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THE CRIMINAL AND THE NAPANOCH PLAN¹

BY WALTER N. THAYER, JR., M. D.²

The only sane standard by which to judge a policy or procedure is the standard of results attained. Judging our criminal law by this standard, we must consider it a failure. Court calendars are crowded with untried cases, and correctional institutions are over-populated, despite the facts that their numbers have been increased, and parole and probation laws are operating to decrease their populations.

Since the earliest days of community life, laws have been necessary to protect society against anti-social or criminal individuals. Criminal law has for its object: First, the protection of society; second, the punishment and possible reformation of the criminal; third, the deterrent effect which punishment of the criminal would have upon others who might be tempted to commit crime.

The first laws enacted attempted to accomplish these ends through the inspiration of fear by the infliction of pain, and even death, if need be, upon the criminal. The first thought in early criminal law would seem to have been that the methods used would be successful in direct proportion to the severity of the punishment. In fact, we are told early English law prescribed the death penalty for upwards of one hundred different anti-social acts.

Imprisonment for a longer or shorter period of time eventually supplanted corporal punishment in the more enlightened countries, and the death penalty is rarely inflicted today, except for premeditated murder. This in itself is a confession either that the capital sentence did not operate to deter the criminal from committing the offense, or the penalty was considered too severe.

In later years, we have heard less of punishment and more concerning the reformation of the prisoner. Criminal law has, therefore, been greatly modified to meet the later viewpoint of society.

In the minds of many, the modification of the criminal law has gone to the extreme, and in the opinion of many prominent jurists there are oftentimes meted out very inadequate sentences for crime. Then, too, our criminal law is so constructed as to throw every protection about the individual charged with crime, and we hear much of

¹Read before the Forty-eighth Annual Conference of the American Association for the Study of Feeble-Minded in Washington, D. C., June 2, 1924.

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the old axiom: "It is better that twelve guilty men escape than one innocent man be punished."

In addition to the modification of the punitive side of the law, and in line with the ideas of reformation, there have been enacted laws which permit the court to suspend sentence on a convicted criminal, and to place him on probation in the community. These laws require him to so conduct himself as to meet the approval of his probation officer and the community in general, and to become an industrious and productive member of society. Should he succeed in his efforts for the length of time fixed by the court, which is usually one year, he is discharged from supervision and his offense forgiven.

The parole law, which is another modification of the old criminal law, provides that when a man is convicted of a felony for the first time, the court should sentence him to an indeterminate period, fixing a minimum and a maximum sentence and making it possible for him to receive his conditional discharge at the expiration of the minimum term. This law is usually administered in the prisons by a state parole board appointed by the governor, and in reformatories, by the board of managers who consider the cases recommended by the superintendents of the institutions.

In my opinion, formed after twenty years of observation, our present-day parole system falls far short of its possible usefulness. There are a number of reasons for this, and the primary one, which is lack of scientific study of each case, cannot be entirely laid upon the bodies exercising these functions, as they are not supplied with a competent staff for the making of these studies. Aside from this, one is impressed with the idea that the parole boards seem to feel where the criminal has made a good institutional record, and has made satisfactory arrangements as to work, etc., that he is entitled to receive a parole at the expiration of his minimum sentence. In the second place, the supervision and assistance rendered the rehabilitated criminal is altogether inadequate.

Taking up the *first objection*: I have been impressed with the attitude of the criminal upon his reception in a prison, or other correctional institution, that all he is obliged to do in order to secure his release at the earliest possible moment is to avoid coming into conflict with the institutional rules until the date of his minimum expiration arrives. This, unfortunately, seems to be a reflection of the opinion of the parole boards as well. As a result of this condition, I have witnessed the parole of a great many criminals whom I felt positively sure would return to their criminal ways, and in the vast majority of

instances my opinion has been borne out by the subsequent history of the case.

It is felt the law never intended a man should have a *right* to parole on the date of the expiration of his minimum sentence. It is felt it merely granted him the *privilege* of appearing before the board of parole and presenting his side of the case, and that it was originally contemplated the board would function only in those cases which would seem to promise successful adjustment in society.

