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## Psychiatry and Criminal Law

Gustav Aschaffenburg

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# PSYCHIATRY AND CRIMINAL LAW<sup>1</sup>

Gustav Aschaffenburg<sup>2</sup>

I ask my readers for their indulgence for my lack of familiarity with many American laws, procedures and institutions. Although I shall deal primarily with the European methods of combating the enemies of society, it is likely that the difference between European and American points of view on this subject may not be too divergent.

In the relations between psychiatry and criminal law the psychiatrist always faces a very difficult situation: it is a common prejudice that the psychiatrist tries to save as many criminals as possible from punishment. Even in 1896 the high court of New York declared: "It is generally safer to take the judgment of unskilled jurors than the opinion of hired and generally biased experts." Though in this audience this erroneous and dangerous opinion is not to be feared, I will nevertheless try to show the reasons for this attitude, because only if we clearly recognize the sources of this error can we hope to combat it successfully.

First, there is the common aversion against the mentally affected. Although the character of mental disease was recognized in an astonishing degree in the centuries preceding the birth of Christ, and the means of treatment were approaching in many ways our

most modern points of view, all this was changed profoundly in the Middle Ages. An insane person was regarded as one whose soul, in consequence of his sins, was possessed by the devil. The burning of witches, the last of which occurred within the past 150 years, is a frightful expression of this popular belief. Although this belief in demoniacal possession has disappeared, the after-effects are still observable.

A second cause of the prejudice is to be found in the misapprehension of most people as to the appearance of the mentally ill person. Generally the layman thinks of an insane person as of one who is extremely strange in his whole behaviour, completely confused, incapable of being reasoned with,—in fact a typical picture of an old schizophrenic. It always impressed me very much to notice how surprised the students of medicine, as well as of law, at my psychiatric demonstrations were when brought to a modern mental hospital. For over thirty years I have found that even well educated people when shown around in my clinic asked me at the end of such a visit where the excited patients were kept. They never realized that the madman of their imagination was but a rare exception. From many conversations with judges and from my experiences

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in the courts, I dare say that a real understanding of the meaning of mental disease is often lacking even in otherwise learned and experienced judges. Better psychological training and the judges' own experiences during investigations and trials may, in the future give them an idea of the difficulties of the problem of recognizing mental abnormalities. But the situation is quite desperate in all jury trials. Without entering into a discussion about the value of such trials in general, there can be no doubt that the layman, if not by chance informed by experiences in his own family, faces our explanations with a complete inability to understand. Such inability militates against the mentally deranged offender.

Another reason that the aversion against mental diseases still continues is the enormous expense which they entail. In Hamburg, for instance, a great city of almost a million inhabitants and one of the richest cities of Germany, in 1908 the expenses for the insane, the feeble-minded and the epileptics were higher than the whole income of the town from its direct taxes.

The last, and in my opinion the most important point, is that it is not the task of the judge to decide what has to become of the sick person after he is recognized as irresponsible. We physicians would resent it if after a careful examination we had proposed some therapy yet the application or non-application would be left to another agency, not at all fit for it. We can understand why also the judge hesitates to acquit an insane defendant

when he is not sure that his recommendation will be carried out. Many judges are inclined not to accept the opinion of the expert and prefer to commit the accused to a jail because of their feeling that a criminal insane person, dangerous to the community, should not be allowed to menace society.

I have mentioned those general difficulties which we encounter, and will consider now the reasons of a legislative and executive nature. American courts decide on the basis of precedents, while European countries, with the exception of Great Britain, have exactly codified laws. Therefore the European lawyer is perhaps better trained for logical and exact reasoning, although literal adherence to the text of law does not favor adaptation to the changing development of ethical views and social circumstances.

In Germany the same criminal law has been valid since 1871 with the exception of the very important "Law for Combatting Habitual Criminality" and the "Law of Juvenile Courts." In the paragraph dealing with irresponsibility the metaphysical expression "freedom of will" was used until 1933, thus forcing most of the experts to *sacrificium intellectus*. For many decades in Germany and all countries working out a new criminal law scientists have been trying to find a more satisfying definition of the word: irresponsibility.

