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Criminal Responsibility

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CRIMINAL RESPONSIBILITY

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Psychiatrists are often called upon to aid the courts in the wise, efficient and real protection of the community as well as to assist in the most equitable care and treatment of offenders, who may require their attention. In former days the alienist operated practically exclusively in the courts. In more recent years, there has been a constantly increasing demand for the psychiatrist's services in penal institutions after conviction. Personality studies of the non-psychotic have been also requested and used by probation and parole groups.

It has long been apparent that segregation after conviction and sentence is too often an inadequate solution. The average person is prone to forget that mere detention for punishment may only defer the solution of the difficulty presented. Within a comparatively short time most criminals or other offenders are released to be at large again in the community and be our neighbors. After all, the death penalty is perhaps the only sure cure for a behavior problem, but it is seldom in popular favor. Certainly we are all vitally concerned as to whether or not the convicted are turned back among us better or worse than when apprehended. Punitive measures and temporary segregation do not seem to be in themselves a real solution.

The writer, in the capacity of psychiatric consultant to a group of courts, probation and children's bureaus, juvenile and adult reformatories, jails and a prison, has been called upon to advise concerning the remedial care and treatment of non-psychotic difficult cases, which are relatively numerous. There is no doubt that psychological problems, personality conflicts and other mental deviations require psychiatric study and care. The information thus derived can be of great assistance to not only the subjects, but also to judges, the responsible administrators and probation and parole authorities.

During the court trial and other legal phases of criminological procedure the psychiatrist is also called upon to concern himself with psychotic and borderline mental states. The various legal codes

[1] Rhode Island State Psychiatrist, 1932-1936.

in operation have for a long time recognized the existence of a total lack of criminal responsibility in a limited number of types of cases. Frank pertinent delusions, the inability to distinguish between right and wrong, or knowing right from wrong conduct, but having a definite inability to refrain from committing the criminal act, and the irresistible impulse are the usual criteria for the court's decision concerning the existence of a lack of criminal responsibility. The testimony designed to furnish expert advisory opinion for the courts is admittedly the province and duty of the alienist or psychiatrist.

In borderline types of cases, when medical men are asked to fit their clinical findings, derived from careful study of a complex human personality, into a comparatively rigid, actually non-existent, philosophical concept or legal abstraction such as the difference between right and wrong, difficulties have ensued. It should be frankly admitted that in what might be called borderline types of cases, there is usually room for an honest difference of opinion even among experts. Furthermore, actual clinical findings have revealed a very numerous non-psychotic group in which there is a definitely reduced personal responsibility from a psychiatric and case work point of view.

This paper deals with the study of a series of a hundred court cases examined by the State Psychiatrist, for the courts at the requests of the judges (and receiving no compensation from either the defendant or the prosecutor). These cases represented specially difficult problems and are therefore not representative of the average run of court cases. Only nine per cent (9%) were found to be psychotic[2]. This clinical investigation indicates the usual finding that personality problems have a bearing in practically all cases of offenders and that a large percentage, thirty-one per cent (31%), who are not psychotic, yet have a definitely limited personal responsibility for their unlawful behavior. Sixty per cent (60%) are found to be sociologically speaking adequately responsible for their acts, but psychiatric study reveals emotional unreasoning motivating factors which were predetermined. As shown in Table I, only fifteen per cent (15%) were mentally deficient.

[2] In a series of 280 juvenile cases only 10, or 3½%, were found to be actively psychotic.

In 348 adult (age 18 or over) cases, 81, or 23-3/10%, required Mental Hospital care and treatment. It should be noted that these juvenile and adult cases were all referred as special problems. The comparatively large percentage of psychotic patients is explained by the fact that they represented only the most involved problems in the State.