The *second objection*: That of inadequate supervision while on parole is a very serious one. I am personally in touch with one very excellent parole supervisor who is endeavoring to supervise and assist over 300 paroled inmates. I recently suggested the appointment of an assistant to this very much overworked officer, but was met with the statement that there were no funds for the purpose, and was surprised to learn the salary paid this officer originated in private sources. This objection of lack of funds is absolutely ridiculous when one considers that the maintenance of a criminal in New York state institutions in 1922 ranged all the way—I am quoting from a list of five, of which I have the figures—from \$345.00 to \$607.00 per year. This parole officer, therefore, in supervising 300 paroled convicts, should he succeed in successfully adjusting but one-half of them, is saving the state, on the basis of the lowest per capita cost, over \$51,000.00 per year, and on the basis of the highest per capita cost, over \$91,000.00 per year. I might say this parole officer receives the munificent salary of \$1,800.00 per year.

Instead of having one assistant, it is felt that *five* should be allowed, and no parole officer should be expected to supervise more than 50 individuals at one time. I can conceive of no argument which would seem to justify the condition existing in this particular case, and I believe it to be typical of parole conditions throughout the state.

A remarkable change has been noticed in the character of individuals received in our correctional institutions when the type of thirty years ago is compared with those of the present day. In making this comparison, one is impressed with the great increase of men of foreign birth and of the first American generation of parents of foreign birth. This is particularly true of individuals of Italian and Russian heritage. This observation is probably explicable because of the greatly increased immigration from southern Europe, Russia and Austria.

Another thing which strikes the careful observer is that the individuals being received at the present time are of a much lower moral standard, and one is impressed with the fact that the outlook for re-

habilitation and readjustment in society is much less hopeful than formerly. This is probably due to the fact that a large percentage of the reclaimable material formerly received in prisons and reformatories is now intercepted by operation of the law provided for suspended sentence and probation. Juvenile institutions also reclaim a large number of individuals who in former days would have progressed to the major institutions. This is as it should be, and is along the lines of true preventive work. Proper examination and selection of immigrants, at their sources of origin, might be expected to limit the number of undesirable aliens embarking for our shores, and this would eventually reduce the vast alien population of correctional institutions. I might say in this connection that not only are the correctional institutions crowded with inmates of foreign birth and heritage, but our state hospitals for the insane and custodial institutions for the feeble-minded also receive large quotas of these people.

Much has been published in the last few years concerning the so-called "crime waves" and "the increase in crime," particularly crimes of violence. We have heard various reasons given for the existence of this condition, many of which have attacked the modification of the criminal law, which would seem to make less stringent the punishment inflicted, and which has had its effect upon institutional management, until the time has come when a large proportion of the public believes that no hardship is inflicted upon the man confined in a correctional institution, and that in some institutions the entire staff seems to be organized into one grand entertainment committee.

Some of this criticism is undoubtedly well founded, but the public mind seems to be fixed upon the idea more of punishment of the offender, plus an occasional thought directed toward his reformation, rather than the solution of the criminal problem on a scientific basis, and toward the effort of crime prevention. To make myself clear on this point requires a thorough understanding of the types of individuals who commit criminal acts and who are found, as a result of these acts, in our correctional institutions. I believe we have, in general, *four* classes of individuals confined for the commission of crime, and they can be classified broadly under the following types:

1. The normally endowed individual who becomes a criminal through bad environmental conditions and through lack of proper training during his formative years.
2. The mentally deficient individual who for the same reasons and because he is peculiarly suggestible and unable to compete with his more normally endowed neighbor is very readily used

- as a tool by brighter individuals, and, learning little by past experience, is repeatedly detected in criminal acts, and is particularly prone to be found among the recidivists or habitual type of criminal.
3. The psychopathic individual who may also be mentally deficient, but who at least is emotionally unstable and deficient, and who is one of that vast number who may be rated as being somewhere between a normal mentality and insanity, and who makes one of our greatest problems both as to numbers and as to difficulty of readjustment.
 4. In addition to these, we have the person who is really insane and irresponsible for his acts. In fact, the only individual in this classification who is entirely responsible for his acts is the one first cited.

ABSTRACT OF CASE HISTORIES, INDICATING TYPES OF INDIVIDUALS AT
NAPANOCH

Group I.

