

1917

Organization of Psychopathic Work in the Criminal Courts

Herman M. Adler

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

Herman M. Adler, Organization of Psychopathic Work in the Criminal Courts, 8 J. Am. Inst. Crim. L. & Criminology 362 (May 1917 to March 1918)

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.

ORGANIZATION OF PSYCHOPATHIC WORK IN THE CRIMINAL COURTS¹

HERMAN M. ADLER²

Before attempting to outline a plan of organization of psychopathic work in connection with criminal courts, it may be well to make a few statements in regard to the meaning of the term psychopathic and to determine its scope in the present connection.

The word "psychopathic" has come to be used generally of late years to fill a gap in the old nomenclature caused by the widening field of activity of the psychologists and psychopathologists.

The old distinctions between sanity and insanity have lost their former clear cut, sharply dividing feature. Whatever the legal distinctions may be, the decision in the individual case must rest upon the testimony of experts in mental disease. Even though the questions of rights, and more especially of responsibility in the legal sense, have not been affected materially by the changes in our attitude toward delinquency, the increase in the number of cases dealt with by the courts in which, while the question of insanity could not seriously be considered, the existence of an abnormal mental state was clearly recognizable, demands special consideration.

This group of cases, which represents a very large proportion of cases disposed of in the criminal courts, could not be satisfactorily dealt with under the older conceptions of insanity. A term to designate this group was necessary which was wider in scope than any of the older classifications and which yet included the latter. A further consideration, namely, that of avoiding as much as possible the stigma attaching to such terms as lunacy or insanity, influenced this choice.

The term "psychopathic" was finally adopted independently by various communities to satisfy these requirements. This term is broad enough to include variations from the normal type of the severe grade of insanity or feeble-mindedness as well as those milder forms of mental disorder which often amount to little more than eccentricities of personality.

Even now the term psychopathic in some quarters is discarded for the still broader conception conveyed by the term "mental hygiene." The distinction between these terms is a significant one. The term psychopathic lays the emphasis upon the variation from normality,

¹Read before the Illinois Society of Criminal Law and Criminology, Danville, Ill., May, 1917.

²M. D., Criminologist and Director Juvenile Psychopathic Institute, Department of Public Welfare, Illinois.

whereas the term mental hygiene emphasizes the maintenance of mental health.

Whether the one or the other term be preferred it is clear that the very fact that such discussions as the present one are possible indicates an ever increasing tendency on the part of the law to regard the cases brought before the courts for personal or social reasons from the point of view of the physician.

This carries with it certain inevitable obligations which are changing the entire legal procedure in certain classes of cases. To make this clear it may be pointed out that there are two kinds of principles which must be observed in this connection. In the first place we must consider principles that are generally applicable to all individuals in a community; in the second place principles which have a bearing on the treatment of the single individual. Just as the *science* of medicine deals with the general principles of disease phenomena and allows certain generalizations which are applicable more or less to all cases, so the practice of medicine concerns itself primarily with the application of general principles and knowledge to suit the needs of an individual case. The biologist, therefore, is concerned with broad problems of pathology or bacteriology and similar branches of science. He is interested in humanity as a manifestation of organic life.

The physician, on the other hand, is interested primarily in the problems of health of individual human beings. He considers the biological principles only in so far as they enable him to deal with the ailments of his patients. Thus the biologist has no hesitation in laying down the principle that individuals afflicted with inheritable disease should not have offspring.

The physician, on the other hand, while he may subscribe to this as a general principle, rarely will attempt to enforce it in an individual case.

The practical failure of most of the legislation authorizing the sterilization of feeble-minded persons or criminals may be explained by these reflections. Thus in New York a law was enacted a few years ago based on the best dictates of science; a law which in general applicability was sound and progressive.

A board of experts was appointed to select cases from those dependent upon public support for this operation. While they had no difficulty in finding numerous individuals who clearly came under the meaning of this law, it was a practical impossibility to enforce the latter when the details of each case came up for consideration.

