

1922

## Dangerous Insane

Paul E. Bowers

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

Paul E. Bowers, Dangerous Insane, 12 J. Am. Inst. Crim. L. & Criminology 369 (May 1921 to February 1922)

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 DANGEROUS INSANE

BY PAUL E. BOWERS<sup>1</sup>

Among the insane there is a class of individuals who commit dangerous acts. They in fact commit every crime in the criminal category, as has been found by observation and study at the Indiana State Prison and the Indiana Hospital for Insane Criminals.

Of this class, Dr. Charles R. Henderson has said the following:

"There is no word here of 'criminals' in the legal sense. According to our laws an insane person is incapable of committing crime. But some of the insane are dangerous to society and require restraint and treatment. In many cases it is difficult to distinguish insane from criminal impulses and actions. Nervous and mental disturbances unquestionably make anti-social deeds more frequent. Therefore brief notice must here be given to this aspect of our problem.

"In the United States the conviction is gathering momentum in ever-widening circles that society is constantly in danger from certain classes of the insane, as well as from the feeble-minded and epileptic, and that measures must be taken for protection. Now that the idea of social revenge is definitely abandoned by all enlightened leaders, and the standpoint of social protection is accepted, we are in much better position to deal with the problem without passion or prejudice. It is impossible in many cases to judge whether a person is insane or not; impossible to measure the degree of responsibility or of desert, and the penalty which will satisfy abstract justice. We ought by this time to be able to free ourselves from the metaphysical confusion which disturbs the traditional penal codes built on the unverifiable assumption that a judge, a jury, or a legislature can measure the pains due to a specific act. What we can discover, with the aid of modern science, is the fact that a given person is dangerous to the life, persons or property of the community, and we can define a suitable method or education, medical treatment and seclusion which will, in one way or another, protect society. All this can be done legally, with judicial safeguards of liberty, and in a way which will be best even for the person placed under treatment. Many a dangerous man has been set at liberty by courts and juries because they feared to condemn an insane person; and so individuals have been placed in jeopardy, and the trait of insanity has been transmitted to children through the vicious system based upon false assumptions."

This class of insane offenders is divided into two groups, namely: the insane criminal, and the criminal insane.

There is need for an explanation of these terms; the last term

---

<sup>1</sup>M. S., M. D., Neuropsychiatrist, U. S. Public Health Service; formerly Medical Supt., Indiana Hospital for Insane Criminals, Michigan City, Ind.

especially needs some elucidation to explain what seems to be an apparent contradiction. How can an individual be both insane and criminal at the same time? The classical school of criminologists have denied this possibility on the theoretical grounds that no crime can be committed without criminal intent and that the insane do not have criminal intent of mind because of their insanity. From a standpoint of rhetoric this argument is logical enough. Admitting for argument's sake the plea of the classical school of criminology, that it is impossible for an individual to be both criminal and insane at the same time, we are confronted with the imperative necessity of recognizing that there is a class of violent mad-men who must be recognized as such, and restrained accordingly.

Without quibbling over hair splitting technicalities, we are compelled to make certain practical definitions that we may have a working basis upon which to formulate our treatment of the dangerous insane.

The criminal insane individual is a person whom the court has found to be insane at the time of trial or insane at the time he committed a criminal or dangerous act. He is an individual who is positively dangerous to the welfare of society because he is unable to control his conduct by reason of mental disease or lack of mental development.

The insane criminal is an individual who has become insane or whose insanity was discovered after he was sent to prison, or an individual who becomes insane while serving sentence in prison.

In the state of New York these two classes of patients have been separated, but the distinction made between them is largely an artificial one. The criminal insane are sent to the Mattewan State Hospital, and the insane criminals are sent to the Dannemora State Hospital. Even though this arbitrary difference is made between these two groups, they are made of essentially the same types of persons. An individual who is classified as "criminal insane" may be one who has served several sentences in prison and while on parole or discharged from a penal institution he commits a crime and is found to be insane at the time of trial and because his history is unknown he is sent to a hospital for insane criminals. There is very little reason to separate these two classes since they are largely recruited from the same ranks of society and they require the same kind of treatment in the same sort of a hospital.

