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# MENTAL ILLNESS IN A STATE PENITENTIARY

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The author's medical education and psychiatric training has been had in Northwestern University, in St. Elizabeths Hospital, Oregon State Hospital at Salem and in the Sheppard Pratt Hospital at Towson, Md. While serving as staff psychiatrist in Oregon he was also Consulting Psychiatrist for the State Penitentiary. He is at present in the School of Industrial and Labor Relations in Cornell University at Ithaca, New York—EDITOR.

Unfortunately, within the confines of all penitentiaries there are found many prisoners who are mentally ill, more than a few of these are psychotic, and still more unfortunately they will serve their time and be released into society to pursue their deviant behavior that resulted in their original confinement.

That psychotic persons arrive at a penitentiary rather than a mental hospital should be an exception rather than the rule, but scientific observation within the prison walls today affords little evidence that this is so. It appears that the term exception can apply to a mentally deranged prisoner in only one way—and that is—he would have been in a mental hospital *except* that he did not receive an adequate and complete presentence examination. That at most only a cursory presentence evaluation of the accused prisoners of Oregon is shown by the fact that 20 percent of the problem inmates examined by a psychiatrist in the Oregon State Penitentiary in 1952 were found to be psychotic or to have a severe mental illness.

The purpose of this article is to bring attention to the existing situation of psychotic prisoners who are wrongfully in the State Penitentiary instead of in the mental hospital where their difficulties could be dealt with by appropriate psychiatric therapy. The mentally ill prisoners received a psychiatric evaluation and their court records have been investigated with the purpose of finding out what has happened to them from the time of their offense to the present as a prisoner in the Oregon State Penitentiary.

The most obvious finding resulted from the study of 100 problem inmates of the Oregon State Penitentiary in 1952 was that inadequate presentence examinations were performed. Evidence that this is so can frequently be seen even in our newspaper headlines. As an example, the following notice appeared in an Oregon newspaper in 1952—COURT DENIES MENTAL CHECK FOR ACCUSED—And we are informed in smaller print by the Judge who parrots his predecessor of a century ago that "there is at the present time no reasonable ground to believe that the defendant is insane or mentally defective to the extent that he is unable to understand the proceedings against him or to assist in his defense."[1] Fortunately the defendant later pleaded insanity as a defense. He was examined by psychiatrists from the Oregon State Hospital who found him insane and at his trial approximately one month after the Judge denied him a mental check he was found not guilty by reason of insanity, and he was sent to the Oregon State Hospital.

[1] OREGON STATESMAN, September 23, 1952.

If the Judge's statement is interpreted in light of what scientific psychiatric knowledge has to offer, both the accused and the Judge are unable to understand the proceedings against the accused. For it is not beyond understanding that society continues to falsely protect itself against deviant behavior with the very same tests of "insanity" which have been used for almost a century—The McNaughten rules of 1843? "Today, more than a century later, the rules relating to the defense of insanity laid down by 15 Judges of England in 1843 following the acquittal of the defendant in the historic McNaughten case are still adhered to in our law. . . . The medical theories upon which the McNaughten rules were based have long since been discarded by the medical profession."[2]

Of course there have been some modifications and in many of the states changes have been made but in some other states the changes have not even been progressive. Oregon for example, in October of 1884 incorporated in its Criminal Code—"Insanity must be proven beyond a reasonable doubt."[3] Another modification in 1894 placed the burden of proof with the defendant when the defense is insanity, this was used in a leading case of 1934. Not only is the burden of proof upon the defendant but he must prove beyond a reasonable doubt that he is insane. Such blind penological legislation is possible because of sociological inattention to the needs of a changing society. That our criminal laws are not adequate and are not functioning properly is evidenced in the Federal Bureau of Investigation's report of 1951—Records submitted by 28 Oregon cities showed Oregon had more than the average number of burglaries, compared with the rest of the nation. The only crime that did not increase in Oregon in the first six months of the year 1952 was robbery.[4]

Psychiatric evaluation of the prisoners in the Oregon State Penitentiary further reveals the results of inadequate presentence examinations. During 1952 the service of a psychiatrist was available to the Oregon State Penitentiary for one-half day per week. During this time 100 prisoners were interviewed in an effort to determine their mental status as accurately as was possible in a 30 to 60 minute interview. No research project was planned. We were dealing with behavior problems coming to the attention of the penitentiary personnel.

The psychiatrist's evaluation was needed to minister justly to the prisoners' needs. Toward the end of the year it was noted in a local newspaper that two judges in the same week denied two different defendants the right of psychiatric examination to determine the sanity of the accused because it was the impression of the court that "there is at the present time no reasonable ground to believe that the defendant is insane or mentally defective to the extent he is unable to understand the proceedings against him or to assist in his own defense." At this time it was decided that the findings on the 100 prisoners examined would be reviewed and that the statistics, if significant, would be published.

