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# DICTA

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## THE VERBAL INEBRIATE AND LUNATIC FRINGE IN PENOLOGY

*By Henry B. Babb of the Denver Bar*

**D**ISRAELI once said of Gladstone, "He is intoxicated with the exuberance of his own verbosity."

The groggy cerebration of the verbal inebriate is our theme. A bewilderment of words! Why not? By a misfitted initial word a momentous thought may be deflected afield, or catapulted in air. It is believed that this accounts for the grotesquely missed objectives of some wonderfully adroit wielders of words. Else how is it that in current criminology starkest cruelty awakens tenderest solicitude for its perpetrator only? Why tenderest pity wholly for the pitiless? Novel and astounding words that split the ears of the groundlings withal, and jar to dislocation the benevolent aims and purposes of their users.

Some years ago in North Denver a brother and sister fifteen and sixteen years old, were playing on some ice that had formed in an excavation near their home. A stranger came upon them and murdered the boy with an axe that he had brought for that purpose, his main purpose being to outrage the girl—which he accomplished.

Reformed modes of approach to the solution of such anti-social acts are,—Ascertain the antecedent behavioristic manifestations of the actor; or if he was the victim of an impelling inferiority complex; or more likely, the evil prepotency of a more or less remote ancestor may be identified as the real culprit.

If these postulates lack technical accuracy of statement, they are not comparatively fantastic, as will appear later.

The Literary Digest of October 26, 1929, discussing the proceedings of the International Congress of Psychologists, meeting at Yale University, relates:

"Prof. Barnes said, as he is quoted in the press, 'There is a quarrel to the death between psychiatry and conventional criminal law—that procedure based upon the theory that the criminal is a free moral agent and should receive a definite measure of punishment for a specific crime. The jury should be replaced by an examining board of psychiatrists, which would determine the treatment desirable in each individual case. The judge would be reduced to the status of a formal supervisor of the process'."

That challenge is accepted by this article.

An equally advanced reform urged by an advocate equally eminent in another alien field, is the following:

"I can vision the coming of a practically crimeless world through the advancement of clairvoyance. We shall have a clairvoyant in every police station and there the criminal will be hunted down so that crime will become the most difficult, if not impossible, action to conceal. Clairvoyants will often be able to tell the actual perpetrator of the crime.

If you give them a portion of the dress of the slain person, they frequently will be able to throw themselves back to the time of the killing and get a kind of intimation of the circumstances and the method used by the criminal." (Sir Arthur Conan Doyle.)

This quotation is also from a press report. The same is true of other quotations, without specific citation. However, the better authenticated quotations will show that no substantial misrepresentation is chargeable to the Press Reports.

Passing from the master of detective literature to his more aggressive rivals, the question naturally occurs, what do the latter propose. This is clearly stated in the New York World by a prominent criminal lawyer:

"Punishment is always wrong. It brutalizes those who inflict it and those who receive it. There is only one motive for it, and that is revenge, in which there can be no justice, for it is based on hatred, which is degrading. That punishment is not much of a deterrent is clear from the fact that our prisons are full of repeaters and that spectacular crimes are followed by imitations, and the idea of reformation is equally absurd. Man works according to his structure. He never reforms, because he can not. His intrinsic character is fixed.

All of which does not change the fact that society must defend itself against the criminal—sometimes against the saint—whether it is worthy of defense or not. But all we need to do is to isolate the offender. In fact, that's all we can do."

In other words, society of questionable worthiness is flagrantly malevolent, and thus far the law-breaker is the better of the two.

That the lawyer's statement of the new doctrine is not influenced by professional bias will appear from further quotations.