If we examine carefully the records of hospitals for the criminal insane, we will find that the majority of the inmates have been habitual criminals or individuals who have occupied all their lives in a region

that lies midway between sanity and insanity. The crimes of the insane and otherwise mentally defective prisoners show an exceptionally high percentage of crimes against the person. I have found that the percentage for murder among the insane prisoners was three times as high among this class as among the inmates of the prison proper. For rape, sodomy and incest, it was one and one-half times greater. Among 169 insane prisoners, 43 were murderers and 16 were convicted of assault and battery with intent to murder; 25 of them were convicted of burglary, and every burglar is a potential murderer; 11 were convicted of rape and attempt to rape, and 4 were convicted of sodomy.

The records of the Indiana State Prison of 2,365 consecutive admissions show the following interesting percentages:

|                                 | Per cent |
|---------------------------------|----------|
| Murder .....                    | 5.2      |
| Rape, incest and sodomy.....    | 6.1      |
| Murder, manslaughter, rape..... | 14.6     |
| Petit and grand larceny.....    | 53.2     |

Of 114 mentally defective prisoners:

|                                 | Per cent |
|---------------------------------|----------|
| Murder .....                    | 16.6     |
| Rape, incest and sodomy.....    | 9.8      |
| Murder, manslaughter, rape..... | 30.5     |
| Petit and grand larceny.....    | 37.7     |

From these figures and tables we see that the majority of the crimes of the criminal insane and insane criminals is chiefly against the person. This fact is extremely pertinent and suggestive and indicates that there should be an indefinite seclusion of the individuals of these types.

The insane criminals and criminal insane suffer with the same mental and nervous diseases as do the civil insane. I have noted, however, no matter what type their insanities may be, their symptoms are distinctly colored with delusions of persecution; seventy per cent of the patients at the Indiana Hospital for Insane Criminals entertain some form of delusions of a persecutory nature; some of the delusions are organized and some are not. In my opinion this delusional state of mind is but a reflection of the whole course of their lives and indicates the deep seated and inherent anti-social tendencies of their mental organizations. It explains to some degree the reason why their lives have always been in conflict with society. Their delusions, when organized generally, concern society, with whom they have always been at war, but the definite fabric of their false beliefs is woven about

prosecuting attorneys, judges, prison officials and the medical officers of the prison. It is a very common practice for them to prepare long statements replete with legal terms setting forth their grievances and complaints against the world at large. Their daily conversation and behavior are filled with discussions and actions which relate to crime. Very often the more intelligent insane criminals attempt to play the part of attorneys and very often plead the case of some terminal de- ment to the hospital officials; even the very games they play in the hospital grounds are very suggestive. Here in their sports they constantly refer to, and enact, scenes of their past lives. They play at having jails and prisons; they designate one another as policemen and detectives to catch make-believe criminals who are always made the central figures of their pastimes.

In the hospitals for the criminal insane are to be found the sexual perverses of all descriptions. There were at this institution<sup>2</sup> thirty-five sexual perverses, and they constitute a very dangerous and troublesome class. It is necessary to keep them under the strictest observation to prevent them from committing homosexual acts. Quarreling and fighting among them is extremely common, and this results from their love affairs and jealousies. They form attachments for each other, indulge in hugs and personal caresses and slip into one another's beds if they have the slightest opportunity. The lovers are separated and placed in different wards and in various parts of the hospital, and yet they send love notes, trinkets and favors to their sweethearts if they get an opportunity. They have even used tin salve boxes in which to send their semen to the objects of their affection. I have also noticed that the most violent love affairs occur between the whites and colored men. The negroes are usually more aggressive and take the masculine part in their acts of sodomy. Some of these patients display absolutely no shame whatsoever about their perversions. Others, while apparently embarrassed, make splendid promises that they will never again commit homosexual acts, but of course their promises are broken the first time they have an opportunity.