TABLE I

Table of Intelligence Levels of this series of cases:

Groups ..	*No.*	*Normal*	*Borderline*	*Mentally Deficient*
"Responsible" Group	60	43	13	4
Deviated Group	31	17	5	9
Psychotic Group	9	7	0	2
Totals	100	67	18	15

TABLE II

The following table indicates the age distribution of these groups:

		Ages				*Sex*	
Groups	*No.*	17-18	19-25	26-35	35-75	*Males*	*Females*
"Responsible" Group	60	12	25	4	19	58	2
Deviated Group	31	10	5	4	12	29	2
Psychotic Group ...	9	0	1	0	8	9	0
Totals	100	22	31	8	39	96	4

In the so-called Responsible Group of sixty cases the most numerous (17) dominant finding was a retarded emotional development or the persistence of infantile self-centered attitudes beyond the age at which they would ordinarily be outgrown or satisfactorily controlled. The factors behind this retardation in character development included a variety of frequently found family problems as well as emotional conflicts in the individual. The personality studies revealed the additional most pertinent factors in their order of frequency; carried over antagonisms (conscious and unconscious hostilities), feelings of insecurity, feelings of inadequacy, affectional deprivation, emotional dependency, over-compensatory mechanisms, conflicts over family problems and lack of social training. Acute alcoholism complicated the picture in four cases. In eight cases, there were important physical findings, two of which had a very definite bearing on the behavior; vis.: over-compensation for spastic paralysis and one case of senility. Only two of the sixty had a hopeless prognosis for an adequate social adjustment.

The court charges for the above group included twenty-three cases of stealing, eighteen sexual delinquencies and nine assaults, while the remainder had less serious charges. Thirty-one of the sixty were first offenders. Investigation revealed ten cases to in-

volve family problems and that fifteen were complicated by alcoholism. Twelve of the accused were foreign-born. Twenty were the youngest children in the family, while six were eldest siblings.

In the small Psychotic Group of nine, seven had important physical findings with a definite bearing on the anti-social behavior. One was an imbecile, who tried to wreck a train in response to a bizzare symptom. The jury decided he was not guilty by reason of "insanity" and he was committed to the State Mental Hospital by order of the Governor. The diagnoses also included Paranoid Condition (3), Senility with Sexual Deviation (2), Alcoholic Psychoses (1), a Suicidal Depression and a case of General Paresis. Four had a very poor prognosis.

The court charges were four assaults, two sexual offenses, cruelty to a child, non-support and the attempt to wreck the train. Eight of the nine were first offenders. Investigation showed that three cases were complicated by alcoholism and three were essentially family problems. Seven were found to be married. Only three were foreign-born. Two were youngest siblings and two were the oldest children in their families.

Let us turn our attention to the Deviated Group with definitely limited personal responsibility for their acts. As revealed by the psychiatric findings although not normal, they were not psychotic and so could not be sent to a Mental Hospital. Yet there were indications that they could neither be expected to react normally to penal confinement, nor become sufficiently socially adjusted to get along in the community without the institution of special treatment or provision for indefinitely prolonged segregation or supervision. In the judgment of the examiner, four of the thirty-one had a good prognosis (Class 1); twenty-two would require prolonged care and treatment with a doubtful outcome (Class II); and only five apparently would require life long segregation or very close supervision (Class III). Yet they all had sentences limited by decision of the court or special legal provisions in the criminal code. It was legally impossible for the courts to impose an indeterminate period of confinement and in many cases facilities were not available to provide the required type of care.

The offenses were ten assaults, nine thefts, six sex offenses, three cases of arson, one a minor offense and two had technical charges against them, having been held in jail because there was no Observation Psychopathic Hospital serving their residence districts. Of the thirty-one cases, sixteen were first offenders. On investiga-

tion seven cases were found to involve family problems, eight were sexual problems and ten were complicated by alcoholism. Twelve were married, seven were found to be foreign-born, four were the youngest in their families and four were eldest children.

Some of the offenders would be capable of making an apparently satisfactory adjustment in the protected environment of a penal institution and so earn consideration for parole. These are the cases that give parole boards much difficulty and incidently a bad reputation. A conscientious thoroughly honest parole board, in the effort to protect society, sometimes release some of these individuals on parole largely because it is the only available method by which follow-up supervision after release can be provided. The follow-up supervision by a parole officer is usually not legally enforceable after the expiration of the sentence.

