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OBLIGATORY PSYCHIATRIC EXAMINATION

Of Certain Classes of Accused Persons.¹

OLOF KINBERG.

This statement concerning a juridical psychiatric examination of certain classes of accused persons is based almost entirely on experience with Swedish criminalistic conditions. Generalizations based on the conclusions drawn from this experience presuppose that the conditions of criminality in other civilized countries are, in their larger outline, the same as those in Sweden. To what extent this premise is justified cannot here be discussed.

In Sweden, judicial procedure with reference to accused persons of doubtful sanity became regulated in 1826 by a royal order to the health authorities. This royal order states "that when it is suggested that a person accused of crime is of unsound mind, or was insane at the time of the act, and the question arises whether he should go unpunished on this account, the court, * * * * after the opinion of competent physicians has been obtained (in connection with the inquisitorial process), shall transmit the medical opinions to the Royal College of Health for its consideration before the court shall give its decision." It was further provided in the same year in a general decree (*Universal*) of the Supreme Court (*Svea Hovrätt*) "that when a person accused or convicted of crime cannot be punished because of his mental distraction, the court shall make no order for his future care except to commit him to the supervisory control of the administrative authorities in order that he may not menace the general security."

This royal order makes it the duty of the court: (1) to cause an examination to be made into the mental condition of the accused, in case it is alleged that he is distracted or was distracted at the time of the act; (2) that before judicial judgment is pronounced the opinion of authorized physicians shall be submitted to and approved by the College of Health; and commends that not the court but the administrative authorities shall prescribe the further measures to be adopted in dealing with the accused.

On the other hand, there are no special rules directing the attention of the courts to certain groups of cases where psychiatric examination of

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the accused would be particularly desirable. Experience has shown that these rules are very deficient, since a great number of persons mentally deranged or psychically abnormal are sentenced without an inquiry into their mental condition. Schuldheis has shown (*über geisteskranke Gefangene in Schweden in den Jahren, 1865-1894*) that during this period of thirty years, 1,707 psychically abnormal or mentally deranged persons were sentenced without preliminary expert medical examination, and that the existence of mental derangement was overlooked by the court in 87 per cent., or in more than two-thirds of the total cases.

According to a computation which the writer has made for the twelve years, 1895-1906, at least 15.3 per cent. of all prisoners found to be mentally deranged at the time of their incarceration had been sentenced without the opinion being had of the College of Health. Although these figures are certainly below the mark I have instanced them for the reason that they are based on official statistical statements.

That persons suffering mental derangement are sentenced, and that psychiatric examination of accused persons is neglected in many cases where such examination should be had, is unquestionable. That this situation is a bad one will not at this day be controverted by anyone.

The necessity of withdrawing criminal *mental derangement* from the sphere of penal execution and submitting it to special treatment is therefore the first ground of a more extended juridico-psychiatric examination of accused persons. Two additional leading considerations also attach:

Psychically abnormal criminals must be excluded from the usual penal processes and receive special criminal treatment. There is general agreement on this proposition. Differences of opinion exist only as to the kind of special treatment to be applied.

Penal measures with reference to *normal* delinquents must be based on accurate knowledge regarding the individual with the object of an individualization of punishment. All these measures correspond in the greatest degree to the objects of criminal justice.

Juridico-psychiatric examination of *all* accused persons is not feasible at this time for practical reasons. General rules having the purpose of stimulating greater care on the part of the courts in the discovery of mental derangements of accused persons, will be found quite ineffective in view of the small understanding among criminal judges of psychopathological conditions and their crime-generating significance. Therefore the evidence of mental derangement must be provided for by legis-

lation through an external agency in which juridico-psychiatric examination is made *obligatory*.

In the investigation of mental derangement a consideration of the kind of crimes encountered is suggested as a matter of first importance. The proposition of Sanders, that "the criminality of the mentally defective is not only quantitatively but also qualitatively high," agrees with general experience. The same is true of the affirmation of the Positive School: the more serious the crime, the less is the probability that the act is that of one mentally normal. It was difficult to give conclusive statistical proof of these assertions inasmuch as by reason of the prevailing decentralization of juridico-psychiatric procedure, reliable statistical information was lacking. Sweden in this respect is an exception. As has already been shown *all* expert medical opinion is subject to review on the part of the Royal College of Health. Judicial decision follows only after such supervisory examination of the medical opinions by the superior medical authorities. A record of these transactions is preserved by the Royal College. It is, therefore, possible to arrive at exact knowledge concerning the relation between various types of crime and mental derangement, through a statistical compilation of the total medical opinions running through a series of years. A comparison between the absolute number of accused persons declared by the medical authorities "irresponsible" or of "limited responsibility" and the number of all persons found guilty by the courts within the various criminal categories makes it possible to arrive at important conclusions with reference to the relation of these computations.

