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THE XYY SYNDROME IN CRIMINAL LAW: AN INTRODUCTION

PETER T. FARRELL*

The following article is a welcome addition to the other salutary research projects concerning the XYY syndrome. Since the tentative findings of many researchers indicate a connection between this chromosome abnormality and criminal behavior, not only the law but also its related spheres of psychiatry, sociology and penology are deeply affected.

Particularly, the XYY syndrome adds yet another factor to the already complicated problem of criminal responsibility. The indications are, that if properly presented, it will form part of insanity defenses in many trials involving serious crimes. In this regard, the discipline of genetics has proved to be particularly relevant. Studies dealing with heredity and organism variation have uncovered some surprising data in recent years which has led to the theory that this predetermined anomaly of cell structure creates an inborn tendency to criminal behavior. Less than a decade ago, the existence of the "XYY" man was unknown, but now science recognizes his presence and is investigating his status in social problems.

Genetics tells us that normal human cells contain 46 chromosomes in 23 pairs, one of which governs sex. Women have two X (XX) chromosomes, while men have an X and a Y. Our particular concern is with those males who have 47 chromosomes, the extra being a Y. These persons — the XYY's — are shown by research to be usually tall in stature, often acned, dull in mentality and usually with personalities characterized by shyness and solitary activity. Many with this genetic defect become involved in crimes of aggressive violence and other anti-social behavior.

It is contended that such a person cannot control some elements of his behavior and should not be held either legally or morally responsible for criminal acts. This theory has a long and difficult road to travel before it is accepted because it runs counter to norms which are basic in criminal law. However, it deserves our immediate concern and fair appraisal.

It may be that those who would excuse responsibility in the XYY individual are but repeating the contentions embraced in the

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theories of biological determinism first contended by Lombroso and more recently in separate studies by Halleck, Hooton and Sheldon.¹ Basically, they have argued that there is a connection between body type and delinquent behavior.

Our criminal law is premised on the assumption that responsibility is the usual norm and excuse is the challenged exception. Our statutes contain a presumption of sanity. To use this genetic abnormality in law, it could be offered before the trial stage in a contention that the defendant involved should never be brought to trial. At the trial level, if offered as an excuse from or mitigation of responsibility, it would have to form part of an insanity defense and be accompanied by psychiatric testimony.

Its relevancy as part of an insanity defense should not be opened to serious dispute. At present, the law is geared to continuous expansion of the latitude of proof to be allowed to a defendant in such cases. Psychiatrists are usually permitted to testify to the existence of more than psychological conditions as the bases for their opinions as to mental conditions. Medical testimony as to organic conditions such as brain damage is very often successfully offered on behalf of allegedly insane defendants. There is an increasing contention by some researchers that some forms of mental illness are caused by biochemical disorders, and respectable professional opinion to that effect could properly form part of an insanity defense.

In a recent trial in Queens County, *People v. Farley*,² the insanity defense embraced not only testimony from a highly qualified psychiatrist but also from another medical doctor engaged in genetics research. The psychiatrist rendered his opinion without any relevance to possible chromosome imbalance present in the defendant. In answer to a direct question, he stated that he did not know whether the XYY factor had any significance in the defendant's behavior. The other professional witness stated that, in his opinion, based on recent research in genetics, there is a higher incidence of inmates in penal institutions with XYY chromosome imbalance. He stated further that, in his opinion, there was a connection between the defendant's antisocial behavior and his chromosome abnormality. The jury rejected the in-

¹ See G. FERRERO, *LOMBROSO'S CRIMINAL MAN* (1911); S. HALLECK, *PSYCHIATRY AND THE DILEMMAS OF CRIME* (1968 ed.); E. HOOTON, *CRIME AND THE MAN* (1939); E. HOOTON, *THE AMERICAN CRIMINAL: AN ANTHROPOLOGICAL STUDY* (1939); C. LOMBROSO, *CRIME, ITS CAUSES AND REMEDIES* (H. Horton transl. 1911); W. SHELDON, S. STEVENS & W. TUCKER, *THE VARIETIES OF HUMAN PHYSIQUE* (1940); W. SHELDON & S. STEVENS, *THE VARIETIES OF TEMPERAMENT* (1942); W. SHELDON, *VARIETIES OF DELINQUENT YOUTH* (1949).

² Indictment No. 1827, Sup. Ct. Queens County, April 30, 1969, *notice of appeal filed*, No. 2061, App. Div., 2d Dep't, July 24, 1969.

sanity defense and found the defendant guilty of murder. The evidence offered did indicate an unusually brutal killing of a woman. It may be that the verdict was part of what could be a general pattern of jury conduct — a reluctance to absolve criminal conduct where there are particular aspects of violence and cruelty.

There is presently a research project in progress in Kings County Hospital within the City of New York on chromosome imbalance. It is being conducted in association with the Psychiatric Division of that institution. Its findings will undoubtedly influence the scope of psychiatric testimony at many trials in the years to come. Further statistical studies will have to be made. There must be a widespread screening of both normal and abnormal populations to properly establish a connection between the XYY syndrome and specific behavior traits. The developments and results will be of great interest and concern to all of us in the discipline of the law.