The insane criminals whether they are still in prison or in hospitals for the criminal insane are constantly manufacturing dangerous weapons. They display their ingenuity by converting the most harmless things into instruments of assault. Out of pieces of wood, spoons, tooth brushes, pens, pencils, stones and even thorns from plants, they make daggers. They steal socks, if they can get an opportunity, and fill them with pebbles, sand, cinders, earth, pieces of soap or anything

<sup>2</sup>Indiana Hospital for Insane Criminals, Michigan City, Indiana.

else they can find, with which they make "black jacks" to use in personal encounters. It is not an uncommon thing for them to make saws of clock springs. It is necessary to inspect the hospital furniture at very frequent intervals to see whether or not the reinforcing rods used in bracing chairs have been removed. In several instances the inspecting officers failed to find the missing rods. The thefts had been carefully concealed in a most novel manner. The patient, after removing the rod, molded a bolt head of putty and placed it at the site of the missing rod; wooden pins have been substituted for the same purpose. They make clubs by rolling newspapers and magazines tightly together, then soak them in water and wrap them firmly with bits of grass or string. It is necessary to search their clothing at very frequent intervals for their home-made weapons.

The criminal insane and the insane criminals do not belong in prisons or in civil hospitals for the insane; they interfere with all reformatory methods. They cannot be disciplined as are the normal prisoners; they create disturbances, are dangerous to the physical welfare of mentally normal prisoners and institutional officers. The presence of epileptics, mattoids, paranoids, paranoiacs, imbeciles and sexual perverts in our prison populations is a menace because of their dangerous tendencies and lack of capacity to adjust themselves to the environments and discipline of penal institutions. They threaten the lives of their fellow inmates and the institutional officers and not infrequently make dangerous and vicious assaults. These persons do not belong in penal institutions, which should be relieved of their presence whenever discovered. In our hospitals for the innocent insane are to be found dangerously violent persons, congenital, homosexual perverts and persons who are constitutionally immoral who do not belong in the civil hospitals since they cannot be given proper care and restraint in such institutions.

It has been found by experience that it is very poor policy to place these dangerous insane in a separate department in ordinary civil hospitals. It has likewise been found faulty and ineffective to set apart for the care of this same class a certain part of the prison. Under the present state of affairs a hospital cannot be converted into a penal institution and neither can a penal institution be changed into a hospital. The purpose, organization and construction of a prison are diametrically opposed to those of a hospital for the insane. The spirit of these two institutions is entirely different. The official personnel of the hospital looks upon its inmates in an entirely different manner from the prison personnel where the rules are far more strict; where there are

definite tasks to be accomplished and where certain definite punishments are inflicted for the violation of discipline.

The question now arises, what is to be done with the criminal insane, since they neither belong in an ordinary hospital for the insane, nor in prison. The solution of the problem is to be found in a hospital for the criminal insane and for this definite reason hospitals for the criminal insane and insane criminals were called into existence and developed to meet the specific problem of caring for persons who were at the same time insane and criminal. Let us make a brief review of the history of the establishment of such institutions. The English government was the first to initiate and construct a department for the care of this class of persons, and this was done by appropriating a special department at the Bedlam Asylum in 1786, for the reception and treatment of criminal lunatics. Bethlehem Hospital was converted to this use in 1815; another institution of similar character was opened at Dundrum, Ireland, in 1850; another at Perth, Scotland, in 1859; and the famous Broadmoor Hospital was founded in 1863; one was established in our own country in New York State in 1859, at Auburn.

In France, after an unsatisfactory attempt to care for insane criminals at Bicetre, a separate wing was built for them at the Gaillon Prison. The criminal insane in Holland were isolated in the hospital of Bosmalen. Germany established psychopathic wards in the prisons at Waldheim, Halle, Hamburg and Bruchsaal.

There are two great fundamental reasons for the establishment of these institutions. The first, which is most important, is the social defense. Society must be defended against the dangerous and anti-social acts of all classes of individuals, whether they be criminal, insane, feebleminded, epileptic or otherwise mentally defective. The first great principle regulating our dealings with them must be that of social preservation. Our safety must be equally insured against the robber who would take our money or our life, or the dangerous paranoiac who kills in a wild, homicidal mania, reacting to the systematized delusions of persecution, or the mentally irresponsible, erratic imbecile who may murder a helpless infant merely to gratify his depraved appetites. The second reason for the existence of hospitals for the criminal insane is born of humanitarian impulses; for we recognize that the criminal, the insane, the epileptic and the feebleminded owe their origin largely to the defects of the social organism. And since society is responsible for their existence, these defective, delinquent and dependent classes must share our humanity and our pity.