The paragraph that I formulated in 1908 and that has been used over Germany since 1933 runs thus: "He is not punishable who in consequence of

mental trouble, clouding of consciousness or feeble-mindedness has not been able to comprehend the wrongfulness of his acts or to act in accordance with his comprehension." The Swiss Criminal Law enacted last year follows the same formulation.

The English and the American jurisdiction is based on the McNaghten case: An insane person can be acquitted only if at the time of the act he was not able to distinguish right or wrong. This rule is valid in twenty-nine American states. A part of those states keep close to the so-called right and wrong-test, while others use the Knowledge of nature and quality-test. This jurisdiction has the basic fault that a purely intellectual quality is chosen as the standard of judgment. I do not know how American experts come to terms or compromise with this rule in court, but in scientific discussion there will scarcely be found a defender for this overvaluation of the intellectual factor.

All our acts, including the acts of sound people, are more influenced by our emotions than by reasoning and our intelligence, much more than our self-esteem may concede. But in reality we choose even our motives for our doing more by our emotivity than by cool deliberation. The real motive power of all our acts is affectivity. Those who share this opinion will agree with me that responsibility depends not only on the possibility of reasoning, but even more on the ability to resist temptations and wishes. I think, therefore, that the German and Swiss definitions of responsibility correlate best the

two aspects, namely, the intellectual and the affective ones.

Almost simultaneously with the McNaghten test here in America the irresistible impulse test was introduced in 1884. The test is used, often in combination with the right and wrong test, in seventeen states and in the District of Columbia. It is based on the view that besides the intellectual judgment there must also exist the possibility to do what is considered right and to abstain from doing what is considered wrong. I think that the expression irresistible impulse is not well chosen. It supposes an irresistible impulse which is found in this literal form only in the incomprehensible acts of confused epileptics, schizophrenics, paralytics and perhaps in some cases of paranoid attacks. It seems to be impossible to convince laymen that an irresistible impulse can exist, although the patient is absolutely clear and quiet, as we find it sometimes in the form of murder as an initial symptom in schizophrenia. On the other hand, an insufficiently trained and inexperienced expert may think that the impulses of sexual offenders may be regarded as irresistible.

Nobody will have the boldness to decide himself if a bridge is constructed with sufficient consideration of all the rules of mechanical engineering, yet in cases of responsibility everybody believes that he is able to find the right decision by himself and that he is able to judge the personality of an accused. In the case of the bridge every court will certainly demand the help of an expert. In the case of responsibility it

may do so, but usually it does not. The task of an expert is to help the judge where the latter's own experience is insufficient to enable him to form an opinion of his own. The judge is not bound by the expert testimony; he decides according to his own judgment, as the law provides. That is inevitable, because in case of differing expert testimonies the judge should be free to follow that which he finds the most convincing. This fact obliges us to formulate our opinion so as to enable the judge to form for himself an idea of the disease and its consequences. I note in Dr. Sheldon Glueck's writings, to which I owe thanks for an abundance of knowledge and insight, that he is of the opinion that the expert should merely state the mental condition of the accused, abstaining from speaking about the question whether the patient is able to distinguish right or wrong; the latter ought to be the task of the court. This point of view is often expressed also by judges. We must agree that we cannot trust the understanding of mental abnormalities of the courts, especially that of laymen. When the expert fails to express clearly his conviction, it seems to me that we put the responsibility of answering the most difficult question upon persons who by training are wholly incompetent to answer it. I cannot share the opinion that we exceed our competence in stating that an accused could not discern that his doing was wrong. I have acted as expert in many courts in and out of Germany, in nearly every case on summons of the courts; they never were

hurt by my expressing the conclusions based on my observations. When once in an extremely difficult case I tried to leave the decision about the responsibility to the court, I was immediately asked to complete my report given in writing.

