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Hillsdale College Hillsdale, Michigan 49242 Vol. 3, No. 8
August 1974

CRIME, CORRECTION AND PSYCHIATRY

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This presentation was given at Hillsdale College, during the Center for Constructive Alternatives seminar which examined "Crime and Punishment: The American Judicial System."

"The law," said the famous 19th Century economist, statesman and author, Frederic Bastiat, "is the collective organization of the individual right to lawful defense."

This is the starting point from which I'll deal with the subject of persons who violate the law and our treatment of these violators. Bastiat went on to add that while each of us has the right to defend his person, his liberty, and his property, man has a natural inclination to avoid pain, and as such will resort to plunder whenever plunder is easier than work. Man does not have to be taught to get into mischief, as anyone who has been around children quickly observes. You simply don't have to teach them to do the wrong thing. Because of this "inborn error of morality," there is but a thin veneer between the civilized society and "the jungle."

In the American system, there are four main lines of defense between the free society and chaos. They are as follows: (1) the lawmaker or legislator, legislators being a kind of "collective conscience" for the society; (2) the police officer, the individuals empowered by the lawmakers to enforce the laws duly created; (3) the judicial system, designed to administer justice; (4) the penal system, the last line of demarcation between order and disorder.

Psychiatry first becomes involved when we start to deal with the judicial system. The psychiatrist really came into his own during the 20th Century, though there were some earlier ancestors of the profession cloaked in other disguises. Some persons view psychiatry as a science, but this definition leaves a great deal of doubt in the minds of many. Perhaps a more accurate description of the profession would be to think of it as a group of individuals, trained in human behavior, who engage in "educated guesswork." In this connection, Dr. Karl Menninger says psychiatry is really a "method" rather than a group of medical specialists. Interestingly, society has bestowed upon the modern profession many powers and privileges. In the tribal societies, such powers were generally reserved for the witch doctor.

In a letter to Dr. Benjamin Rush, Thomas Jefferson wrote the following: "They (the clergy) believe that any portion of power confided in me will be exerted in opposition to their schemes. And they believe truly, for I have sworn upon the altar of God eternal hostility against every form of *tyranny over the mind of man"* [italics added]. If we simply insert "psychiatrist" instead of "clergy," we can readily see how far-sighted Jefferson really was. To be sure, psychiatrists are in a position to exert "tyranny over the mind of man," as has been so graphically demonstrated in the Soviet Union.

Psychiatry is often called into play even prior to the trial of one charged with a crime. If the question is raised as to one's competency to stand trial, a psychiatric evaluation is ordered. Requests for evaluation are often vague and confusing. The psychiatrist may be asked to describe the defendant in legal terms, rather than psychiatric ones. In a protocol, designed by the Suffolk Superior Court Clinic in Massachusetts, the word "mental condition" was substituted for "criminal responsibility," thereby limiting the psychiatrist to describing a condition well within his field of expertise. No comments regarding probation were to be allowed the psychiatrist since this was to be a judiciary decision. Even the word "dangerousness" was omitted because of its potential vagueness.

If the individual is deemed "incompetent," he may then be held in custody until he is determined to be "competent." A recent monumental Supreme Court decision has held that a person may not be kept in custody for a length of time exceeding that for which the individual might have been incarcerated if convicted of the crime charged. Prior to this landmark decision, a defendant charged with a crime could have been held indefinitely, based exclusively upon the opinion of the "psychiatric expert." We

im•pri•mis (ĭm-prī′ mĭs) adv. In the first place. Middle English, from Latin in primis, among the first (things). . .

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must always be alert to the possible abuse of this power.

Who Defines "Insanity"?

A problem also arises in regard to the use of the psychiatrist at another step in the judicial level. Assuming a defendant has been deemed competent, but the issue of insanity has been raised, the psychiatrist again enters the picture. In the state of Indiana, the law defines "insanity" as follows: "A person is not responsible for criminal conduct if at the time of such conduct, as a result of mental disease or

defect, he lacks the substantial capacity either to appreciate the wrongfulness of his conduct, or to conform his conduct to the requirements of the law." Note the phrases "substantial capacity," "wrongfulness," and "to conform his conduct." There is obviously nothing objective about these definitions, yet the future of the defendant rests upon an opinion dealing with these intangibles.

