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## Notes and Abstracts

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## NOTES AND ABSTRACTS

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**Legal Aspects of Psychiatry.—Corrected Final Report of the Committee of the American Psychiatric Association.**—Your Committee on the Legal Aspects of Psychiatry made a preliminary report at the 81st annual meeting of the Association at Richmond, Virginia, on May 15, 1925. That report was printed in full in *The American Journal of Psychiatry*, Volume 5, No. 2, October, 1925, pages 306-311. Careful perusal of the report is recommended to the membership.

The committee asked for a continuation which was granted. It was decided to report in writing to the entire membership certain points of agreement and disagreement with regard to the various problems outlined in the questionnaire printed in the 1925 report. Members were then asked to indicate in writing their attitude toward the various points dealt with, mailing their comments to the committee. This enabled us to make indicated revisions in the final report, corresponding to the prevalent attitude and convictions of the majority of the members of the association. This final amended report is now respectfully submitted.

The committee felt that the problem assigned them was not merely one of what we as psychiatrists should recommend to the lawmakers in regard to bills regulating expert testimony. It seemed to us that our problem was one of reinterpreting to society the function and the objectives of the psychiatrist, particularly insofar as these concern the type of behavior which is technically and popularly regarded as criminal. The committee felt that it was exceedingly important to divert the attention of the public from the relatively minor issue of alienistics to the major issue of psychiatrics.

In the practical application of psychiatry to problems of criminal law, the prevalent concepts of tradition and long usage conflict sharply with psychiatric attitudes. Popular theories of retribution and established methods of dealing with offenders almost entirely prevented a scientific envisagement of crime until recently when psychiatrists, in spite of their original limitation of field, discovered and demonstrated that types and trends of abnormal psychology extended far out from the asylum into the court room, school and home. The psychiatrists found their experience and technique equally applicable to the irascible employee, the retarded school child, the persistent stealer, the compulsive drinker, the paranoid murderer, and the textbook cases of epilepsy, melancholia and schizophrenia. Face to face with the legal partitions of misbehavior into "insane" and "criminal" psychiatrists now find themselves with no technical interest in these partitions and no general agreement with them, but with a driving concern in all the unpropitious trends of human character; with all acts, thoughts, emotions, instincts and adaptations, either socially or individually adverse. Some of these constitute committable "insanity," some of them do not; but all of them are psychiatric problems.

The question of responsibility is constantly being raised and the psychiatrist is frequently asked to make definite statements regarding the responsibility of a particular subject. As White and Glueck have shown, however,

the conception of responsibility is exceedingly vague. In a strictly legal sense it probably means the capacity to change one's conduct in response to the direction of certain painful associations. Of course this is not the sense in which the public understands it or uses it. In the latter case it is merely an echo, the antiquated crystallization of primitive and infantile reactions known as talion law. Of course no scientist has a moment's consideration for such emotionally determined policies or mystical concepts of atonement. There was a time when even inanimate objects were held to this kind of accountability. If a man tripped over a chair and injured himself, the chair was "responsible," and must be punished by being burned or broken. Until comparatively recent times animals were held responsible for injuries they committed; they were tried and convicted and formally sentenced. But ultimately inanimate things and animals came to be exempted from the ritual of responsibility, and slowly but progressively children, idiots, and finally most of the "insane" were likewise exempted. Various curious tests then had to be decided upon to determine the "responsibility" of persons suspected of "insanity" (or an "irresponsible" "insanity"). Once they were compared in appearance and conduct with wild beasts, later with the "mentality" of a 14-year-old child. This was actually the criterion of "responsibility"! Current even today in many states is the slightly less hoary "right or wrong" test, persisting in spite of common knowledge that people are actuated by various compulsions to do things they themselves regard as wrong in the most shameful sense. Psychiatrists realize that the capacity to feel remorse does not imply power to control conduct.

The legal problem of responsibility evidently involves the philosophical problem of "free-will." Philosophy still debates the different issues of the question and science can hardly assume to give a final answer to them now. But the law stubbornly maintains that the question is closed. According to the law, all persons of certain categories possess absolute freedom of will, and all persons of other categories possess none. Neither science nor philosophy can accept such a conclusion.

The scientist then, really cannot answer as to legal "responsibility," and he does not wish to participate in the ritual of "punishment." (Several members of the committee emphasize our professional interest in observing how it gratifies the craving of the crowd for atonement through vicarious suffering.) For his patients the psychiatrist seeks, not retributive action, but diagnosis and scientific attempt at therapy. This, in a sense, is an "inhuman" attitude, in that it is a departure from the instinctive mechanism that rules most of humanity; the clamor for vengeance is more "human." But treatment may sometimes be as painful as the sacrifice prescribed by the legal ritual. Opening a boil or setting a fracture may be painful, and the psychiatrist, too, may prescribe painful treatment, but it is never punishment (retributive).

