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## Criteria of Responsibility

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## CRITERIA OF RESPONSIBILITY<sup>1</sup>

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Criminology and Psychiatry are sister sciences which are hardly to be separated. Both deal with conduct which deviates from the normal or average conduct of the community. In both cases this abnormal conduct is or may become a public menace, and in both cases individuals exhibiting such conduct may require to be temporarily or permanently isolated from society for the latter's good; we should also be able to say for the good of all concerned, since our avowed goal for the criminal is reclamation just as for the mental patient, restoration.

In the course of the discussion I should like to draw certain comparisons, indicating how psychiatry has proceeded for a considerable distance along a path upon which criminology has only more recently set out; and how each science may profitably partake of the experience of the other, criminology rightly claiming the benefit of the longer experience of her sister science along the particular course she has pursued.

In all human relationships there is inherent the notion of Responsibility. We speak of the developing responsibility of the child, of the impaired or abolished responsibility of the mental patient, and in the case of the criminal the issue of responsibility has ever been paramount.

There is perhaps no word which we use more glibly, more unthinkingly, more dogmatically, aye, more cruelly, than the word "responsibility."

Can it be defined? According to the Standard Dictionary it is the state of being answerable or accountable legally or morally; having sufficient mental capacity to understand and perceive the distinctions of right and wrong; having sufficient moral discrimination to be legally answerable for one's conduct. Mercier's concise definition of criminal responsibility is: "Rightly liable to punishment." Such definitions are clear enough as statements but they do not give us the true inwardness of the matter, and it is desirable to consider the essential vagueness behind the apparent clarity.

To say that to be responsible is to be answerable or accountable is merely to resort to synonyms. Mercier frankly concedes the in-

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<sup>1</sup>Read at the Fifty-Ninth annual congress of the American Prison Association, Toronto, Canada, September 20th to 26th, 1929.

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definiteness of his definition when he explains that "rightly" liable simply means in accordance with "the body of opinion as to what is right and wrong now prevalent in my own country and generation."

And this quality of responsibility has been assumed to be something which in some curious way appears at a given age. As young children are obviously incompetent as compared with adults, the statutes arbitrarily decide that under the age of 7, children are irresponsible and cannot be held accountable for their acts. After 7 they may be regarded as responsible, although provision is made for doubt up to the age of 14. But after the latter age the child is legally answerable for his deeds. In certain States the age of irresponsibility has been raised from 7 to 10 years or even higher. Thus it may be merely a matter of geography whether a given child who has killed a playmate is criminally liable. Such arbitrary decisions of age limits at which the attribute of responsibility suddenly appears, utterly fail to take into account the manner in which the processes of integration are going forward in the individual child's mind to make for wholesome or unwholesome reactions to his environment.

In the definitions quoted the dilemma of responsibility has two horns as all dilemmas should, in this case an ethical and a legal one; on one side the ability to distinguish between right and wrong—moral discrimination; on the other, legal accountability—competency to make one's conduct conform to certain standards established by law. Unfortunately these two horns are not strictly mates. Legal values and ethical values may coincide but by no means necessarily do. As Warden Lawes recently remarked, one can break six of the ten commandments and commit no crime. Likewise there are certain statutes the violation of which does not as a matter of course imply moral turpitude. One of the strongest executive arms in the American Government is still trying to dissuade the citizenry from that viewpoint.

In principle the objectives of law and ethics are the same, as we should expect from their common lineage. Law is but the outgrowth of morals (mores), just as morals are only customs crowned with the halo of time—the habitual practices of the majority through succeeding generations in a community of social beings.

Responsibility then is an attribute of man as a social agent and concerns his relations to other social beings. It loses most of its meaning when we attempt to consider him as an isolated personality without contact with his fellows. And in this relationship the traditional "right and wrong" continually crops up. This does not make for definiteness in our thinking about responsibility for we have no ultimate

test of right and wrong. They are merely relative ideas, changing, even reversing, from social level to social level, from generation to generation, from country to country. Absolute right or absolute wrong are abstractions which convey no meaning.

There is a commandment which says "Thou shalt not kill." We infer that it is wrong to kill. But when is it wrong to kill? It is easy to picture a murder as a vicious and criminal act. In another case with altered circumstances killing becomes a natural and defensible act; in another it may be extolled as a praiseworthy deed; and in still another it is enjoined as an inevitable duty. We read of certain states of society where it is considered proper to kill off the crippled, the aged, the incurably sick. There is precedent among primitive people for the head of the house to dispose of the lives of members of his own family. Moreover, human sacrifice has been a regular observance in many religions scattered over the face of the earth.