Non-feeble-minded, stable from an emotional point of view, but habitual offender; that is to say, a normal individual with tendencies to a chronic delinquency, due to bad heredity and environment.

M. McM.

This individual's family history is rather characteristic of the type of case. The mother died of tuberculosis and the father was alcoholic. One brother, a nomad and definitely mentally defective, has served a term in prison for burglary. On the other hand, another brother is a high school graduate and has self-educated himself into an engineering position with the Western Electric Company.

The personal history shows no retardation in school. While he was very sensitive as a boy and was much "kidded" by his playmates on account of his short stature, he seems to have gotten along well and did not get into many fights. Possibly this might be accounted for by his ability in athletics. He is an expert swimmer and, according to his own account, has saved three people from drowning. He is a member of the American Life Savers' Association. He is a pretty good ball player (member of institution team) and a rabid ball fan. Is a good skater and is fond of athletics in general. He has always been energetic and his interests have developed chiefly along muscular activities. He has been brought up in the East Harlem district (around 110th street) and readily fell in with the street life of the community. He became a confirmed crap shooter and cigarette smoker at an early age, and his sociable, rather genial disposition gave him easy access to street gangs. He speaks of knowing personally some of the "pugs" locally popular and intimates that he has

kept out of trouble so long on account of his having avoided street corner loafing. The police remarked, he states, when he was first arrested, that they had been trying to get something on him for a number of years, and then, inmate added, rather egotistically, that he had been able to "get by" for some fifteen or twenty years only by avoiding the corner gangs. Later he became a "pool shark" and frequented dance halls and cabarets. He seems to have avoided drink, if one may rely on his own narrative. Such a life, of course, involved the usual association with prostitutes and a consequent luetic infection, of which he seems to have been cured. His occupational activities as messenger boy, bellhop and pool room employee formed an appropriate background to his other pursuits. As might be surmised, with an energetic, somewhat aggressive nature of this kind, his delinquent history shows the bolder type of crime, such as "stick up" and "burglary."

This case seems to be of normal intelligence, no marked psychopathic tendencies, but with delinquent traits possibly accentuated by the loss of parental influence when he was in his mid-teens.

Group II.

Definitely feeble-minded, usually with a long history of delinquencies.

These individuals are frequently unstable, temperamental, have outbursts of anger, are sullen, unmanageable. There is another subdivision of this group, however, which is well behaved but highly suggestible and at the mercy of bad companions with whom they associate. They usually are of quite low grade intelligence. The following case illustrates the first mentioned subdivision; that is to say, the unstable.

J. C.

The family history indicates death of both parents and a paternal aunt from tuberculosis. Father addicted to alcohol. One brother emotionally unstable, another mentally retarded with service in Catholic Protectorate for vagrancy. The only sister seems to be quite bright and now is in high school. The personal history shows that inmate's "bringing up" has been very unsatisfactory. His mother died when he was about six years old and the drunken, tuberculous father was in no condition to care for the family. Consequently, all the boys were sent to Mt. Loretta Orphanage, Staten Island, and the only girl was adopted by well-to-do people. While in the orphanage inmate was both unruly and mentally retarded and had to be placed in a special class. He succeeded in reaching the fifth grade by the time he left the institution at the age of sixteen years. During the one and one-half years that he has been out of institutions, after the age of six years, he was cared for by his aunt and uncle. The orphanage quite evidently fitted him poorly to cope with life. During the year he was out he became a confirmed gambler, began to attend pool halls and to loaf about street corners. He also became sexually promiscuous, but has always shown a defective libido. His highly suggestible nature apparently has not led him into sexually perverted acts. The same difficulties he experienced in adapting himself to the discipline at the orphanage showed up in his occupational pursuits. On his first job, of short

duration, he was inefficient and fought constantly with his associates. The next job resulted in a discharge, and arrests apparently prevented trouble at the two other places where he worked. In temperament he has shown himself to be of a rather excitable, easily-angered type, careless and thoughtless in his acts even to the point of being reckless, but without enough "nerve," as he himself has expressed it, to do anything really vicious. Although he has never had the ability to apply himself, nor to concentrate his energies, he has had a good deal of energy output in a scattered way which has shown itself in boisterous childish behavior and in the development of athletic interests, such as swimming, skating, baseball, football and handball. His tendencies have been towards the courser, more active muscular pursuits, but little leadership has been displayed in any of these. He has been organized on too low a scale, apparently, to show any of the sensitiveness or neurotic traits that often accompany the excitable disposition. A high (?) moron whose inherent mental retardation and personality defects, which have been exaggerated by prolonged institutional life in the formative years, have made this individual a segregable type.