Though there are variations of this definition in different jurisdictions on a national level, it is fairly representative of the majority view of "insanity" in our courts today. The power granted the psychiatrist again becomes most evident. Fortunately, there is at least one very practical check built into the system. The defendant is still judged by a jury of his peers and they may elect (and often do) to reject the opinion of the psychiatric expert.

It's an interesting commentary on the American system to note that in our society only "mentally healthy" or sane persons can be punished, incarcerated, or executed. According to the law, the "insane" suspect lacks the *mens rea* or "guilty mind," and the law says he will not be treated the same as an individual who has the "criminal intent." If the psychiatrist testifies that a defendant is sane (whatever that means), the court is then free to convict and sentence him.

The courts are placed in the position of being the punitive parent. If the child (defendant) misbehaves (violates the law), then the parent (court) is compelled to punish (sentence) him. Yet, in our analogy, we say that if the child broke the rules, but did not do so "with a guilty mind," then he isn't to be punished. Instead of sending him to prison, we hospitalize him, involuntarily. While this is deemed "non-punishment" by society, the individual is denied his personal liberty and his property. It is my contention that use of the psychiatrist in the court room offers very little to any of the parties involved. The "battle of the experts" becomes a frequent game in the adversary system and it generally allows the jury to decide guilt or innocence with some "expert" support. In reality, it allows the jury to dilute their feeling of guilt or responsibility in "punishing the child."

Let's look at how the system might be abused at the judicial level. Suppose the arresting officer decides a particular individual is "an enemy of the state" and arrests him for the alleged commission of a crime. If the psychiatrist, in his determination, decided that this "enemy" was incompetent, he could be involuntarily hospitalized for at least a duration of time equal to that of the would-be sentence. If the judge (not the jury) decides the defendant is incompetent to stand trial, the defendant may be subjected to "treatment" against his wishes. The potential danger in this kind of situation is obviously very great. As noted previously, this is apparently what's happening in Russia today. A basic difference between Russia and the United States is that our recent Supreme Court case limits the duration of the involuntary hospitalization.

Psychiatrist's "Perplexity"

Going back to our original model, we find that society has not only allowed the psychiatrist to enter the judicial arena, but has also encouraged him to become involved in the prison system. Our prisons represent the second major area of defense in which the psychiatric profession is allowed to function with minimal restraint. Dr. Seymour Halleck, professor of psychiatry at the University of North Carolina and author of numerous articles and books on criminology and psychiatry, recently expressed his "perplexity" about the willingness of psychiatrists to render opinions as to an offender's competency to stand trial, or lack of guilt by reason of insanity, yet be reluctant to treat those same offenders whose behavior is so clearly maladaptive. Frankly, I don't share his confusion. I'll comment on this later.

The Philadelphia Quakers first conceived of a penitentiary system back in the 18th Century. They developed it as a radical departure from the treatment of the times which included such things as floggings, executions, and pillorying. Psychiatry was not a part of the treatment regimen at the time of the penal system's inception. While the original intent of the Quakers was to allow the criminal to repent of his sins and be penitent, the goal of today's penal institution is probably much different. There is much talk about the purpose of penal institutions as being one of rehabilitation. If this really is the primary goal of our prisons, then the institutions are an abysmal failure. Realistically, it would appear that our prisons have functions other than to rehabilitate.

Turning back to Dr. Halleck's "perplexity" about the lack of interest on the part of psychiatrists toward the treatment of the criminal element, we might look at the situation a little more closely. Dr. Halleck pointed out that there were more psychiatrists working in prisons in the 1930's than there were in the 1960's. He found this a "shameful" commen-

tary on the profession. Just how shameful is it really?