One out of every five prisoners examined was found to be psyhotic (mentally ill), feeble minded, or severely mentally handicapped. However, the 100 prisoners ex-

[2] HERMAN I. POLLACK: *The Mentally Ill in Pennsylvania's Criminal Law and Administration*, UNIVERSITY OF PITTSBURGH LAW REVIEW, Vol. 12, 1950, p. 587.

[3] Oregon Criminal Code, Article 6, 26–929, sec. 159, Oct. 1884.

[4] OREGON STATESMAN, September, 1952.

amined had come to the attention of the authorities because of behavioral difficulties. The other 1200 prisoners were not examined, so it can only be assumed that there are other severely mentally ill people among them waiting until their release date to be returned to society. The court records of the 20 psychotic prisoners were checked and it was found that 19 of them had pleaded guilty to the charges against them in court and were summarily sentenced. There was no investigation of their mental states for no question had been raised by the prosecution or the defense. One prisoner had pleaded insanity as a defense and had received a thorough psychiatric examination and was pronounced sane in terms of the law.

In reviewing the legal and psychiatric publications reflecting the thoughts of progressive educators and practitioners in their respective fields one is impressed with the unanimity of opinion that the current legal framework of controlling deviant behavior is in general based on out-moded, century old principles. Our lawmakers have been able to pass appropriate legislation to deal with persons in the civil population who are mentally ill or mentally deviated according to their needs and the needs of society in light of what scientific psychiatric knowledge has to offer. For some reason this has not been done in the field of criminal law. If criminal behavior were always the willful act of a sane person then perhaps our existing legal code would suffice. However this is not always so and today we know that much criminal behavior is a manifestation of pathologically deviated minds or personalities. A dilemma confronts the criminal courts when a mentally person performs an act that by law is criminal. Lebensohn in a recent article emphasizes this point and observes certain similarities between lawyers and psychiatrists. "As responsible and enlightened members of society, psychiatrists and lawyers have this in common: they are both deeply interested in the administration of justice and the preservation of social order. . . . They both deal with people in trouble. The psychiatrist's patient has come in conflict with inexorable laws governing personality function: the lawyer's client has run afoul of man-made laws that govern social behavior. The difficulty arises when these two phenomena occur in one and the same person. . . . Contrary to the popular stereotype, the modern psychiatrist is not an advocate of unrecognized emotional license. Indeed he recognizes all too clearly the need for well regulated controls in harmony with both the internal laws that govern personality function and the external laws of the land."[5]

In such an instance, if our criminal courts fail to become aware of the distorted internal forces of the accused that have failed to govern his personality so as to make it acceptable to society, the courts also fail properly to perform their function of protecting society. By the immediate act of gaining a confession of guilty or a conviction of the accused by trial the courts protect members of society only for the near future—that is, until the prisoner's time has expired. Should he have been psychotic at the time of his offense and during the court proceedings it is not unlikely that he will escape detection in prison especially if no psychiatrist is available, only to be released into the community at the time his sentence expires still possessed with the psychological abnormality that led to his original deviant behavior. In such an event

[5] LEBENSOHN, ZIGMUND M., *Psychiatry and The Law: A Plea For Closer Rapport*, AMER. JOUR. OF PSYCHIATRY 2: 96, 1952.

the ultimate protection of society is not achieved. And not too unlikely he will come to the attention of the court again because of his psychotic behavior, only this time there may be one citizen fewer from whom to pick a juror for the murder trial.

There is one way for achieving the ultimate protection of society and that is for those concerned with the enforcement of our criminal laws to become aware of the importance of obtaining complete information about the accused (to consider the criminal rather than the crime) by taking advantage of scientific psychiatric counsel in the form of an accurate presentence examination. And then—in designating an offender as psychiatrically deviated—it may be much more important to predict what he may do rather than to judge him on the basis of what he has done. It is more difficult for the courts today to consider the criminal more than the crime, as the basis for criminal law begins with a false consideration of the accused.

H. J. Berman and Donald H. Hunt have stated: "The Law seeks to establish norms equally applicable to all, in order to determine the proper measures which would be taken to protect society against certain types of offenses and certain types of offenders. The presumption of civil law that the litigant is a 'reasonable man' who understands the natural and probable consequences of his acts, is carried over to criminal law as well. It finds expression in the rule that the accused is considered responsible (sane) unless it is proved that he lacks the intellectual capacity to know the nature of his acts and more particularly to know right from wrong, or the volitional capacity to control his impulses."[6]

This presumption of civil law that is carried over into criminal law was established many years ago at a time when little was understood about abnormal human behavior. Today statistics reveal that there are about nine million people in the United States suffering from mental illness and other personality disorders—about 6 percent of the present population or about one in every 16 people—and that one out of every 12 children born will sometime during his life suffer mental illness severe enough to require hospitalization.[7]

In light of what is known about the prevalence of mental illness the statement that the accused is considered to be sane needs revision. It is not so—what is so is that one out of every 16 people is suffering from a mental illness or other personality disturbance. It therefore behooves us as members of society to see to it that our criminal courts afford us ultimate protection.