Group III.

This group is also unstable, emotional and the individuals composing it are usually quite at the mercy of their variations in temperament. Frequently they have paranoid ideas about the community and their place in it. Most of them have a defective heritage and are to be grouped as constitutionally psychopathic. The following case is an example.

C. J. W.

Poor heredity is back of this inmate of German stock. The father, emotionally unstable, was a drunkard and died, presumably of alcoholism. One brother was convicted of manslaughter, and later became insane; also a drug addict. The environmental influence upon patient's life has been likewise unfortunate. The father, when drunk, would abuse the mother and the children, and these beatings and scenes, apparently, became indelibly stamped upon inmate's memory, making a craven of him later in life. The mother, a worrisome, rather ineffectual sort of individual, died when inmate was about six years old. The family was destitute and inmate was placed in an orphanage. He was always "nervous," too restless to concentrate upon his studies, and retarded mentally to the extent he made poor progress. The other boys found great sport in the "pug-nosed" boy, and his sensitive, timid disposition caused him to become seclusive under their jibes. He has never recovered from this, apparently, has always sought to be alone, became nomadic in his attempts to reach and seek out environments which promised him more comfort than the one in which he lived. It is rather significant that after he left the orphanage at the age of nineteen years he would spend the greater part of his time at Coney Island, which offered plenty of variety and little exactitude for service, demeanor, or personal appearance. He states he seldom was in New York when he could be at Coney Island. His occupational history is a series of maladaptations. While he would work hard and was fairly

efficient, he lacked aggressiveness to get his wages or secure an adequate return for his efforts. He never progressed beyond the errand boy-dish-washer stage, has been destitute frequently, slept in hallways, and at times little short of a bum. Drink apparently has been a contributing factor, although inmate minimizes this. He has some talent for music, has played in a band and picks up tunes readily. Sexually he is below par, with perverted tendencies. He has been arrested no fewer than four times on sodomy charges (not convicted), and has had some peeping Tom episodes apparently. He is quite bashful and even antagonistic in presence of opposite sex. The memory of his mother, which he does not want sullied or effaced, plays a part in this. Marked feelings of inferiority with transient ineffectual attempts to compensate and a timid withdrawal from a rather harsh aspect of the world seems to be his mental background. He gives a record of residence in two different state hospitals, is emotionally unstable and obviously psychopathic. From this point of view he could be classified as a constitutional psychopathic inferior with defective intelligence.

Group IV.

Classified as mental deficiency with psychosis; that is, the individuals composing this group are feeble-minded and, in addition to this, insane. The following is a rather typical case:

R. C.

The family history, as given by inmate, shows his mother is psychopathic and his father probably has tuberculosis. Most of the brothers and sisters appear to be retarded in school and one brother is a drug addict and has been arrested as such. The personal history shows marked backwardness in school, but not unruly conduct. He was teased by his playmates because he had "no brains." The family situation seems to have been unsatisfactory, although inmate's statements are doubtless colored by trends towards the stepmother especially. He entertains a hatred towards his father and stepmother, had had unpleasant scenes with them, and apparently has been considered psychopathic by the father for some time, as the father told the other brother as much. The memory of his own mother is reverently maintained. He is apparently undersexed and has a distinct aversion to females at present. His homosexual component seems to be overdeveloped, as he chooses a few male friends with whom he closely associates. The long list of jobs he has held shows inefficiency, restlessness and the desire for change. At one place his awkwardness (note inability of defectives to perform highly co-ordinated movements) led to a mangling of his right hand after a day's work among the machinery. His excuses for quitting work are notably psychopathic, e. g., in one hospital the sickness about him made him feel "funny"; in another the girls paid him too much attention; in a third the stepmother "spoiled" him so he quit, etc. He is completely oriented. The history of the case pieced out by information obtained from him would seem to indicate that this man has had one continuous psychosis extending over a number of years, that it is essentially persecutory in nature with active hallucinosis, and, as may be expected in such cases, is marked at irregular intervals by