TABLE I.

Number of persons declared guilty of murder, manslaughter, rape and arson, and the number of such persons declared "irresponsible" by the Medical College in Sweden, 1901-1907:

Crimes	1 Declared Guilty	2 Found Guilty and Declared "Irresponsible"	3 Percentage of 2 to 1
Murder.....	49	26	53
Manslaughter.....	150	10	6.7
Rape.....	90	3	3.3
Arson.....	141	41	29

An inspection of this table shows in itself how large is the proportion of the serious crimes, particularly murder and arson, where mental

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derangement, or from the criminal law point of view, where co-existent psychic abnormality is encountered. The connection between these categories of crime and mental derangement becomes all the more conspicuous when we stop to think that the number of persons subjected to criminal punishment must be apportioned to the total population having a criminal responsibility (less those mentally distracted or idiotic), while the number of persons sentenced for similar crimes in accordance with the provisions relating to "irresponsibility" must be apportioned to the number of insane and idiotic who had the opportunity to commit crimes (that is to say, the whole number with the exception of those confined in public institutions).

The average population in Sweden in the years 1901-1907 of persons of criminal capacity (less those insane or idiotic) was 3,536,566. The number of insane and idiotic persons of the age of capacity who were in a position to commit acts called criminal was at the most 20,000. A calculation of the occurrence of certain of the severer criminal acts among the insane and idiotic of the age of capacity and among those neither insane nor idiotic is shown in Tables II-IV.

TABLE II.

Insane and idiotic persons in Sweden who were declared "irresponsible," in the years 1901-1907, by the College of Health, classified according to the kind of crimes; and the calculated frequency of the several crimes in 100,000 insane and idiotic persons of the age of capacity:

Crimes	1 Number of Criminal Insane and Idiots	2 Number of Crimes to 100,000 Insane and Idiots
Murder.....	26	130
Manslaughter.....	10	50
Infanticide.....	6	30
Rape.....	3	15
Arson.....	41	205
Other Injuries to Property.....	6	30
Larceny.....	45	225
Fraud.....	1	5

TABLE III.

Number of prisoners in the penal institutions of Sweden in the years 1901-1907, classified according to crimes; and the number of con-

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victed criminals to 100,000 persons of criminal responsibility in the total population:

Crimes	1 Number of Criminals	2 Number of Criminals to 100,000 Persons of Criminal Responsibility in the Total Population
Murder.....	23	0.65
Manslaughter.....	140	3.96
Infanticide.....	231	6.53
Rape.....	87	2.46
Arson.....	100	2.83
Other Injuries to Property.....	102	4.58
Larceny.....	8,472	239.56
Fraud.....	693	19.59

TABLE IV.

Comparison of the frequency of crime between persons of criminal responsibility in the total population and insane and idiotic persons in Sweden in the years 1901-1907:

Crimes	1 Crimes to 100,000 Persons of Criminal Responsibility	2 Crimes to 100,000 Insane and Idiots	3 Frequency of Crime the Normal Bears to the Abnormal is, as 1 to
Murder.....	0.65	130	200
Manslaughter.....	3.96	50	12.63
Infanticide.....	6.53	30	4.59
Rape.....	2.46	15	6.1
Arson.....	2.83	205	72.5
Other Injury to Property...	4.58	30	6.55
Larceny.....	239.56	225	0.99
Fraud.....	19.59	5	0.26

With reference to the third column of Table IV it first is to be noted that it is arrived at with actually comparable data, and that it is a positive representation of criminal tendencies in the two groups under comparison. Beyond this it must be conceded that these numerical computations are only approximations since the basic data in the first column of Table II do not relate to a homogeneous group. This group consists not only of presumptively normal persons, but also of that not small number of limited defectives declared psychically abnormal. Accordingly there is an increase in the number of normal offenders and a relative decrease in the number of insane persons and idiots. It fol-

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lows, therefore, that the normal group contains a numerically indefinite but yet not unimportant number of mentally defective persons whose psychical condition was not observed by the courts. The result is that on account of the smallness of the absolute number of the "irresponsibles" there is certainly a very important *absolute* diminution of the numbers in this group. For this reason and on account of other things which cannot be here discussed, the relative computations in Table IV must be considered as only approximations, and also—and this is to be particularly emphasized—as *minimum numbers*.

