

Verdict Guilty — Now What?



Papin

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A distinguished psychiatrist explains why our present method of punishing criminals is "an utter failure" and suggests a more scientific—and less extravagant—way to deal with them.

SINCE ancient times criminal law and penology have been based upon what is called in psychology the pain-pleasure principle. There are many reasons for inflicting pain—to urge an animal to greater efforts, to retaliate for pain received, to frighten, or to indulge in idle amusement. Human beings, like all animals, tend to move away from pain and toward pleasure. Hence the way to control behavior is to reward what is "good" and punish what is "bad." This formula pervades our programs of child-rearing, education, and the social control of behavior.

With this concept three out of four readers will no doubt concur.

"Why, of course," they will say. "Only common sense. Take me for example. I know the speed limit and the penalty. Usually I drive moderately because I don't want to get a ticket. One afternoon I was in a hurry; I had an appointment, I didn't heed the signs. I did what I knew was forbidden and I got caught and received the punishment I deserved. Fair enough. It taught me a lesson. Since then I drive more slowly in that area. And surely people are deterred from cheating on their income taxes, robbing banks, and committing rape by the fear of punishment. Why, if we didn't have these crime road blocks we'd have chaos!"

This sounds reasonable enough and describes what most people think—*part of the time*. But upon reflection we all know that punishments and the threat of punishments do *not* deter *some* people from doing forbidden things. Some of them take a chance on not being caught, and this chance is a very good one, too, better than five to one for most crimes. Not even the fear of possible death, self-inflicted, deters some speedsters. Exceeding the speed limit is not really regarded as criminal behavior by most people, no matter how dangerous and self-destructive. It is the kind of a "crime" which respectable members of society commit and condone. This is not the case with rape, bank-robbing, check-forging, vandalism, and the multitude of offenses for which the prison penalty system primarily exists. And from these offenses the average citizen, including the reader, is deterred by quite different restraints. For most of us it is our conscience, our self-respect, and our wish for the good opinion of our neighbors which are the determining factors in controlling our impulses toward misbehavior.

Today it is no secret that our official, prison-threat theory of crime control is an utter failure. Criminologists have known this for years. When pocket-picking was punishable by hanging, in England, the crowds that gathered about the gallows to enjoy the spectacle of an execution were particularly likely to have their pockets picked by skillful operators who, to say the least, were not deterred by the exhibition of "justice." We have long known that the perpetrators of most offenses are never detected; of those detected, only a fraction are found guilty and still fewer serve a "sentence." Furthermore, we are quite certain now that of those who do receive the official punishment of the law, many become firmly committed thereby to a continuing life of crime and a continuing feud with law enforcement officers. Finding themselves ostracized from society and blacklisted by industry they stick with

the crowd they have been introduced to in jail and try to play the game of life according to this set of rules. In this way society skillfully converts individuals of borderline self-control into loyal members of the underground fraternity.

The science of human behavior has gone far beyond the common sense rubrics which dictated the early legal statutes. We know now that one cannot describe rape or bank-robbing or income-tax fraud simply as pleasure. Nor, on the other hand, can we describe imprisonment merely as pain. Slapping the hand of a beloved child as he reaches to do a forbidden act is utterly different from the institutionalized process of official punishment. The offenders who are chucked into our county and state and federal prisons are not anyone's beloved children; they are usually unloved children, grown-up physically but still hungry for human concern which they never got or never get in normal ways. So they pursue it in abnormal ways—abnormal, that is, from *our* standpoint.

WHY OUR CRIME THERAPY HAS FAILED

WHAT might deter the reader from conduct which his neighbors would not like does not necessarily deter the grown-up child of vastly different background. The latter's experiences may have conditioned him to believe that the chances of winning by undetected cheating are vastly greater than the probabilities of fair treatment and opportunity. He knows about the official threats and the social disapproval of such acts. He knows about the hazards and the risks. But despite all this "knowledge," he becomes involved in waves of discouragement or cupidity or excitement or resentment leading to episodes of social offensiveness.

These episodes may prove vastly expensive both to him and to society. But sometimes they will have an aura of success. Our periodicals have only recently described the wealth and prominence for a time of a man described as a murderer. Konrad Lorenz, the great psychiatrist and animal psychologist, has beautifully described in geese what he calls a "triumph reaction." It is a sticking out of the chest and flapping of the wings after an encounter with a challenge. All of us have seen this primitive biological triumph reaction—in some roosters, for example, in some businessmen and athletes and others—and in some criminals.