These same principles which have been noted in connection with the biologist and the physician are effective in the case of the jurist and the legal practitioner.

The law concerns itself with the problems of the community and it must necessarily be generally applicable. The legal profession, on the other hand, deals with the application of general principles to individual cases. It is, therefore, not sufficient to have broad principles which cover the problems of crime and criminality, but it is necessary also to have sound principles in the administration of the laws as they affect the criminal.

Whether intentionally or not, the tendency in dealing with a specific case to concentrate attention upon the criminal rather than upon the crime is obviously on the increase.

Although the law officially deals chiefly with the "rights" of individuals and groups of individuals, it has, from time immemorial, recognized its obligation in the direction of the prevention of crime, no matter whether in so doing it has paid particular attention to the individual delinquent or to the community.

Punishment, which is prescribed by the Criminal Code and which originally was nothing more than legalized vengeance, has been disguised by a pious subterfuge to appear as a method of correction.

The effect claimed for it, except in capital cases, is that it corrects the evil tendencies in the individual by subjecting him to a bitter experience and in all cases that it serves as a deterring influence upon potential delinquents.

Whatever one may hold in regard to this statement, it is clear that by this method the law is committed not only to the adjudication of rights but to treatment of the offender whether actual or prospective.

In other words, there is inherent in this principle the same point of view which actuates the physician to undertake the treatment of a sick patient and the prevention of disease.

The only important difference between the legal and the medical point of view in this connection is that while the latter is rather humble in regard to the efficacy of its remedies and is entirely convinced of the necessity of further research and study in devising effective treatment, the jurist considers that the question of treatment has been solved long since in its essential details and that in the system of punishment and legal procedure in general he possesses an assured panacea for social ills.

Notable individual exceptions to this last statement do not seriously affect its general correctness. Throughout the civilized world there are numerous institutions with large annual budgets from public and private sources which are occupied exclusively with the investigation of the biological phenomena underlying disease, with the ultimate object of devising methods of combating the physical ailments of humanity.

With the exception of a few small laboratories, too young and in the main too poorly endowed financially to have as yet contributed important additions to our knowledge, there are no institutions which deal with legal treatment as a problem of science. Nevertheless, it is probably safe to say that there will be little progress in the application of the law in criminal cases unless the point of view of the scientific investigator becomes permanently established as a necessary adjunct to this branch of human knowledge.

Someone has justly said that "Laws are discovered, not made." If this is true anywhere, it is true in the field of criminology.

This new affiliation between law and science which has come about as a result of some of the circumstances mentioned, promises not only to provide for new methods for dealing with old, vexatious problems, but to give new life to the study of criminology because it clearly defines the objects sought.

Psychopathic work in connection with the criminal courts accomplishes two purposes. In the first place, it classifies the individual delinquent or criminal not according to the type of his act nor according to the amount of damage done, but according to the elements of his personality. In other words, it attempts to disclose the underlying causes of the particular act which brought the delinquent into court. In the second place, on a basis of such facts as this examination discloses, a plan of treatment may be devised to suit the needs of this particular individual rather than the general requirements of his type.

One of the reasons why psychopathic laboratories in connection with criminal courts are still open to objection by a large proportion of the legal profession, is probably because up to the present the emphasis has been laid almost entirely upon the classification of criminals. Such classification, while of scientific value, is after all largely academic, unless it is made the basis of treatment.

In medicine the diagnosis is apparently over-emphasized at times, at least in the eyes of the layman, merely because if once a correct diagnosis has been established the proper treatment is a comparatively obvious matter.

Not so in the law. Here, while classification is still far from what is to be desired, it is even now much better developed than are the methods of treatment.

It is toward this latter side of the work that the energies of the community must be bent so that the scientific classification of criminals by scientists may be made of practical use to the courts.

