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THE TREATMENT OF RECIDIVISTS

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This article was read before the recent Third International Congress on Criminology in London.—EDITOR.

It has been one of the tragic characteristics of the administration of criminal justice that the concept of motivation of human behavior has been oversimplified. From the point of view of distribution of prisoners among various types of penal institutions, this oversimplification is probably more or less unavoidable. However, once we begin to question the wisdom of incarceration and realize its destructive effect in most criminal cases, we need no longer adhere to the artificial classification of offenders in crude categories. We can afford to individually study human beings who have failed and to organize their rehabilitation accordingly. This also is true of any kind of therapeutical approach to recidivists. Only a thorough sociological and clinical study of the individual repeater can guide us in our selection of rehabilitative measures. This paper attempts to treat the decisive importance of one segment of correctional work: the reintegration of convicted men and women into society by means of proper employment.

Rehabilitation should consist in an all-comprising treatment program for the lawbreaker. It requires not only thorough understanding of the offender's total personality, body and mind, but also of the environmental forces which have left their imprint and generated extreme tensions since his early childhood. His inability to handle these tensions in a socially acceptable manner has brought him into conflict with the law. This is true in the overwhelming majority of cases of delinquency, and only sincere understanding and evaluation of all factors which have shaped the personality of the lawbreaker can lead to the development of successful methods of treatment. It is obvious that specific circumstances of environment do not necessarily cause identical effects upon individuals whose personalities—soma and psyche, as well as their interplay—differ. It is the mind of the human being, affected by organic and sociological factors, which determines his behavior. In order to change this behavior, we have to consider and treat the following three areas: his physical condition, if impaired; the environmental circumstances which he is unable to bear; and the psychodynamics that have developed in a faulty way. We must attempt to strengthen

his ego, to improve his defenses, and to develop greater elasticity in case of frustrating experiences.

In addition to analytically oriented individual or group psychotherapy, rehabilitation must include a complete rearrangement of the offender's entire life. Thus, one of the most essential factors will necessarily be his reintegration into society and a certain amount of security and hope for the future.

I do not believe that true rehabilitation can be achieved and completed in a prison setting. Let me quote to you the words of James V. Bennett, Director of the United States Bureau of Prisons, who aptly describes the unsolvable conflicts inherent in the prison setting. He says:

Prisons are expected to discipline rigorously at the same time that they teach self-reliance. They are built to be operated like vast impersonal machines, yet they are expected to fit men to live normal community lives. They operate in accordance with a fixed autocratic routine, yet they are expected to develop individual initiative. All too frequently restrictive laws force prisoners into idleness despite the fact that one of their primary objectives is to teach men how to earn an honest living. They refuse the prisoner a voice in self-government, but they expect him to become a thinking citizen in a democratic society. . . .¹

A further description of the syndrome "institutionalized" is given by Norval Morris:

Intellectually atrophied, emotionally starved, trained for years to rely on others for daily needs, denied steady employment or the incentive to grow in vocational skill, sexual energy misdirected to onanism or other perversions, and quite incapable of coping with life out of any institution.²

Opposed as I am to crude classification, I would nevertheless suggest that a general demarcation line, in regard to treatment techniques, should be drawn between those repeaters who have had a satisfactory work-record and those who have demonstrated, through their marked difficulty in obtaining and/or holding employment, that basic personality difficulties are interfering with steady work. The latter group would at present still have to be classified as "psychopaths." At this point, let me comment briefly on the term "psychopath," which, fortunately enough, was dropped from the official nomenclature of the American Psychiatric Association more than two years ago. I agree with the critics of this nosological concept who consider it as a sociological evaluation as well as an admission of our inability to treat the syndrome with known correctional methods. However, I do not share their feeling of hopelessness in regard to the treatment of these "psychopaths." On the strength of my professional experience as a correctional psychotherapist, I feel quite strongly that many of them are amenable to treatment when sufficiently strong ties and a continuous relationship are developed between patients and the correctional worker. Such a result will afford identification with the worker and his associates, and emulation of them. It cannot be denied that the establishment of such ties is difficult in this type of offender, but it is not impossible and depends to a large extent on the personality of those who participate in the offender's rehabilitation.