emotional outbursts of the restless, irritable type, moderate in degree and of relatively short duration. His conflict seems to have started from inability to make money, sense of physical inferiority through deafness ("I hate myself, etc."), and inability to further his ambitions. It is expressed in his trend by his belief, on the one hand, that his parents are depriving him of getting a start in life by taking away what little he does make, and on the other hand, by his compensatory grandiosed resentment towards the stepmother who has supplanted his own beloved mother in the household, and an attempt to find a more satisfactory substitute in the married woman next door. His virility is satisfied by the psychosis by the hallucination of a struggle with the armed husband for the affections of this woman. Much homo-sexual material is evidenced, a few suggestions of which are voices telling him to grab observer and have sexual relations with him; then again strong antagonism towards observer in compensation for this feeling, indifference to women in general, etc. He desires to be old because he believes old people no longer have to strive; the battle is over and he can rest in peace, with sufficient money to live comfortably, and he would no longer look like himself; people would no longer recognize him as the despised man he now is, and he would be no longer considered a failure. He picks out the woman next door for a paramour who has gray hair, and in his hallucinations the man representing himself has gray hair and always plenty of money and jewelry. With all of this is a marked anxiety and fear reaction; he is afraid of being killed and is confused by the threats he hears on every side.

This is a case of dementia præcox, paranoid form, in a low moron who has a primary intelligence defect and doubtless further impairment by the psychosis of some years' duration. It is not a rapidly deteriorating type, however, and a rather surprising amount of emotional reaction is still worked up after a lapse of years of hallucinations.

Considering the criminal problem from this standpoint, I believe I am justified in criticizing the organization of the law as it stands today, which is based more upon the idea of arbitrary punishment for a crime committed and does not take into consideration the personality of the individual which was really the causative factor in the commission of the crime. In other words, speaking from the viewpoint of the physician, the first or present criminal law is calculated to treat results rather than causes, and to obtain any measure of success, which is attendant upon that treatment, by the inspiration of fear rather than the correction of causative conditions. Medically speaking, we are interested more today in prevention of disease, and where disease exists, in the specific cause, than we are in the treatment of symptoms. Applying this idea to the criminal problem, it would seem that every correctional institution should be possessed of a staff which would enable it to do research work in order to determine just *why* the criminal is *what* he is.

It would seem to be unnecessary to assert that where 99 individuals in every 100 agree (and this agreement is made apparent by

passage of laws governing the conduct of society) that a certain course of ethical conduct is desirable for the welfare of the community, there must be something radically different in the make-up of the one individual who so conducts himself as to be a menace to society. For this reason an intensive study of this one per cent should be made in the institutions caring for them, and an effort made to ascertain just why these individuals react differently to the problems of life. It may not be too much to expect in time we shall be able to detect the earliest indications of delinquent traits and perhaps to apply corrective measures before the individual has become habituated to criminal ways.

Further than this, the institution can be of untold value to society by furnishing the results of such investigations to parole commissions, in order to give them expert assistance in the use of their powers. Investigation has made it possible to state that the first anti-social act in the life of more than 90 per cent of the criminals incarcerated in the reformatories of New York State was truancy. This, then, would seem to indicate that the truant child should be carefully investigated to ascertain why he committed this particular act. Psychologically speaking, truancy is an indictment of our educational system. If our schools were conducted in a more scientifically correct manner, we would have little truancy. Truancy means that conditions in school are not as attractive as conditions elsewhere. It many times means that the requirements of the curriculum are too severe for the individual, or are not correctly applied.

THE NAPANOCH PLAN

The result of research into the life history of criminals makes it apparent that our present method of handling the criminal should be changed, in that instead of treating the result—the symptoms of conditions existing within the man rather than the conditions themselves—an effort should be made to uncover and treat these causative conditions. To make this possible would require that the criminal law be so modified as to require the courts to pass primarily upon the facts of the case, and to determine the guilt or innocence of the accused. If found guilty, before inflicting sentence, the case should be referred to a commission competent to make a scientific analysis of the individual. Upon completion of this analysis the case should be returned to the jurisdiction of the court with a detailed report as to conditions uncovered. The court, in the light afforded it, should be required to commit the individual to an institution where facilities for his adequate care and treatment would be found. This commitment should preferably be absolutely indeterminate. In other words, the ideal method of

management in the case would be to commit the individual in such a way as to make it possible to *release* him at any time or to *detain* him for any length of time.