If I am well informed I must concede that the German expert's duty differs much from that of the American. This finds its explanation perhaps already in the entirely different task of the prosecuting attorney. In Germany he has to procure the material not only for the confirmation of the criminal charge but also for its disproval. The court has to prove the guilt of the accused, not the accused his innocence. This circumstance is of great importance in the question of irresponsibility. In Germany every offender against the law is supposed to be responsible; but if he himself, his family, the defender, the state's attorney or the judge have any doubts as to his responsibility, the court is bound to prove it. It is superfluous to mention, to you how much simpler it is to establish an illness than to exclude it. In my own reports and in those written in my clinic under my supervision we always chose the words "no signs of a serious mental disorder have been found." We carefully avoided saying that the examined is sane. That would exceed what we can do and are allowed to do.

In twenty-two of the United States the burden of proving the mental disease is shifted upon the accused; in my opinion this is an unbearable situation. How can he possibly do so? Even though he has a defender he cannot

utilize the means of the state for procuring the necessary material for his defense. Very often, too, the patient himself lacks judgment of his own disease. In two other states it is doubtful who has to prove the mental disease, but in nineteen states, the District of Columbia and the Federal courts are of the opinion that it is up to the prosecution to prove the sanity of the defendant. Opinions are divided as to how far the evidence to prove sanity ought to go. The Supreme Court of Germany, the Reichsgericht, always stated that justified doubts in responsibility must be valued "*in dubio pro reo.*" The surprising idea that the accused should prove his irresponsibility himself forces the consultation of a private expert; this is a most embarrassing situation, as it exposes, as we have seen, the physician to the suspicion of being purchased, even though his opinion is given under oath.<sup>3</sup>

Where the state is obliged to prove the responsibility we can hope that in time judges will be on tolerable or even friendly terms with the experts. Perhaps even the extremely low fee will help in the same way. In Germany uncomplicated cases are examined by the court's experts. In more difficult cases the offender is sent to a clinic or a state hospital for a period of observation which may last not longer than six weeks. Our results must be given in writing. Even if the report consists of 30, 50 or more pages, the maximum fee paid for official physicians is only 30 marks, about 12 dollars. In other words, if paid by the hour the

maximum fee of the expert is often less than the minimum salary of an untrained workman. This is of great psychological importance because it protects the expert against the suspicion that he is financially interested.

Expert testimony is given to the judge, the prosecuting and defending attorneys, before trial; in this way everyone has time to study it carefully beforehand. During the trial the physician is not a witness, but an expert. He must explain his opinion by word of mouth. After his testimony is given he is sometimes questioned about whatever may not be clear to the court, but it is not usual to ask hypothetical questions. I have always refused to answer such questions; neither have I ever answered the question of the responsibility without making a personal examination. If the judge should not allow observation at request, this would be without doubt a reason for reversing the verdict.

In Massachusetts psychiatric investigation is necessary in all cases of capital offenses and in cases of persons indicted for any other offense who are known to have been previously indicted more than once or to have been convicted of felony. (The so-called Briggs Law, since 1929).

In America, only in California and Indiana is the appointment of experts by the court "mandatory" in all cases where the issue of insanity is pleaded. Other states may do so. But the Michigan and Illinois Supreme Courts have held it unconstitutional.

<sup>3</sup> In Germany the expert's oath differs from the oath of witnesses: "I swear that I will give my testimony impartially and conscientiously

and according to my knowledge (sc. of the facts and my science); May God help me."

Summing up my experience as an expert for nearly 50 years, I dare say that many courts not only have gained more understanding for expert opinions but also more confidence in their objectiveness. We have succeeded in no longer being looked upon as trouble-makers of the trial but as welcome advisers to the court.

In 1933 in Germany the idea of diminished responsibility was legally adopted. It goes without saying that there can be no sharply drawn line between responsibility and irresponsibility by reason of mental disorder. There is a kind of No Man's Land between the realms of responsibility and irresponsibility. Thus the alienists and many progressive criminologists for many decades have asked for a law for the cases of diminished responsibility. It is a real tragedy that just when our wishes were about to be realized, one of our most outstanding alienists, Carl Wilmanns, felt himself obliged to speak against adopting it as a law. His reasons are the following:

1. The difficulty of diagnosis,
2. The much too great number of such cases,
3. The impossibility of treating any case according to its individuality.

