

1953

The Swedish Organization of Forensic Psychiatry

Olof Kinberg

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Olof Kinberg, The Swedish Organization of Forensic Psychiatry, 44 J. Crim. L. Criminology & Police Sci. 135 (1953-1954)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

**THE SWEDISH ORGANIZATION OF
FORENSIC PSYCHIATRY**

Olof Kinberg

The author, M.D., L.L.D., is the well-known chief of the Criminological Institute of Stockholm University, Sweden, and one of the most distinguished of European Criminologists. His latest contribution to this JOURNAL appeared in Volume XL, No. 5, under the title, *Forensic Psychiatry without Metaphysics*.—EDITOR.

In many countries psychiatric evidence in criminal cases is criticised from several view points. It has been contended, for instance, that the expert is not up to his task, that the opinions he puts before the Court are often biased, that some lawyers are rather unscrupulous in using expert testimony in their pleading, and that expert evidence, moreover, as used by the parties, presents contradictory and confusing opinions before the Court.¹

In Sweden legal proceedings in Criminal cases differ on several points from those prevailing on the European continent and in Anglo-Saxon countries.

There is a jury only in cases of libel.

Half a century ago accused persons were not regularly provided with counsel.

The prevailing preoccupation of courts and administrative authorities was the fear the artful rogues would malingering and thus escape well-earned punishment. This is why the first decree regarding mental expert testimony in criminal cases (1826) directs that the Courts shall send every report on the mental state of accused persons to the Royal Board of Health before they pass sentence. Thus it was believed possible to make up for the lack of psychiatric experience on the part of doctors to whom the task of giving expert evidence was confided. However, this remedy was not of great value. For the doctors on the Board of Health generally did not possess greater knowledge of psychiatry than those who acted as experts.

In Sweden the medical criticism of psychiatric testimony in criminal cases began at the end of the nineteenth century, but it was not until 1908 that concrete reform proposals were put forward.²

1. WINFRID OVERHOLSER: *Psychiatric Expert Testimony in Criminal Cases since McNaghten*. JOURN. OF CRIM. LAW AND CRIMINOL. 1951.

2. O. KINBERG: BROTTSLIGHET OCH SINNESSJUKDOM (CRIME AND MENTAL DISEASE) Stockholm 1908.

Here are some of the proposals:

1. Doctors who have to examine accused persons should have a thorough knowledge of psychiatry.

2. There should be legal guarantees that mental examination is made in all cases where there are reasons for assuming that the accused is suffering from some mental disease.

According to Swedish experience from that time, mental disease was to be suspected, especially in cases of murder, infanticide, arson, sexual crimes, rape, perjury, and robbery with violence.

New studies on the origin of crime prove that mental troubles are frequent in many other groups of delinquents, as for instance, all kinds of thieves, crooks, embezzlers etc. Thus it seems that cases with slight brain injuries of infectious, toxic, or allergic origin, *les petits lésés cérébraux*, often occur among recidivists.

3. The Board of Health must be provided with a special commission of psychiatric experts in order to serve as a superior authority on question of forensic psychiatry.

4. Psychiatric wards must be organized in some prisons in order to give adequate treatment to mentally diseased prisoners.

Some of these proposals have been realized after varying delays.

Thus the first psychiatric wards were opened in 1913 at two prisons (*Västervik, Härnösand*). In the same year the Board of Health was provided with a Forensic Psychiatric Commission.

Nine years later a Forensic Psychiatric Clinic was opened at the Central Prison of Stockholm and the Senior Doctor of this Clinic had to serve as Associate Professor of Forensic Psychiatry in the Medical Faculty of Stockholm. About ten years later the clinic was housed in a separate building at the side of the Central Prison.

A Professorship of Forensic Psychiatry was arranged at the Faculty of Medicine in 1948.

In 1926 two laws on preventive detention were adopted according to which certain dangerous abnormal criminals and certain recidivists can be placed in "Security Establishments."

In the Law on Mentally Diseased Persons of 1929, new rules were given as to the employment of psychiatric experts in criminal proceedings.