At page 756, Vol. 51, Rep. Am. Bar Assn., an eminent psychiatrist incorporated in his paper read to the Association, a report of a committee of the American Psychiatric Association, which persons interested should read. For lack of space the following is excerpted:

"3. That crime as well as other behavior and characterologic aberrancies can be scientifically studied only by those properly qualified—scientists who have made it their life interest and study to understand and treat behavior disorders. \* \* \*

"7. That this point of view requires certain radical changes in legal procedure and legislative enactment, insuring the following provisions \* \* \*

(b) The elimination of the use of the hypothetical question and the terms 'insane' and 'insanity' and 'lunacy', etc. (c) The exemption of the psychiatrist from the necessity of pronouncing upon intangible concepts, in which he has no interest, concern or experience, such as 'responsibility', 'punishment' and 'justice'."

Here is frankly stated the point of divergence between these scientists and old-fashioned folk who think, with Edmund Burke, that justice is the greatest concern of mankind. Their proposed substitute was presented in a series of articles in the World's Work Magazine, July, August and November, 1925. The writer says:

"Crime is caused by a defect of the brain. This defect renders its victim so far below normal in emotion as to make him literally irresponsible. \* \* \* The emotionally sub-normal man is much more dangerous, because he is so quiet that he is seldom suspected until after he has committed a crime, and because his type comprises nearly one hundred per cent of all criminals. This discovery has provided a rational and consistent explanation of every kind of crime, from petty larceny to murder." (Note the one hundred per cent.)

\* \* \* \* \*

"(2) Emotional insanity is incurable.

"(3) Emotional insanity can now be positively diagnosed and accurately measured.

In the light of this new knowledge, we cannot 'punish' people for irrational acts; we cannot hope to reform people who are incurably irrational. What then can we do?

First, humanize our penology by abolishing our prisons. These barbarous cages of stone and steel are relics of our old ideas of punishment. In their place provide guarded farm colonies, where these pathetic victims (for

that, in truth, is what they are) of their physical inheritance may live a civilized life safe from the temptations of the world, and where they cannot further molest society."

This writer says that all criminals have a "defective affectivity", the result of a defective mind.

"This means, literally, that there is a structural defect in the tissues of the lower brain. In 89 cases out of every hundred the defect is inherited. Every human being has two minds—not in any mystical sense, but literally. One is the upper part of the head, or cortex. With this gray matter we reason. This is the thinking mind. The other mass of gray matter is the feeling mind. It is the base of the brain.

These are the only two functions of the mind that can concern crime, emotions and the will. All crimes come from a defect of the lower mind, because conscious acts require the exercise of the will, and improper acts are from improper emotions."

An actual case illustrating this principle is at hand. An Ohio lady brained her spouse with a hammer because he opposed her going to a bridge party. She burned her blood-bespattered garments in the furnace, went to the party and apparently enjoyed it. A distinguished psychoanalyst of Cleveland explained that the homicide was due to a split personality, and therefore "an accident resulting from the mastery of Mrs. West's unconscious mind over her normally conscious state."

So it goes. These privileged people, whether of mind or personality, have a bifurcated makeup, so that in case of homicidal misadventure, culpability slips somewhere between and disappears.

The writer of the magazine article in the November issue of *World's Work* says:

"The emotional types correspond roughly to types which on the side of intelligence we call respectively moron, imbecile and idiot."

Thus implicitly assuming, as proof by analogy, that the part of the criminal class other than the emotionally insane, is made up from those types, moron, imbecile and idiot. In other words, that it is an established fact that criminal conduct is the result of mental defect or deficiency of which the criminal is the irresponsible victim. Time was when this ignorance might have been winked at, but not since the World War and the Army mental tests.

Prof. Carl Murchison, Ph.D., Professor of Psychology in Clark University, in his exhaustive work on Criminal Intelligence, at page 32, says:

"In the light of the discussion in this chapter and the preceding one, it seems fairly obvious that the pre-war prevailing opinion that criminality and feeble-mindedness are closely related, was certainly not built upon a solid foundation of collected facts. The progenitors of this theory are not to be condemned on that account. There were no existing norms of general intelligence in the civil population. Until those norms should be formulated, no examination of criminals alone could reveal why criminals were more or less feeble-minded than the general population."