These objections are justified, but they constitute no bar to the legal acceptance of diminished responsibility. Wilmanns himself, in his very valuable book, "Diminished Responsibility," has quoted much material that proves irrefutably the existence of such states. This fact is not to be denied. We must try to overcome the difficulties. The first argument can be eliminated by providing for a better training of all

physicians, especially the court physicians, in psychiatry. As to the fear that the number of cases of diminished responsibility is too great, we may admit that there are many. But we do not ignore cancer and tuberculosis because they are widespread! On the contrary, that fact has spurred the physician to greater efforts to combat them. In my opinion, the very fact that there are so many cases of psychic abnormalities forces us to ask for the best methods of dealing with them. The most important objection is the third, the difficulty of treating these cases according to their individuality. This is a difficult task that strains our knowledge; and all progress in diagnoses and therapy will never prevent us of making mistakes in the choice of our means. Finally, in many cases any kind of treatment will fail, even though new methods should be available.

It is necessary to realize which personalities are troubling society and endangering it. We are obliged for this purpose to schematize. But for this audience I need not mention that it is impossible to differentiate the groups exactly; also, they often are combined.

- a. The idiots, the insane and epileptics, of whom but a relatively small part, much smaller than generally supposed, are socially dangerous, though they are very troublesome for their surroundings.

- b. The immature, mostly juveniles, who on account of inferior constitution or by lack of education are maladjusted to life.

- c. The drug addicts.

- d. The sexually abnormal.

- e. The borderline cases, who in part belong to the group of diminished responsibility. They must be subdivided as follows:

1. The feebleminded and morons,
2. The apathetic and dull,
3. The unstable.

The foregoing by their passive nature compose the great army that is harmful for society; there are beggars, vagabonds, prostitutes, many occasional offenders, many thieves, but also many sexual offenders, persons mostly without any real criminal tendencies and often well meaning. But by their lack of energy, their insufficient judgment and above all their incapacity for resisting temptation, they are led into criminality and often relapse. Wetzell has employed the phrase: "habitually occasional criminals." Strange as it may sound at the first hearing, it aptly describes their mentality and what we can expect of them.

4. The hotheaded and excitable, who by their readiness for explosions (short-circuits reactions) form the chief contingent of criminals by impulsive and uncontrolled emotion.

5. The brutal, who differ from the last group by their missing sound affectivity and are near the following group:

6. The affectively and the morally insensible, whose egotism is at any moment dangerous for the community. (In enumerating these subgroups I do not pretend that there will be often a case of irresponsibility, nor do I think that it regards the last subgroup)

7. The antisocial, who is more or less identical with the professional criminal. He is the notorious enemy of the community. It is impossible to say whether the egotism of such active personalities is the greater danger or their hardmindedness against the interests and the suffering of other people.

This picture is unharmonious and entangling. But my intention has been only to outline which personalities and which prevalent qualities of mind are dangerous or harmful for the community. This enumeration of maladjusted persons is not an instruction for diagnosis and surely not a way to find a prescription how every group should

be treated. Only some criteria should be given to help us to discuss the best ways to cope with those personalities.

We physicians are accustomed to regard not the particular illness but the sick person. The same treatment may be useful in one case but without any effect in another one, and harmful, perhaps lethal, in a third case. To an even higher degree the treatment of mental disorders depends on the whole personality. We must individualize. Many an insane person is harmless, while others suffering from the same form of mental diseases are very dangerous. It is quite the same with those of diminished responsibility. Here is the principal source of the opposition to legal rules for the cases of diminished responsibility. As long as the point of view is that punishment has to be a just equivalent for a committed crime, the consequence is: lower punishment for lower guilt. But experience shows that on account of mental inferiority the person of diminished responsibility is often extremely dangerous for the community. For this reason the psychiatrists have long asked that diminished responsibility should not at all mean diminishing of punishment but an adaptation to the special personality of the criminal. Every other solution would be a return to a simple retaliation-theory, and neglects the real aim of criminal law.

