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THE PSYCHOPATHIC LABORATORY

HAROLD SHEPHERD¹

Perhaps there is no legal and social conception that has undergone a greater evolution during the past century than that of the purpose of punishment as administered by the courts. Today we, theoretically at least, look upon the idea of punishment for revenge or retribution as survivals of barbarism and a primitive society and rather proudly we assert that the purpose of punishment and our penal institutions is to protect society from repeated acts of aggression on the part of the criminal and similar acts of aggression by others and to first reform and then restore to society the criminal when the dangers of repeated aggressions are over. Just how ill adapted our present system of criminal courts and some penal institutions are to effectuate this conception of the theory of punishment and how the psychopathic laboratory promises to furnish the necessary machinery to bring about a practical reformation, it shall be the purpose of this article to point out.

•It is well known, not alone by lawyers, but by laymen who have given thought and consideration to the problem, that the great majority of our rules of criminal law and its administration were formulated in a society far different than the one in which we live, and in the light of a medical and psychological science so antiquated that they were hardly deserving of the name "science." It is not at all surprising, therefore, that in those aspects where the administration of the criminal law involves the welfare of the social group, and especially where it is affected by medical or psychopathic consideration, that the rules of the criminal law so affected should be as antiquated and as ill adapted to the needs of the present social order as the attempted practical application of the theories themselves in other fields would be. One of the most thoroughly implanted conceptions in the law arising from this antiquated medical "science," and from which even the most modern courts have had great difficulty in completely divorcing themselves, was that certain abnormal mental conditions of the criminal and which today we would without hesitation classify as positive mental diseases having a causal connection with the crime, were actually

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"manifestations of the power of the devil,"² and hence, either deserving of punishment *per se* or so far relieving the criminal of mental responsibility as to make him in the eyes of the law "not guilty." The danger in any such conception is twofold: first, it results in conviction and a consequent ineffective (so far as society is concerned) punishment of many really insane persons who are unable to show that their form of insanity is one of the kinds which will relieve them of criminal responsibility. (This, it is submitted, was the great defect in the rule established in one of the leading authorities on the question, *McNaghten's case*,³ the result being, to use the words of a learned writer on the criminal law, that "the memorials of our jurisprudence are written all over with cases in which those who are now understood to have been insane have been executed as criminals.")⁴

The second and perhaps more glaring defect of such a conception is that even a larger number of criminals just as dangerous or more so to society are able either to bring their form of insanity under the "Right and Wrong" test, or as pointed out by Mr. Justice Wilbur in his recent article in the *Journal of the American Bar Association*⁵ are acquitted because the jurors under the circumstances would have done exactly the same thing "and this upon the ground of insanity." In either case, however, this large class of dangerous criminals is acquitted "because their real or faked" insanity is a defense to the charge. Little wonder is it, therefore, that Justice Wilbur should urge the abolition of such an abused defense. The mere abolition, however, of insanity as a defense is not enough. There must be established as ancillary to the criminal courts adequate machinery providing the necessary information and data to enable those administering the criminal law to intelligently deal with the mentally defective criminal class after their mental abnormalities will no longer avail them as a defense to the crime. The abolition of insanity as a defense to crime and an adequate psychopathic laboratory supplement each other, the latter being rendered indispensable by the former, the former failing entirely in its purpose without the latter.

²The Lord Chancellor of England in 1862 declared that "The introduction of medical opinions and medical theories into the subject has proceeded upon the vicious principle of considering insanity as a disease," and in the same year the Supreme Court of North Carolina said: "To know the right and still the wrong pursue proceeds from a perverse will brought about by the seductions of the evil one."

³10 Clark & F. 200.

⁴1 Bish. Crim. Law (7th Ed.), pp. 390.

⁵"Should Insanity Defense to Criminal Charge be Abolished?" Hon. Curtis D. Wilbur, Associate Justice of Supreme Court of California, *Journal American Bar Association*, Oct., 1922; p. 631.