According to this law, arrested persons accused of criminal behavior should be examined in the psychiatric wards of certain prisons by the senior doctors of these wards. There are six such wards in the country. Persons not arrested should be examined by doctors in mental hospitals.

As a matter of principle the accused must be found guilty by the

court before it decides that a mental examination should be undertaken. Yet it is not required by law that this opinion of the court should have the character of a formal decision.

In order to guarantee as far as possible that a mental examination will be carried out in all cases where it is desirable, the law requires that such an examination shall take place:

1. If the accused person has previously suffered from mental disease or if there are other reasons to believe that he labours under such a disease.
2. If the court intends to apply the laws of preventive detention to certain abnormal or recidivist criminals.
3. If the accused person has committed murder or arson without the intention of defrauding anybody, or has attempted either of these crimes, and in such cases the court intends to apply the laws of preventive detention or pass sentence of penal servitude for at least one year.

INCREASE OF SANCTIONS IN SWEDEN DURING FIFTY YEARS

The criminal policy in Sweden having been provided with a number of new measures for the treatment of delinquents, it has become necessary to acquire a more complete knowledge of the personalities of accused individuals. The only way to gain such knowledge is by the psychiatric examination combined with a detailed inquiry into the psycho-social environment of the accused person.

As a consequence of these circumstances the number of mental examinations rose from 60 during 1900 to 1744 during 1944, which means that about 13 percent of all persons accused of serious crimes were mentally examined during 1944.

As the number of mental examinations increased and as it became more widely understood that the courts should have a thorough knowledge of the mental state of accused persons, great efforts were made to improve the quality of the examinations. Thus in the beginning of the nineteen-thirties the Forensic Psychiatric Clinic of Stockholm began to employ young students at the School for Social Workers for collecting information on the antecedents of the accused persons, their social background and so on. In order to complete and facilitate the inventory of the psychological make-up of the accused person a lot of tests were used for studying not only their intellectual equipment but also their reactional tendencies, their social attitudes etc.

Another factor of great importance, not only for the mental examina-

tion of accused persons but also for future criminological research work in Sweden, was the founding of a Central Archive of Criminology³ It is composed of all the records of mental examinations sent to an institution attached to the University of Stockholm; at present it contains more than 17,000 reports. If an accused person is to be submitted to a new mental examination after having been previously examined, the doctor can have the previous report sent to him.

On the basis of the materials of the Archive and with generous support from the Rockefeller Foundation, a number of criminological studies have been made.

THE ORGANIZATION INTRODUCED IN 1929 NOT SATISFACTORY

Although the enactments given in the law on the assistance of mentally diseased persons marked a certain progress, the organization of the mental examination of accused persons had several weak points.

From the psychiatric point of view, the accused persons differ from the ordinary clientele of the mental hospitals. But the psychiatric experience of doctors who have to make mental examinations is on the whole acquired during work in such hospitals. Their qualifications for the forensic tasks are therefore often not sufficient. Further such tasks encroach on the ordinary occupations of doctors appointed at mental hospitals. Moreover, the psychiatric expert in criminal cases needs a great deal of knowledge in matters of criminology, sociology, philosophy of law, organization of criminal policy etc., which most of the mental hospital doctors lack. These deficiencies in organization and staff entailed several inconveniencies.

The mental examinations took many weeks, thus unduly prolonging the court proceedings. The value of the psychiatric information given in the reports varied considerably, as did also the advice on treatment of accused persons given to the court.