Within the limited time of my lecture I can not thoroughly discuss the ultimate aim of criminal law. I confine myself to what is necessary to prove that our wishes are not in contradiction to its ultimate scope. Orig-

inally criminal law issued from the necessity to replace the arbitrariness and the exaggerations of individual revenge by appropriate measures of the clan, and later the community. But soon the aim to protect society was added. Even centuries before Christ the question was discussed that the Dutch Hugo Grotius has formulated as follows: "Are we punishing *quia peccatum est* or *ne peccetur*?" A punishment for a committed crime can only be approved if we can retaliate justly. But how measure the guilt, if there is a deep gulf between the criminal's intention and his actual deeds? Very often the consequences of a crime exceed by far what the criminal intended to do. But not less often the criminal does not accomplish what he had in mind to carry out, because of unforeseen interference. But supposing we could find a balance for the discrepancy between the objective and the subjective guilt, it surpasses all human aptitude to find the just expiation. In Germany even prominent adherents of an unrestricted retaliation-theory have conceded that measuring of punishment may be arbitrary "and depends more on the disposition and even on the digestion of the judge than on actual insight into the criminal's guilt." As deep as ever the want for revenge may dwell in mankind, but the chief task of criminal law is: protecting decent and law-abiding people against the attacks of the criminals. More and more this opinion is being generally adopted, thanks to the work of Lombroso and the influence of the idea that not the crime should be regarded as important but the criminal

himself. In 1876 Cesare Lombroso published his book: "Trattato antropologico sperimentale dell 'uomo delinquente." Lombroso claimed that a great number of people—according to his own judgment one-third of all criminals—are born criminals, *deliquenti nati*; even when living in a good position and well educated, those persons can not live honestly. Furthermore, Lombroso claimed that those people could be recognized by signs of degeneration.

The present generation will hardly realize the uproar, the storm of indignation, created all over the world. It was easy enough to find some mistakes and exaggerations in Lombroso's theory. Lombroso was, as his daughter has said, "Although a scientist, also a poet." Perhaps he was a poet rather than a cautious and scrutinizing scientist. The idea that we could recognize the *rei nati* by somatic and psychic abnormalities was erroneous; and his auxiliary hypotheses that the born criminal is an atavistic form of human being, and that his personality was like that of children, epileptics and primitive tribes, was not justified. But his observation was correct: There are many individuals whose mental make-up prevents them from living the life of a peaceful citizen.

Twenty years later Ferri published his work: "The Crime as a Social Symptom." Though in it he accused society, which means all of us as members of the community, as guilty for the existence of criminality, no indignation was aroused. Nor was it when Kretschmer claimed that everyone's personality

was predestined by his special somatic type, as asthenic, pyknic, and so on; this opinion was discussed objectively, as well as Johannes Lange's statement, that the reaction of identical twins was practically identical. Lange created for this phenomenon the formula: "Crime as Fate." We cannot doubt where this change of mind has come from. The doctrine of Lombroso has deeply affected the general opinion and shaken our belief that we would be able to bring out expiation justly; it thus has influenced the fundamentals of criminal law. The idea that not the committed act is of importance but the criminal himself, was too natural and too well founded to be repressed any longer, and soon it was recognized that we are by no means delivered defenseless to the criminal. On the contrary, just this attitude offers better weapons for real protection of the community. We need a number of effective methods of dealing with dangerous people and we do not neglect punishment as a means in appropriate cases.

Criminologists expect a two-fold effect of criminal law, namely, a general preventive effect, and a special preventive one. The first aims to prevent criminal action through the certainty that it will find its punishment. The question as to what extent this is true, cannot be proved by statistics. Capital punishment, which was inflicted for thefts of any kind and also for minor offenses in the Middle Ages, failed to prevent them. Also the fact that the number of first offenders has been increasing year by year shows that the effect of the general preventive influ-

ence of the criminal law should not be overestimated. I believe nevertheless that stamping an action as a criminal deed has an educative influence.