And in a preliminary summary of pages of tabulated data, carefully gathered by applying the Army tests to hundreds of prisoners in half a dozen penitentiaries, he says:

"That is, the criminal element of society, as will be shown by the facts reported in this book, does not possess a lower average intelligence than the civil population, assuming the Army norms and the civil norms here reported to be equally representative enough for the purposes of this discussion. This is well substantiated by the report in Volume 15 of the Memoirs of the National Academy of Sciences, 1921. On page 800 a comparison of 3368 criminals at Ft. Leavenworth, with 94004 cases of the sample of the army, shows that the criminals have the advantage in Alpha scores." (Alpha scores throughout the book is synonymous with intelligence.)

The author says at page 50:

"Not a single state in America sent a draft quota that could compare mentally with the criminals born West of the Mississippi and confined in eastern prisons."

He says that this may be the result of factors not necessary to be discussed here. All that is important is that the criminal mentality at least averages in every way with that of the law-abiding. This is in accord with common sense conclusion from ample opportunity for observation.

Lewis E. Lawes, for many years warden of Sing Sing Penitentiary, in August 1928 *World's Work Magazine* says:

"It is now known to all leading scientists, sociologists and criminologists, that law-breakers are just as normal or abnormal as those that keep the law, and that the born criminal type does not exist and never has existed."

The same in substance is said by John G. Grooms, for five years warden of the East Penitentiary of Philadelphia, in a late issue of the *Saturday Evening Post*. He adds—

"The criminal comes from all types and classes."

Such was the opinion of Henry Starr, notorious bank bandit:

"There is no more a science of criminology than there is a science of eatology, or drinkology, or lawyerology, or carpenterology. You say the criminal has certain wheels in his head that lead him to be always a criminal in spite of all efforts to reform him. You might as well say a carpenter has certain cogs in his brain and bumps on his nut that make him build houses in spite of all efforts to get him to do something else. Bunk! We all know a carpenter can quit that game any time he wants to. So can the criminal quit his game, and they do."

In effect, the first quoted World's Work writer practically coincides with these views, and on page 395 of the August number says:

"On the other hand, a considerable majority of the law-abiding, God-fearing human race grade no higher than high grade moron intelligence. Indeed, the good-natured moron is the backbone of civilization. He does nearly all the useful manual labor. He does the tasks that do not require initiative or invention or extraordinary will power. He earns his livelihood, is a good neighbor and presides over most of those centers of wholesome thought, genial companionship and abiding affection that we call home."

For which, thanks! And let it be added with all the spirit of which the class is capable, that as a factor in the normal progress of the social order, dull people are greatly undervalued. We impede the swift innovations of hectic genius. We wear the meretricious theory and the theorist to a frazzle in his futile effort at its demonstration.

Dr. Murchison, at page 27 says:

"Probably no man ever lived who was not mentally defective in some way."

The familiar, "All excepting me and thee, and I sometimes think thee is queer", expresses the popular recognition of the same truth. The psychopathic laboratories that report such startling discoveries of "physical defect of the mass of gray matter composing the basal ganglia and the nervous system" wholly fail to report that their diagnoses have included any part of the law-abiding, concededly normal population. Whatever the variant behavior of these ganglia may be, if it is not demonstrated to be peculiar to the (criminal) "charac-

terologic aberrancies" which it is supposed to produce, such symptoms are utterly valueless as proof of the correctness of such supposition. In other words, if it is not shown that the same alleged anomalous functioning of these organs is non-existent among the uninteresting, law-abiding population, who are without such "aberrancies", the assumed truth is not only unproved, but becomes ridiculous and the fine theory explodes itself.

Quoting the World's Work writer more fully, he says at page 390 of the August number:

"The new psychologists know exactly what degree of abnormality he is affected with, and they know that his affliction—for it is just that—is a physical defect of the gray matter, comprising the basal ganglia and the nervous system."