¹ CONTEMPORARY CORRECTION, *Paul W. Tappan*, ed., New York, McGraw Hill, 1951, p. 70.

² THE HABITUAL CRIMINAL. Harvard University Press, 1951, Pp 312-313.

Only if we succeed, through mass-psychotherapy and mass-education, in reducing the sadistic and basically criminal need for vengeance on the part of members of our society, and accept the effective protection of society as the only justifiable aim for the administration of criminal justice can we limit incarceration in custodial institutions to the small percentage of offenders who constitute an immediate danger. Our treatment problem in regard to the rest, i.e., the majority of the offenders (probably close to 90 percent of the total), then consists in helping them to readjust their lives. In this respect, nothing is more important, more basic than to secure work and income for them.

I do not know to what extent employment of people with criminal records constitutes a problem in Britain. But I do know that it has become one of the darkest chapters in the history of man's inhumanity toward man in the United States. Employers are traditionally reluctant to accept persons who have criminal records. Moreover, a new trend in the field of insurance has come to life in America. It is spreading like wildfire. I refer to the so-called blanket-bonding of both laborers and employees who are in positions of trust, and who could violate their trust.

These so-called fidelity or surety bonds are obtainable by employers at relatively low cost. One of their stipulations is the refusal of employment to anybody with a criminal record without specific consent on the part of the bonding company. Any violation of this provision invalidates the protection of the employer. Questionnaires to be filled out by applicants for employment contain the question "Have you ever been convicted of an offense?" Or even "Have you ever been arrested?" and, if the answer is in the affirmative, rejection by the bonding company, even in cases of relatively minor offenses, is the rule and exceptions are rare.

At present, about ten and a half million people in the United States are on record for offenses more serious than traffic violations, and, under the prevailing system, none of them is eligible for bonding. Although a great number of independent employers could easily accept people without bonds as an exception to the rule, they usually take advantage of the excuse that they personally would not mind employing the applicant but that they are unable to do so because of the bonding company.

Another contemporary exacerbation of deep-seated human sadism generated by fear is the so-called "security-angle," which mercilessly eliminates anyone with a criminal record from employment in industries working for the Armed Forces. Special emphasis is placed on homosexuals, who are considered security risks *per se*.

The magnitude of the problem just outlined is growing by leaps and bounds. It affects millions of employees and their families, and the danger to society at large, entailed in the fact that we are steadily pushing these people back into delinquency, is mounting. The following figures may serve as an illustration of the proportion which this issue is presently assuming. According to a report recently received from the Bureau of Criminal Statistics of the California State Department of Justice, only about 15.5 percent of the total of male admissions to California state prisons are without prior commitment, which leaves 84.5 percent of the men admitted with prior records. To be sure, this percentage of prior commitments includes misdemeanors and juvenile commitments. On the other hand, 35.7 percent of the admissions had had one or more prior prison records.

In order to deal with the problem, a group of seriously concerned people conceived and tentatively developed the following plan.³

The sciences of sociology, psychology, education and medicine—especially psychiatry and neurology—are constantly contributing to our understanding of behavior disorders and the design of treatment techniques for them. Clinical personality evaluations, as well as predictions of attitudes and of reactions in specific situations, are increasingly possible. Extensive bibliographical and study materials are available. In addition, many highly gratifying experiences regarding the employment of people who have criminal records (even extremely serious felony records) have been obtained on a nationwide basis during the past years by employers, parole and probation officers, and by the Army, Navy and Marine Corps. They constitute an exceedingly important contribution to the study and evaluation of human beings who have failed.

Insurance companies are relying economically on the mathematical calculation of their individual risk. While this has been so in almost all fields of insurance, it has never been applied to the surety or fidelity bonding of employees. In fact, our bonding companies are losing hundreds of millions of dollars every year exclusively on people who have had no criminal record. The introduction of a scientific approach to the bonding of employees with or without prior criminal records would substantially reduce the losses of bonding companies. Our plan rests on these basic realizations.