The psychiatric profession has been something less than successful in simply treating the individual with an alcohol problem, let alone trying to unravel the workings of the criminal mind. If we cannot successfully treat the alcoholic, what psychiatric expert would have the audacity to suggest that he could be more successful with individuals who have demonstrated an even greater deviation from the acceptable norms of human behavior?

Secondly, in regard to recruiting staff to work with inmates, one has to take a rather realistic appraisal of that situation also. If a psychiatrist is a "successful" practitioner of his profession, what would be his motivation toward working with a prison clientele? When one can work in a nice office with highly motivated and readily treatable patients, who would choose the gray walls of the prison environment with a patient population that was anything but motivated toward utilizing or appreciating one's services? Not only would one have to be especially motivated to work with a very unique segment of the population, but one's patience and tolerance levels would have to be remarkably high. Is it any wonder that psychiatric population in prisons decreased in the 1960's as compared with the 1930's?

Profession's Impact Limited

Presently then, I think it would be fair to say that psychiatry plays a rather minimal role in our penal institutions. There is a great deal of rhetoric about what psychiatry could do, or should do, but in reality, the profession's impact (at least in a practical sense) is hardly felt. This is not entirely the profession's fault, but is also related to political factors as well as society's general disinterest. Much skepticism prevails as to just how effective treatment would be for the criminal.

Prisons, in their present form, do everything *but* prepare the offender for a "healthy" adjustment to the outside world. Isolation and distrust is the prevailing mood. Prisoners are discouraged from any kind of intimate contact with prison personnel. Family contacts are, at best, minimal. Homosexuality runs rampant. Drugs are used in varied quantities. Prisons also tend to make the prisoners suppress any feelings of aggressiveness, even in appropriate quantities. This trait of aggressiveness is a highly regarded one in the business community, but in the prison, it is almost totally suppressed. There are some changes in the offing, but as yet they are not part of a national program. On a recent T.V. show, an art dealer in New York showed some paintings done by inmates in one of the local penal institutions. He pointed out that an art program was presently in operation, thereby allowing some of the inmates an outlet for expressing their feelings. The work done was not only good in terms of quality, but the feelings of isolation and loneliness experienced by most of the prisoners had a healthy avenue for release.

There are certain conclusions we can draw concerning our present system. First of all, incarceration does work in isolating some of the plunderers from the plundered. Secondly, there is a punitive element to imprisonment at both a conscious and unconscious level. It's not really socially acceptable to say we want to punish the criminal, but that's what it's all about to a large degree. There is a parallel in our society with that of the German populace during the time of the Nazi concentration camps. If it is distasteful, we tend to deny that it's happening. Many, therefore, try to deny their desire for retribution. The mask frequently comes off, however, with the commission of some heinous crime, especially if the crime occurs close to home.

A third feature to the penal system is the deterring effect on at least some members of society. There has been a great deal of publicity recently about a young college coed who served three months of a

one year sentence for taking a $5 chair from an apparently abandoned building. It seemed a pretty stiff penalty for the "crime" committed, but you can be sure there will be some second thoughts in the minds of other persons who might decide to casually make off with someone else's property, at least in Georgia. At the same time, we can be equally assured that it will have virtually no effect on the "criminal mind."

In a report just released by the Justice Department, it was pointed out that one of every three Federal offenders commits a new crime within two years after his release from prison. The survey concluded that the rate of repeaters for Federal prisoners is about the same, or slightly less, than the figure reported ten years ago. Norman A. Carlson, director of the Bureau of Prisons, felt that this represented some progress, primarily because the current prison population consists of a greater number of "high-risk" inmates. He explained that the lower risk offender is more often placed on parole. Despite his optimism, a 33% recidivism rate does not suggest that our prisons focus on rehabilitation. One problem with statistical data of this sort is the fact that it does not include all the repeat offenders who commit crimes but don't get caught.

What of Future Treatments?

What then might be the role of psychiatry in the future treatment of the criminal offender? The first problem will be one of separating the different groups of criminal offenders. The young college coed who

took the $5 chair would obviously not be in the same category with the savage murderer. In dealing with these extreme cases, the separation of the two would not be difficult, but an attempt to identify the sociopath who could be rehabilitated from the one who could not, might be a different story. In any event, that is at least a starting place.