As has been already pointed out, the courts have been very slow to modify legal rules in the light of advanced medical science, even though there has emerged from the development of psychological and medical science the scientific truth in spite of the Lord Chancellor's statement to the contrary, that insanity is a disease, and not only insanity as we commonly use the term, but that there is a host of other mental abnormalities which would have been formerly viewed as resulting from "the seductions of the evil one," but which science now recognizes as positive pathological conditions; and it is largely the failure of the law to recognize and deal with them as such that has led to much of the maladministration of the criminal law. Even more important, however, for the purpose of our discussion, than the discovery and isolation of these positive pathological conditions was the startling discovery that these mental diseases and feeble-mindedness had an important bearing upon crime. This relationship had been noted a long time by students, but its treatment was largely academic and its results theoretical merely. And later, even though the establishment of the casual connection between certain types of psychopathic conditions and certain types of crime became stronger and based upon actual statistics and observation, and as this relationship became more firmly recognized by psychologists and medical men, still it was nevertheless blindly ignored by our courts, which for the most part continued to follow, where insanity was pleaded as a defense, the "right and wrong" test and the delusion rule that the defendant "must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real" established by *McNaghten's* case. Some courts, it is true, more in touch with modern developments, such as, for example, the Alabama court in the well-reasoned case of *Parsons v State*,⁶ deplored the unprogressive condition of the law which refused to keep pace with the startling discoveries that were being made daily in the medical world and urged that the old precedents be disregarded where no longer applicable. But even these more enlightened courts, with their progressive tendencies, were unable to accomplish the desired results because even if they recognized as a defense other types of mental diseases than embraced in the *McNaghten* test then the only result would be that perhaps a far more dangerous individual to society (i. e., one who, while not responsible criminally for his act, but nevertheless very likely to repeat acts of the same type) would be turned free to repeat his depredations upon society. On the other hand, if his defense were

⁶2 Southern Reporter 854.

not allowed he would either be executed, or, what is perhaps still worse, confined in a common state institution where all manner of criminals of different degrees of mental and moral responsibility were placed. In either case, then, the courts did not have the requisite machinery, equipment or expert knowledge available to enable them to deal effectively with this type of criminal.

Just at this point it becomes necessary to correct a popular misconception of the purpose and probable effect of the so-called "reformers" in the field of insanity. It is supposed by a great many that an adoption of the more advanced medical and psychologic conceptions of the nature of insanity and allied psychopathic conditions would result in a greater leniency in the already over-abused defense of insanity in a criminal proceeding. In result just the opposite is the fact, for while these so-called "reformers" would perhaps allow a greater latitude in placing before the court different forms of mental disease, nevertheless they would recognize no form as a defense in the sense that the defendant would be turned back upon society, but rather they would regard his proper classification and future care as a special and highly important duty of the state.

In this connection attention is again called to Mr. Justice Wilbur's proposal that the defense of insanity be abolished. Says Justice Wilbur: "My proposal then is this: that insanity be no longer treated as a defense to a criminal charge and that evidence on that subject be excluded from the jury trying a criminal case; that after conviction the defendant, upon suggestion of insanity, be examined by a board of alienists with a view to determining whether the defendant should be committed to the state hospital, or prison, or be released under probationary supervision to private hospital or to other custody; that the judge be empowered to make such supervisory orders from time to time upon the advice of competent alienists as may be necessary and that the state retain jurisdiction over the defendant, even after an apparently complete cure, for at least as long as the maximum term of imprisonment for the offense, resuming custody of the defendant during that period whenever symptoms of a relapse make further custody desirable for the protection of the public." Even this short extract shows that Mr. Justice Wilbur's solution anticipates just what the psychopathic laboratory has to offer, and if we substitute for Mr. Wilbur's "board of competent alienists" the term "psychopathic laboratory," established in conjunction with and ancillary to the criminal courts so as to secure the maximum amount of co-operation and the

impartiality of state-employed experts, then we would have exactly the machinery prerequisite to the successful operation of his plan.

We are now perhaps in a position to summarize the more glaring defects of our present system of administering the criminal law which it is the special function of the psychopathic laboratory to eliminate: (1) The present legal conceptions of insanity as a defense to crime are inadequate, because the prevailing view lays down ability to distinguish between right and wrong in the commission of the particular act as the test, whereas medical science has established that there are other forms of mental disease and certain types of criminal tendencies which make the actor equally irresponsible. (2) Because the present law of insanity, by making it a defense to the crime, permits many dangerous persons to escape who might not have the necessary ability to distinguish between right and wrong and so be freed under the *McNaghten* test and yet who are so much victims of certain other well-recognized diseases and criminal tendencies as to make their release a virtual crime against society.

