Debate*

The Motion before the House was: "That Semi-Responsibility should be recognised in our Criminal Code."

Professor A. Mamo, B.A., LL.D., kindly consented to take the Chair.

Mr. J. Brincat, proposer, stated that in the history of our Criminal Law we find that on various occasions attempts were made to introduce a provision in our Criminal Code to deal with the case of semi-responsibility. In 1850, Sir Adriano Dingli proposed the incorporation of such a provision, and so did Sir Arturo Mercieca in 1909. The proposer held that the opinion of two such eminent jurists was of great weight and constituted a clear proof of the need of recognising such a theory.

The proposer pointed out further that the motions might have been defeated because such theory was not accepted in English Criminal Law. But as our Criminal Code was based on the Neapolitan Code and our temperament was that of Southern Europeans we should rather imitate the Italian Criminal Code and mete out a lesser punishment to a semi-responsible criminal. The opinion of several Italian authors was then quoted.

It was generally objected that it would be very difficult to prove the existence of semi-responsibility. This objection however was not very serious, for in fact, in Italy, Japan and Sweden, where such theory was being put into practice, its application was not found to be difficult.

Mr. F. Dingli, the opposer, began by describing a semi-responsible man as one who is less capable of thinking and willing than a normal one. To the admissibility of the theory of semi-responsibility he found three objections. Firstly, the effects of such theory were detrimental to the accused, for he would be sentenced to imprisonment instead of being sent to a mental hospital. A half normal person is not normal and so he should not be subjected to a lesser punishment, but should be sent to hospital for treatment. Secondly, he stated that it

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* Reported by G. Schembri, B.A.

was practically impossible to distinguish between the half normal and the totally abnormal, and thirdly, even if this were possible, it would be unnecessary. In practice the jury classified such a person as insane. Mr. Dingli quoted two cases Rex vs. Pizzuto (1919) and Rex vs. Busuttil (1940), where the jury gave a verdict of insanity, notwithstanding the opinion of medical experts to the contrary.

Mr. O.J. Gulia, B.A., L.P., seconded the proposer. He pointed out that it might seem cruel to send a half normal person to prison, but it was by far more inhuman to send such person to the gallows. The speaker went on to explain that our law is totally at variance with English law in the matter of insanity. He reviewed the development of the various theories on insanity in English Law, from the Wild Beast Theory to the McNaughton Rules, which did not deal at all with irresistible impulse. English Law was criticised in this matter even by English writers. Villiers, Chief Justice of the Cape of Good Hope, admitted the possible existence of a weak will, and such opinion was being followed now by English Judges.

Psychiatrists have accepted the theory of semi-responsibility, for indeed it was quite logical that a state of mind between the normal and abnormal should exist.

In the recent Connell case, the jury, while giving the verdict of guilty for one of the accused, Burnell, requested the Court to exercise its clemency as Burnell was of weak will. The Court could not comply with the request of the jury, as the law did not provide for such a contingency, and the death sentence was passed on Burnell together with the other accused.

Mr. E.P. Sammut, B.A., seconder of the opposition, began by stating that in Italian Law the introduction of such provision met with considerable opposition. Some psychiatrists disapproved of this theory.

In 1909, the Crown Advocate opposed Sir A. Mercieca's motion on the ground that there was no definite criterion to determine the existence of such state of mind. If a person were abnormal to such an extent as to merit a decrease in punishment, then it would be more just to classify him as insane. As to the objection that a person once remitted to a mental hospital was never released, Mr. Sammut drew the atten-

tion of the proposer to the existence of a Board which released persons meriting discharge.

He was of opinion that an express provision relating to semi-responsibility would be dangerous as jurors would be inclined to attribute the slightest abnormal conduct on the part of the accused to a state of semi-responsibility. It was the legislator's duty to maintain an equitable balance between public security and humanely directed clemency.

The debate was then declared open to the house.

Mr. G. Degaetano opined that our law recognised semi-responsibility implicitly since it allowed a latitude in the amount of punishment. An amendment was thus only required in the matter of homicide.

Mr. A. Cachia, B.A., begged to differ from the opposer's statement that a semi-responsible person was a lunatic, and so in practice he would not be sent to a mental hospital. Justice was not to be sacrificed because of the difficulty of proving the existence of such a state of mind.

Mr. J. Schembri, B.A., expressed himself in favour of the motion and stated that such doctrine was admitted with regard to homicide in the law of Scotland.

Mr. W. Gulia, B.Sc., said that one should not lose sight of advances made in psychiatry. Semi-responsible persons were not normal. The community should cater for all individuals and so such persons should receive a treatment different from that of normal ones. The best solution would be an institution intended exclusively for such persons.

On being put to the vote the motion was carried by 7 votes against 4, with 1 abstention.

Prof. Mamo then examined in a masterly way the arguments brought forward by both sides of the House. He stated that the doctrine of insanity in English law was surely inadequate, if we were to consider the McNaughton Rules as the whole of the law on the matter. But in practice this was not the case. While English law might not be the best on paper, it was unsurpassed in its practical administration. The lack of a provision in English law dealing with semi-responsibility was remedied very adequately by the non-existence of minimum punishments, leaving the judge unfettered in his discretion to mete out the punishment he considered most suitable according to

the circumstances of each case. Moreover English Law provided a variety of preventive, reformative and remedial treatments which enable the Judge to deal with the case before him in the most satisfactory way. In Italian Law the minimum punishment was fixed and hence they felt the need of introducing a provision dealing expressly with semi-responsibility.

Not all writers agree as to the existence or otherwise of the semi-responsible man. The majority of modern psychiatrists stood for the affirmative proposition. The difficulty arose when one came to frame a provision of law to regulate such matter. The suggestion of the proposing side that semi-responsible persons should be kept in prison for a lesser period would entail among other unacceptable consequences their earlier return to society. Such procedure might be detrimental to society. The best solution was that suggested by Mr. W. Gulia that a special institution should be set up to cater for such persons. A practical solution in Malta, concluded Prof. Mamo, might be the abolition altogether of the minimum punishment and the provision of modes of treatment of offenders other than by fines or imprisonment, e.g. probation service homes for the mental deficient and so on.

DEMOCRACY

True democracy is that system which in the words of De Tocqueville "may be reconciled with respect for property. with deference for rights, with safety to freedom, with reverence to religion."

LORD MACMILLAN.