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INSANITY AND CRIMINAL RESPONSIBILITY

(REPORT OF COMMITTEE "A" OF THE INSTITUTE)

VICTOR P. ARNOLD, Chairman¹

The central idea which this committee has had in mind in preparing this report may be expressed by saying that in the consideration of mental abnormality as a factor in the causation of crime, it is necessary to realize that there are forms of mental abnormality other than insanity and feeble-mindedness (as these terms are generally understood) which must be taken into account.

That a very considerable proportion of delinquency is associated with mental abnormality is very strongly emphasized by army experience during the war. When it was found necessary to raise a large army the disciplinary authorities were requested to estimate the number of delinquents for whom it would be necessary to provide accommodation when the army was increased to three million men.

Using the experience of previous war and peace armies it was officially estimated that the disciplinary barracks would be called upon to care for 50,000 prisoners. As a fact, with an army considerably in excess of three million men, the total number so confined was approximately 5,000.

Doubtless many factors entered into the consummation of this remarkable result, but the one which we would emphasize is the exclusion of men presenting mental disability of any kind. In this connection it must be remembered that in previous armies the obviously defective and insane were eliminated and hence that the additional exclusions, based upon more expert psychiatric study, represent, in large degree, persons who had succeeded thus far in civil life without giving evidence of marked anomaly.

Studies of prisoners in civil penal institutions, especially of recidivists, reveal a large proportion of persons showing mental anomalies similar to those upon which exclusion from military service was based.

¹The personnel of this Committee is as follows: Victor P. Arnold, Chairman, Judge of the Juvenile Court, Chicago; Dr. Hugh T. Patrick, Chicago; Dr. H. Douglas Singer, State Alienist, Kankakee, Ill.; Dr. Sidney Kuh, Chicago; Burdette G. Lewis, Commission on Charities and Corrections, Trenton, N. J.

We may then conclude that expert study permits the recognition of many such individuals even before the commission of serious crime.

In offering these statements we do not wish to be understood as alleging that all crime is due to mental disorder. We recognize two large categories into one or other of which all causative factors must fall.

(1) Defect or abnormality in the delinquent.

(2) Factors dependent upon the environment in which the delinquent has developed.

We would insist that factors belonging in both categories may be operative together in one and the same case and that expert study, often extending over a considerable period of time, may be necessary to determine the presence and relative importance of the various causative elements.

The prime objects of society in relation to criminals are the prevention of crime and the reformation of the criminal.

When the crime results from the mental inadequacy of the offender it is quite generally admitted that he is not responsible and that the problem of his disposition and care becomes one of treatment directed towards the amelioration or cure of the anomaly and the segregation of the individual as long as may be necessary to prevent further crime.

In the case of responsible persons the treatment applied is usually included under the name of punishment. This may be deterrent, retributive or reparative and is also described as preventive and reformatory.

Punishment may be termed preventive when it takes the culprit's life or shuts him up within prison walls permanently. In such cases society is usually attempting to protect itself and not to make the offender pay for his offense. Strictly speaking then, this is not punishment and is identical in purpose with the segregation provided for the mentally irresponsible.

The reformatory aspect of punishment has been emphasized in this century and recognizes that the offender must be prepared to return to society through the building up of his physical well-being and of his moral life. This reconstruction is identical in its purpose with that of the treatment accorded to persons presenting some mental abnormality.

Hence it may be said quite generally that prevention of crime and the reformation of the criminal are problems of treatment, the

first essential in prescribing which is correct diagnosis of the factors leading to the delinquency. Our concern is to find, not the "punishment" to "fit the crime," but the treatment necessary to make the criminal law-abiding and to prevent the commission of further crimes.

Delinquencies of exactly the same nature as offenses against the law may be the result of either personal or environment inadequacy or both. The treatment needed for persons committing the same crime may therefore vary within wide limits.

No man, expert or layman, can foretell in most cases how long will be required to effect reformation. No age limit can be set at which the factors determining the delinquency will cease to be operative.

As a defense for crime the irresponsibility of the criminal is, from the view-point of society, largely an academic question. The pragmatic feature of such a situation is that the offense has been committed and this remains a fact regardless of whether it is decided that the person committing it was irresponsible by reason of juvenility, feeble-mindedness, insanity or other inadequacy. Such considerations are of importance only for determining the particular treatment to be adopted for the reformation of the criminal and the protection of the community. Society needs as much protection from the criminal acts of irresponsible individuals and is as vitally interested in their reformation as in the case of the responsible.

Upon the above considerations this committee recommends the adoption of a program for development directed towards the following ends:

- (1) That in all cases of felony or misdemeanor punishable by a prison sentence the question of responsibility be not submitted to the jury, which will thus be called upon to determine only that the offense was committed by the defendant.
- (2) That the disposition and treatment (including punishment) of all such misdemeanants and felons, i. e., the sentence imposed, be based upon a study of the individual offender by properly qualified and impartial experts co-operating with the courts.
- (3) That provisions be made permitting the transfer of such misdemeanants and felons at any time after conviction from one institution to another affording a different kind of treatment upon the presentation of evidence of the needs for such action satisfactory to the court which passed sentence.
- (4) That no maximum term be set to any sentence.

(5) That no parole or probation be granted without suitable psychiatric examination.

(6) That in considering applications for pardons and commutation careful attention be given to reports of qualified experts showing the applicant's mental age and mental stability and that in drafting statutes determining or defining juvenile delinquency, mental age and mental stability, within reasonable limits, be regarded as of importance with the calendar age of the delinquent.

In view of the foregoing and as an initial step towards the ends stated your committee submits the following resolution and urges its immediate adoption:

Resolved: That the several states be urged to make provision for the psychiatric examination, under conditions permitting prolonged observation when necessary, of all persons convicted of a felony, misdemeanor or other offense by properly qualified experts appointed to assist the court in reaching a decision as to the proper disposition and treatment of the offender.