(3) The present state of the law generally makes no distinction between the treatment of the different types of criminals of the same grade; that is to say, it fails entirely to recognize that psychologically and mentally the criminals are entirely different persons. It would seem that if there be anything at all in our pretensions of reforming the criminal, then different types should be segregated and placed under an environment to which that particular type would respond. The demoralizing effect of one class upon the other where there is no segregation cannot be overestimated, and the results are shown in the great number of prisoners released from such conditions that are re-arrested for similar criminal offenses. As illustrating this defect in the present system, let us take the case of Indiana where there is no segregation at all: Out of 2,500 prisoners in the state prison, 675 were found to be feeble-minded, 250 actually insane, 200 epileptic, 450 psychopathic.⁷ The report of the California State Bureau of Criminal Identification shows that from July 1, 1918, to July 1, 1920, of the total number of arrests made for serious offenses, 1,935 had had prior state prison records. This large number is accounted for largely by the fact that no attention whatever was given at the time of their first commitment to a proper segregation according to the criminal types represented and consequently the response to the so-called reformatory purpose of imprisonment was practically nil.

Another fact revealed by this large number of re-arrests is the

⁷Journal of Delinquency, vol. 4, No. 1.

utter failure of the present system of administering the criminal law in the matter of prevention of a repetition by a criminal of his criminal acts, and this brings us to the fourth great defect of the present system.

(4) The present state of the law pays very inadequate attention, if any at all, to the preventive side of the problem of crime, and this perhaps is both its most glaring defect and also is the phase where the psychopathic laboratory idea promises most. This failure of the present law is due fundamentally to the fact that the law now strikes at the evil only after it has appeared on the surface, after the crime has been committed, and it does not have any machinery at all for investigating the *cause* of crime, hence no opportunity to remove crime by removing the conditions conducive to it. Typical of this attitude of the law is section 2168 of the California Political Code, which, it is true, provides rather a summary method of protecting society against insane people by providing that they may be taken into custody, but it is to be noted that this section is confined to persons about "to endanger health, person or property," or, in other words, it is confined to what we would commonly term the violently insane, and leaves out of account entirely that vast class of mental defectives, feeble-minded persons and other potential criminals which criminologists, as a result of many years of investigation, have shown to be the real dangerous class, even more so than the violently insane. It has, moreover, been established by a wealth of statistics (substantiated by the report of the psychopathic laboratory of the Chicago Municipal Court) that criminal tendencies are most pronounced, and consequently more easily detected, during the period of adolescence, and yet our existing machinery of justice affords generally no opportunity to detect the criminal in embryo and place him in an environment and under a treatment which would result in sparing society more violent outbursts of his criminality in the future.

Finally, it is very common in prison records to find that certain criminals have been convicted as many as fifteen times for prior offenses, and yet it would have seemed time at the end of at least the fourth or fifth conviction that society take some preventive measures to obviate the trouble and expense of the last ten prosecutions, and yet in spite of this condition our machinery generally does not enable us to recognize this type and deal with it as a case where the criminal acts were practically certain to be repeated.

(5) Even in those states having a number of different institutions for the detention of different classes of criminals, the assignments have been made generally, not on the basis of a scientific classification,

but more or less haphazardly, and there is very little, if any, adequate machinery for determining when transfers should be made from one institution to the other.

(6) The sixth great defect would seem to be in the matter of granting pardons, paroles, probations and commutations of sentence. The governor or other board having to discharge this function is without reliable data to make an intelligent decision, and it may very well be and frequently is the case that a criminal whose prison record has been good because during the imprisonment the criminal tendency has been suppressed by force is pardoned or paroled without any material change in the type he represents having been made at all and the natural result is that these persons again do the very thing that the expert trained in psychopathic methods could have predicted. This is the cause of much criticism of the pardon, probation and parole systems, whereas perhaps the real difficulty is not with that system but because of a lack of the proper kind of reliable scientific data upon which the pardon or parole boards should act.

It is apparent from the defects already pointed out that the crying need of the country was for some system or institution, ancillary to the courts, which could furnish the most expert aid of the medical and psychological professions in the detection, segregation and classification of criminal types and tendencies and which would furnish to the courts the necessary data which they must have if they are to intelligently carry out the two functions of protecting society to the fullest extent and rehabilitating the criminal.

It was to fill this very need that the pioneer, largest and most successful institution of its kind in this country was established, the Psychopathic Laboratory of the Chicago Municipal Court, established in 1914 under the supervision of a trained expert, Dr. Hickson. This laboratory in the first three years of its existence examined, classified, scientifically tested and made reports of 4,447 cases divided as follows: From the boy's court, 2,025; domestic relations, 1,236; morals court, 947; police court, 329. The latest report made in 1921 showed that in the six years the laboratory had dealt with over 20,000 cases.