This effort will be successful only at such time as the burden of proof of insanity rests upon the prosecution rather than upon the accused. The court must be reasonably sure that each litigant is not the one of 16 who is mentally ill and in need of psychiatric treatment instead of punishment for his abnormal behavior.

At this point it is hoped that the need for an adequate presentence examination in most criminal cases has been established. If so what are the possibilities of seeing that this is done in the State of Oregon or in states with similar problems. A serious defect exists in almost all of the state laws; it is that they leave the initiative of raising the question of insanity wholly to the defense. It is only where the defendant pleads

[6] STANFORD LAW REVIEW, *Criminal Law and Psychiatry, The Soviet Solution*, Vol. 2, 1949-50, p. 653.

[7] FACTS AND FIGURES, April 1952, National Association of Mental Health.

insanity that the law goes into operation. The only procedure designed to take the initiative from the defense is the Massachusetts Briggs law which provides for a routine psychiatric examination by experts appointed by the state department of mental health in all cases involving a capital offense, those indicated for a felony or previously convicted of a felony.

First of all a similar law can not be carried out in the State of Oregon or similar states as there are not enough psychiatrists to examine all of the offenders. So the existing legal and psychiatric facilities will have to be used. Let us review briefly the laws of Oregon to see what progressive steps can be taken.

"If before or during a trial in any criminal case the court has reasonable ground to believe that the defendant, against whom an indictment has been found or information filed, is insane or mentally defective to the extent that he is unable to understand the proceedings against him or to assist in his defense, the court shall immediately fix a time for a hearing to determine the defendant's mental condition. The court may appoint one or more disinterested qualified experts to examine the defendant with regard to his present mental condition."[8]

If the remote location of the trial court prohibits obtaining the services of a psychiatrist in the community, Oregon, along with at least 12 other states, permits the court to commit the defendant to a state hospital for a period of observation when insanity becomes an issue. Of interest here is the statistics of a few of the other states who have followed this procedure:

| State | Over a period of | Percent of defendants sent to mental hospitals for observation found to be insane by the hospital authorities |
|---|---|---|
| Colorado | 22 years | 26 |
| Maine | 10 years | 40 |
| Vermont | 29 years | 26.8 |
| Ohio | 20 years | 17 |
| South Carolina | 3 years | 32 |
| Arkansas | 1 year | 10 |

A serious defect in almost all of the statutes is that they leave the initiative wholly to the defense—it is only where the defendant pleads insanity that the law goes into operation.[9]

As mentioned previously, not all the offenders against Oregon criminal laws or states with similar laws can be examined due to the unavailability of psychiatrists; but this does not prevent a careful screening of all offenders by the judges, the attorneys and their court assistants.

Of those offenders whose past history reveals significant repeated violations, or previous hospitalizations in mental institutions or of those whose behavior is unusual it behooves the court to see that the accused or defendant is sent to the state mental hospital for psychiatric examination if the service of a psychiatrist is not available locally.

[8] Oregon Penal Code, Article 6, 26-930, 1937.

[9] HENRY WEIHOFEN, *Elimination of the Battle of Experts in Criminal Insanity Cases.* MICH. LAW REV. March, 1950, p. 961.

All state hospitals have qualified psychiatrists and psychologists who will examine the offender to evaluate his mental status and personality. After a usual 30 day period, or longer if deemed necessary, the findings along with recommendations if desired will be forwarded to the referring court. During this 30 day period of observation there is also sufficient time for F.B.I. records, detainers and other information to reach the authorities. This is necessary for a complete evaluation.

It is encouraging to note that many courts are taking advantage of this service. However from the prevalence of mental illness in the State Penitentiary it can only be assumed that the services of the Oregon State Hospital are not being used to the fullest extent. Is this true in other states as it is in Oregon?

It is not within the realm of this paper to discuss all aspects of mental illness as it relates to criminal law. However in closing it should be mentioned that only the most obvious mental illness has been considered, mainly the psychoses. There yet remains the minor or not so minor psychiatric deviations such as in those offenders who are not considered by the law to be ill enough to not know the difference between right and wrong, yet who nevertheless may be compelled to commit a crime because of an irresistible impulse. This still remains a major defect in our legal procedures relating to criminal behavior.