One would suppose that such scientific cock-sureness would be a finality, but a writer in a later number of the same magazine, June 1930, says:

"If forty or fifty per cent of the world's criminals are gland made—which the doctors now believe to be the case—then defective glands are without question the largest cause of crime."

In other words, not the intelligence and telegraph system, but the organs of secretion of the human frame play the dickens with its normal functioning.

The last article mentions "disturbance of the gonads" with well-known obvious physical consequences. Barring the technical term, universal human experience supports the gland theory in this particular, to a reasonable extent. In fact, morbid sexicologists seem just now to be winning the day in so-called scientific circles, and sex is chiefly the basis of Freud's Psychoanalysis.

It seems that anybody can make almost any statement and advance any theory regarding biological agencies and functions, without conclusive challenge, because there is so much that nobody knows. And we are not yet convinced that we should abolish our prisons and by pure love and affection cure the law-breaker of his evil ways.

The annual roll of murders in the United States, by a reliable authority is said to number about 12,000. Any reader who has been neighbor to a family to whom the dead body of

a murdered husband, father and breadwinner has been brought home, will remember a scene something like this,—A distracted wife, terror-stricken children, and in many cases a hopeless outlook for the future. In the domestic catastrophe, not interested. But the red-handed murderer is a “pathetic victim”, to be tenderly cared for in a farm colony and caressed into social adjustment.

In *Midsummer Night's Dream*, lovesick Titania, under a temporary spell, lavishes her affections on an ass. She could not hold a light to the amorous attainments of these scientists. And they demand that the courts be reduced to the function of mere supervisors of the process of translating these “pathetic victims” from the temptations of a cold and cruel world to the Elysian conditions above mentioned. And abolish juries altogether.

The merit of this demand is illustrated by a quotation from a Denver paper dated more than two years after the trial therein mentioned:

“He cannot live a year! This was the unanimous verdict of five leading Denver alienists who examined Orville J. Turley, murderer of Mrs. Emma G. Wise. They so testified in Turley's trial. \* \* \* Turley spent a short time in the penitentiary hospital after his conviction, grew fat, and learned to play the saxophone. Friday night, with two other members of the penitentiary band, he made his escape at Hugo, Colorado, and is now at large.”

It will be observed that the contention here opposed is, that all criminals are psychopaths, and therefore little attention is herein given to such as are actually so afflicted.

Dr. Chase, in his book “*The Ungearred Mind*” (1900), says that the average percentage of insane in this country is one in 350 of the urban, and one in 500 of the rural population.

Louis E. Bisch, M.D., Ph.D. whose “job is psychiatry”, reports in the *Saturday Evening Post*, June 12, 1926, from the psychopathic laboratory of the New York Police Department,—

“The approximate number of daily arrests was 623. Of this number 29 cases, or roughly five per cent. were considered candidates for mental examination, and of these 21 were found to be distinctly abnormal. \* \* \* They were persons whose reasoning, memory, judgment, and other faculties were affected to such a degree that efforts at reform would be fruitless, un-

less they were placed in a special institution and given special and individual care and attention."

Note that the five per cent are the kind of offenders most likely to be caught. This would greatly reduce the percentage as to the whole body of crime.

An instruction to a jury by a Denver trial court and approved by the State Supreme Court, reads as follows:

"On the subject of insanity the court instructs you as follows: 'A person who is so diseased in mind at the time of the act as to be incapable of determining right from wrong with respect to the act, or, being able to so distinguish, has suffered such an impairment of mind by disease as to destroy the will-power and render him incapable of choosing the right and refraining from doing wrong, is not accountable; and this is true howsoever such insanity may be manifested, whether by irresistible impulse or otherwise. But care should be taken not to confuse such mental disease with moral obliquity, mental depravity or passion, growing out of anger, revenge, hatred, or other motives, and kindred evil conditions, for where he is induced by any of these causes the person is accountable to the law'."

