempt is made to understand it. But outside the treatment room lies a society that pays heed to what is conscious, and that society can be expected to be judgmental.

Freud's complex formulation has advantages over other views. It offers more hope than Lombroso; it says things are more difficult than Montagu. But it leaves us undecided about how much blame—and how much punishment—is appropriate for those who perform violent criminal acts.

In 1965 a group of researchers at Western General Hospital in Edinburgh presented a paper that has forced us to reconsider the Freudian position. Perhaps criminality and violence are inborn, perhaps physical qualities hereditarily transmitted predispose the individual to crime. This group reported that out of 197 mentally abnormal men undergoing treatment in a special security institution, seven had an unusual chromosomal component. These offenders, who tended to be tall and of low IQ's, showed a high incidence of crimes of violence. One commentator speculated that the Y chromosome "seems to possess an elevated aggressiveness potential . . . and that the addition of another Y chromosome presents a double dose of those potentialities that may under certain conditions facilitate the development of aggressive behavior."¹⁰

The XYY controversy has continued, and at present findings are too contradictory and too controversial for courts to be willing to excuse a violent criminal because of his extra Y. But the old debate of the genetic versus the psychical and cultural basis of

criminality—"bad seed" versus psychological and social failures of upbringing—is revived once again.

Although we do not know precisely, or even approximately, the relationship of chromosomal abnormality to the commission of crimes or the eruption of violence, we can speculate that a wide range of chromosomal and other biological abnormalities might cause either increased aggression, decreased ability to control aggression, or a deficient concern with the consequences of aggressive action. After all, we achieve some degree of peace in our society, a portion of domestic tranquillity, not because police and judges immobilize so many criminals but because individuals choose to conform to the law. The criminal justice system is not our first line of defense; it deals effectively with only a small proportion of criminals. Official police data recently confirmed some of our worst suspicions: 79% of all United States murders, aggravated assaults, forcible rapes, robberies, burglaries, larcenies, and auto thefts go unsolved; at least half of the nation's crime is not even reported to the police.¹¹ If only crimes of violence were considered, the figure would be appreciably lower; nevertheless, it is still a fact that although the criminal justice system may deter potential criminals and immobilize captured criminals, most potential criminal activities are curbed not by the police and the criminal justice system but by the desire of individuals to obey the law.

In its doctrine of excusing the legal transgressions of the seriously mentally ill, the criminal justice system has recognized that some organic as well as some psychological conditions should allow the decriminalization of acts otherwise to be considered criminal, but it has restricted this allowance to extreme examples. If chromosome constitution, epileptic focuses in the brain, abnormal brain wave tracings, hormonal imbalances, and a variety of other organic conditions interfere with the ability of the individual to control his actions, perhaps many more criminal acts should be seen as excusable and perhaps also as capable of being prevented through medical intervention.

Much research is now going on concerning the limbic lobe, the "old" part of the brain. The limbic structures, deeply buried parts of the central nervous system, are especially sensitive to deprivation of oxygen at time of birth and in later stages of development to the effects of high fevers, virus encephalitic conditions, toxins. We have long known the connection between rabies, which is a viral encephalitis, and "rabid" behavior, rage and fierce aggressiveness; we are less aware that other kinds of illness—including burns covering a large percentage of the body—can also cause organic brain changes which may be less dramatic and produce less potential destructiveness but are equally organic in origin. One team of researchers has postulated a "dyscontrol syndrome," manifested chiefly by problems with controlling violence and an abnormal electrical potential in the brain, which it says is capable of treatment by brain surgery.¹²

There is no doubt that individuals, both for physical reasons (which can perhaps someday be treated by medical and surgical methods) and for psychological reasons, such as being the objects of violence in infancy, may have special problems in conforming their conduct to the law and in curbing their potential for violence. This brings us to two major questions. Do we excuse criminal behavior for this reason? Do we require individuals to submit to medical and psychological treatment to curb their criminality or violence?

The literature on what factors should constitute an excuse for criminality—the question of criminal responsibility and diminished responsibility—is enormous. Let us only say that courts, while acknowledging these factors—and the related factors of racial disadvantage, parental deprivation, and poverty—are not now in a position to greatly temper justice on their account. Some of these factors are too conjectural and we know too little about them for courts, which have the duty of handing out impartial justice, to give them compelling weight. But these factors are being used to slightly temper the punishment; race, poverty, early parental mistreatment are sometimes taken into consideration (if presented to the court in an effective fashion) to provide at least a partial

extenuation for anti-social activity. (It is a rare judge, however, who gives a shorter sentence to a defendant because he is black, poor, and undernourished; the contrary is more frequently true.)

We can see the effort to take account of more and more factors—physical in particular, but also psychological, if these two can be completely separated—as humanitarian, but it does lead to unequal justice, a variably defined standard of punishment that may be unfair. A more important criticism is that it impairs the law's function as a rigid framework of rules and regulations by which we judge our conduct; variable penalties lead to a feeling that the law is not certain, and some of its authority is lost. As a result, the law, in spite of its willingness to take more factors into consideration when determining culpability, is still not ready to recognize the XYY syndrome, the XXY syndrome, or the "episodic dyscontrol" syndrome as more than incidental factors in the commission of crime, and less well defined causative factors are given less weight.