In speaking now specifically of the organization of a psychopathic laboratory in connection with the criminal court, it must be understood that these suggestions must necessarily be tentative. The whole problem is still largely an experimental one and the best methods of dealing with it are still to be discovered.

This, however, can be accomplished only if a persistent effort is made utilizing all the facilities at present known to this branch of science and in such a way that necessary improvements can be applied whenever it is found expedient to do so.

This means that whatever organization may be decided upon must have a large element of elasticity so that it can adapt itself to changing needs and to new facts as they are discovered.

The first consideration in organizing such a laboratory is the consideration that scientific research has come to be dependent upon adequate organization much as has advance in any other human activity.

Always excepting the appearance of a genius of the first magnitude, who may be able to achieve impressive results with the meagerest equipment and under the most unfavorable conditions, it may be said that the returns of scientific research are directly proportionate to the magnitude of the attack made upon the problems. In this field, as in any other field of science, a small investment both in regard to actual money and in regard to the number and intelligence of the workers, will yield small results.

Just as in wars there was a time when a champion could in single combat decide the fate of a whole people, so there has been a time, not so long ago, when in science a single worker, armed with nothing more than a well-filled fountain pen, could achieve results of compelling significance.

The enormous advance of science in the last generation has made this method, if not impossible, at least very uncertain.

The domain of mental science presents even greater difficulties than those of almost any other branch of science. The average methods of investigation are delicate, the technique is difficult, the problems are illusive. Nevertheless, the results so far achieved show that in this field, as in any other, the well-established rules of scientific procedure

will yield returns if a carefully planned attack is carried out under such circumstances that the available means are sufficient to press home every advantage gained.

In order to accomplish this, it is therefore not sufficient to engage the services of a competent psychopathologist to make a personal examination of such cases as attract the attention of the judge. While such work may be of some assistance to the judge in coming to a decision in specific cases as to the responsibilities of the individual, and may often serve to modify the penalty imposed, it can never hope to satisfy the requirements. In the first place, the time taken by a conscientious examination is such as to preclude the possibility of applying this method to a sufficient number of cases to have any serious effect upon the total problem. In the second place, the work must necessarily confine itself under these conditions to an examination and preliminary classification without leaving any time to the much more important constructive work of prevention and above all, treatment.

The inference from this is obvious that the technique of this problem has now grown to such proportions that a larger organization is clearly necessary.

The work to be done by a psychopathic department in connection with the criminal court consists on the one hand in examination and classifications and on the other in treatment.

Properly to carry this out a staff of workers, instead of a single worker, is essential. But the proper functioning of such a staff requires integration, correlation of effort and therefore a co-ordination of the workers in each department under a single head. The director of this laboratory should be a psychopathologist of suitable training and experience, whose duties should be in the main those of dividing the work among the other members of the department, correlating their findings and working out general policies of examination and treatment. He should, therefore, be freed as much as possible from routine examinations so as to allow him the fullest liberty to concentrate upon the more difficult portions of the work.

He should further have the mental quality of originality so that he may stimulate and carry on research.

Under him there should be a corps of workers engaged upon the various divisions of this work. Some of these should carry out the routine mental testing and the routine psychiatric examinations. Others should specialize in physical examinations, including anthropometric examinations, metabolism studies and psychological examinations. Still others would be occupied with social problems, investiga-

tion of home environment; the history and antecedents of the individuals; problems of heredity and of education.

On the basis of knowledge accumulated by these workers, a proper classification of the individual delinquent would be possible, which would not only serve to guide the judge and other officers concerned with the adjudication of the particular circumstances at issue, but would form a basis for a sound and scientific treatment designed to correct the individual's abnormalities and to prevent the reoccurrence of delinquency in his case.

The treatment indicated, to be effective, must then be carried out under the scientific direction of this or a similar group of workers. This means that the work of such a psychopathic laboratory must be extended not only to the institutions to which some of the delinquents are committed, but to the community in case they are returned to it.