The objection which would be raised to this would be that in the hands of unscrupulous or incompetent individuals these men could be released at any time, and thus do away with the deterrent effect of incarceration upon others. For this reason it is recommended that the commission in its report to the judge outline the treatment it would consider necessary for the possible rehabilitation of the individual and also state the minimum length of time adequate for the treatment. The judge could then accept this recommendation or modify the length of time, as he saw fit. There should be, however, *no maximum sentence imposed*, as it should be possible, for the protection of society and the welfare of the community, to retain individuals of this type in custody for the balance of their lives. The law, of course, would not do away with the individual's right to be heard on a writ of habeas corpus, nor with the governor's right to exercise executive clemency, if he thought the parole commission were acting in a too arbitrary manner.

As an illustration of the wisdom of such a law, the speaker quotes one case which came under his observation during his experience of two years and two months at Connecticut State Prison at Wethersfield, Conn.:

During this time one individual served parts of three sentences. He was an inmate of the institution at the time of my appointment in March, 1898, and was discharged very shortly thereafter. Within a few weeks he was received on another sentence of one and one-half years. He served this sentence and was again discharged; and before I resigned on June 1, 1900, he was again in custody on a third charge. There would seem to be no real reason for ever again discharging this individual in the community, providing the laws were so fixed as to make his detention possible. This change in the law, it is felt, would have a markedly deterrent effect upon the average habitual criminal, because he would have no assurance of ever again being at liberty.

This has, in my experience, been illustrated in several ways. The first illustration occurred at Clinton Prison in 1910 when I wrote an article opposing the sterilization of criminals. This law, which was upon the statutes of New York State, made possible the sterilization of the habitual criminal in order to prevent his becoming the parent of children whom it was felt would probably become criminals because of such parentage. This idea was founded upon the theory of Lombroso, who believed criminality to be inherent or hereditary.

At the time the article was written, and before it was published,

the writer was the recipient of much favorable comment by the brainier individuals serving sentences in Clinton Prison. After the article was published, and it was found that he had suggested the abolition of the maximum sentence, there was a decided reaction against the opinions expressed in the paper and wholly on the basis of the possibilities of segregating the criminal indefinitely.

The application of just this plan at the Institution at Napanoch has been productive of the same objection by inmates in custody there. At a recent interview, when an individual told the superintendent that he was absolutely through with criminal ways, and was in turn told that he had probably made this assertion to the head of every institution in which he had been incarcerated, he replied: "I mean it this time. I never before have been in an institution where it would have been possible to have kept me all my life. I'm scared, and I'm through if I ever get out of here."

In my opinion, this would reflect the attitude of many habitual criminals, and one of two things would result in a large number of cases. They would either be "through," as this man asserted, or they would go to a state where no such law existed.

It is my belief that the enactment of the law governing the commitment of individuals to the institution at Napanoch is a tremendous step in advance in the scientific treatment of the criminal. But it is also my opinion that the desirable features of the *Napanoch Plan* should be incorporated in the criminal code governing the treatment and custody of all persons convicted of crime, regardless of the mental condition of the criminal.

I do not advocate this change in the law because of any mistaken, sentimental interest in, or lack of sympathy for, the criminal, but for the protection of the public. The criminal deserves sympathy, just as the victim of a contagious disease, who for the protection of the public is in quarantine, deserves sympathy. The public is entitled to protection in either case until the danger to the community is passed, and the criminal should be quarantined just as rigidly as the diphtheria victim. It would be folly at the inception of a case of diphtheria to attempt to prophesy the exact day and hour when it would be safe to permit the patient to mingle with society. It is even greater folly to endeavor to do this with the criminal.

In closing, I want to emphasize the fact that to treat the criminal problem scientifically we must get away from punishment of end results, as would seem to be the idea back of the law today, and must uncover the causative factors in delinquency, and treat them, rather than attempt to punish the crime.