This examination based on *official* statistical data concerning criminality and the occurrence of mental derangement in Sweden among various criminal categories, proves that murder and arson are especially the pathologically affected types of crime; that manslaughter, other injuries to property, rape and infanticide have strong psychopathological affinities; and that the economic crimes such as larceny and fraud have no prominent connection of this kind. This last fact has suggested to the writer to divide arson into two groups—those cases with and those without an economic motive—and to propose only for the latter group obligatory psychiatric examination.

There is one criminal category (discussed in the writer's thesis on this subject) the omission of which is perhaps noted in these tables—the immoral type. The reason that these crimes are not taken into account in these tables is the deficiency in this regard of Swedish criminal statistics. There is no distinction made between such crimes as indicate sexual impulses and those which present economic or other motives such as the offenses of pandering, offering for sale lewd writings or pictures, cruelty to animals. The heterogeneity encountered in this group makes it impossible to arrive at any conclusions of criminal-psychological value, and accordingly this statistical division of criminal acts is here disregarded. In the absence of statistical information I have based my consideration of this group partly on the investigations of Aschaffenburg, Leppman and others and partly on my own statistical, though unfortunately incomplete, data.

A second subject for investigation is the relapse of criminality. These cases are the cross of criminal polity. The bestowal of the greatest care in their criminal treatment is clearly indicated as advisable. Yet the experience of alienists as well as officials in penal institutions discloses that these relapsed cases show a large number—it has been put as high as 75 per cent.—of insane, idiotic and otherwise abnormal persons. The exclusion of these persons from the customary processes of criminal procedure and their subjection to special treatment are the

first of the leading necessities to attain success in the war against criminal relapse. In order to segregate these persons they must first be known, and this requires chiefly the help of the alienist.

Against the objection that an examination of all relapsed offenders would require an extraordinary effort, the following is submitted: The number of relapsed cases of criminals convicted in Sweden in the years 1901-1905 amounted to 3,869; therefore, 773 each year. If the psychiatric examination is limited to second offenders the number of recidivists will fall, for the years noted, at the highest, to 545 the year. For the conditions in Sweden, this does not present insurmountable difficulties.

A third test of inquiry (which the writer has discussed in his thesis) is the *age* of offenders. From this viewpoint, there are two groups in which a juridical-psychiatric examination is desirable: original juvenile, and senile (or the related præsenile) offenders.

The following alternative conclusions may be drawn with reference to the casual conditions of very early criminality: either the internal conditions of criminality are very strong; or limited moral derangement comes about among those of original normal psychical constitution through neglected training and physical and mental miseries; or the internal and external conditions though separately not sufficient, in combination are able to produce early criminal effects. Whichever of these conclusions fits the particular case, the practical results are the same. We must avoid the danger of having these young offenders swallowed up in a mechanical method of treatment, which is the worst fault of modern criminal administration.

That there is good ground for reckoning with psychic maladies as the cause of criminality among juvenile offenders is clearly shown by Swedish criminal statistics. In the years 1891-1904 the maximum of frequency of immoral crimes, arson and grand larceny occurs in the age-group of 15-18 years. Of these three criminal categories, as has already been shown, two—immoral crimes and arson—show a strong affinity to mental derangement. It hardly needs to be stated that the statutory institution providing a new form of guardianship of children will not justify itself if it does not take account of the occurrence of pathological mental conditions in a large number of these wards.

Inasmuch as in the criminal statistics of Sweden neither the number of children accused of crimes and misdemeanors nor the number of juvenile offenders convicted of crime is given, I have ventured to propose obligatory psychiatric examination only in the case of those

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accused of the more serious offenses.² Since the number convicted in the year 1905 amounted only to 235 it is not likely that the accused number of the same category will now be much larger, and consequently the examination proposed can be effected without greater difficulty.

While an examination of juvenile offenders is desirable in the first degree on considerations of general criminal polity, yet the same is not true for original senile or præsenile offenders. Their number is pretty small and their importance in relation to the combined criminality of a country is not of much moment. The reason that I have indicated this class of offenders for examination is based rather on the incidental fact that when a man has lived a long blameless life and in his old age resorts to criminal acts, the suspicion is awakened of the existence of acquired mental infirmities. This kind of examination should be designed to afford protection to mentally disordered persons against the disgrace of criminal conviction.

With reference to the age limit beyond which examination should be compulsory, there may be, of course, divergent opinions. In fixing the full age of sixty years as the basis for this category, I have been guided by the fact that senile mental infirmities first largely tend to develop beyond this point. I am unable to give the number of persons in this category, but in any case, it must be pretty small.