The committee felt, therefore, that the bill covering the question of criminal responsibility was a problem upon which there was at the present time insufficient information and insufficient general agreement. Most of the members of the committee felt that the word "responsibility," as well as the word "insanity," and other similar static concepts should be eliminated entirely and endeavor made to determine rather the capabilities and incapa-

bilities of the accused, or a specification of whether or not the mental status (disease, defect, trend, etc.) of the offender was likely to lead to neglect or danger to himself or to others.

For this reason the proposal of the American Institute for Criminal Law and Criminology was not wholly approved. It was regarded as a good beginning step but it has two flaws, one of which is that it perpetuates the ambiguous and metaphysical term "responsibility"; the other is that it insists upon a particular state of mind without being able to define it. The committee has given careful attention to Sheldon Glueck's excellent book on Mental Disease and the Criminal Law and recommends it to the study of all members as a presentation of the legal status of various problems involved, without particularly favoring the author's specific recommendations for legal reform.

With regard to the burning question of expert testimony, the committee was in almost unanimous agreement that the recent Massachusetts laws offered the best practical technique so far presented. The committee is favorably impressed by both the Massachusetts and California laws. Various defects will no doubt appear; it is perhaps questionable whether sufficient examination is provided for and whether there is sufficient latitude for recommendations. Psychiatrists certainly do not wish to be limited to "Yes" or "No" reports, i. e., to specify whether or not a man should be sentenced. It is rather a question of how he should be handled, where he should be kept, or what he should be given to do. The problem of sufficient remuneration is another question involved to which the committee had no time to give. That these laws have faults is certain, but they represent an enormous step in advance, and they anticipate nearly all of the defects and faults of the present system of expert psychiatric testimony in criminal trials. Whatever the precise legal procedure adopted, the committee felt it imperative that all judges be authorized (obliged) to request psychiatric advice, the examinations to be made conjointly, the reports to be made in writing, and the remuneration to be made from public funds.

The committee unanimously favored an attempt to codify the commitment laws of the various states. "Insanity" has come to mean nothing but certifiability, i. e., the desirability of enforced hospitalization. It seems quite unnecessary to have a score of different methods for determining the desirability of this step. The committee recognizes, however, the great practical difficulties in achieving this codification, and has no specific ways and means to suggest.

The following suggestions were made by members of the committee in regard to possible projects for our Association in a furtherance of the aims of public education referred to above:

(1) That the American Psychiatric Association delegate a committee to publish a volume on the present status of our knowledge concerning criminality and outline a standard procedure. This committee should cooperate with the National Committee for Mental Hygiene and the American Bar Association.

(2) That there be correlated herewith the practices in foreign countries as England, France and Germany.

(3) That a survey be made of the present work of psychiatric clinics in association with courts and prisons and the results published, particularly with reference to the practical achievements of these clinics. The public knows little enough of psychiatric theories in regard to crime, but it knows even less about the medical work that is already being done in many places; hence such a study would not only afford a convenient and much needed reference for the use of social workers, legislators, judges, psychiatrists, etc., but would also serve as a basis for the dissemination of valuable educational information to an uninformed but eager public.

(4) That the American Psychiatric Association cooperate with the National Research Council, which is already considering research problems along this line and that a representative of the American Psychiatric Association be selected to function on the National Research Council.

(5) That this association should encourage uniformity of clinical statistics in prisons through contact with the American Prison Association.

(6) That there be an obligatory published review of the cases in which members of this association testify.

(7) That an annual report of cases, clinics, and of the situation in general, be presented to the American Psychiatric Association.

(8) That The Journal of the American Medical Association be assisted by the American Psychiatric Association in presenting to its readers a comprehensive and progressive account of psychiatry and criminology with the aim of educating the medical profession itself in psychiatric and criminologic problems.

These suggestions merit further discussion.

For the present, your committee specifically recommends the following proposals for immediate action:

(1) That the American Psychiatric Association go on record as favoring certain types of legislation such as the recent Massachusetts enactment which put the psychiatrist in a position of counselling the legal authorities as to the disposal of social offenders.

(2) That the American Psychiatric Association set up, agree upon, and publish official standard qualifications of medico-legal experts, and that it maintain a published list of such qualified experts, revised annually, for the convenience of court selection.

(3) That the American Psychiatric Association, in its annual conventions, give more attention to the problem of psychiatry as applied to crime and other behavior disorders, including demonstrations of the work being done in penal and correctional institutions, behavior and child guidance clinics and psychiatric clinics associated with criminal courts.

(4) That the American Psychiatric Association foster an attack on certain pressing problems of research in this field, particularly (a) the working out of a useful nosological classification of mental disorders which will take into consideration behavior pathology not now definitely defined or classified from a psychiatric standpoint, and (b) the analysis of the medico-legal situation in the various states of this country with particular reference to psychiatry.