It consists in the formation of an independent, nonprofit organization, tentatively called "Character Underwriters," which, upon application by individual offenders, would provide a clinical examination and a scientific study of the personality and behavior patterns of the applicant, using, with his written permission, the files of courts, probation departments, schools, hospitals, etc. The evaluation and interpretation of the material would be made by experts in the field of human behavior, specifically, criminologists, psychologists and psychiatrists. It would include individually structured recommendations as to the type of employment, necessary safeguards, etc. Under specific circumstances, a limitation as to the scope of the bond in question might be necessary. Subsequent gradual modification of such limitations would be possible if the applicant would furnish good behavior records and good work records over a period of time.

The cost of these studies and the issuance of a Certificate of Evaluation would be advanced by the organization and eventually refunded to it by the applicant out of his earned salaries or wages. Every man or woman accepted by "Character Underwriters" would be under its continuous case work supervision, which would by far exceed the kind of supervision offered by any existing State Parole Service. The plan envisages the eventual development of the organization's own private correctional treatment facilities with professional staffs of social workers, clinical psychologists, psychiatrists and criminologists. This service would be equally self-supporting, since those certified by "Character Underwriters" would have to commit themselves to this type of supervision and treatment at their own expense, also payable in installments out of earned income.

³ Cf. MARCEL FRYM, *Past and Future of Criminal Rehabilitation, Law and Medicine Symposium*, JOURNAL OF PUBLIC LAW, Emory University, Georgia, Vol. III, No. 2, 1955.

I should like to quote here from a letter I received a few years ago from Mr. Charles Ward, President of the well-known firm of Brown & Bigelow, St. Paul, Minnesota. He says:

Regardless of record, every man who is hired is a risk, one way or another. Even men with no criminal acts booked against them can turn crooked. They do. That's why they go to jail and why they become a problem when released.

But I believe that any man is entitled to more than one chance. I've proved that in the 27 years I have been with Brown & Bigelow. During that time, more than 500 ex-convicts have been employed by this firm. . . . Of all these, only four have been recidivists.

As Mr. Ward points out in another part of this letter, not only the employers reject these human beings who have failed; they are equally rejected by many of their fellow-workers. Thus, it seems that an examination of the psychodynamics of all of us—i.e., we who reject and those whom we reject—is not only indicated but imperative.

Rehabilitation of offenders has been a slogan for a long time, and modern penology has given it a great deal of lip service. So far, the results have been tragically disappointing. The rise in criminality is used as an argument against the principle of reformation by those who consider punishment and ever more punishment as the only solution to the problem; these people blame probation and parole and insufficiently severe punishment for this rise. I do not believe in the validity of this argument. Actually, rehabilitation of offenders has hardly begun. There have been sporadic attempts in a few institutions, as, for instance, in the California State Institution for Men at Chino, California, and the Federal Prison in Seagoville, Texas, but even these institutions do not offer individualized correctional psychotherapy and the parolee has once again to face the very same world with which he was unable to cope before, with his problems still unsolved and without much actual help.

In the light of the foregoing, it seems to me that our only hope in reducing crime is to radically revise our own attitude toward nonconformists. In our ruthlessly competitive society, most crimes are the tragic results of the struggle for survival; they are committed by men and women who either doubt their ability to compete successfully, or who for various reasons are actually unable to do so. One answer, and in my opinion the only answer, is to try to free these endangered and therefore dangerous human beings from their fears; and this is a therapeutical, educational and sociological task which can be carried out only by highly trained personnel in an atmosphere of intelligent understanding.

Any discussion of crime is unavoidably affected by emotional considerations. Most of us are constantly struggling against drives that cannot be gratified without violation of moral or legal codes. Thus, our emotional equilibrium is threatened when the dynamics of this struggle are being investigated, when the concepts of right and wrong and the necessity of acting accordingly are made the topic of discussion. It is this lability of our own emotional equilibrium which accounts for the passionate debates regarding any basic change in our philosophy of dealing with offenders. We are not only afraid, as we may rationalize, of the harm that may possibly be inflicted by criminals unto ourselves and our loved ones, but we are equally and perhaps even more afraid of the things we dread to do and, as we believe, might do, were we not

held back by the threat of punishment. Whenever criminal responsibility is examined dynamically, the most basic fear of all human beings is activated: the fear of losing one of the powerful instruments of orientation in our daily, nay hourly existence.