In a study of Forensic psychiatric praxis, G. Inghe points out that exemption from punishment was proposed in 62 per cent of the cases examined at the Forensic Psychiatric Clinic, whereas the corresponding figure was only 42 percent in the cases examined at another centre for psychiatric examination.⁴

In order to remedy these shortcomings the forensic psychiatric organization was reformed in 1945. The most important feature of the new organization is the rule that the mental examination of not

3. The Archive was started in 1934 on the initiative of the author of this article.

4. G. INGHE: RÄTTSPSYKIATRISK PRAXIS (FORENSIC PSYCHIATRIC PRAXIS). Svenska läkartidn. 1938.

arrested persons shall be made in special wards at certain mental hospitals provided with doctors considered to be experts on forensic psychiatry. At present there are eight such wards, thus raising the total of forensic psychiatric wards to fourteen. Their staff consists of 35 doctors who are supposed to give their whole time to the mental examinations of accused persons and who receive their salary from the State. In addition there are a score of social workers and secretaries, but, owing to the great number of examinations the staff is still insufficient so that some of the cases must be examined by other doctors not belonging to the staff.

Notwithstanding the efforts to improve the scientific standard of the reports and in spite of the Psychiatric Commission at the Board of Health still having to examine all forensic psychiatric reports, these reports still vary between the different wards with regard to their clinical and juridical standard. Thus during 1946-1950 the number of cases where exemption from punishment was proposed was 64 per cent in the ward for non-arrested persons at St. Lars Hospital, Lund, but only 23 per cent at the Forensic Psychiatric Clinic in Stockholm where arrested persons are examined.⁵

In order to understand the curious change of attitude at this clinic it must be kept in mind that a new senior doctor has been in charge during the later period. There are other facts too which explain the reversal of the figures at this clinic. At the same time as the forensic psychiatric organization was reformed in 1945, the content of the paragraph of the penal Law where the enactments on exemption from punishment for mentally diseased persons are given, was also changed. In repealing the ancient criteria of "imputability" ("responsibility," "accountability") and in giving biological denominations to mental disease which exclude punishability, the domain of exemption from punishment was widened. But in a memorandum published by the Department of Justice as a kind of commentary to the new paragraph, the opinion is put forth that so-called psychopaths should be declared exempt from punishment only in certain exceptional cases. This arbitrary interpretation of the new paragraphs was a concession to an opinion, especially among lawyers and their echoers, according to which the praxis of declaring "psychopaths" exempt from punishment, which had gained ground especially during the thirties, was detrimental.

Now, the notions of "psychopathy" and "psychopaths" have been objected to for several years in this country as resting on unfounded

5. AXEL WERSÉN: DEN VACKLANDE BEDÖMNINGEN I RÄTTSPSYKIATRISKA FRÅGOR (The VACILLATING APPRAISEMENT IN FORENSIC PSYCHIATRIC QUESTIONS) Svenska läkartidn. 1950.

theories as to their nature. Thus it has been contended that the belief that "psychopaths" were "constitutionally abnormal" is wrong, and that the terms "constitution" and "constitutional" should be used only as designating quantitative and normal variants of dispositions occurring in all human beings.

The psychiatric experts refused to recognize "psychopathy" as a clinical entity and considered the "psychopaths" to be persons suffering from some form of mental disease (mostly "petits lésés cérébraux"). According to this opinion they continued to propose exemption from punishment for accused persons of this kind. The same experts have also refused the Department of Justice the right to decide on clinical entities.⁶

On the other hand, some experts—among whom is the new head of Forensic Psychiatric Clinic who by the way is one of the authors of the memorandum published by the Department of Justice—who still believe in "psychopathy" as a clinical entity, submitted to the interpretation of the law given in the Memorandum according to which the mentally diseased delinquents whom they called "psychopaths" should be sent to prison.

As a result of certain legal enactments adopted in 1945 and aiming at a decrease of the number of mental examinations, this number went down from 1744 in 1944 to 1023 in 1951. This decrease has certainly not been without influence on the volume of crime. The legal enactments in question have also been criticized even in the Riksdag (Parliament).

The great differences in clinical appraisalment in different examination wards also prove the incapacity of the Forensic Psychiatric Commission to serve as a scientific "rectifier".

PRACTICAL CONSEQUENCES OF THE SWEDISH ORGANIZATION

The Swedish organization implies some important practical consequences.

The Court has not to choose experts, as all cases must automatically be sent for examination to the ward in the district where the Court is situated.