How does this laboratory function? Each individual taken into custody and referred to it by the various judges is placed under observation by experts and an intensive criminalistic, psychiatric, physiologic, neurologic, hereditary and sociologic study made and a detailed written record kept. By means of these studies the mental diseases and criminal tendencies are discovered. Neither space nor the scope of this article permits in this paper a discussion of the modus operandi

of these tests or a classification of the different mental diseases and criminal tendencies. It will be seen at once that this laboratory is able to render the following service:

(1) It will offer expert service in the further investigation and isolation of the causes of crime, and thus furnish intelligent data, not alone for the courts, but for the legislature on which to base future social legislation. In this connection Judge Olson has suggested that the activities of such an institution could even be extended to our immigration service on the other side of the ocean and hence would result in the elimination of a great part of the criminal and feeble-minded classes which European countries have been in past years deliberately dumping on us. The economy resulting from preventing the criminal from ever entering our country will at once be recognized.

(2) The second great service of the laboratory will be to offer impartial and scientific data and history of cases, so that the defense of insanity may not be abused as at present.⁸

(3) It will assist the judge in determining the appropriate disposition to be made of a person who has been found guilty of committing crime. Where any discretion is allowed the judge at all, and it usually is the case that the law has provided a number of alternatives in form of punishment or restraint—for example, to suspend sentence, place on probation or to commit for various or indefinite terms, to a variety of institutions—in such cases it will be decidedly to the interest of society that the judge be enabled to use his discretion in placing the different groups of criminals in institutions or isolated farm colonies which have been previously established under the direction of the psychopathic experts where a method of treatment and discipline appropriate to the case are provided for.

(4) Perhaps the greatest service that the laboratory will be able to offer is in the field of prevention of crime and delinquency (as before indicated). With the positive scientific tests that have been thus far developed and the additional ones that would in all probability be developed in such a laboratory, the dangerous potential criminal (and criminologists are convinced that there is such a type; in fact, Mr. Olson reports a case wherein a laboratory expert truthfully predicted that a criminal of such a type would commit a certain crime and very soon after his release for the first offense this most brutal crime was

⁸Another very grave defect in our system of procedure is the very meager opportunities which it affords for the investigation of the mental condition of an accused person. "The scandal," justly complains Dr. Blandford, "which has come upon evidence given in doubtful cases of insanity has arisen from medical men giving their opinions after an amount of knowledge and examination which in no degree warranted any opinion at all" (Oppenheimer, "The Criminal Responsibility of Lunatics").

actually committed) could by means of the indeterminate sentence be so isolated and placed under observation that his repeated crimes could be reduced to the minimum; the lowest types of mental defectives with decided criminal tendencies and feeble-mindedness could perhaps be placed on farms or in industrial colonies, contemplated as part of the general plan, so that their reproduction and consequent hereditary transmission of the criminal tendencies be obviated. As illustrating the possibilities of the laboratory as a preventive of crime it was shown that in the first three years of the operation of the Chicago laboratory there were thirty cases of murder by young men whose prior psychopathic records showed them to be dangerous potential criminals. When the idea of prevention is fully developed these young men upon their first commitment for a less serious crime would be so segregated that the city might have been spared at least twenty out of the thirty murders. The soundness of such prevention is further shown by Judge Olson's final conclusion, made in 1921 and based upon six years' practical experience with over 20,000 cases, that "in practically every case a serious crime is committed only by a person who has a record of prior offenses." In summing up this most vital feature of the laboratory idea I quote from the tenth and eleventh annual reports of the Municipal Court of Chicago, page 275: "It will only be a question of time until one of the great advantages that psychopathology has over the law, namely, *anticipation of crime*, will come into its own. At present the law is constrained to wait until a crime has been committed, but psychopathology will recognize and isolate all potential criminals, mental defectives, before they enact their depredations."

(5) The final advantage of the laboratory will be that it will be able to give intelligent information regarding the advisability of pardons, paroles and probations after the prisoners have been once committed, and should there be improvements sufficiently marked in any case as a result of the treatment rendered to justify the transference of a prisoner from one kind of an institution to another, then it will, like the original commitment, be based upon a scientific understanding of the case.

In conclusion and by way of summary it will be seen that the justification of the psychopathic laboratory lies in the fact (which today we cannot intelligently deny) that a large proportion of crime is a result of psychopathologic conditions and that the ends of society are best served by recognizing this as a *cause* with means taken to prevent crime by a removal of the source, and one of the most practical steps yet taken toward the securing of that end is the establishment, in conjunction with the courts, of the psychopathic laboratory.