Our second question is whether we can compel criminals to submit to medical or psychological treatment to curb their criminality or violence. In 1970 it was revealed that three prisoners at California's Vaccaville prison had been subjected to brain surgery in order to attempt to eliminate violent outbursts. As a result of newspaper publicity the experimental program was shelved.¹³ In Michigan a mental hospital inmate who had been declared a criminal psychopath and committed to a state hospital was scheduled for a brain surgery experimental program: a suit brought by the American Civil Liberties Union resulted in an opinion that such surgery could not be done legally because there was too much possibility of coercion—with the resultant lack of free and informed consent—when such inmates are urged to submit to surgery.¹⁴ Although many researchers wish to approach the problem of violence and violent offenders through psychosurgery, most psychiatrists feel that such interventions into the brain are of unproved effectiveness, and they fear the possibility of state-ordered imposition of mind changes through surgery; such surgery is now confined to experimental surgery on non-criminal and entirely voluntary patients.

In Western Europe and in at least one instance in Colorado, castration and the use of chemical treatments which produce the same effect as castration have been used for sexual offenders.¹⁵ The same objections that apply to psychosurgery apply here.

Behavior modification programs are now being used in many prisons; they are particularly useful for violent and destructive inmates who cannot be controlled by the traditional methods of prison. In a number of prison systems the most troublesome offenders who have lost all other privileges are put in a cell unit with the deprivation of everything except essentials of life and are then allowed to earn back normal prison liberty, privileges, and "good time"—time off their sentences which has been forfeited by previous behavior—by success in the behavior modification program.

Writing in *Human Behavior*, Wayne Sage says:

Behavior modification has come to the prisons at a time when those institutions are desperate to save themselves as a conscionable part of society. To do that, they are attempting to show that they are not solely places of confinement and punishment but are also centers for rehabilitation. Along these lines, the 1960's saw virtually everything except behavior modification tried on convicts. Psychiatrists psychoanalyzed them; counselors counseled them. Educators educated them and vocational instructors trained them. Social workers tried to settle them into the community with jobs and housing. Some reformers attempted to restructure the entire prison environment to make every element of the prisoner's surroundings nonauthoritarian, supportive and therapeutic. Physicians, for their part, tried tranquilizers and in one case even plastic surgery to try to help ex-convicts establish a new identity on the outside. Only a very few scattered exceptions, such as in the use of castration on sex offenders, indicated evidence that prisons as we know them are capable of doing anything whatsoever to get criminals to stop committing crimes.¹⁶

Violence in particular was hard to deal with because violent behavior is so often unpredictable and often apparently not highly motivated. Sage exaggerates how much was done for prisoners in the 1960's—most prisoners get little if any rehabilitation—but he does describe the hopelessness that beset corrections until behavior modification ideas were put forth. Although the use of drugs, hypnosis, aversive stimuli, electroconvulsive shock, and other extreme means of altering behavior generally cause doubts, most correctional people did see a place for simple reward and punishment schemes.

The prisoner sees such schemes as an assault on his personality, however, and now the charge is being made that these programs are themselves so violent and destructive—in fact or in spirit—that they create violence in prisoners. Says one California psychiatrist, “The few examples I encountered of men who I considered dangerous, because it was clear that they could kill without compunction and without provocation, were the men who had been locked up almost continuously in adjustment centers. They were so filled with bitterness, resentment—*rage* isn't even a strong enough word—at the treatment they had been accorded, that they were prepared to kill at a moment's notice. The kind of violence that has been occurring in the California system, in my opinion, stems from a human personality that has been developed within the department of corrections.”¹⁷

We have seen too much violence in children, violence in people who have never been in the toils of a department of corrections, to agree with this psychiatrist that prisons are the main cause of violence, but it is true that prisons have not defined their roles, they have not been successful in dealing with violence, and they do serve to complicate an already complicated problem.

Prisons harm in various ways. Our system makes great mistakes by lumping together violent and nonviolent prisoners, by creating an atmosphere that is so tense that the propensity for violence grows in its population, and by then providing a “school for crime”; by keeping nondangerous prisoners—whose crimes may have been much less serious violations of the rights of property rather than of the person—for excessive periods of time; and by destroying the contacts with family that can be most helpful to inmates. Our prisons indicate that we do not have much regard for prisoners, and they reciprocate the feeling.

How can the prison system cope with the problem of violence? The system of criminal sanctions serves a number of different functions, and some of these are contradictory. If we want to provide the best example, so that children will not follow their elders' bad examples, we will deal harshly with offenders, but if we do we will get unnecessarily hardened and embittered offenders who will be released someday to do further damage. If we insist on remaking prisoners through behavioral modification techniques, we will impose long sentences so that maximum results can be obtained, but if we think of prison as a deterrent, short sentences in many cases will be much more effective.