Without discussing any further in the abstract the functions of

the hospital for insane criminals, its uses may be briefly explained by a short account of its practical workings. These institutions are so comparatively few, but a relatively small number of persons have any definite conception of them, or the valuable services they render.

The Indiana Hospital for Insane Criminals was built in the year 1910, entirely by prison labor. It is located in a plot of ground comprising four acres adjacent to the Indiana State Prison. It is surrounded by a brick wall twenty-four feet in height. The building is three stories high, built in the form of a Y. There are thirty-two private rooms on each floor. This particular model of architecture was carried out so that the supervisor on each floor could at all times have a view of two day rooms, halls, dormitories and dining rooms, from any front location. It is at once apparent to the visitor that the institution partakes of the character of a hospital and a prison. It is equipped with offices, a hydrotherapy, a surgery, a drug room, and a psychological laboratory. All the windows have bars of the outside basket variety. It was constructed with a view in mind to prevent escapes of the patients. The interior of the building is furnished entirely in terrazzo and this finish makes it very easy for the institution to be kept scrupulously clean.

The institution is under the same Board of Control and Management as the prison, but it is an entirely separate institution. Its medical administration is governed by a medical director who conducts its internal affairs. The attendants of this hospital are men who have had experience as prison guards and as attendants in hospitals for the insane. The wages they receive are about twice the amount of remuneration ordinarily paid this class of help in hospitals for the insane. This enables the administration to secure a better class of attendants than usual. The discipline is entirely different from that of the prison and conforms to the ordinary ideals of hospital government. Owing to the fact that the majority of the patients have served sentences in prison, their conduct in many respects is more orderly and regular than in civilian hospitals; kindness, gentleness and firmness is the triad of qualifications that make for discipline. An endeavor is made to have the patients understand that they are in a hospital and not a prison. In the day rooms they are allowed books from the library; they have games and musical instruments for their entertainment. They are afforded recreation outside the building in the form of ordinary field sports, as baseball, basketball and intensive gardening.

Within the hospital grounds there has been constructed a weaving shop which contains many hand looms and two sock machines. In



this department blankets, sheeting, ticking, shirting, toweling, rugs, etc., are manufactured. Occupational Therapy has proved very valuable in the treatment of the dangerous insane.

The following is an abstract of the laws which relate to the purpose and function of the Indiana Hospital for Insane Criminals:

CHAPTER 87, ACTS 1909, INDIANA

*Lunacy Commission*

Section 8. Whenever the physician of the Indiana reformatory or the physician of the Indiana state prison shall certify to the general superintendent or warden that any convict therein is insane, giving in full the signs, symptoms and conditions in detail on which his diagnosis is based, together with the full history of said convict as far as obtainable, the general superintendent or warden shall then, if fully satisfied of the insanity of such convict, report such case to the governor of the state, transmitting with such report a complete transcript of all of the papers filed in the case, which transcript shall be signed by the general superintendent or warden and sealed with the seal of the institution. Upon the receipt of such transcript, the governor shall direct the general superintendent or warden to convene a lunacy commission to be composed of two physicians and one justice of the peace, resident in the county in which such reformatory or prison is located, but having no connection with such institution, whose duty it shall be to investigate and examine into the mental condition of the person alleged to be insane; and after such investigation and examination to report in detail and in writing his condition to the general superintendent or warden, who shall upon receipt of said report, transmit it to the governor: *Provided*, That at least five days prior to the holding of such examination by said lunacy commission, it shall be the duty of the general superintendent or warden to notify in writing by United States mail the next friend or nearest relative of such convict alleged to be insane, if the records of the institution contain the address of such friend or nearest relative or if the same can be ascertained of the intention to hold such examination and of the time and place where the same will be held and that such friend or relative may be present in person or by representative, if he so desire, and the secretary of the state board of charities shall also be notified of such examination.

*Report—Governor's Order*

Sec. 9. Upon receipt of the report of said lunacy commission by the governor, he shall, if fully satisfied of the insanity of such convict and as to the wisdom and justice of the proposed transfer, issue an order committing said convict to the Indiana Hospital for Insane Criminals and commanding the general superintendent or warden to transfer such insane convict to the Indiana Hospital for Insane Criminals, the order for such transfer to accompany the convict and to become a part of the records of his case and to be kept on file as other records are kept.