In the practical carrying out of this work a close relationship between the psychopathic laboratory and those agencies which deal with the delinquents in the community and in the institutions will be necessary. The first step in this direction would be to co-ordinate the probation department and other social service departments now connected officially or unofficially with the courts with the laboratory.

This arrangement means the enlarging of the psychopathic laboratory so as to include specialists in various types of the work, such as psychopathology, psychology, psychiatry and the various lines of social work and education.

The number of these workers must, in principle, depend not upon the size of the appropriation that one is able to obtain from the authorities, but upon the number of cases brought into court. If this sort of examination is of value at all it should be applied to all the cases in the community. The selection of individuals for intensive work should not be left to chance but should be made as the result of definite findings after a suitable examination by experts.

In the work with syphilis a similar situation has existed. On account of the stigma attached to this disease, and on account of the delicate and difficult technique, the selection of the cases has often been made on the basis of social or personal factors with the result that a large number of individuals have been permitted to continue without treatment so long that when the disease was finally discovered the attempts at treatment have failed.

In the more progressive clinics it has long since been the custom to make no selection in regard to the tests, but to examine every patient admitted. The result of the test frequently has disclosed the

presence of the disease in cases in which it might otherwise not have been even suspected until years later, and has made possible an early and effective treatment.

Just so with the mental examination. The time will undoubtedly come when the old methods of education will have been so improved as to include as routine measures, mental surveys of each child during its earliest school years, at a time when logical method of treatment based upon definite knowledge may be counted upon to yield maximum returns.

The extent of such a routine, preliminary examination and the exact methods to be adopted will, of course, vary from time to time as new knowledge is acquired; but these details must be left to the staff of the laboratory to determine.

We would have then a psychopathic laboratory or institute working as a scientific organization, to determine specific impersonal facts in regard to the individuals brought before the bar of justice.

On the basis of the facts determined, just as definite and impersonal recommendations may be made and these finally presented to the judge who may then use this information according to his best judgment in the individual case. If legal treatment is decided upon, the judge will have the means for carrying it out. At his order the various workers in the probation department, the social service department or those on the medical staff of the laboratory may proceed to carry out a logical and scientific treatment, based not upon generalities, but upon definite knowledge of the particular individual concerned.

The equipment necessary for this work consists in the first place of a staff large enough to perform the actual work required in the way of testing and examination; suitable quarters for this work and the necessary apparatus and scientific equipment. This will include, of course, suitable clerical help, so that minute records may be kept which are of importance not only in connection with the individual case, but also in working out generalizations upon which the broad policies may be based.

So long as this work is confined to a single court or a group of courts located in the same building, this laboratory may be located in rooms adjoining the courts. This arrangement, however, has one drawback. In performing these examinations it is very often not possible for a single application of tests to solve all the most important mental problems presented. After all the problem is one of behavior-

istic psychology. Great emphasis must be placed for a long time to come upon the history and career of the individual.

It is almost the rule in cases in which litigation of one kind or another occurs that an objective knowledge of the actual facts is difficult if not impossible to obtain. Under such circumstances it is always essential that there be provision for the observation of problem cases under environmental conditions which are standardized and under the control of the scientific organization.

The behavior and reactions of the individuals placed in such an environment become significant, whereas under the haphazard conditions of the community at large their evaluation would be impossible.

Such a scientific observation, for a period often not exceeding ten days, or at most a month, proves frequently a shortcut to the elucidation of social problems which might take years under the ordinary conditions of community life to determine, and yet it is often just these social questions which form the most important features of many of these cases, and the failure to elucidate them and to evaluate them properly often prevents adequate disposition of the cases.