Dr. Halleck has summarized the four major strategies for changing criminal behavior as follows: (1) An individual's biological state may be changed (e.g., with the use of psychoactive drugs, convulsive therapy, or psychosurgery); (2) The individual's environment can be changed so as to provide him with new learning experiences; (3) Behavior can be changed not only by changing the contingencies of reinforcement within the environment, but also by changing the nature of environmental stimuli through an increase or reduction of stress; (4) Behavior can be changed, at least moderately, by providing people with new information. He also noted a fifth way of changing criminal behavior, and that is simply providing an environment where the behavior would be unlikely to take place (e.g., total incapacitation, incarceration or deportation).

When we begin talking about the various treatment modalities, we must look very carefully at some of the complex ethical and political implications. Many behavioral conditioning techniques have been developed, but the predictability of the results is not the same with human beings as one could expect from combining elements in a chemistry laboratory. It is true we can change behavior, but just how the final product turns out is not altogether certain.

Previously, I suggested the potential danger of using the psychiatrist to incarcerate the political prisoner. Consider the potential abuse of the behavioral conditioning expert in "changing the thinking" of the political prisoner. Think of the possible long range effects if we were to have "successfully" rehabilitated Martin Luther King or Malcolm X? If these two political leaders were not to one's liking, one might say, "It would have been the best thing for everyone." *But then consider the possibility of our having "successfully" rehabilitated the apostle Paul, or even Jesus Christ. Think how different the world would be if these two "criminals" had had their thoughts brought into greater harmony with the existing society.* Suddenly one finds that if his ox is being gored, the dangers seem more apparent.

A most important element to any kind of "treatment" or rehabilitation program is the willingness or unwillingness of the prisoner-patient. Dr. Walter Shervington, Chief of the Psychiatry Training Branch of the National Institute of Mental Health, has said, "We must be most cautious that cruel and inhuman therapies are not experimented with or even used for correctional purposes, under the guise of science."

Regardless of treatment program, prisons should be open to review. As noted previously, we have a tendency to avoid or deny those areas in our lives that prove distasteful, but it is our obligation and responsibility to face any area that infringes on the rights and liberties of another. It would be impossible to discuss all the uses and abuses of the psychiatrists and behaviorists armamentarium within the penal system. At the same time, it becomes evident that there are some very grave dangers that could occur if unrestricted powers are granted, under the mistaken hope that someone else will solve society's problem.

Our penal system, as it now exists, does not offer any realistic rehabilitation. If society decides this is what it wants, then the psychiatric profession can offer its services and opinions. The primary responsibility still lies, however, with the private citizen and his need to maintain eternal vigilance in this area.

THE BALANCING ACT:

QUOTA HIRING IN HIGHER EDUCATION

by George C. Roche III, president of Hillsdale College

"The quota system is far from a new idea. It is not the wave of the future; it is the putrid backwash of all the tired social engineering schemes of centuries."

"By standards of the American dream at its best," writes George Roche, "in the interest of all individuals, especially in the interest of the 'disadvantaged,' and in the interest of society as a whole, we must understand that the egalitarian dream now pursued by Affirmative Action programming on the campuses of America's colleges and universities bids fair to undercut the very structure of the open society. We are all in favor of equality, but the commendable goal of equality of opportunity must not be confused with the shoddy, politicized quotas of Affirmative Action."

In response to the threat Affirmative Action now poses for the academic community, Dr. Roche has set forth a determined defense of individuals judged on the basis of their individual merit.

"The Balancing Act: Quota Hiring in Higher Education" is being published by Open Court in both hard cover and paperback. The paperback edition will be available from Hillsdale College early this fall. You will receive more information and an order form later, as a regular IMPRIMIS reader.

The hard cover edition, which combines Dr. Roche's book with "Black Studies Revisited," by Alan Reynolds and Ernest van den Haag, may be ordered from Open Court Publishers, Box 599, La Salle, Illinois 61301, for $8.95.

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