In Courts of the first instance only the report of the official expert is presented. But if the public prosecutor or the defendant appeals to the higher Court, it happens that the defendant presents reports of

6. O. KINBERG: *The Concept of Psychopathy and the Treatment of so-called Psychopaths*. (PROCEEDINGS OF THE PSYCHIATRIC CONGRESS OF COPENHAGEN 1946 and *Theoria* 1947).

BO GERLE: *Psykopatibegreppets bankrutt* (THE BANKRUPTCY OF THE CONCEPT OF PSYCHOPATHY. Lund 1947).

inofficial experts which, however, rarely occurs. The official expert is only exceptionally summoned to testify, where as the inofficial expert is regularly summoned. Thus the official expert has generally nothing to do during the whole procedure either with the public prosecutor, the counsel for the defence, or the judge. He has to examine the accused person, to write his report, and to send it to the Court; after that his task is accomplished.

This however does not exclude any communication between the judge and the expert: the judge can ask the expert for an explanation of different points in the report; the expert can seek contact with the judge in order to discuss the proper treatment of the accused person.

As an instance of a practical and realistic collaboration between the expert and the Court I should like to cite one case.

A man aged 56, widower, working at a sawmill was accused of carnally knowing girls under thirteen (*coitus inter femora*).

His medical history was complicated. Aged 25 he got an oedema of the mucous membrane of the nose and pharynx, with such impediment of respiration as to produce unconsciousness. At another time he was struck by lightning. Two years before committing the criminal acts he got a severe attack of influenza followed by a marked decrease of his working capacity. Having taken alcoholic liquors he became maudlin. He had a submicrocephaly, an atrophy of the skin on the hands, a premature senility, vegetative troubles etc. Further he was very fatigable and had a sensation of void in the head during efforts. His intellectual development was feeble. Nevertheless he was a good worker, conscientious and appreciated by his employer who declared himself willing to take him back in his service immediately after having done his time.

He was ashamed of his crime, the moral and juridical signification of which he had not understood. His previous life had shown him to be a friendly and sociable person. Consequently there were good reasons to regard his social prognosis as a good one.

Owing to his mental inferiority, he could be recommended to exemption from punishment. But as he did not need any treatment in a mental hospital I considered this measure unsuitable. Therefore I communicated with the judge and told him that conditional conviction would be the most suitable treatment. If the judge were of a different opinion I would hardly be able not to propose exemption from punishment with subsequent internment in a mental hospital. The judge accepted my view and the man was conditionally sentenced to penal

servitude for six months. He was at once taken back by his employer and has never since shown any behaviour trouble.

If the court has any doubt on the expert's conclusion it can ask for the opinion of the Forensic Psychiatric Commission. In conformity with the obligation of this body to check all forensic psychiatric reports it can inform the Court that the accused has to be reexamined without the court having asked for its opinion. In such cases the sentence is postponed until the commission has given its opinion. The initiative of the Commission does not as a rule mean that the examination is remade by another expert. It only implies that the Commission is of another opinion than the expert on certain points of the report. Having been informed of the opinion of the Commission, the Court has the right to pass sentence in conformity with the Commission, the expert, or neither of them.

As to the procedure in criminal cases I would lay stress on the fact that the Court should be satisfied that the accused person is the perpetrator of the crime before ordering a mental examination to be made, although this statement need not have the form of a formal conviction.

Before deciding on the treatment of the accused person the Court has to take into consideration all available information on the personality of the accused and his previous environment acquired in the course of the trial and during the mental examination.

POSITION OF THE PROBLEMS ON WHICH THE EXPERT HAS TO GIVE HIS OPINIONS.

Every time a person is accused before a Court there are two problems to be solved.

1. Has he committed the crime in question?
2. If so, what should be done with him in order to prevent new crimes?

Generally it is considered to be the task of the Court and of no one else to check the evidence produced during the trial. There are however, rare cases where the mental examination can give valuable information on circumstances that shake the supposition that the accused person has committed the crime. It also happens that the mental examination reveals circumstances that preclude the culpability even in cases where it is proved that he has committed the act. Here some instances.