The predominant or apparently most important findings in this Deviated or Borderline Group are shown by Table III. Very extreme emotional immaturity or retardation in character development with the carry-over of narcissistic infantile self centered attitudes was curiously enough the most numerous, occurring in seven out of the thirty-one cases. Many clinics might classify most of these seven offenders as Psychopathic Personalities. Nine had very important physical findings, three of which (a case of Postencephalitis and two cases of Motor Paralysis accompanied by emotional instability) had a definite bearing on the behavior. The other pronounced physical findings included Blood Lues, Tubercular Tendency, Cardiovascular Disease, Hyperpituitarism and Orthopedic Deformity.

TABLE *III*

Findings in Deviated Group showing Limited Criminal Responsibility.

		Ages		*Prognostic Class*		
Diagnoses	*No.*	*25 or below*	*26 or above*	*I*	*II*	*III*
Psychopathic Traits	7	4	3	1	6	0
Psychoneuroses	3	0	3	1	2	0
Compulsions						
Sex Play	1	1	0	0	1	0
Sex Equivalents						
Stealing (Kleptomania)	1	1	0	0	1	0
Fire Setting (Pyromania)	2	1	1	0	2	0

Sexual Deviations						
Peeping Tom	1	1	0	1	0	0
Homosexual Pervert	1	1	0	0	1	0
Mental Deficiency	5	2	3	0	5	0
Defective Delinquent*	4	4	0	0	2	2
Alcoholism	3	0	3	1	1	1
Organic Conditions						
Postencephalitis	1	0	1	0	0	1
Paralysis (with emotional instability)	2	0	2	0	1	1
	31	15	16	4	22	5

Prognostic Classification. (Formulated by V. C. Branham.)

Class I. Readily adjusted in or returnable to the community under suitable care, treatment or follow-up supervision.

Class II. Requiring prolonged institutional or other treatment with a doubtful prognosis.

Class III. Cases so mentally or emotionally abnormal, but within the limits of sanity, that they should be segregated or otherwise controlled and no form of available standard treatment would be expected to alter their careers.

In their 1935 Report, the American Psychiatric Association's Committee on the Legal Aspects of Psychiatry in furtherance of the position taken by the American Bar Association's and the American Medical Association's joint 1934 Committee, included the statement, ". . . There seems to be much confusion of thought upon this subject (insanity as a defence in criminal law) as represented by a criticism of the courts for not taking sufficient notice of disorders of the mind of a less obvious nature in the trial of a criminal case, coupled with a criticism of the law for leaving this difficult problem to be solved by twelve persons, who have no training or experience in this field; . . ."[3] The comparatively recent findings of some clinicians point toward a larger and larger proportion of neurotic

* A Defective Delinquent may be briefly defined as a feeble minded individual with confirmed delinquent habits, who would not fare well in a penal institution and who is neither eligible for commitment to a Mental Hospital nor suitable for a School for the Feeble minded.

[3] Report of the Committee on Legal Aspects of Psychiatry, *American Journal of Psychiatry*, 92, 2, p. 471, (September, 1935).

criminals, who commit crimes in response to an inner unconscious need for punishment.

What of these borderline cases? Since these offenders are found to lack total responsibility for their criminal acts, should they be treated as though they were fully responsible and eventually be released back into society? Such men tend to have a deep feeling of injustice, which may act as a vindication for a retaliatory subsequent offense. The same resolution of the Joint Committee, as quoted above, concluded with the statement, "Now therefore, be it resolved, by the American Bar Association, that it is desirable to keep within rather narrow limits the kind and degree of disorders of the mind which will entitle the defendants in a criminal case to an acquittal, and to readjust the machinery after the point of conviction to the end that disorders of the mind, which are not sufficient for an acquittal, may result in treatment other than that provided for persons who are not mentally disordered." In 1936 the American Psychiatric Association's Committee on the Legal Aspects of Psychiatry endorsed the recognition of the concept of limited responsibility and urged its acceptance by the legal profession and the courts.[4]