In general, though, the gains and goals of the social offender are not those which most men

seek. Most offenders whom we belabor are not very wise, not very smart, not even very "lucky." It is not the successful criminal upon whom we inflict our antiquated penal system. It is the unsuccessful criminal, the criminal who really doesn't know how to commit crimes, and who gets caught. Indeed, until he is caught and convicted a man is technically not even called a criminal. The clumsy, the desperate, the obscure, the friendless, the defective, the diseased—these men who commit crimes that do not come off—are bad actors, indeed. But they are not the professional criminals, many of whom occupy high places. In some instances the crime is the merest accident or incident or impulse, expressed under unbearable stress. More often the offender is a persistently perverse, lonely, and resentful individual who joins the only group to which he is eligible—the outcasts and the anti-social.

And what do we do with such offenders? After a solemn public ceremony we pronounce them enemies of the people, and consign them for arbitrary periods to institutional confinement on the basis of laws written many years ago. Here they languish until time has ground out so many weary months and years. Then with a planlessness and stupidity only surpassed by that of their original incarceration they are dumped back upon society, regardless of whether any change has taken place in them for the better and with every assurance that changes have taken place in them for the worse. Once more they enter the unequal tussle with society. Proscribed for employment by most concerns, they are expected to invent a new way to make a living and to survive without any further help from society.

Intelligent members of society are well aware that the present system is antiquated, expensive, and disappointing, and that we are wasting vast quantities of manpower through primitive methods of dealing with those who transgress the law. In 1917 the famous Wickersham report of the New York State Prison Survey Committee recommended the abolition of jails, the institution of diagnostic clearing houses or classification centers, the development of a diversified institutional system and treatment program, and the use of indeterminate sentences. *Forty-two years have passed.* How little progress we have made! In 1933 the American Psychiatric Association, the American Bar Association, and the American Medical Association officially and jointly recommended psychiatric service for every criminal and juvenile court to assist the court and prison and parole officers with all offenders.

That was twenty-six years ago! Have these

recommendations been carried out anywhere in the United States? With few exceptions offenders continue to be dealt with according to old-time instructions, written by men now dead who knew nothing about the present offender, his past life, the misunderstandings accumulated by him, or the provocation given to him.

The sensible, scientific question is: What kind of treatment could be instituted that would deter him or be most likely to deter him? Some of these methods are well known. For some offenders who have the money or the skillful legal counsel or the good luck to face a wise judge go a different route from the prescribed routine. Instead of jail and deterioration, they get the sort of re-education and re-direction associated with psychiatric institutions and the psychiatric profession. Relatively few wealthy offenders get their "treatment" in jail. This does not mean that justice is to be bought, or bought off. But it does mean that some offenders have relatives and friends who *care* and who try to find the best possible solution to the problem of persistent misbehavior, which is NOT the good old jail-and-penitentiary and make-'em-sorry treatment. It is a reflection on the democratic ideals of our country that these better ways are so often—indeed, *usually*—denied to the poor, the friendless, and the ignorant.

SCIENCE VERSUS TRADITION

IF WE were to follow scientific methods, the convicted offender would be detained indefinitely pending a decision as to whether and how and when to reintroduce him successfully into society. All the skill and knowledge of modern behavioral science would be used to examine his personality assets, his liabilities and potentialities, the environment from which he came, its effect upon him, and his effects upon it.

Having arrived at some diagnostic grasp of the offender's personality, those in charge can decide whether there is a chance that he can be re-directed into a mutually satisfactory adaptation to the world. If so, the most suitable techniques in education, industrial training, group administration, and psychotherapy should be selectively applied. All this may be best done extramurally or intramurally. It may require maximum "security" or only minimum "security." If, in due time, perceptible change occurs, the process should be expedited by finding a suitable spot in society and industry for him, and getting him out of prison control and into civil status (with parole control) as quickly as possible.

The desirability of moving patients out of institutional control swiftly is something which we psychiatrists learned the hard way, and recently. Ten years ago, in the state hospital I know best, the average length of stay was five years; today it is three months. Ten years ago few patients were discharged under two years; today 90 per cent are discharged within the first year. Ten years ago the hospital was overcrowded; today it has eight times the turnover it used to have; there are empty beds and there is no waiting list.

But some patients do not respond to our efforts, and they have to remain in the hospital, or return to it promptly after a trial home visit. And if the *prisoner*, like some of the psychiatric patients, cannot be changed by genuine efforts to rehabilitate him, we must look *our* failure in the face, and provide for his indefinitely continued confinement, regardless of the technical reasons for it. This we owe society for its protection.