(5) That the American Psychiatric Association advocate the association of a psychiatrist or a psychiatric clinic with every penal institution and with

every criminal court, to act in an advisory and consulting capacity without administrative duties, and that it advocate the teaching of courses in Criminology in both law schools and medical schools by psychiatrists.

(6) That the American Psychiatric Association maintain a central bureau, either in the form of a standing committee or in the form of a full-time paid secretary, to aid in disseminating to the medical and lay public, in a dignified and accurate manner, news of the actual and potential contributions of psychiatry to present-day social life, perhaps cooperating with the National Committee for Mental Hygiene. Such a bureau should publish from time to time an official bulletin containing official statements of psychiatric attitude and opinion available to newspapers, magazines and the public at large.

(7) That the American Psychiatric Association officially accept, endorse and subscribe to the following statement of the present attitude of the members of this association toward the problems now under consideration and give it wide circularization.

*Official Statement of Position*

WE BELIEVE—

(1) THAT the psychiatrists's chief concern is with the understanding and evaluating of the social and individual factors entering into failures in human life adaptations.

(2) THAT crime is a designation for one group of such adaptation failures, and hence falls definitely within the focus of psychiatry, not excluding, of course, certain other branches of science.

(3) THAT crime as well as other behavior and characterologic aberrancies can be scientifically studied, interpreted and controlled.

(4) THAT this study includes a consideration of the hereditary, physical, chemical, biological, social and psychological factors entering into the personality concerned throughout his life as well as (merely) in the specific "criminal" situation.

(5) THAT from a study of such data we are enabled in many cases to direct an attack upon one or more of the factors found to be active in a specific case to effect an alteration of the behavior in a propitious direction; while in other cases where this is not possible we are able in the light of past experience and discovered laws to foresee the probabilities to a degree sufficient to make possible proper provision against subsequent (further) injuries to society. By the same experience and laws we are enabled in still other cases to detect and endeavor to prevent the development of potential criminality.

(6) THAT these studies can be made with proficiency only by those properly qualified, i. e., scientists who have made it their life interest and study to understand and treat behavior disorders.

(7) THAT this point of view requires certain radical changes in legal procedure and legislative enactment, insuring the following provisions:

(a) The court appointment, from a qualified list, of the psychiatrists testifying in regard to the mental status, mechanisms, or capabilities of a prisoner; with opportunity for thorough psychiatric examination using such

aids as psychiatrists customarily use in practice, clinics, hospitals, etc.; with obligatory written reports, and remuneration from public funds.

(b) The elimination of the use of the hypothetical question and the terms "insane" and "insanity," "lunacy," etc.

(c) The exemption of the psychiatrist from the necessity of pronouncing upon intangible concepts of religious and legal tradition in which he has no interest, concern or experience, such as "responsibility," "punishment" and "justice."

(d) The development of machinery adequate to the requirements of the psychiatric point of view in criminal trials and hearings, including court clinics and psychiatrists, and ultimately a routine compulsory psychiatric examination of all offenders with latitude and authority in the recommendations made to the court as to the disposition and treatment of the prisoner.

(8) THAT this also entails certain radical changes in penal practice, including:

(a) The substitution of the idea of treatment, painful or otherwise, for the idea of retributive punishment.

(b) The release of prisoners upon parole or discharge only after complete and competent psychiatric examination with findings favorable for successful rehabilitation, to which end the desirability of resident psychiatrists in all penal institutions is obvious.

(c) The permanent legal detention of the incurably inadequate, incompetent, and antisocial, irrespective of the particular offense committed.

(d) The development of the assets of this permanently custodial group to the point of maximum usefulness within the prison milieu, industrializing those amenable to supervised employment, and applying their legitimate earnings to the reimbursement of the state for their care and maintenance, to the support of their dependent relatives, and to the reimbursement of the parties injured by their criminal activities.

(9) THAT effective preventive medicine is applicable in the field of psychiatry in the form of mental health conferences and examinations, child guidance clinics, mental hygiene clinics, lectures and literature, and similar institutions and efforts.

(10) THAT the protection outlined provide an efficient and scientific solution to the problems of crime, viz.:

(a) The protection of society.

(b) The rehabilitation of the "criminal" if possible.

(c) His safe and useful disposition or detention if rehabilitation is impossible.

(d) The detection and the prevention or deflection of the development of criminality in those potentially predisposed.—Herman M. Adler, L. Vernon Briggs, Bernard Glueck, William Healy, Smith Ely Jelliffe, R. F. C. Kiehl, L. G. Lowrey, T. W. Salmon, F. E. Williams, W. A. White, Karl A. Menninger.