*Recovery of Sanity*

Sec. 10. Whenever any convict who shall have been confined as insane in the Indiana Hospital for Insane Criminals, shall recover his sanity before the expiration of his sentence or before the expiration of the maximum limit of an indeterminate sentence, the warden and physician in charge shall so certify to the governor who, having fully satisfied himself as to the fact of sanity, shall thereupon order such convict to be transferred to the penal institution from which he was removed to the insane hospital.

*Term of Confinement*

Sec. 11. Whenever the insanity of any convict confined as insane in the Indiana Hospital for Insane Criminals, continues beyond the expiration of his sentence, or beyond the maximum limit of his indeterminate sentence; he shall be kept in such hospital so long as his insanity continues and in case any such convict shall recover his sanity after the expiration of his sentence or after the expiration of the maximum limit of his indeterminate sentence, the warden and physician in charge shall certify such recovery to the governor, who, having fully satisfied himself as to the fact of such sanity, shall forthwith order his discharge by the warden, which discharge shall be immediately reported by the warden to the institution from which such convict was transferred and to the secretary of the state board of charities.

*Criminal Insane in State Hospitals*

Sec. 12. Insane convicts sentenced to the Indiana reformatory or to the Indiana state prison and confined in any of the state hospitals for insane at the time of the passage of this act, shall be transferred to the Indiana Hospital for Insane Criminals as soon as practicable after the issuance of notice by the governor of the completion and readiness of such hospital to receive patients. In every instance the transcript of the record of the original inquest and of any intermediate proceedings must accompany the patient. The expenses of such transfer shall be borne by the institution from which such patient is removed.

*Credit on Sentence*

Sec. 14. An insane convict shall receive credit on his sentence for the time while he is insane and under treatment in the Indiana Hospital for Insane Criminals to the same extent as if he were confined during that time in the institution to which he was originally sentenced.

*Insanity Defense—Sentence*

Sec. 16½. After the passage of this act, if upon the trial of any male person accused of a felony the defense of insanity is interposed whether upon a special plea or a general plea of not guilty, the court or jury trying said cause shall make a finding both as to the sanity of said defendant at the time so claimed and as to whether he committed the act as charged. And if it shall be found in favor of said defendant on such plea of insanity but against him as to the commission of the act as

charged, he shall upon order of the court be committed to and confined in the Indiana colony for the insane criminals in like manner and on such conditions and for such terms as is now provided for by law for the confinement of insane criminals in a state hospital for the insane.

CHAPTER 298, ACTS 1913, INDIANA

*Insanity—Criminal Cases—Plea of Insanity.*

Section 1. Be it enacted by the general assembly of the State of Indiana, That when the defendant in a criminal cause desires to plead that he was of unsound mind at the time the offense charged was committed, he himself, or his counsel must set up such a defense specially in writing, and the prosecuting attorney may reply thereto by a general denial in writing.

Sec. 2. At the trial of such cause, evidence may be introduced to prove the defendant's present sanity or insanity.

*Time of Insanity—Duty of Court and Jury*

Sec. 3. In all cases where a plea of insanity is interposed as a defense it shall be the duty of the jury or the court, if tried by it, if the defendant is found not guilty, to find, and the jury or court shall be required to find, whether the defendant committed the act charged in the indictment or the affidavit, and if so, whether the defendant was sane or insane at the time of the commission of the act, and whether not guilty because he was insane at the time of the commission of the act.

*Commitment of Criminal Insane*

Sec. 4. If the court or jury trying the cause find the defendant not guilty on the ground of insanity, the court shall find as to the defendant's sanity at the time of the trial, and if the court shall find that the defendant is insane at the time of the trial, he shall order the defendant, if a male person, to be committed to the Indiana colony for the criminal insane, and, if a female person, to be committed to any hospital of the state where the female insane are confined; or if he shall find that the defendant is sane at the time of trial, but the recurrence of such an attack of insanity is highly probable, he shall order the defendant to be committed as above provided. Such person shall be confined therein until released as hereinafter provided.