A young man accused of attempted rape whom I had to examine had confessed to the police both premeditation and preliminary meas-

ures in order to attain sexual intercourse. During the trial he denied premeditation but still admitted the preliminaries. During the mental examination he declared he had never seen the victim. Under such conditions the expert cannot but give expression to his doubt whether the accused person really has committed the crime. But before the examination was finished the court informed the expert that another young man had confessed to the crime so that the report was never sent to the Court.

Perhaps it is not too bald to suppose that the different attitudes of the young man before the police, the Court and during the mental examination are proportional to the more or less inquisitory character of the questionings before these three inquiring agencies.

In another of my cases, a young girl, Mary, who was nearly an idiot and very ugly had got a child whose paternity had by decision of Court been attributed to a farmhand. The child died after some months. Mary lived in the house of her uncle, a peasant resident in an isolated village of a northern province of Sweden. Between her uncle and a neighbor there was bitter enmity. In order to defame this neighbor the uncle persuaded Mary to betake herself to the inspector of police and tell him that the evidence on the paternity of her child was wrong and that the father was the neighbor's son. Mary obeyed and was astounded at being immediately arrested and accused of perjury. The mental examination revealed that she did not know anything about perjury or oath and that consequently she was incapable of giving evidence in Court. She was declared exempt from punishment.

In another case the owner of an industrial plant, after having sold a rural estate, was accused by the buyer of having given false information as to the health of the cattle. He was accused before Court and sentenced to penal servitude for one year and a half for having instigated several persons to perjury; four other persons were sentenced to punishments of varying degrees. As a psychiatric expert I made plain to the Court of higher instance that the facts on which the witnesses had given evidence were so insignificant and of such old data that there was only a slight probability that persons who had little interest in the facts at the time when they had occasion to observe them, would have been able to keep them in mind. Thus there was too much room for involuntary mistakes to make a criminal intention probable. The Court acquitted the accused persons.

During an action for a new trial on account of illegal conviction of a man sentenced to penal servitude for life for having killed his wife and having served 15 years, I could prove before the Court that ade-

quate evidence of the man's being the perpetrator of the crime was lacking, that the theory of the medico-legal expert was based on inexact observations and that the psychiatric expert and the judge had been influenced by the fact that the man's previous life was not blameless. The man was submitted to a new trial, acquitted and indemnified.

According to my experience it is above all in cases of perjury that the psychiatric expert can give evidence excluding the culpability of the accused person by pointing out ignorance of fact, incapacity of giving evidence by reason of mental disease or mental deficiency, or other circumstances nullifying the presumption of criminal intention or of wilful omission or neglect.

For when examining whether a given act has been done by a given person, the act should always, in the last resort, be related to the personality of the subject. As everybody is not capable of committing every kind of action, this position of the problem is necessary in order to avoid errors as far as possible. Thus the questions requiring answers are:

Does it seem *possible* that a certain act has been done by a given person?

Then, does it seem *probable* that the act has been done by him?

Finally, is it *proved* that he is the doer of the act?

If the answers to the first and second questions are negative, there are strong reasons to redouble one's critical attention to the evidence, for in all cases where a man has not been caught red-handed one is reduced to his confession to the act and to circumstantial evidence which is generally open to doubt if there is not an accumulation of concordant circumstances making doubt difficult or impossible.

It seems to me a matter of course that the comprehensive knowledge of the personality of the accused person, achieved through a conscientious and capable mental examination, puts the expert in a favorable position for judging whether the accused person has committed or not committed the act attributed to him and whether he has been in the psychological state required for culpability.

During a Conference at the International Criminological Society in Paris in 1951 it was asserted from several quarters that the psychiatric expert has to achieve two tasks:

Examine the accused person in order to make evident whether he is fully responsible, if his responsibility is impaired or non-existent; or

Provide the Court with the most complete information on his personality, his character, on the motives for the criminal act, on his previous life history and his present situation.

