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MEDICINE, THE LAW, AND JUVENILE DELINQUENCY¹

SMITH ELY JELLIFFE, M.D.²

Behind a celebrated ancient aphorism, just as true today as it was in 400 B. C., I trust I may find some excuse for the temerity which has brought me into this post of prominence and also may it offer some refuge for my shortcomings.

“Life is short, art is long, the occasion fleeting, experience faulty and judgment difficult.”

Thus Hippocrates, whom all physicians have held in high esteem for some 2,000 years, expressed himself regarding the ability of the physician to understand and adequately deal with the ills of the body.

Now permit me to direct your attention in an ultra modern manner to a *recent* pronouncement about man's ability to deal with some of the *economic* ills of the body politic. “Calling all cars! calling all cars! calling Sinclair Lewis! Doremus Jessup—stand by, p. 127 of ‘It Can't Happen Here.’”

“And for a newspaper editor—for one who must know, at least as well as the Encyclopaedia, everything about local and foreign history, geography, economics, politics, literature, and methods of playing football—it was maddening that it seemed impossible now to know anything surely.

“He don't know what it's all about” had in a year or two changed from a colloquial sneer to a sound general statement regarding almost any economist. Once, modestly enough, Doremus had assumed that he had a decent knowledge of finance, taxation, the gold standard, agricultural exports, and he had smilingly pontificated everywhere that Liberal Capitalism would pastorally lead into State Socialism, with governmental ownership of mines and railroads and water-power so settling all inequalities of income that every lion of a structural steel worker would be willing to lie down

¹ Contribution to a Symposium on Juvenile Delinquency held Dec. 11, 1935, at the Norwalk Medical Society, Norwalk, Conn. Dr. A. R. Diefendorf, Hon. Judge N. Candee of Norwalk, and Victor C. Passage, Director of Probation Officers, Fairfield Co., Conn., participating.

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with any lamb of a contractor, and all the jails and tuberculosis sanatoria would be clean empty.

"Now he knew that he knew nothing fundamental and, like a lone monk stricken with a conviction of sin, he mourned, If I only knew more! . . . Yes, and if I could only remember statistics!"

"The coming and the going of the N. R. A., the F. E. R. A., the P. W. A., and all the rest, had convinced Doremus that there were four sets of people who did not clearly understand anything whatever about how the government must be conducted: all the authorities in Washington; all the citizenry who talked or wrote profusely about politics; the bewildered untouchables who said nothing; and Doremus Jessup."

And to paraphrase somewhat from Sinclair Lewis—Of the four sets of people who do not clearly understand anything whatever about how the problems of delinquency and criminality are to be understood and adequately treated—There are all the authorities in federal, state, municipal, and county courts, the Judges, lawyers, and their expensive paraphernalia; there are all the doctors, professors, psychologists, and merchants, the citizens who talk and write profusely about criminology, there are the bewildered who say nothing and "yours truly"—the homologue of Doremus Jessup.

Doremus Jessup said "now after Buzz Windrip's inauguration, everything is going to be completely simple and comprehensible again."

What therefore is left to me—shall I boldly swing to the radical demagogic left in the shining garments of a new prophecy and like Buzz Windrip tell you how simple it can all be made by eugenic sterilization, or the revival of the whipping block or by wholesale liquidation? Shall I preach some modern Tarpeian Rock Method, or shall we, on the Townsend plan, give everybody some \$250 a month and then nobody will want to steal; or even be more radical than the Reds and give nobody anything and then what can the criminals do then, poor things, save sing Willow—Tit Willow—Tit Willow! But strange to say—Mr. Brasol in the Introduction to his "Elements of Crime" (p. IX) tells us—"It is impossible for society to wait until the problematic blessings of a socialistic Utopia will have done away with the numerous manifestations of criminal psychology. Besides, statistical data gathered in that shining example of Utopia, a country where there is no 'capital,' prove the fact that criminality in general and juvenile delinquency in particular, in-

stead of disappearing from the social stage, have penetrated all the pores and fibers of the nation."

I think I might go on the whole evening and then some more and recite at greater length or in more minute detail the many thousand and one "Buzz Windrip" cheap jack, easy solutions of a well-nigh insoluble set of problems.

Or turning to the extreme right shall I be content to be a defeatist, an iconoclast, a pessimist?

Shall I let an excessive modesty serve as a mask for indolence and have nothing to offer in the face of the super-Augean stables that confront the earnest and sincere worker for the modification of the present structure of society? A structure with which no one is satisfied and about which everybody has a formula for moulding, strangely recognizable as something much like himself.