The fourth test of inquiry is *social incapacity*. I mean by social incapacity that quality of a man who in the face of industrial opportunities is not able to maintain himself by honorable labor. The characteristic thing of social incapables is their *internal limitation of capacity for labor*. Whether this constitutional defect is inborn or acquired is quite unimportant. The occasion here for the attention of the alienist is based on one hand on the investigations made in late years by Bonhoeffer, Wilmans, Mönkemoller and others as to the mental qualities of tramps and beggars, and the criminalistic relation between this group of social incapables and recidivists. It will not be necessary to detail the conclusions of the above-named German investigators, since these results are within the reach of everyone. Bonhoeffer's statement may, however, be here repeated that among tramps only 15 per cent. were found without mental derangement.

Criminal statistics afford important information regarding the criminal tendencies of vagabonds. In the year 1906 in the penal institutions of Sweden, of 1,074 prisoners not less than 485 or 45.1 per cent.

[*Vergehen* is the term used. The Germans employ a tripartite classification of criminal acts: *Verbrechen* (punishable by death or imprisonment); *Vergehen* (punishable by imprisonment or fine); and *Uebertretung* (punishable by fine).—A. K.]

previously had suffered prison punishment. Of this number, 204 had been convicted of repeated larceny. Only 220 or 20.4 per cent. had not been convicted of crime.

Since the group of social incapables, tramps, beggars, etc., is closely related in a psychological as well as criminal sense to the relapsed criminal, it appears to me that psychiatric examination of the latter group demands, as a consequence, similar examination of the former.

The feasibility of obligatory psychiatric examination within the range indicated depends in the first instance on the number of persons to be examined. The criminal statistics of the year 1905 in Sweden afford the following approximate computation of the cases for examination:

Test of Examination Based on	Number to be Examined
1. Kind of Crime.....	547
2. Age of Accused.....	235
3. Recidivation.....	773
4. Social Incapacity.....	877
Total.....	2,432

This computation is in excess of the fact, since in many cases the accused is classified in two or more groups. Assuming, however, that this computation is right, what labor will it require in Sweden of the court or prison physician? In order to answer this question we must see what is required to be done in a psychiatric examination. The steps are as follows:

1. An accurate life history of the accused;
2. A personal examination of the accused;

Inasmuch as the number of prison physicians in Sweden is 47, there would be for each one an average of 53 examinations the year.

3. Preparation of a scientific statement in those cases where the accused is found mentally incapable or psychically abnormal;

The number of these cases cannot, of course, be given, but estimating it at 10 per cent. there would fall to each prison physician an average of 5.3 opinions the year.

4. A brief statement of the characteristics of those accused persons not found psychically abnormal or mentally irresponsible. This statement should chiefly note the intellectual and moral quality of the accused, should classify the criminal type, and indicate the kind and degree of danger in his criminality.

The labor of such examination of 2,500 accused persons divided

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nearly in equal measure among 47 judicial physicians would certainly not exceed their capacity.

Obligatory examination in such cases within the range outlined therefore can be regarded in Sweden, without involving greater labor, as feasible.

A copy of the medical opinion and the subject's life sketch should be delivered to the central criminalistic office, where every offender examined should be registered and where the *dossier* of his case should be preserved for future reference.

I have indicated that juridically obligatory psychiatric examination is practically feasible. Of course, it will require considerable labor and money. Therefore, we must consider if the benefits to be derived will compensate for the necessary outlays. These benefits are as follows:

1. A certain number of insane persons will be discovered, and given over to a special method of treatment, and will accordingly be eliminated from the number of recidivists;

2. An important number of psychically abnormal persons will be recognized and can be disposed of in accordance with the nature of their abnormality and the degree of their danger to society;

3. The peril to society of those criminals neither insane nor abnormal may be established by the courts much more accurately than at present, and thus afford a basis of great importance for the measurement of punishment;

4. By the delivery of all records to a central statistical bureau, there will come into existence within a few years a full collection of casuistic materials dealing with the real *criminal types* of the country, which will make possible a profounder statistical basis for dealing with the problem of crime.

Finally, in a theoretical connection, the examination suggested will deepen our knowledge of criminal psychology and provide a possibility of demonstrating this knowledge; because it will be based not on individual instances, but on the totality of cases in a definite category. In the practical aspect such examination means the sorting out of one of the most important criminalistic elements, and is therefore an indispensable premise—not to be disregarded at any price—of a rational criminal polity based on natural science methods.