During the discussion of these points it was said that "the task of the expert was to inform the judge on the natural criteria apt to influence what is still called responsibility by the law, i.e. "the consciousness which the delinquent has of his act and its consequences, or his capacity for determining his behaviour or for behaving according to his insight into the nature of the act." (Mr. Graven).

There has even been an attempt to distinguish between this "psychiatric, the juridical and the metaphysical responsibility" (R. P. Vernet).

On the same occasion it was stressed by different persons (Mr. Graven and others) that "the term responsibility which lends itself to endless controversies must be avoided."

In order to limit the functions of the psychiatric expert it was proposed that legal medicine and police sciences should attend to the examination of the act and the fact, whereas the psychiatrist should examine its perpetrator (Miss Marx).

EVOLUTION OF THE FUNDAMENTAL IDEAS ON CRIMINAL PSYCHIATRY IN SWEDEN.

In Sweden we have for many years been looking at these problems in another way.

In 1911 the editor of the German review, *Monatsschrift für Kriminalpsychologie und Strafrechtsreform*, G. Aschaffenburg, published a number as a kind of introduction to the First International Congress of Criminal Anthropology which took place in Cologne the same year. In this number I published a little article in which I tried to make evident that all attempts at giving a new content to the notions of "imputability", or "responsibility" (the "Zurechnungsfähigkeit" of the Germans) which had been made so far (by Kraepelin, Forel, Alimena, von Liszt et al.) were unsuccessful.⁷

A little later I published some lectures given at the University of Uppsala in which I tried to demonstrate that "imputability" ("accountability", "responsibility") is not a psychological state which can be diagnosed; thus it does not have any empirical basis. In practically applied forensic psychiatry, the concept of "imputability" implies that it should be possible to distinguish between "imputable" and "non-imputable" mentally diseased persons. But such a distinction can never be made. If certain experts believe the contrary they are labouring under a delusion.

In the same work I have tried to demonstrate that the so-called

7. O. KINBERG: *Ueber die Unzulänglichkeit aller Versuche einen Begriff der Zurechnungsfähigkeit festzustellen* (MONATSSCHR. F. KRIM. PSYCH. u. STRAFR. Ref. 1911).

criteria of "imputability" (and among those the ones given in McNaghten's case 1843) belong to the same category of illusions based on a defective psychological analysis.⁸

The practical application of the concept of imputability in criminal policy has proved disastrous, above all in such cases as were formerly considered belonging to the category of impaired imputability. According to the Swedish penal code of 1864 this imaginary mental state should entail reduced penalties. But the most dangerous criminals are often found in the group of what was considered "impaired imputability". In applying reduced penalties to dangerous criminals of this kind social protection is weakened and criminality increased, whereby one of the principal aims of criminal policy, i.e. the protection of honest people against the doings of crooks is sapped.

Also the criticism of the theory of "imputability" from a practical point of view was directed above all against this proportional application of sanctions. As a result of this criticism the old concept of "impaired imputability" disappeared from the law in 1945, and together with it this detrimental proportionality.

Like the circle arising from a stone thrown into water, the discussion of "imputability" has widened to embrace other metaphysical concepts of the theory of law: the moral debt, the proportioning between this indefinable debt and penalties, the just retribution, etc.

The discussion on the theoretical foundation of penal law which started in Sweden some forty years ago has given obvious results. The term imputability has disappeared from the law. Thus the concept of "impaired imputability" in the law on preventive detention after conviction of certain abnormal and recidivist criminals (1926) disappeared when the law was reformed (1937).

The courts never ask the psychiatric expert to give his opinion on the "imputability" or "responsibility" of the accused person. It happens extremely seldom that a psychiatric expert uses these terms. If now and then the lawyers use them, they often have a certain feeling of awkwardness or a shade of remorse at employing words which lack any comprehensible meaning. Even in the newspapers, which formerly abounded in "unimputables" and "half-imputables", these expressions have become more and more rare. On the whole, criminal policy in Sweden has entered into an antimetaphysical and realistic phase which is something new in a domain where theological and metaphysical notions have prevailed for centuries.