The question arises as to how much recidivism is actually being fostered by many judicial and penal systems. The author's clinical experience in court and in penal institutional psychiatric practice, led too often to an affirmative tentative opinion. However, it should be noted that the Judges, prosecutors and Administrators concerned usually made every effort to follow out practical recommendations made. Many times the required treatment facilities or institutional programs were not available. When once convinced of the findings, the courts were more than ready to utilize to the utmost their discretionary powers in order to provide every possible aspect of a well grounded remedial program. The additional understanding gained from psychiatric, psychological, physical and social case studies was found to meet with great appreciation and relieved the depressing experience occasioned by the stream of recidivism, which passes through the courts and penal-correctional institutions.

On April 27, 1935, at a joint meeting of the Committees of the American Bar Association and the American Medical Association, with the former meetings having been attended by the American Psychiatric Association's Committee on the Legal Aspects of

[4] Report of Committee on Legal Aspects of Psychiatry, *American Journal of Psychiatry*, 93, 2, p. 461, (September, 1936).

Psychiatry, a joint resolution for submission to the American Bar Association contained the following introductory statements: "Whereas, It is necessary to emphasize the vital importance of adequate treatment . . . of disorders of the mind (of convicted felons) with a view to their return to society no longer constituting repeaters and social menaces; and Whereas, In many penitentiaries inadequate treatment of the convicted by way of discipline and punishment instead of correction and reform results in their return to society as hardened criminals, embittered, revengeful and likely to continue to engage in criminal activities, . . ." There is no doubt that our present criminological system is, in many localities, not functioning as we would like to have it.

The findings of this clinical study with the associated sociological implications appear to support the stand contained in the above quoted resolutions. Furthermore, this study emphasizes that it is logical to expect to find in any series of court cases a fairly large percentage of offenders, who are sufficiently deviated from the average run of individuals to warrant some sort of legal recognition, if for no other reason than that they could not be expected to fare well in the average penal or correctional system which exists today in this country.

The varied aspects of the crime problem should be emphasized. Programs designed to prevent delinquency and crime are of course of primary importance. In the presence of efficient detection and prosecution services, the adequate protection of society would appear to also involve the readjustment of legal and penal machinery after court conviction to provide the required type of treatment, disposition, or institutional placement. To accomplish this aim many workers and investigators have previously also advocated the further use of psychiatric consultation and treatment services and the further development of remedial programs in correctional institutions. In the light of our present day knowledge, it is very important not to neglect the cooperative use after release of the supervision furnished by parole systems and by the diversified guiding, supportive community agencies and other social therapeutic resources.

Conclusions

1. In a series of one hundred difficult court cases, subjected to psychiatric study, emotional and personality problems were found to be important factors in the maladjustments in practically all the cases.

2. Sixty percent were sufficiently normal to be regarded, from a legal and sociological point of view, as adequately responsible for their acts.
3. Thirty-one percent were not psychotic, but were sufficiently handicapped so that they had a definitely limited responsibility for their unlawful behavior and would require some form of special disposition or treatment. Only five of the thirty-one had a hopeless prognosis for some future acceptable type of social adjujstment.
4. Nine percent were found to be psychotic.
5. Only fifteen percent were regarded as mentally deficient.
6. Physical disabilities were present in twenty-six cases and had a very definite bearing on the behavior of twelve of them.
7. In the light of this study, it seems logical to expect to find in a series of court cases a considerable percentage of non-psychotic but abnormal offenders who, for the future protection of society and for their own welfare, require the use of specialized disposition or treatment, other than the usual segregation from society in a penal institution.

In order to properly care for this unfortunate group, and prevent the abuse of the "defense of insanity," it is desirable that legal provision be made, "to keep within rather narrow limits the kind and degree of disorders of the mind which will entitle the defendants in a criminal case to an acquittal, and to readjust the machinery after the point of conviction to the end that disorders of the mind, which are not sufficient for an acquittal, may result in treatment other than that provided for persons who are not mentally disordered."