The special preventive effect should work in the criminal himself, who should be prevented by punishment from relapsing into crime. The statistical proof shows that this hope is not justified under the existing circumstances. The higher the number of former punishments, the quicker the recidivism. We may not overlook the fact that very often the penalty is merely an imprisonment for a certain length of time, lacking any educative value, and too seldom is an attempt made to influence and to reform the guilty person during imprisonment. The effect of the punishment can never be anticipated, because the judge has hardly sufficient time during the trial nor sufficient psychological training to be able to ascertain the personality of the criminal. Furthermore, he has no influence on the treatment of the convicted person once sent to prison. The main reason for our skepticism concerning punishment is to be found in the very personality of the criminal. When I was physician in a prison I examined 200 men convicted of sexual offenses. All had been found by the courts to be guilty and responsible for their actions. Among these I found 44 to be undoubtedly insane and irresponsible. In 6 cases it could not be stated whether the later disease had already developed at the date of the crime. 35 cases were border-line, 16 cases were of diminished responsibility. Among the remaining 99 only 45 per-

sons, equal to 22.5%, could be considered as normal individuals. I choose the word "normal" rather generously, as you may be convinced if I mention that among that group I found 12 cases in which alcohol had been a factor in the crime. My idea that sexual offenses are likely to be committed more frequently by abnormal personalities than are other crimes such as assault, robbery or theft, was erroneous. This leads to the conclusion that we should not be too optimistic, and furthermore that we ought to be very careful in the choice of four methods of dealing with these maladjusted personalities. The general point of view is, in a few words: As long as we can hope to reform the criminal we must try to do it. The incorrigibles must be prevented from endangering society further by committing him to prison or other appropriate institutions, if necessary for life. The mentally abnormal must be treated; if not recovered but still dangerous he should remain in a hospital.

An attempt has been made by lawyers as well as by some alienists to differentiate between insane criminals and the criminal insane, and in some laws the measures differ according to whether the ill person belongs to the first or the second group. In fact this differentiation is wrong and inappropriate. A person living in easy circumstances is much less likely to commit a crime; should he become mentally disturbed and troublesome for others he will be sent to a mental hospital, and no judge will have a chance to deal with him. If such a man has already committed a crime, his family

will ask for an expert. The patient will be considered as criminally insane. But, if the mental disease has been overlooked by the court and is discovered later in the prison—as it often happens—the offender is treated as an insane criminal. It is a strange fact that in England the insane criminal is better treated than the criminal insane. The insane criminal is usually sent to a local mental hospital and must be committed to it if he has served his sentence, but the criminally insane offender is committed "during His Majesty's pleasure" to the institute for criminal insane at Broadmoor. He can be discharged only by the Home Office which generally decides according to the act the patient has committed. In consequence, in Broadmoor, as well as in Dunderum, the Irish institute for criminal insane, I found that most of the inmates were found "guilty but insane" of murder and manslaughter, while sexual offenders, who are so much more likely to relapse, are rarely found there. The objection to this differentiation lies in the fact that the illness is regarded as an unchangeable state, whereas really the symptoms are inconstant, and with the symptoms the behavior of the ill personality against society changes. The sick person becomes more or less dangerous according to either improvement or aggravation of his disease. Thus this differentiation between insane criminal and criminal insane gives a totally wrong impression of the patient's real state of mind. It is useless and misleading to look back on the deed; it is necessary

to look forward to the possibilities of future acts which may endanger society.

I cannot insist at this time on enumerating the ways of individualization of the methods of treating dangerous and troublesome people. Nor does time allow me to discuss all the desirable methods of preventing crime by combatting abuse of drugs, eliminating the dangerous influence of certain kinds of movies and detective stories, the danger of slums, and so on.