The mere act of killing then is not necessarily wrong. It all depends. It becomes wrong or criminal only under given circumstances which must be precisely defined, and in the end we are reduced to the formula of Mr. Darrow that "it is wrong to kill when it is wrong to kill." But our conventional test of responsibility requires that the individual shall be able to discriminate between right and wrong, although to define finally and permanently these opposite terms is as impossible as it is to personify them.

The legal horn of the dilemma is hardly more satisfactory to deal with. For even the law changes, more slowly than customs and morals, but none the less surely. The lawful act of yesterday becomes today by the affixing of a signature to a piece of paper, a crime; and by a similar process the crime of today may become the virtue of tomorrow. And it is with reference to these changing values of right and wrong, permissible and not permissible, legal and illegal that we are called upon to determine the question of responsibility.

But this is not the worst. The foregoing considerations have had to do merely with such standards as we have by which conduct is to be gauged; and these standards as everybody knows are uncertain enough. They represent in a sense the objective side of the inquiry. But when we come to investigate the subjective side, the personality and state of mind of the person whose conduct we are studying we are on infinitely more precarious ground. The important thing, obviously, is not so much what we think of a given individual's responsibility, as what that quality of responsibility signifies in his own consciousness, and this is the thing in most cases almost or quite im-

possible to determine with any degree of accuracy. Not only so, but the concept of responsibility, which is behind all social relationships, varies considerably in different individuals even under the ordinary conditions of everyday life. It varies with age, with conditions of physical health, with educational, cultural, economic and various environmental circumstances. We have only to consider the wide differences in the sense of seriousness with which various so-called normal people look upon minor irregularities in their daily conduct. At one extreme we have the individual whose conscience works overtime, who is so weighed down by scruples that initiative is almost paralyzed and who endeavors, nay feels compelled by his over-developed conscientiousness to tread an almost literal chalk line. Such a person not only does not commit crime, but he does not allow himself what the majority of people feel to be normal latitude of action, and when his scruples reach the point of obsession he becomes a mental patient.

At the other extreme we have the type of personality which does not take life seriously enough. Such an individual resorts to all kinds of indirection and short-cuts not strictly orthodox in his dealings with others; he may in fact cleverly develop the faculty for circumventing rules and regulations, even statutes, for his own advantage. It may be merely a matter of accident or environment whether a person of this kind lives out his life as an apparently law-abiding citizen or passes to the ranks of the professional criminal. The daily press constantly reminds us that the successful and respected business man of today may tomorrow be stamped as a criminal; but are we to assume that any actual change has taken place in the nature of the individual and in his habits of thought and action?

The farther we pursue the phantom of responsibility the more devious and uncertain is the path. The law endeavors to attain some precision of meaning when it insists upon the item of criminal intent. This leads to mere philosophizing on the doctrine of free will. It seeks to show that the criminal as a free agent, knowing the difference between right and wrong, has deliberately chosen the wrong. But to establish criminal intent it is not enough to know what impression the words and acts of the accused have made upon witnesses; it is necessary to know what was the actual state of consciousness of the accused himself. Moreover, the inquiry unfortunately always has to be directed to a state of affairs in the past, to the mental status of the accused at the time of and preceding the crime, since which a shorter or longer interval has elapsed; so that we are not dealing with present reactions which may be directly observed but must be satisfied to re-

construct past reactions, to call up the image of a moment in the past which was experienced only by the principal in the action and which is now vanished forever.

In short, as we scrutinize the quality of responsibility from one angle to another, and the more we aim at greater precision, the more hopelessly we become involved in guesswork. We are saved from discouragement, however, by some of the contemporary trends in criminology. For this purpose we must draw upon the experience of psychiatry.

It is not so long ago that persons called insane were dealt with very much as were criminals. The two classes were indeed housed together. Even in contemporary legal procedure we find faint echoes of that period. But psychiatry as one of the medical sciences was bound to follow the scientific method. The mental patient had to be translated from the "case" performing unaccountable acts to an individual personality to be investigated. His conduct was made up of reactions, the motives of which must be sought in inheritance and original endowment, in the training, experiences and habits of early life and the multiplicity of living conditions surrounding his whole career. Without information on all of these matters the conduct of the mental patient is incomprehensible. But this is only asserting a truism which applies to the daily acts of every individual. Psychology dealing with normal conduct and psychiatry with abnormal follow similar lines of investigation. And it is this path upon which modern criminology is setting out.

The study of criminology might well be introduced by a perusal of Dostoyefsky's masterpiece "Crime and Punishment" (1866). Written by a man who had himself served years in penal servitude, associated with all types of criminals and who knew the mind of the outcast as few men have done, this sombre Russian novel opens to our view something of that subjective element without a just appraisal of which the concept of responsibility, even as a legal term, can have no meaning at all. Dostoyefsky's criminology is based on the dual attitude of compassion and comprehension. It is the first of these, namely compassion toward the criminal which arms the critics of modern criminology with one of their strongest weapons. We still hear much objection, wholesome enough too, to the so-called sentimental attitude toward criminals; and while it is not necessary if we do not choose to follow Dostoyefsky in *loving* the criminal it is all the more imperative to concentrate upon *understanding* him.