To meet this condition it is necessary to establish in connection with the psychopathic laboratory of the court a detention ward or home which should be under the direct authority of the scientific staff. In such an institution, even the entire routine of the inmates' lives can be made to yield significant facts. If properly officered by suitably trained nurses and attendants, such an institution could offer as an instrument for scientific investigation definitely pre-arranged conditions. An observation in such an environment would yield information in regard to the presence or absence of definite psychopathic traits, of inherent anti-social trends, facts in regard to the development of the individuals, whether depressed or optimistic, whether inhibited or retarded, whether hyperkinetic or active; whether friendly and affectionate or sulky, suspicious and hostile; whether truthful or dishonest, simple or complex in character. Furthermore, such an observation would offer the opportunity to make more extensive investigations than are possible at the court itself in the hurried proceedings produced by the numerous cases on the calendar.

Finally the observation period carries with it an important advantage in that the scientific examinations may be made at the time most favorable for performing the same. It would be possible to put the patient into a suitable frame of mind to co-operate with the examiner or clearly to show that such co-operation was not to be obtained.

Such an institution could, furthermore, be made to serve not one

court or a small group of courts, but all the courts in the community dealing with criminal cases. If such an institution is established, organization of this department could be made to resemble in general the organization of the medical service of the army.

The institution would represent a field hospital with first aid stations at the courts themselves. The court work could be reduced to a much simpler routine so that a single worker could pass upon a much larger number of cases during a given time than is possible if his work represents the entire psychopathic work in connection with every case. He would act, then, largely as a preliminary diagnostician. He could quickly determine whether the case presented required a more extended examination or not. In those cases which would not require such examination legal disposition could be made at once, and thus the work of the court would be expedited.

Those cases in which more extensive examination was recommended, could be continued and the delinquents sent to the observation station, where a further investigation could be made in the most economical fashion without undue haste.

From this observation station the individuals could then be returned to the court for disposition in accordance with the findings. The disposition made by the court then would be either the discharge of the individual or the return of the delinquent to the community under the authority of the follow-up and after-care departments, which would act through the probation department or social service agencies; or the court could commit the individual to the custodial institutions, which would be the analogue of base hospitals in the military medical service.

This arrangement would emphasize a branch of the court work which at present is recognized as important, but has not yet been developed to the extent necessary adequately to fulfill its purpose.

That is, the after-care which deals with the rehabilitation of the individual and with prevention, should become an important and purposeful branch of the court's activities. The officials carrying out the orders of the court in this regard would act under the authority and in close association with the psychopathologist at the central observation station.

As a logical consequence of this arrangement the observation station would provide a service similar to that of the dispensary of a hospital; a place where any one in need could consult the experts without any legal formalities. Wherever this has been tried out it has been found that contrary to the expectations of many, there are

large numbers of individuals in the community, whether primarily psychopathic or primarily delinquent, who are not only willing but often desirous of consulting with any one who holds out the hope of correcting their defects.

This experience, in spite of the cynical attitude of many concerned with the problem of crime, has served to strengthen the contention that with the exception of a small group of psychopathic individuals of the paranoid type who have a definite and inherent anti-social trend, the majority of mankind, even those who persist in getting into difficulties with the law, have a fundamental desire to do right. Such individuals, therefore, when they do get into trouble find themselves in unpleasant situations not as a result of any intentional evil doing, but as the result of some lack in their mental or physical equipment.

This may be nothing more than a poor memory, a weak will, an increased suggestibility or poor judgment.

It is of particular importance in connection with these individuals to note the fact that unpleasant experiences or even suffering do not in any way correct their innate defects. To attempt, therefore, to deal with these individuals on the principle that if the ordinary terrifying experiences of community life have failed a more terrible experience will act as a deterrent, is foredoomed to failure.

There is little doubt in the minds of competent specialists that these older methods have been tried extensively and for a long time with, on the whole, unsatisfactory results. The continued reliance of the law on the efficacy of treatment by punishment can therefore be explained only on the basis of conservatism and perhaps an instinctive reliance upon the principle of vengeance. That this latter still plays an important role in the minds of many is evidenced by a recent editorial in the public press against what was termed "mushy justice." It takes considerable courage on the part of a judge, in the face of the popular opposition on the part of the general public to the sympathetic treatment of the criminal, to employ the modern methods of treatment based on scientific investigation of the individuals.