In closing I prefer to mention only some of our most important tasks as alienists:

1. Better instruction and training of the physicians in psychiatry. Neither in Europe nor in America have we enough adequately trained and experienced physicians with knowledge of psychiatry. Only those with a profound special training in psychiatry should be allowed to give expert testimony, as it is proposed here in America. Nor should physicians for prisons and reformatories be appointed who have no special experience in psychiatry.

2. In Germany health officers are obliged before being appointed to work at least four months in a mental hospital. Even the association of health officers has pleaded for a one-year training. There is no doubt that they need at least two years.

3. We psychiatrists introduced in all German universities practical courses where legal questions are discussed in connection with psychiatric problems and where cases of mental

diseases are demonstrated.<sup>4</sup> These lectures are for medical as well as for law students. The medical students have far outnumbered the law students. Sometimes even judges and attorneys were more numerous than students of law. During these demonstrations the judge has ample opportunity to discuss his own opinion, and therefore both physicians and lawyers learn to compare their differing views.

I do not share the fear that after such courses the judge may believe that he has gained sufficient experience to be an expert himself. My experience is just to the contrary: By acquiring profound understanding of the great difficulties in judging abnormal personalities and in searching the best way to treat them, the judge will gladly acknowledge really qualified experts and will ask for their opinions.

The best method for instruction would be a kind of clinical demonstration,<sup>5</sup> not only for physicians and lawyers, but also for wardens and guards of prisons, Bortsal institutions, houses of correction and reformatories, for probation officers as well as for social workers and teachers. The lecturer might well present trustworthy records about hereditary factors, development at home, in school and in social contacts, occupation, environment and habits, as well as concerning the intelligence and affectivity of the demonstrated person. Then he may discuss, as we do in our clinics, the anamnesis, the diagnosis, the prognosis and the therapy. I would even

<sup>4</sup> In Bonn the criminologist Graf zu Dohna joined the psychiatrists in those courses.

<sup>5</sup> Such lectures have been given during the last decade in Germany and Austria also by the

criminologists von Hentig (Giessen, now Colorado University), Lenz (Graz) and Graf Gleispach (Vienna).

like to enlarge this idea in asking that also mentally sound persons might be demonstrated.

Such education for a deep insight into human personalities would enable a better understanding and would guarantee a better cooperation between psy-

chiatrists and everyone who has to deal with abnormal and dangerous personalities. It would provide us with new experience for the fight against criminality by more appropriate laws and by more efficient means of reforming the offender and of preventing crime.

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My object all sublime  
I shall achieve in time—

To make the punishment fit the crime.  
—William S. Gilbert.

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The generality of men are naturally apt to be swayed by fear rather than by reverence, and therefore to refrain from evil rather because of the penalty that it brings than because of its own foulness.—Aristotle, *Ethics*, X, 9, 1.

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Offenses are not to be measured by the issue of the events, but rather by the bad intentions of the offenders.  
—Cicero, *Letters*, IV, 8.

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We are mad, not only individually, but nationally. We check isolated man-slaughters and murders; but what of war, the much - esteemed crime of slaughtering whole peoples?  
—Seneca, *Epistles*, 95, 30.

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The right (i.e., the power secured by social recognition) of free life in every man rests on the assumed capacity in every man of free action contributory to

social good ("free" in the sense of determined by the idea of a common good. Animals may and do contribute to the good of man, but not thus "freely"). This right on the part of associated men implies the right on their part to prevent such actions as interfere with the possibility of free action contributory to social good. This constitutes the right of punishment,— the right so far to use force upon a person (to treat him as an animal or a thing) as may be necessary to save others from this interference.

—Thomas Hill Green, professor of Moral Philosophy at Oxford University, "Principles of Political Obligation," chap. L, *Works*, vol. II, p. 486.

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All those who have given intelligent consideration to the subject are convinced that the most efficient means of preventing crime and reforming those who have violated a criminal law is to be found in a PROBATION system that is at once kindly and sane.

—George Gordon Battle.

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An ounce of PROBATION is worth a pound of prison.—Sanford Bates.