8. O. KINBERG: OM DEN S.K. TILLRÄKNELIGHETEN (ON SO-CALLED IMPUTABILITY) Stockholm 1917.

Owing to this evolution of ideas the discussion on practical criminal policy is not obscured by the introduction of indefinable and incomprehensible terms.

The distrustfulness of obscure notions of speculative origin has roused a need to submit to the critical magnifier also some terms used to designate current practical measures of criminal policy. Instead of calling the mentally diseased criminals who ought to be put under medical treatment "non-imputable" or "irresponsible", we call them *exempt from punishment*. But even this term has been criticized because it suggests the idea that these persons are not exposed to any social reactions on account of their criminal behaviour, which is undesirable from the moral point of view. Besides, exemption from punishment does not mean freedom from every kind of reaction, since it is often followed by an internment in an asylum which can last for many years and is therefore often considered by the criminals themselves to be still less desirable than a time determined punishment.

Therefore, one has come to the conclusion that this term too should be put out of use. The only way of doing this would be to eliminate even the notion of punishment.⁹

The theological idea of the classical theory of law that every crime should be followed by a punishment has long since been given up by practical criminal policy. The conditional sentence, the substitution of punishment by educational measures for young delinquents or by a preventive detention of certain dangerous abnormal or recidivist criminals, the medico-social treatment of certain alcoholic delinquents, the conditional sentence in certain cases, pardon, etc. are all exceptions from the rule. Moreover, considering the great volume of crime it would be dangerous to let the citizens know how many among them are criminals. For it is not good that the man in the street should be given the opportunity to ask himself: "Why should I be better than so many others?"

The idea of eliminating all kinds of punishment may seem too revolutionary. But as criminal policy is nothing but practical measures, it is understandable that a concept so charged with elements of thoughts and emotions belonging to the theological and metaphysical sphere are a serious obstacle to the purpose of criminal policy. If one regarded punishments, especially those implying loss of liberty, not as the *specific* means of reacting against crime but as a measure to which one had to resort only when there was no rational therapy available, it is probable

9. O. KINBERG: *Punishment or Impunity* (ACTA PSYCH. ET NEUROL.) Copenhagen 1946.

that one would make greater efforts to seek for measures at the same time more effective and more humane. .

SUMMARY.

I have thought it appropriate to give this summing up of the theoretical discussion going on in Sweden on the fundamental theoretical problems of criminal law in order to set off in a more plastic way the every day practical problems of the forensic psychiatrist.

Having put aside all elements liable to obscure the problems of criminal policy there are left two groups of factors: on the one hand, a group of human beings equipped with certain biological characters of morphological, physiological and psychological nature who, after having found themselves in certain precriminal situations, have committed criminal acts and, on the other hand, a social organization providing a certain number of practical measures applicable to the criminal. Between these measures the courts and other agents of criminal policy have to choose those which in the different cases are most apt to bring about the criminal's social readaptation or, if this is considered impossible, to make him inoffensive.

The tasks of the psychiatric expert in Sweden are as follows: aided by his social workers he has to collect all available data on the criminal's social life, applying to the school authorities and other social institutions which have previously had to do with the criminal. Owing to our social organization this inquiry generally gives valuable information on the antecedents of the accused.

After having inquired into the medical history of the accused and made a thorough medical and psychiatric examination, he gives as complete a report as possible in which he tries to point out constitutional, lesional and characterological traits in order to make a diagnosis.

Then he tries to analyse the dangerousness in its different aspects: its direction, its degree, its rousability, and its persistence. When the case belongs to the domain of elephantine psychiatry: general paresis, advanced cases of schizophrenia, confusional states, alcoholic psychosis, cerebral deformities, i.e. the "*grands lésés cérébraux*" where hospitalization is needed, the treatment to be proposed to the court is easy to choose.

If the person was mentally diseased at the time of the crime but not needing hospitalization he is to be declared exempt from punishment and, if he is an alcohol addict, put under the care of the authorities who have to apply the law on the treatment of alcoholics.