In the beginning there was pain and suffering. Man comes into the world by a process that of itself tests the vitality of both the producer and the produced. And I stand here as a representative of that "isolate" in the human aggregate occupying one of the oldest, if not *the* oldest niche in that aggregate, medicine. The priest, the lawyer, the doctor were at one time combined in one person, but the paintings on the walls of the caves of Altamira, and their like, point fairly clearly to the fact that the devil chasing masks of the medicine man were the original mediators between the supernaturally thought of sources of pain and suffering and the fear of death.

With such an ancestry of faith in the efficacy of the medical man it ill becomes me therefore not to take on some of the attitude of

"Behold Sir Oracle."

When I ope my mouth let no dog bark.

Furthermore I should ope my mouth, even if no oracle, because within the isolate of a medicine man I represent an important place in the medical niche, as a psychiatrist. One whose lineage is still traceable back to the walls of the caves of neolithic man for of all the medical arcanum are we not those still supposed to speak with the voice of authority as the preeminent devil chasers, of the mind distraught as seen behind non-adaptive social behavior?

Psychiatry, however, is not a narrow study of only one type of non-adaptive social behavior, the psychotic, or as our legal friends speak of it—the "insane." The psychiatrist, from the days of his earliest prototype, has been an observer of behavior, a student of

the conduct of the entire organism. On those cavern walls he wore the mask of the evil one. Today in the consultation room, the lecture hall, the court of law, the press, or in the Medical Society he is called upon to unmask the evils which we call "disease," in the individual body and in the social mass. There are even no illnesses of single organs—apart from accident—that stand entirely unrelated to the body as a whole and its *purposes*. Psychiatry is not the step-mother of medicine, as it is often stated, it is the "Ur" mother, the original medical matrix out of which the priest, the lawyer and the doctor have developed. With such a claim for preeminent distinction it can the more readily be grasped why there should be so many Buzz Windrip's among us—as well as those made dumb by the great responsibility of our calling—especially when asked to confer with society's policemen, the law.

As one standing somewhere between a steam calliope of sound without substance and a stick-in-the-mud as dumb as an oyster, what has a psychiatrist to offer to the law?

Much as I might aspire to be a Roscoe Pound, and outline the philosophical aspects of the development of "law," here my modesty as well as my ignorance compel me to silence. I shall assume a simplistic postulate and view "law" only in its "executive" role—namely as that social tool which would carry out certain restrictive, prohibitive, and punitive functions, and here tonight only insofar as a limited inquiry is projected—on the juvenile delinquent.

I hope before closing to point out that the shifts in the functions of the legal tool from punitive, to restrictive, even to the prophylactic are steadily going on and that sound, progressive and heartening cooperations between medicine and the law are in progress in many communities.

The theme of juvenile delinquency almost coincides with the program of criminality in the large, but I shall not spend the time on nominalistic or metaphysical considerations beyond saying that I would ask to be heard as speaking of "individual delinquents" and not of an abstraction "delinquency"; as individuals whose behavior has been so different from that of others as to fall into isolated legal pigeon holes defined as "crimes." Difficult as these may be with some 50,000—80,000 enactments yearly being ground out by legislative bodies manufacturing "crimes" by the thousands and menacing millions—this aspect of the potential manufacture of criminals while of great importance as throwing light upon man's compulsions derived from his sadism, is but mentioned, to be caught up later

perhaps as a part of a protest on the part of the youth of a community and which may play a part in the production of certain aspects of juvenile delinquency.

Science—and especially medical science—is primarily investigative. It notes what is faulty in action, of individual or in organs of the individual, in the human community. In this sense medicine is a branch of that biological science known as ecology; *i. e.*, the study of the human household in its adaptive capacity to the hostile forces that surround it, either inorganic—as the winds and the waves, the heat and the cold, or organic, as the poisonous plants or animals, or the competing ideologies of brothers and sisters.

Seen as a study of human adaptation and maladaptation in the scheme of evolutionary survival, ecology, as a science, is scarcely more than a hundred years old—and so far as an adequate understanding of the hostile forces of its human environment is concerned, it is scarcely more than 40 years old.