We consider the need for immediate gratification a sign of emotional immaturity and a symptom of psychopathology. In our treatment of offenders, however, we—the community—are presenting the very same symptom of complete inability to postpone gratification. While our rationalization of punishment states that we must protect society from crime, we do know that the tremendously high incidence of recidivism, among other incontestable features, disproves this claim, with the exception of the short period of time during which the offender is taken out of circulation. Thus, we are sacrificing the protection of society for an incomparably longer period of time to the immediate gratification of at least momentarily having the offender behind bars.

More than a generation ago, Mead, in his "Psychology of Punitive Justice," pointed to the irreconcilability of the following two attitudes: ". . . that of control of crime by the hostile procedure of the law, and that of control through comprehension of social and psychological conditions. . . . To understand is to forgive and the social procedure seems to deny the very responsibility which the law affirms, and on the other hand the pursuit by criminal justice inevitably awakens the hostile attitude in the offender and renders the attitude of mutual comprehension practically impossible. . . ."⁴

And again in May 1943, Dr. William Draper Lewis, Director of the American Law Institute, testified as follows before a Subcommittee of the American House of Representatives:

Progressive procedures are in sharp conflict with the principle of punishment to fit the crime and with the penal facilities and procedures developed to apply that principle. Here we find the reason for the present chaos in our correctional systems, which defeats much of our effort to rehabilitate offenders. Side by side with the new principle of corrective treatment of the individual to rehabilitate him and the necessary procedures of diagnosis, classification, parole, and so forth, we find the old principle of retributive punishment and relics of its procedures, facilities, and personnel, such as the fixed sentence, the mass-custody institutions, and the oldtime prison guard.⁵

There is little doubt in my mind that the average criminal prefers by far the present type of penal justice—especially the fixed sentence which permits him more or less to calculate his risk—rather than a painful clinical study and evaluation of his underlying problems, comprising his entire personality and his past in the light of scientific knowledge. From the point of view of the average offender, our present system, which unavoidably favors the exploitation of formal mistakes in procedure and other legal tricks, is certainly preferable to the clinical and sociological approach. However, fear can regulate behavior only to a limited and socially unsatisfactory extent. The dynamics of rehabilitation can be understood only if we objectively investigate our prevailing concepts of guilt and shame. The feeling of guilt presupposes a realization of wrongfulness and implies fear of the painful secular or, depend-

⁴ AMER. JOUR. OF SOCIOL., 23: 577, 592 (1918).

⁵ Hearings before Subcommittee No. 3, Committee on the Judiciary, House of Representatives 2139, 2140. 78th Congress, First Session, 1943.

ing on religious beliefs, spiritual consequences. Rehabilitation should, therefore, aim at identification with certain positive values which the offender has never learned to cherish, to make him experience hidden, repressed needs in his personality that can be gratified without getting him into conflict with society. We must replace fear and hopelessness by confidence and faith. Such treatment is not possible within prison walls; it is possibly only in the framework of a free community and with the help and understanding of each one of us who has had the good fortune of never having been caught.

The far-reaching implications of such an approach to delinquency can hardly be predicted. Applied on a broad scale, it might be the beginning of a basic revision of our entire educational philosophy and thereby penetrate every home. It might, and this is my fervent hope, help to do away with the type of criminal law enforcement which, psychologically speaking, is criminal in spirit and methods and criminogenic in its effect, because it thrusts the offender ever deeper into antagonism to society. To a certain extent, it might even transgress the boundaries of nations and influence international relations by contributing to the understanding of the aggressor and the fears that might have generated his aggressive behavior. Our present system of criminal justice, with its humiliations, rejections and degradations, and actual moral destruction of the offender in prison, is in my opinion the main contributor to recidivism.