There will be some offenders about whom the most experienced are mistaken, both ways. And there will be some concerning whom no one knows what is best. There are many problems for research. But what I have outlined is, I believe, the program of modern penology, the program now being carried out in some degree in California and a few other states, and in some of the federal prisons.

This civilized program, which would save so much now wasted money, so much unused manpower, and so much injustice and suffering, is slow to spread. It is held back by many things—by the continued use of fixed sentences in many places; by unenlightened community attitudes toward the offender whom some want tortured; by the prevalent popular assumption that burying a frustrated individual in a hole for a short time will change his warped mind, and that when he is certainly worse, he should be released because his "time" has been served; by the persistent failure of the law to distinguish between crime as an accidental, incidental, explosive event, crime as a behavior pattern expressive of chronic unutterable rage and frustration, and crime as a business or elected way of life. Progress is further handicapped by the lack of interest in the subject on the part of lawyers, most of whom are proud to say that they are not concerned with criminal law. It is handicapped by the lack of interest on the part of members of my own profession. It is handicapped by the mutual distrust of lawyers and psychiatrists.

The infestation or devil-possession theory of mental disease is an outmoded, pre-medieval con-

cept. Although largely abandoned by psychiatry, it steadfastly persists in the minds of many laymen, including, unfortunately, many lawyers.

On the other hand, most lawyers have no really clear idea of the way in which a psychiatrist functions or of the basic concepts to which he adheres. They cannot understand, for example, why there is no such thing (for psychiatrists) as "insanity." Most lawyers have no conception of the meaning or methods of psychiatric case study and diagnosis. They seem to think that psychiatrists can take a quick look at a suspect, listen to a few anecdotes about him, and thereupon be able to say, definitely, that the awful "it"—the dreadful miasma of madness, the loathsome affliction of "insanity"—is present or absent. Because we all like to please, some timid psychiatrists fall in with this fallacy of the lawyers and go through these preposterous antics.

AS THE PSYCHIATRIST SEES IT

IT IS true that almost any offender—like anyone else—when questioned for a short time, even by the most skillful psychiatrist, can make responses and display behavior patterns which will indicate that he is enough like the rest of us to be called "sane." But a barrage of questions is not a psychiatric examination. Modern scientific personality study depends upon various specialists—physical, clinical, and sociological as well as psychological. It takes into consideration not only static and presently observable factors, but dynamic and historical factors, and factors of environmental interaction and change. It also looks into the future for correction, re-education, and prevention.

Hence, the same individuals who appear so normal to superficial observation are frequently discovered in the course of prolonged, intensive scientific study to have tendencies regarded as "deviant," "peculiar," "unhealthy," "sick," "crazy," "senseless," "irrational," "insane."

But now you may ask, "Is it not possible to find such tendencies in any individual if one looks hard enough? And if this is so, if we are all a little crazy or potentially so, what is the essence of your psychiatric distinctions? Who is it that you want excused?"

And here is the crux of it all. We psychiatrists don't want *anyone* excused. In fact, psychiatrists are much more concerned about the protection of the public than are the lawyers. I repeat; psychiatrists don't want anyone excused, certainly not anyone who shows anti-social tendencies.

We consider them all responsible, which lawyers do not. And we want the prisoner to take on that responsibility, or else deliver it to someone who will be concerned about the protection of society and about the prisoner, too. We don't want anyone excused, but neither do we want anyone stupidly disposed of, futilely detained, or prematurely released. We don't want them tortured, either sensationally with hot irons or quietly by long-continued and forced idleness. In the psychiatrist's mind nothing should be done in the name of punishment, though he is well aware that the offender may regard either the diagnostic procedure or the treatment or the detention incident to the treatment as punitive. But this is in *his* mind, not in the psychiatrist's mind. And in our opinion it should not be in the public's mind, because it is an illusion.

It is true that we psychiatrists consider that all people have potentialities for antisocial behavior. The law assumes this, too. Most of the time most people control their criminal impulses. But for various reasons and under all kinds of circumstances some individuals become increasingly disorganized or demoralized, and then they begin to be socially offensive. The man who does criminal things is less convincingly disorganized than the patient who "looks" sick, because the former more nearly resembles the rest of us, and seems to be indulging in acts that we have struggled with and controlled. So we get hot under the collar about the one and we call him "criminal" whereas we pityingly forgive the other and call him "lunatic." But a surgeon uses the same principles of surgery whether he is dealing with a "clean" case, say some cosmetic surgery on a face, or a "dirty" case which is foul-smelling and offensive. What we are after is results and the emotions of the operator must be under control. Words like "criminal" and "insane" have no place in the scientific vocabulary any more than pejorative adjectives like "vicious," "psychopathic," "bloodthirsty," etc. The need is to find all the *descriptive* adjectives that apply to the case, and this is a scientific job—not a popular exercise in name-calling. Nobody's insides are very beautiful; and in the cases that require social control there has been a great wound and some of the insides are showing.