Just as the biologist may speak of a pre-darwinian and post-darwinian period relative to the understanding of the forces that make and unmake evolution, this particular psychiatrist—Doremus Jessup—if you will—speaks of a pre-freudian and a post-freudian psychiatry. I mean by this that only with the advent of the dynamic psychology of Freud, with his astute conceptions of the libido theory and the theory of the unconscious has it become possible for the first time to view the behavior of the human being by any consistent series of criteria compatible with those that obtain in the physical sciences. For the first time the entire organism may be seen as a part and parcel of nature in the large and the essentials of human behavior became visible to the observer. The masks of the medicine man of the neolithic cave man pictures can be seen as the masks of man's inner capacities—beyond good and evil, as Nietzsche aptly supplies the phrase, or as the priest preferred "God and the Devil."

Therefore "causation" and the fundamental reasons why—so essential for an understanding of the "what," and thereby affording some aid in modifying, came into the open.

By rough analogy, in the pre-freudian era, mankind judged human behavior more from the standpoint of the varnish on the car than it did from the engine that ran it. The post-freudian psychiatry looks at the entire car, outside and inside, as well as on the driver, the road, the traffic lights and the map. It is interested in total situations, as far as possible—theoretically absolute, pragmatically the best that can be done.

To continue my car metaphor, the psychiatrist sees the individual delinquent as a bit of human machinery out of adjustment. While the law may specify a certain grade of "anti-social infringement" seen from the standpoint of danger to society,—the human engineer first would enquire how did the human machine get "that way." What was the genesis, the development of the disordered conduct? When he has made an appraisal can he offer some pragmatic suggestions as to what to do with the instrument? Fix it, or junk it? Let it run on a limited roadway or have someone else always on hand to drive it? Give it adaptive jobs or shackle it down to certain speeds?

The catch in the whole business is its economic practicability. At first blush it might seem that the social workshop—set-up, from policeman, to juvenile courts, to social workers, to schools and correctional institutions required such a planning to deal with individual cases, equipped to transform every tin Lizzie into a Rolls Royce or a Lincoln.

Very broadly considered when a situation involving antisocial behavior on the part of a minor comes for consideration before the special community agencies, much of the damage has been done already. Just how much maybe the psychiatrist can answer. In the so-called juvenile delinquent the law already has a partial end-result. Maybe not the crafty highly polished super crook, but already one in whom the ever-present, potential criminal drives that are at home in all of us may have broken through restrictive barriers which civilization and culture have been erecting slowly through the ages.

It is just at this point that clinical psychiatry in cooperation with legal agencies meets with its most difficult issues; issues which cannot be summarily dealt with by any rule of thumb methods, but by the most painstaking inquiry if the cooperation of the legal and medical disciplines are to be of real and/or lasting service.

It is here where biological theory, clinical psychiatric experience and the empirical knowledge gained in every day work of the social agencies meet to resolve some of the knottiest problems raised by individual delinquents.

Medical science seeks for light as to the factual causative possibilities in each individual situation.

It is a great temptation for me to offer you a general historical essay on the concepts relative to the causes of crime from the days when supernatural agencies took the form of a serpent—tempted

Eve, through the morass of scholastic notions about freedom of the will and the essential wickedness of the heart of man to the most modern hypotheses. But I shall spare you and confine myself to a bare and imperfect skeleton of the kinds of inquiry or methods of approach that the psychiatrist would offer in making a preliminary survey of the young delinquent first caught in the particular kind of trap of protecting agencies erected by society.

When living organisms, whether plants, lower animals or man are compared as to their differences in their forms or functions, adaptive or non-adaptive, modern biological science desires at least four classes of insight. It would know about differences in ancestry, about segregation, about differences in environment and about accident or uncaused events, if any. The most prominent bones in this skeleton are, as you know, Heredity—Environment—Nature and Nurture. If I may be colloquial, now speaking of the delinquent, "what did nature put in his 'genes'—and what does the environment offer that he covets to put in his 'jeans'?"

Let me dispose of the usually lesser structures of my skeleton. The discussion of segregation is more or less out, since it is of moment only for the Utopian Eugenist so far as mankind is concerned. It works beautifully for apples, or grapefruit.

As an illustration of accidental or uncaused factors which deserve special scrutiny, maybe a personal experience duplicated in innumerable instances among young offenders may serve. As a youth from 10-15 I lived on the outskirts of the growing city of Brooklyn. There were isolated or clustered houses, here and there, the future streets were surveyed, but the intervening lots made the happy playgrounds for the restless boys of the community. Here were baseball lots, occasional apple, cherry or pear trees to pilfer, but most entertaining, for my special purpose, and in the fall of the year was the burning of the long grass that was abundant in the unbuilt areas. It was a great stunt and vigorously guarded against by the mounted police of the precinct. Being the most fleet of foot and most agile of fence climbers as well as most presuming in such capacities for escape, naturally I set most of the local grass acres on fire—but finally the "cop" got me. I can even remember his name, and now with gratitude. This time the trek to the station house was begun. He had chased me many times to find me slip over a back fence, dash through a kitchen and out the front door of an adjoining street and listen to the "ha ha's" of the rest of the gang.