Compare this with the eminent English author of the article on psychiatry in the 2nd Sup. to the Brittanica, II Ed.:

"A man is regarded as insane who, on account of mental disease no longer thinks, feels and acts in accordance with the usages and customs of the society to which he belongs; and is not held responsible for his behavior if he does not know at the time the nature and quality of his acts."

The instruction above quoted is a free paraphrase with concrete application, of the statements of principles by the last two quoted psychiatrists. Our "quarrel to the death", therefore, is not with the men of highly enlightened and enlightening intelligence, whose professional assistance, at times, is so necessary to certitude in the administration of justice, but such quarrel is with the Roosevelt fringe of the same profession who disdain the "intangibles of insanity" "responsibility" and "justice". It is here submitted that they have disqualified themselves as competent witnesses in any court of justice. In fact, Judge Kavanagh includes them in the title to his very useful and readable book "Criminals and their Allies."

Then why this protest? Because these reformers have quite overwhelmed popular attention by their vociferation and muddled popular understanding to the extent that the alert politician is inclining his ear as to a possible vox Dei.

Thus far, ordinary amenities of controversy have required that the profession of our adversaries be taken at their own valuation. The following from those who ought to know is respectfully submitted:

"There is chaos in the science of psychology. Psychologists have no agreement among themselves about the fundamental laws that govern learning or the formation of human thought and habit.

They disagree as to what these laws are; what the problems are which they intend to solve; what their importance in the science is, and whether the laws governing the thought processes are the same or different from those governing the formation of conduct. Having discarded the old laws, each modern psychologist who undertakes to write a book formulates his own laws." (Prof. Homer B. Reed, of Pittsburgh University.)

"There are few words so loosely used as psychology. There are few claims of science so insecurely founded as the claims of psychology. There are few men of science so cocksure, so invasive, so 'go ahead before you are sure you are right' as psychologists." (Dr. Joseph Collins, Past President, Neurological Association; Founder of the Neurological Institute.)

If this is true of psychology, how much more true of psychiatry, the ology of the disordered mind. The term has its inherent perils. Its twist of orthography, tortuous pronunciation and consequent quirk of concept, naturally teeters the highly sensitized mental balance of the all-philanthropist. It is this scheme of nebulous nebulosity that is to control the decisions—not of life and death—but whether charged murderers, rapists and burglars shall be set at large or cared for in a farm colony so long as "they continue dangerous."

But it cannot be denied that the new cult contains more than a modicum of truth. For instance, there is much in the doctrine of heredity; but how much in a given case? Whence the many-sided greatness of Abraham Lincoln. Some guess that it was from his unknown grandfather. But it is only a guess. So in any case it is a guess, at least as to the relative dominance of heredity over other factors. But if it were more surely ascertainable, what of it?

In the case of *The People v. Rattlesnake*, the plea of heredity is undeniable, but no good; and the further plea that his emotions are wholly malignant by nature, is true enough; but so much the worse.

So in the case of *The People v. Tiger*. The defense of

“defective affectivity” or congenital no conscience, admitted but unavailing.

Society in its right to protect itself, denies the validity of such defenses. So it does when like human types of cruelty are at the bar of justice, and insists on individual, not ancestral, responsibility.

But it is said that punishment does not deter. That it does deter when it is swift and sure, as in England, every one knows, but the comparative efficiency of the administration of justice in England and the United States is another story.

In conclusion, the foregoing animadversions relate exclusively to the “fringe” mentioned in our caption, well-meaning folk who are “intoxicated with the exuberance of their own verbosity.”

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## NOTICE

A combined index of the five volumes of The Denver Bar Record and of the first three volumes of Dicta, will appear in the next issue of Dicta. If you have saved your copies of either the Record or of Dicta, then watch for that index and *save that index for future reference.*

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