To understand him we require all the data that sufficiently prolonged observation under scientific conditions can afford. Above all we require the cooperation of the criminal himself in supplying this information.

It is at this point that psychiatric and criminal procedure have hitherto generally parted company, not alone because of the set formulae of the legal inquiry, but also because of the universal social reaction of hostility to the criminal. Common judicial procedure does not favor self-expression and self-revelation on the part of the man accused of crime, but just the reverse. By his act he has set himself apart and society is his enemy. Is this reaction inevitable or desirable? Is it defensible for society to continue to yield to this somewhat primitive sort of reaction? We recall that even within the last century the public attitude toward those who were called insane was very much the same. There were those psychiatrists who deliberately taught that mental disease was evidence of moral perversion, which practically amounted to saying that the deranged individual had through voluntary wickedness brought his infirmity upon himself, and that he was getting his just desserts. Such an attitude naturally precluded overmuch of sympathy, and it is not difficult to understand that sternly repressive measures, even severe physical punishment was the common lot of both the insane man and the criminal.

In the realm of mental medicine these unwholesome prejudices have largely been overcome, and today the mental patient is treated with the sympathy and understanding which Dostoyefsky in his time bespoke for the criminal as well. It is one of the most significant departures of contemporary criminology that confidence and cooperation of the criminal are invited in the scientific study of his case; that an attempt is made to show him that his own welfare and that of society should not and do not necessarily aim in opposite directions; that society has no purpose and no wish to inflict suffering upon him merely as vengeance or retaliation; that treatment designed to promote his own welfare must include punishment or penalties also insofar as the equal demands of the public welfare require.

By this shift of viewpoint we find that we are no longer pursuing the visionary something called responsibility; rather we are seeking motives to conduct, whether that conduct be normal or abnormal, vicious or virtuous, criminal or lawful; and we become aware that the same kind of measuring stick must be used whether we are dealing with normals, insane persons or criminals. In psychiatry this method endeavors to get at the real springs of conduct in place of

hypothetical motives; and it happily advances a long way in the explanation of disordered behavior which before seemed so bizarre and unaccountable. It offers guides to a logical series of events where before appeared only misjudgment and confusion. And this knowledge is the light on the path of treatment along which sick people are assisted toward recovery.

From this viewpoint the idea of responsibility has all but vanished. Ultimately the problem is one of stimulus and response, a biological problem. The fact that the criminal is a menace to society does not alter the methods of investigation. The mental patient likewise is often a menace to society and under proper treatment he will not be released as long as he continues to be a menace.

Let it not be thought that in stressing the idea of treatment for criminals and in discounting the idea of responsibility, there is any intention of placing the insane and the criminal on the same footing or of unduly minimizing the place of punishment in the treatment scheme.

Punishment is the converse of reward, and the twin concepts—reward and punishment—are fundamental in all human actions and relations. It is not unfair to say that all individual endeavor is directed to the attainment of reward and the avoidance of penalty. In their proper setting, however, reward and penalty alike are only natural consequences of opposite kinds of action. In the penalties of nature there is nothing of passion or vengeance, but only the inevitable succession of cause and effect sequences.

It is in some such way that modern criminology conceives of punishment. It is a matter of cause and effect. The individual cannot isolate himself from society; he is a part of it. If his act is injurious to the group its reaction strikes home to him as well. It infallibly follows that the kind of punishment meted out to the criminal which will best serve the interests of society, is that which carries the penalty only to the length required for the public safety and welfare.

The suspicion one sometimes hears expressed that the psychiatric viewpoint in criminology would tend to regard all criminals as mental cases is by no means justified, even though we fairly speak of crime as a social malady. But the statute holds every man sane until the contrary is proved; and this applies to criminals and law-abiders alike.

In medicine it goes without saying that satisfactory treatment cannot be given without full knowledge of the nature of the disease and its causes. In the years before the insane were regarded as sick persons they were punished, and severely punished. The result was

“Bedlam.” Today in dealing with mental disabilities the same principles of therapeutics apply as in other branches of medicine. Bedlam has disappeared, and in the wards of mental hospitals the recovery rate compares favorably with that in internal medicine. These facts are sign-posts along the way that criminology must proceed. It has nothing to lose and everything to gain by relegating to the background its preoccupation with the outworn philosophic concept of responsibility, frankly substituting the scientific concept of etiology which alone can point the way to dealing rationally with crime.

In taking this new step criminology breaches the gap long since closed in psychiatry. What is true of the sane and insane is likewise true of criminal and law-abider—all are brothers under the skin.