The trip was some six or seven short city blocks and as the

distance to the station house became shorter and shorter my anxiety and even terror became greater and greater. Finally within a block of the "goal"—either he felt I had learned my lesson or my promises tempered mercy with justice and he let me go. Now as the celebrated saying of a Bishop contemplating an execution of a murderer goes—"but for the Grace of God—there stand I," so had I been unfortunate enough to have been put through the mill as a juvenile delinquent but for the grace of the "mounted cop" I do not know what my future career may have been. This is but a type albeit a frequent one of the "accidental" factors which need evaluating in many first offenses and I am glad to say that I have found the first approach in the situations—*i. e.*, the police officer—as a rule, a tolerant human being. There are some however who should never be allowed "on the force." They are few, but these, in their inward souls are just aching to break people and behind the uniform and the club find justification for their sadism. Fortunately the streak is thin even though it sometimes zig zags through the whole legalistic structure to the Judge's bench. The newer psychoanalytic psychiatry is showing up this special wickedness in high places and a healthier mass reaction on the part of the electorate through freedom of expression is refusing to elect such types of individuals. I need not mention certain tendencies which are operating in the opposite direction in certain not too distant communities.

This brings us back to the backbone of the discussion of causes and I wish to raise my individual voice as against looking for the causes and ergo the remedies in too great an emphasis along the study of heredity. This factor cannot be eliminated.

The problems here uncovered are innumerable. Were it not difficult for me, like Doremus Jessup, to remember statistics, the mountains of figures showing high percentages of mental defect, neuromuscular or glandular inferiority of a definitely genetic origin all too plainly prove that "Nature" has not dealt kindly with at least from 25% to 50% of the juvenile delinquents studied from Maine to California. It is not any such "thing" as criminality that has been passed on through the genes. It is a mass of inferior organ variations which render these unlucky ones ill prepared to meet the demands of the environment in some one or many of its inorganic and organic habitats.

One highly interesting series of studies have been made by Lange of Breslau and published under the title of *Crime as Destiny*.

Lange, with Luxenburger, Verschuer and others have been studying "twins" and their development and Lange in particular has published a study of some 13 pairs of uniovular twins, in which one brother or sister showed criminal behavior. In 10 of these the other twin also showed criminal behavior. Close analysis showed that an individual with a certain constitution put in a certain environment—similar to that of the mate will also turn out to be a criminal. Dizygotic twins showed no such mimicry of criminal behavior. Hence his far reaching dogma that "crime is destiny." The hitch here seems to show that when monozygotic twins are brought up in dissimilar environments the mental and ethical developments are distinctly dissimilar. The findings of Muller, Newman and others point in this direction and give added support to the main directions taken by the leaders in our correctional institutions, namely that educative measures, in the broad sense, do offer the greatest chance for such correctional methods.

Be this as it may, then the psychiatrist cannot unduly stress the importance of this aspect of cooperation with our social agencies looking towards the return to the community of healthy citizens from among the juvenile delinquents caught up in the mesh of their misdeeds.

Even this optimistic note however receives a severe jolt when the evidence is carefully studied, more particularly that brought forward by the Gluecks in their study Vol. 1 of the Harvard Crime Survey which has presented the carefully analyzed data concerning 1,000 juvenile delinquents treated by the court and clinic methods then in vogue in Massachusetts. These cases were studied after a 5 years' lapse after their contact with the socio-legal methods then in vogue. It showed that 88% of them continued their delinquencies during the 5 year post-treatment periods. And the disappointing summary—"The major conclusion is inescapable then that the treatment carried out by clinic, court and associated community facilities had very little effect in preventing recidivism."

This constitutes a major challenge for "medicine" as well as for the "law." Dr. Bernard Glueck has brought out most strikingly however the major deficiency here—namely, the transitory and inadequate nature of the so-called treatment. He has aptly pointed out the fact that these 1,000 cases are really to be considered as "untreated" cases and important issues are raised as to how within the economic exigencies already referred to can the court and the

clinic, in spite of the great effort and expense, be made more efficient.

Certainly some improvement in these measures is demanded. The set-ups throughout the country vary enormously in their completeness. The vast majority have as yet only the station house or a sheriff and a jail. Little or no psychiatric contact is present except in the larger or more highly evolved communities.