The opposition has been able to adduce some evidence unfavorable to the psychopathic laboratory in connection with the criminal court. This has been due in part to the fact that every self-styled psychopathologist is not necessarily competent to perform this service.

But, in the main, it is probably due to the fact that the experiment of including psychopathic work in the regular court proceedings

has not as yet been tried out on such a scale as to make success certain.

We are dealing with a problem which in numbers affected and the money value of property involved is second in magnitude not even to the present world war. An attack upon this must be made with sufficient preparation and on a sufficiently large scale to be commensurate with the difficulties and magnitude of the objective.

In order to gain the results absolutely necessary, the community must become accustomed to the idea that nothing but a first class organization can hope to accomplish anything more than trivial results. It is probable that the official treasury of state or municipality will not for some time to come be able to bear the burden of this work. Chicago leads the entire country in the establishment of a psychopathic laboratory in connection with the courts. The Juvenile Psychopathic Institute and the Psychopathic Laboratory of the Municipal Court were the first of their kind to be established in this country. They have been copied extensively elsewhere since their establishment.

In each case the expenses were defrayed for a number of years by private individuals. The idea underlying this unselfish public service was that if a demonstration could be made it would serve as such a compelling object lesson that the community would be forced to continue the work at its own expense. We are now confronted by the necessity of increasing largely the size and scope of these organizations. In order to accomplish this it will be necessary again to make a public demonstration. This can be hoped for only as private means will again come to the rescue of the community in showing officials and laymen what their duties are in regard to an important group of individuals whose activities represent a total annual loss in life and property, which is greater here in Chicago than almost anywhere else in the country.

The Rockefeller Foundation has pointed the way by establishing its research institute in close co-operation with the Bedford Hills Reformatory for Women. It has recently established a similar institute in connection with the Sing Sing State Prison in New York. In Boston the Judge Baker Foundation has just put ample means at the disposal of Dr. Healy to inaugurate psychopathic work similar to that done by him in connection with the Juvenile Psychopathic Institute in Chicago during the past nine years.

If, as seems likely, the community will not undertake this burden, whether because of a difference of opinion in regard to its efficacy

or whether as a result of insufficient information on the subject, it will be necessary for private philanthropies to at least temporarily supply this need. Nowhere is this more important than in the case of the juvenile offenders, whether at the Juvenile Court or at the Municipal or Criminal Courts.

The earlier in life these methods are applied the better the chances of good results. The world war recently has been frequently given as a cause for the suspension or postponement of such efforts as these. The experience in England during the first two years of this war has conclusively demonstrated the necessity not only of continuing all relief efforts and educational standards in connection with minors, but of actually increasing them.

The problem of criminality, particularly of juvenile criminality, is one which becomes of the utmost importance during the time of national peril. Mr. Cecil Leeson in "The Child and the War" has the following to say: "Even for adults the world of the moment is a harder place to dwell in than it was two years ago; it is not likely to be less hard for inexperienced children from whom guidance is withheld."

In 1915 Juvenile delinquency increased in England, as a whole, 34 per cent, while in the larger cities it increased from 46 per cent to 56 per cent.

If in times of peace we are urgently concerned in coping with the increased magnitude of the problem of delinquents, it is obvious that in a time of war the obligation upon us is binding. It is time that we discarded the old and unsuccessful methods of the past.

In joining forces with the scientific worker and availing ourselves of the new methods that result from the psychopathic examination of delinquents, not only in the obtaining of a better understanding of the individual but in the recognition and treatment of his failings, we put ourselves in the position of obtaining new resources and more powerful instruments in attacking and overcoming one of the most important obstacles to the progress of civilization.