If a mentally diseased person who has to be declared exempt from punishment does not need hospitalization he may be put under open treatment as an out-patient. The organization of this kind of treatment is still insufficient.

For the "*petits lésés cérébraux*" with mental troubles originating in cerebral lesions of more or less limited character, produced by infectious diseases, traumatisms, intoxications, etc., i.e. the greater number of the so-called psychopaths or neurotics, the choice of treatment is still more difficult. Their belonging to the group of the "*petits lésés*" does not mean that the psychological and social consequences of their shortcomings are insignificant. On the contrary, strengthening the forces that push to crime and disintegration of their socio-moral life which saps resistance to criminal impulses, often make them very difficult and even dangerous members of the community. Further, they often lack such symptoms as are considered signs of mental disease by the man in the street. Therefore, it can be very difficult to get the Courts or juries to understand that such persons are sick and belong to the domain of medicine. Although a purely medical treatment is often not to be had, they ought, being diseased people, not to be placed in prisons under the direction of a non-medical staff. For even where the medical treatment is reduced to a kind of vague psychotherapy it should be applied under medical guidance.

If the "*petits lésés*" are placed in asylums organized for the treatment of the classical psychosis they are often very embarrassing owing to their great number, their lucidity and their intriguing, subversive and antisocial attitudes. Therefore, in Sweden we are preparing to organize special medical establishments for this clientele, so far homeless.

At present most of them are sentenced to punishment. Some of them are placed in "Security Establishments" as dangerous. A few are declared exempt from punishment and interned in special wards at certain mental hospitals. None of these treatments are adequate.

In order to make the organization of mental examination of accused persons more appropriate, the Swedish government charged me with the task of making proposals to this end. These, however, cannot be exposed here.¹⁰

Before ending this summary survey of the present situation of forensic psychiatry in Sweden and to avoid giving an unduly flattering

10. O. KINBERG: *Betänkande med förslag till rättspsykiatriska undersökningsväsendets organization (Proposals as to the Organization of Forensic Psychiatric Examinations)* SOU: 1950:24 (Lwersh Public Reports 1950:24) Stockholm 1950.

picture of its criminal policy, I should like to point out some weak points in our defence against criminality. Without saying too much it must be admitted, I think, that the legislation with regard to crime adopted during the last twenty-five years is founded on a rather solid empirical and practical basis. It has a marked tendency to adapt the practical measures to the personality of the delinquent in order to achieve a readaptation to a free life in conformity to the law.

But the social and administrative organization in Sweden has developed very fast, even too fast for our resources. Above all we lack a staff sufficiently big and capable to cope with the many new and difficult tasks created by the social super-organization. There is a very embarrassing lack of doctors in all fields of medicine. Some posts in social and preventive medicine are unoccupied or difficult to fill with competent persons. The mental hospitals are insufficient with the result that they are crowded with patients. The ordinary hospitals suffer from the same inconveniences. It is very difficult to get an adequate nursing staff. The measures for the education and training of the staff needed in the institutions of criminal policy (industrial schools, reformatories, Security Establishment, Prisons, etc.) are insufficient or non-existent.

In spite of the high standard of living and the high development of social organization aiming at a satisfactory social security, the economic criminality is still, seven years after the end of the war, about the double of that before the war. Other forms of delinquency also have a tendency to rise.¹¹

This proves that neither rational and realistic principles as to the treatment of crime, nor a legislation for the most part adequate, nor social circumstances which are considered good, are capable of checking the increasing delinquency. From this it can be concluded, I think, that many current opinions on the etiology and treatment of crime are fundamentally false and that these problems are much more complex than hitherto believed. Therefore still greater efforts must be made to find new concepts and theories more appropriate to explain crime and to guide its treatment.

11. O. KINBERG: VAD HÄNDER MED BROTTSTIGHELEN? (WHAT HAPPENS WITH CRIMINALITY?) VAD SKALL VI GÖRA MED BROTTSTIGHELEN? (WHAT SHALL WE DO WITH CRIMINALITY?) Stockholm Tidningen November 12th and 23rd, 1951.