1919

Insanity and Criminal Responsibility

Victor P. Arnold

Follow this and additional works at: https://scholarlycommons.law.northwestern.edu/jclc

Part of the Criminal Law Commons, Criminology Commons, and the Criminology and Criminal Justice Commons

Recommended Citation


This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.
The central idea which this committee has had in mind in pre-
paring this report may be expressed by saying that in the considera-
tion 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 gen-
erally 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 ex-
perience 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 consider-
ably 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 obvi-
ously defective and insane were eliminated and hence that the addi-
tional 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 recidi-

vists, reveal a large proportion of persons showing mental anomalies
similar to those upon which exclusion from military service was
based.

---

3The personnel of this Committee is as follows: Victor P. Arnold, Chair-
man, 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 reformatory 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 "punish-
ment" 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 com-
mited 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 refor-
amtion 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 punish-
ment) 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 satis-
factory 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.