Intelligent judges all over the country are increasingly surrendering the onerous responsibility of deciding in advance what a man's conduct will be in a prison and how rapidly his wicked impulses will evaporate there. With more use of the indeterminate sentence and the establishment of scientific diagnostic centers,

we shall be in a position to make progress in the science of *treating* anti-social trends. Furthermore, we shall get away from the present legal smog that hangs over the prisons, which lets us detain with heartbreaking futility some prisoners fully rehabilitated while others, whom the prison officials know full well to be dangerous and unemployable, must be released, *against our judgment*, because a judge far away (who has by this time forgotten all about it) said that five years was enough. In my frequent visits to prisons I am always astonished at how rarely the judges who have prescribed the "treatment" come to see whether or not it is effective. What if doctors who sent their seriously ill patients to hospitals never called to see them!

THE END OF TABOO

AS MORE states adopt diagnostic centers directed toward getting the prisoners out of jail and back to work, under modern, well-structured parole systems, the taboo on jail and prison, like that on state hospitals, will begin to diminish. Once it was a lifelong disgrace to have been in either. Lunatics, as they were cruelly called, were feared and avoided. Today only the ignorant retain this phobia. Cancer was then considered a *shameful* thing to have, and victims of it were afraid to mention it, or have it correctly treated, because they did not want to be disgraced. The time will come when offenders, much as we disapprove of their offenses, will no longer be unemployable untouchables.

To a physician discussing the wiser treatment of our fellow men it seems hardly necessary to add that under no circumstances should we kill them. It was never considered right for doctors to kill their patients, no matter how hopeless their condition. True, some patients in state institutions have undoubtedly been executed without benefit of sentence. They were a nuisance, expensive to keep and dangerous to release. Various people took it upon themselves to put an end to the matter, and I have even heard them boast of it. The Hitler regime had the same philosophy.

But in most civilized countries today we have a higher opinion of the rights of the individual and of the limits to the state's power. We know, too, that for the most part the death penalty is inflicted upon obscure, impoverished, defective, and friendless individuals. We know that it intimidates juries in their efforts to determine guilt without prejudice. We know that it is being eliminated in one state after another, most

recently Delaware. We know that in practice it has almost disappeared—for over seven thousand capital crimes last year there were less than one hundred executions. But vast sums of money are still being spent—let us say wasted—in legal contests to determine whether or not an individual, even one known to have been mentally ill, is now healthy enough for the state to hang him. (I am informed that such a case has recently cost the State of California \$400,000!)

Most of all, we know that no state employees—except perhaps some that ought to be patients themselves—want a job on the killing squad, and few wardens can stomach this piece of medievalism in their own prisons. For example, two officials I know recently quarreled because each wished to have the hanging of a prisoner carried out on the other's premises.

Capital punishment is, in my opinion, morally wrong. It has a bad effect on everyone, especially those involved in it. It gives a false sense of security to the public. It is vastly expensive. Worst of all it beclouds the entire issue of motivation in crime, which is so importantly relevant to the question of what to do for and with the criminal that will be most constructive to society as a whole. Punishing—and even killing—criminals may yield a kind of grim gratification; let us all admit that there are times when we are so shocked at the depredations of an offender that we persuade ourselves that this is a man the Creator didn't intend to create, and that we had better help correct the mistake. But playing God in this way has no conceivable moral or scientific justification.

Let us return in conclusion to the initial question: "Verdict guilty—now what?" My answer is that now we, the designated representatives of the society which has failed to integrate this man, which has failed him in some way, hurt him and been hurt by him, should take over. It is *our* move. And our move must be a constructive one, an intelligent one, a purposeful one—not a primitive, retaliatory, offensive move. We, the agents of society, must move to end the game of tit-for-tat and blow-for-blow in which the offender has foolishly and futilely engaged himself and us. We are not driven, as he is, to wild and impulsive actions. With knowledge comes power, and with power there is no need for the frightened vengeance of the old penology. In its place should go a quiet, dignified, therapeutic program for the rehabilitation of the disorganized one, if possible, the protection of society during his treatment period, and his guided return to useful citizenship, as soon as this can be effected.