

MURDER, MADNESS AND THE LAW. By Louis H. Cohen. Cleveland: World Publishing Co., 1952. Pp. 173. \$3.50.

THIS is a book to be rent cover to cover. Its chief virtue is the relatively slight number of pages. Yet in its small space more heinous murders are committed and more horrid humans exhibited than in perhaps all the works of Mickey Spillane or a year's subscription to True-Detective. The book was executed by Louis H. Cohen (who is a psychiatrist) with the assistance of Barbara Frank (who is the daughter of Judge Jerome Frank) and Thomas E. Coffin (who is otherwise unidentified).

Judge Frank's introduction starts the book off on the wrong foot by insinuating it is a good book ("a new approach to the problem of the insane murderer") and penning an adroit aphorism ("A society that punishes the sick is not wholly civilized. A society that does not restrain the dangerous madman lacks common sense.")<sup>1</sup> If Dr. Cohen had really gone on to reveal to us how to separate the sick from the bad, the insane from the criminal, he would have earned the gratitude of a society in fact deeply troubled over whom to treat and whom to punish.

"With 17 startling and dramatic case histories as the basis for his investigation, Dr. Louis H. Cohen, well-known legal psychiatrist, analyzes the problem of why people kill."

So states the dust-jacket. The modicum of truth is that the seventeen murders are startling. The grossest exaggeration is that there is *any* analysis of why people kill. We are told merely the awful rudiments of how seventeen insane (or seemingly insane) people killed. The basic design of the book appears to be the publication, for popular consumption, of seventeen shocking murders, some infamous, the others not, all dressed in the vogueish psychiatric mode. This reader was reminded of Benjamin Karpman's *Alcoholic Women*, published as a psychoanalytic study of several promiscuous female imbibers, but chiefly productive of a chronicle of the real and dream sex-lives of several promiscuous female imbibers. The point is that such works, whatever their rationale, seem designed less for any advancement of learning than for the purveyance of shock and sex. This is not to suggest that such sensations are not suitable objects of literature or learning, but to urge that the publication of sensationalism be given its due and no more. Dr. Cohen, to be sure, tells

his sordid tales in the approved, coldly clinical manner. Nevertheless, seventeen insane melodramas emerge.

The somewhat obscure scholarly design of the book is probably as Judge Frank suggests—to point out a new approach to the problem of the insane murderer. We do not desire to punish the insane nor to treat the criminal, so the psychiatrist will try to teach us to distinguish. Of the seventeen murderers discussed by Dr. Cohen, nine were adjudged not insane while the remaining eight were found insane and committed to mental institutions. The author appears to have little quarrel with the treatment of the latter eight at the hands of the law. Concerning the nine found not insane, the author expressly criticizes only four convictions. Charles Guiteau, the assassinator of President Garfield, was executed despite medical testimony of insanity. (It may be noted, however, that fifteen medicos testified for the prosecution.) Albert Fish, an old man, murdered and ate (with apparent sexual relish) a ten year old girl. He was executed (following contradictory testimony of psychiatrists for the prosecution and defense). "Harry," a good-looking youth, killed "Lola," his first love, when Harry grew to believe Lola did not love him. Harry was sentenced to life, following several years in a mental hospital, and despite testimony of schizophrenia by four psychiatrists. Finally, "Lester," who lived with "Pearl" as man with wife, got blind drunk one night and, suspicious of Pearl's sailor friends, shot Pearl. Despite the fact that Dr. Cohen testified at trial that Lester's condition was one of (alcoholic) insanity, Lester was convicted of first-degree murder. Dr. Cohen's opinion of Lester, as contained in a report to defense counsel, is noteworthy:

"The nature of the prisoner's past history, particularly his delinquency and anti-social behavior dating from childhood, indicates to me beyond any doubt that he is a psychopathic personality with amoral and anti-social traits. Moreover, he has been a heavy alcoholic, and for several months preceding the murder his drinking was even heavier than usual. His behavior in the past would indicate that under conditions of alcoholism his anti-social attitude would become overtly manifested, and he would get into fights or other difficulties of an anti-social kind, for which he already has six recorded convictions by the authorities. . . ."