Certain psychiatric fundamentals must be achieved. Does the individual delinquent know or realize there is something wrong with his conduct? Is this state of knowing purely affective, as of the super ego (conscience) or is the organ of reality (the ego) in the Freudian sense also aware of the situation? How about the desire to get well? As neuropsychiatrists dealing with patients who in consciousness assert their wish to be cured, we meet with strong resistances on the part of the unconscious that determine a repetition of their behavior. How about transference possibilities? Here important personality factors on the part of the personnel of the legal set-up are paramount. The punitive, prohibitive attitude will modify transference in direct relation to the hostile, sadistic environment. The "bigger the bully" the less the transference and the greater the tendency to regression into antisocial attitudes.

The psychiatrist offers his assistance to the law to determine more about the relation of the specific milieu to the super-ego formation. As one does not hope to pick figs from thistles, so the family ideals are of special significance. One does not have to be a monozygotic twin to be a "spittin image" of a sibling. Mimicry of the parents pertains throughout life for good and evil and in forms rarely recognized save by the poet, the philosopher and the physiologist.

We may even go further and state that what we see in juvenile delinquency is only that which exists in adult models of behavior. In general the community deserves what it gets. The presence of this and other forms of illness is but a symbol of the defects of our social development.

I am profoundly convinced that when more attention will be paid to spiritual wickedness in high places; when the subtle and complicated unethical and smooth patterns of hypocrisy and guile are better understood beneath their veneer of righteous rationalization, only then will the crude imitations of such patterns which we call "juvenile delinquency" be capable of modification.

In crude metaphor for every super-crook who steals a million, there will be a million delinquents to be dealt with for stealing a loaf of bread. Ambivalence in the unconscious is as inviolate as the laws of gravity and it is only within the post Freudian period that the mirror-picture of high and low can be tentatively admitted even if not practically demonstrated. All this refers to the unconscious "sense of justice" of the average citizen. Psychiatry is deeply interested in the study of man's reactions to such forces and hopes to cooperate more thoroughly with those agencies which have had the "monopoly of 'justice'." If what has been said be true is there not something radically in need of study then of the administration of justice?

I can do no better than quote in this connection.³

"Man accepts the demands and restrictions which living in association with others imposes upon him not without resistance and protest and only in return for the promise of the benefits and securities of communal life. When he does repress his egocentric and selfish tendencies in the service of civilized life, he does so with the tacit understanding that society, in its turn, has assumed certain obligations toward him. Among these obligations of society to the individual, one of the most precious is an assurance of a social sense of justice or rightness. A violation of this sense of justice constitutes a vicious betrayal of this tacit understanding and furnishes justification for the unleashing of primitive impulse and instinct which had been held in check.

"The psychiatric study and treatment of the offender must embrace all the facts pertaining to a human life. In its contact with the problem of crime it must guard assiduously against becoming the unwitting tool of those whose personal aggrandizement, power and wealth depends upon the maintenance and continuance of the present social-economic order with its accompaniment of criminalism, pauperism and intolerable waste of human and material values. Psychiatry has made great strides in recent decades. but we can still learn a great deal concerning the technique of rehabilitating the criminal through an honest and objective examination of the influences which have made us what we are."

And now in closing may I bring to your attention an ideal picture of what one community has achieved in its handling of the juvenile delinquent—an institution under the profound influence of

³ Bernard Glueck. Criteria for Estimating the Value of Psychiatric Service in the Field of Criminology. *Am. Jour. Psychiat.*, 91. 693. Nov., 1934.

the psychological discipline—where the total personality of the delinquent is taken into account. It is from one angle not a fair sample to offer—since in the sifting of its material the feebleminded are eliminated. This sifting is a process which must be more extensively and accurately carried out.

I refer to the Whittier Correctional School near Los Angeles, California, and I am indebted to Dr. Fenton⁴ for the courtesy of the lantern slides which I show you taken from Dr. Fenton's book and about which Lewis M. Terman writes: "It is my honest conviction that the methods of delinquency prevention developed at Whittier must be rated among the most enlightened to be found in this or any other country."

Whittier is only one of the considerable institutions of its kind that have distinctly passed from the old era into the new.

The most important feature of this newer point of view is the treatment of the individual delinquent and this can only be brought about by pooling the case studies of psychologist, physician, psychiatrist, educator, social worker and legal agents.

⁴ Norman Fenton, *The Delinquent Boy and the Correctional School*.