*Discharge from Custody*

Sec. 5. At any time after six months from the date of said commitment any person so confined in a hospital for the insane may file his or her application to be discharged, in the court from which they were committed, and, upon satisfactory proof being made to such court of the restoration of the sanity of such person and that the recurrence of such an attack of insanity is improbable, the court shall order his or her discharge from such institution, and enter a final judgment discharging him or her; *Provided, however,* That a second or subsequent application for

discharge shall not be made within two years from the time of any previous application.

*Commitment Before Trial*

Sec. 6. That when at any time before the trial of any criminal cause or during the progress thereof and before the final submission of the cause to the court or jury trying the same, the court, either from his own knowledge, or upon the suggestion of any person, has reasonable ground for believing the defendant to be insane, he shall immediately fix a time for a hearing to determine the question of the defendant's sanity and shall appoint two competent disinterested physicians who shall examine the defendant upon the question of his sanity and testify concerning the same at the hearing. At the hearing, other evidence may be introduced to prove the defendant's sanity or insanity. If the court shall find that the defendant has comprehension sufficient to understand the nature of the criminal action against him and the proceedings thereon and to make his defense, the trial shall not be delayed or continued on the ground of the alleged insanity of the defendant. If the court shall find that the defendant has not comprehension sufficient to understand the proceedings and make his defense he shall commit the defendant to the Indiana colony for the criminal insane, or, if a female, shall be committed to any hospital of the state where the female insane are confined. Whenever the defendant shall become sane, the superintendent of the insane hospital shall certify the fact to the proper court, who shall enter an order on his record directing the sheriff to return the defendant, or the court may enter such order in the first instance whenever he shall be sufficiently advised of the defendant's restoration to sanity. Upon the release of any defendant so committed he or she shall then be placed upon trial for the criminal offense the same as if no delay or postponement had occurred by reason of defendant's insanity.

It is at once recognized that these laws are in some respects quite faulty, and attempts have been made, and future efforts will be made, to have them so improved as to meet the standards which have been attained in medico-legal science.

The presence of a hospital for the criminal insane in the state of Indiana has had a very marked effect upon the behavior of the prisoners in the state prison. The belief has become current among many of the prisoners that very frequent infractions of prison discipline are looked upon by the prison officers as indications of mental defectiveness and they soon learn that insanity means a transfer to the hospital for insane criminals, and once they are there, their stay is indefinite. The inmates of the insane hospital are always anxious to return to prison, for in such an institution they know that they will be discharged from custody when their sentences have expired and that this is not the case in the hospital. There has also been a great reduction in the number of trial cases in the Indiana courts in which the plea of in-

sanity has been interposed as a defense. As a result of the presence of the Indiana Hospital for Insane Criminals, insanity pleas for the defense of crime have become far less popular in Indiana, and malingering of insanity in the Indiana State Prison has been reduced to practically nothing.

Just as soon as psychopathic laboratories become an integral part of the legal machinery of our courts of justice, those individuals who commit dangerous acts because of unsoundness of mind will be promptly discovered without running the whole gamut of criminal court procedure, as it is now practiced. When these individuals are discovered, they will be sent, without further loss of time, to hospitals for the criminal insane, and they will not be turned loose upon society because they are "not guilty of crime, because they are insane," and they will not be sent to ordinary prisons as normally minded felons, to be punished for acts which were purely symptomatic expressions of their unrecognized disorders. The psychopathic laboratory in the prison will at once discover and classify the dangerous insane, who find their way into our prisons, because of the miscarriage of justice, and those prisoners who became insane while serving sentence, and are therefore dangerous to the rest of the prison inmates, will be transferred to hospitals for the criminal insane. Two very definite conclusions are to be drawn from the study of criminal psychiatry: the modern psychiatrist making due allowances for rhetorical differences, academic and legal finesse, recognize that there is a distinct class of dangerous or criminal insane, who are to be discovered by psychopathic laboratories in the criminal courts, and in penal institutions. Since there does not exist a criminal class, it becomes necessary for the states of the union to establish hospitals for the criminal insane, or to make equivalent provision for the care of these individuals in connection with other state institutions.