"From a diagnostic standpoint, the foregoing picture appears to me to be that of a disorder considered by psychiatrists to be alcoholic psychosis, pathological intoxication. If this is correct, the prisoner at that time was incapable of understanding clearly or at all the difference between right and wrong, or to comprehend clearly the nature and consequences of his acts."<sup>2</sup>

Notwithstanding Dr. Cohen's concluding sentence, the reader recalls:

"Suddenly Lester ran into one of the houses on the street, and told the owner of the house that he had done something wrong. He asked the man to call the police, and while he was waiting for the police, he had three shots of whiskey."<sup>3</sup>

2. Pp. 140-1.

3. P. 140.

More seriously delinquent, however, are the author's reasons for describing Lester as psychopathic. As can be seen, these reasons center on Lester's *anti-social* and *amoral* behavior and traits. How ingenuous the psychiatrist. By redefining criminal behavior in this sociologic way, a psychotic emerges where a chronic criminal earlier stood.

It may well be that Lester was insane. We certainly are not persuaded by Dr. Cohen's kindly sophistry. Such, however, are the thoughts which enter into the author's conception of insanity. For courts to use such a method to distinguish the insane from the merely criminal would simply obliterate the distinction.

Dr. Cohen's complete prescription for separating the mad from the bad involves an initial determination (presumably by the court) of whether the crime in question was an *insane* crime. The possibility of distinguishing insane murders from ordinary murders was a subject of inquiry by Dr. Isaac Ray in 1839, in his *Medical Jurisprudence of Insanity*. Dr. Cohen quotes Dr. Ray's observations at considerable length. Some of the more important distinctions between insane and ordinary murder consist in the absence in the former of any reasonable (selfish) motive, any well-conceived or executed plans, and any accomplices. These common-sense observations are doubtless generally valid and are, moreover, precisely the sort of reasons which today persuade courts to order psychiatric examinations of certain criminals brought before them. Like all rules of thumb, however, exceptions abound. Were Leopold and Loeb not *accomplices* in their insane crime? Was there a total absence of *reasonable motive* in their brazen attempt at confounding their community, at committing the "perfect crime"? Was there not an *intelligible motive* in "Harry's" murder of "Lola," in "Lester's" killing of "Pearl"? Literature surely affords many instances of such "insane" crimes. Dr. Cohen somehow chooses to look only to two other of his cases for illustrations of the validity of his suggestions. Significantly, the courts in those cases had anticipated the author and had found both the culprits to be of unsound mind.

Dr. Cohen's final appeal is for the more general use of psychiatrists in criminal proceedings. The ideal is a psychiatric examination of every criminal brought before the bar of justice. But aware of the unsightly phenomenon of psychiatric "experts" contradicting each other in the court room, the author proposes a court-appointed psychiatrist to determine insanity for the court. This proposal has become popular with the *avant-garde* of the legal profession and has been recently adopted in modified form in certain New York courts. The weakness should be obvious. Genuine disputes, however embarrassing, are not wisely resolved by eliminating one of the disputants. Psychiatry is no science, as even Dr. Cohen will (elsewhere) admit.<sup>4</sup> The only true protection against foolish or erroneous or malicious or arbitrary expert opinions is the opportunity to cross-examine and provide expert opinion in opposition. We have surely endured for too long legal trial by combat to forego its undoubted virtues for the dubious calm and certainty of

monopolized expertise. The problem is not one of the courts but of the experts. Agreement is not wisely reached through elimination of all parties but one.

The most troubling thought is why a book as superficial as this obtains acclaim from jurists like Jerome Frank (and Edmund Cahn, as witnessed by his review<sup>5</sup>). Perhaps even more serious is the question why such short-sighted solutions for inevitable juristic problems like determination of disputed facts (insanity, being one) are so readily embraced by presumably thoughtful elements of the bar and bench. Is it simply that our "realists" cannot realize the unarticulated wisdom that may lie in legal traditions and social institutions? Is it that they find in "archaic practices" their best whipping-posts for prevailing trials and tribulations? Let old thought be abused where new thought fails.

Why, for example, should the jurist listen to the psychiatrist castigate the ancient (1843) *McNaghten* rule on criminal insanity? Why, when the psychiatrist unblinkingly proposes, for locating criminal insanity, a *new* method exclusively derived from the even more ancient writings (1839) of an American psychiatrist (Isaac Ray)? Why, especially, when the sanctity of legal rules need not rest on science, whereas psychiatric rules deserve little regard but as derivatives of a science?

If, then, there is a psychiatrist who can reveal a "test" of criminal responsibility or sanity better than the *McNaghten* query whether the accused knew his deed was wrong, let him step forward. Pray let him think first, however. Or, in the alternative, let him contemplate the other side to that Platonic coin: "The best partner for dice-playing is not a just man, but a good dice-player."

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5. Book Review, N.Y. Times, Nov. 30, 1952, § 7, p. 34, cols. 2-3.

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