We do know enough now to devise improved prisons, but to do this we must face facts squarely. We must steer a course between the sentimentalism of some sociologists who claim that punishment does not have a preventive or deterrent effect and therefore we should give up our system, and the obsessionality of those psychiatrists and behavioral scientists who feel that they can remake the prisoner and thus should have control over him for long periods of time. Johannes Andenaes, Norwegian law professor and criminologist, in his book *Punishment and Deterrence* makes the points that punishment does deter, at least in many cases, that we must do a better job of determining under what circumstances what punishments are most effective, and that the fusion of a therapy scheme with a correctional system will not answer the problems of crime or violence.¹⁸

We need more use of shorter prison sentences and more attempt to provide prisons in which further impetus to violence is not facilitated. We need more awareness of the cost-effectiveness factor in corrections, so that we can use our corrections budget better. A more efficient correctional system would make more use of punishments in lieu of prison sentences—night and weekend incarcerations, retributive fines, works for the

public good; in conjunction with prison sentences, such a system would make more use of educational release and half-way houses; and it would certainly offer more helpful services in the community to help offenders reestablish themselves in civilian life. But we do not want to lose sight of the fact that some offenders, a small percentage, are so violent and so dangerous, perhaps because of their own proclivities, perhaps because we have made them that way, that society for its own protection needs them put away for long periods or permanently.

We also need more awareness that in our attempt to curb violence we often foster violence. We do violence to offenders when we treat nonviolent offenders as if they were violent—and thus promote their potential for violence. We do violence to prisoners by imposing indeterminate sentences or by making the prisoner subject to arbitrary decisions of parole boards so that the extent of their punishment is dependent on our good will. We do violence to prisoners when we impose some behavior modification programs on them that use violent techniques. The dehumanized atmosphere of most prisons is an expression of our feelings of violence toward offenders, and it fosters violence in return.

The criminal justice system will always have more of an indirect than a direct effect on our society; it will do a better job of deterring violence than of reforming those already committed to violence. Early influences—the family and the climate of the early neighborhood—will always be more of a factor in our efforts to minimize violence than anything we can accomplish in corrections. The war on violence in our society must be waged on a broad front, and we cannot achieve a less violent society by squashing criminals while at the same time we allow handguns, permit the media to encourage violence, and in other ways show our infatuation with the non-criminal forms of violence. If the criminal justice system can become less violent, it will diminish the violent reactions it stimulates, but we must think and act much more comprehensively to make real inroads on violence in our society.

Freud has said that the eternal struggle between the constructive wishes and the destructive wishes in man produce in him a sense of guilt. Even if man does not give in to his most destructive and aggressive urges, he knows at some level of his mind that he feels enjoyment in evil. The guilt that results produces tension, and the tension can be used to stimulate reform, development, and progress, or it can be so unnerving to the individual that he ends up by acting out his uncivilized rather than his civilized impulses. Some such concept—of civilization preserved only at the expense of effort and struggle, of a system of justice maintained partly because we recognize in the offender qualities we have seen in ourselves—helps us to recognize the difficulty of curbing violence, allows us empathy with those who cannot control their violence, and persuades us to treat the offender with as much dignity as we can muster. Violence is not only a problem in others, it is a problem in ourselves.

References

1. Freud S: *Civilization and its Discontents*. Standard edition, V. XXI. London, Hogarth Press, 1961
2. Montagu A: *Culture and the Evolution of Man*. Quoted in Ardrey R: *The Territorial Imperative*, New York, Atheneum, 1966, p 30
3. Montagu A: quoted in Ardrey, p 289
4. *Ibid*
5. Hume D: quoted in Ardrey, p 288
6. Freud, *op cit*
7. *Ibid* p 122
8. Waelder R: *The principle of multiple function*. *Psychoan Quart* 5, 1966
9. Freud S: *The Psychogenesis of a Case of Homosexuality in a Woman*. Standard edition, V. XVIII. London, Hogarth Press, 1955, pp 167–168
10. Jacobs P, Brunton M, Melvill M et al: *Aggressive behavior, mental subnormality and the XYY male*. *Nature* 208:1351, 1965

11. National Observer, Aug 3, 1974, p 1
12. Image and Commentary, V XII No XXII, *The Anatomy of Violence*, 1970; Mark V, Sweet W, Ervin F et al: *Brain Disease and Violent Behavior*, Neuro-Ophthalmology. Proceedings of the Fourth Symposium held by University of Miami School of Medicine, ed Smith J. Springfield, Ill, Charles C Thomas, 1968
13. A Clockwork Orange in a California prison. *Science News*, March 11, 1972, p 174
14. *Kaimowitz v Michigan Dept of Mental Health*, Civ No. 73-19434-AW, Wayne County, Mich Cir Ct July 10, 1973
15. International comments, anti-androgen for sex offenders, *JAMA*, Jan 10, 1972, p 230; *Psychiatric News*, Oct 20, 1971, p 30; *Medical World News*, May 12, 1972, p 56; *Psychiatric News*, June 7, 1971, p 12
16. Sage W: Crime and the clockwork lemon. *Human Behavior*, Sept 1974, pp 16-17
17. *Ibid* p 17
18. Andenaes J: *Punishment and Deterrence*. Ann Arbor, University of Michigan Press, 1974