

Spring 1943

Medical and Social Factors in Crime

A. Warren Stearns

Tufts College Medical School

Follow this and additional works at: <https://www.repository.law.indiana.edu/ilj>



Part of the [Health Law and Policy Commons](#), [Medical Jurisprudence Commons](#), and the [Social Welfare Law Commons](#)

Recommended Citation

Stearns, A. Warren (1943) "Medical and Social Factors in Crime," *Indiana Law Journal*: Vol. 18 : Iss. 4 , Article 3.

Available at: <https://www.repository.law.indiana.edu/ilj/vol18/iss4/3>

This Article is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Law Journal by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

MEDICAL AND SOCIAL FACTORS IN CRIME

A. WARREN STEARNS*

When a child is born his behavior is almost entirely on a physiological basis. He reacts to various stimuli on a reflex level and draws upon his heritage through past ages for motivation. In other words, his conduct is asocial. His parents begin the task of training forthwith, just as they would in the case of any other animal. This training at first has to do with the regulation of the various functions of the body and with teaching a certain amount of decorum. For a long time it has been recognized that children differ in their capacity to receive this sort of guidance. In some, tidy habits can be acquired in three months, in some six months or a year, and a few can never be taught correct habits. Obviously, the technique of the parent can be resolved to a very simple formula, the punishment of vice, and the reward of virtue.

Upon reaching the age of five or six the child is sent to school, his behavior is then dependent upon the thoroughness with which the previous parental duties have been carried out. Here a new factor comes in to direct the instinctive drives of the little animal. He is directed to a certain extent by teachers, but more important still is the social pressure which comes from his associates. They begin teaching him the ways of the world. Brutally and cruelly they ridicule or punish deviation from the customs current in any particular community. To be sure he learns to read and write and to add and subtract, but he also learns how to behave like the other children. Here again it has long been observed that there are individual differences in the ease with which this latter knowledge is acquired.

A few stormy years of adolescence, more or less hectic according to individual qualities, and he is embarked upon adult life. Here he has the task of conforming to the requirements which the adult population imposes upon him, and especially he must get a job, fit himself to his employment, and then get a wife, establish a home, and begin the same program which he has just completed, with another generation. He continues to develop and progress through

* Dean, Tufts College Medical School; now, Commander, U.S.N.R.

mid-life. Then come the effects of the disintegrating process of latter years, and finally he leaves life as he entered, entirely helpless. Such is the traditional trajectory of life.

Society in the main tends to approve and reward the conventional life. Just as parents direct the child through praise and blame, society controls the adult. The mechanism is identical. However, some do not conform and from the dawn of history we can trace the efforts of society to induce or compel conformity to a conventional pattern. In primitive society this is done ruthlessly. There are no laws, but there are mores and the non-conformist is hunted down and destroyed much as a skunk or snake is destroyed by civilized persons. By common acclaim only, the non-conformist is destroyed.

As we ascend the long hard climb through various stages we find a gradually developing attitude toward criminals. While the savage governs his conduct by the pleasure or displeasure of the spirits, in early biblical days it was the purity of the city which was being sought. Personal motivation in punishment has always been identical, but the assigned purpose has always been altruistic. In the Roman days abstract justice became the goal and later the deterrent effect of punishment.¹

This brings us up to relatively modern days. To this point there has been little thought of individual differences, most legal philosophy having to do with the social damage and abstract theories of right and wrong. During the great revolutionary period, punctuated by the French and American Revolutions, there was a great awakening in humanitarian fields. Man could no longer see his neighbor drawn and quartered, or burned at the stake, and the so-called sanguinary laws of Europe were abolished in Massachusetts in 1786. The work of John Howard either caused a universal awakening or was the expression of such. One of the immediate phases of John Howard's work was an interest in the sanitary conditions of prisons. So unhealthful were they that the scourge of typhus fever was popularly called "jail fever." The bad smell of dirty, sick bodies was referred to as "prison odor." So Howard drew up plans for a penitentiary house with single cells where men could have a chance for

1. Stearns, A. Warren: *The Evolution of Punishment*. *Jour. of Criminal Law*. Vol. 27, July 1936, 219-250.

penitence and prayer and be cured. The first of these was erected in New York in 1798. In 1805 the Massachusetts State Prison was opened. No greater idealism was ever expressed than that which gave rise to the Charlestown State Prison. Benevolence and religion seemed to offer salvation from the scourge of crime. Yet in a very few years it was found that all persons could not be cured by this method. Those who had been once in the penitentiary tended to come again. Almost for the first time individual differences were indirectly taken account of and in 1818 an habitual criminal law was passed.

In 1816 an act for the relief of poor debtors was passed, thus recognizing the helplessness of this class. In a general way the series of laws softening the punishment of debtors was opposed by the legal profession. It was thought that if debtors were not punished that no one would pay his bills. Here again, no allowance was made for individual differences. We shortly enter an era in which education and training appear to be the answer to the problem of criminology. In 1821² the House of Industry was established in Boston modelled after previous ones in Marblehead and Salem, and if one reads the report of the committee recommending this he finds that honest work and learning a trade are offered as cure-alls for this type of social ills. In 1824, the House of Refuge was opened in New York and shortly after a similar one was opened in Massachusetts.³ It was thought that the proper training of neglected children would furnish the way to the cure of crime and their published reports breathe great optimism as to the future.

The Livingston Code begun in 1821 provided for the abolition of capital punishment and its spirit was remedial rather than vindictive. Already, in the appointment of physicians, a considerable beginning had been made toward remedying the sanitary condition of prisons.

Meantime the reformatory movement had grown to full stature having its origin with Admiral Macanochie in 1798.⁴ This gradually developed into the Irish system perfected by Sir Walter Crofton in Dublin. The American replica of the Irish system first appeared at the Elmira Reformatory. An

2. Quincy, Josiah: Report in Regard to House of Industry. 1821.

3. House of Refuge, First Annual Report. 1826.

4. Maconochie, Captain Alexander: Report.

excellent account of this is found in Wines.⁵ Here again a formula was offered for the cure of crime regardless of individual differences.

In 1875 the Massachusetts State Board of Health made its famous report of the sanitary conditions at the Charlestown State Prison showing that even at this relatively modern time rather inadequate provision had been made for the health of inmates. From then on medical services in prisons were improved and the medical component in the care of prisoners showed a rapid increase. Finally, some prisons were actually the healthiest places in the world.

There was gradually accumulated a vast store of knowledge throughout all this period of the relation between physical ill health and crime. Cripples, the blind, persons with tuberculosis and other chronic diseases, unable to compete on equal terms with their fellows, were found in prisons out of all proportion to their occurrence in society.

It is difficult to say when an interest in the mental state of prisoners began. Benjamin Rush⁶ in his celebrated book published in 1812 has a page or two on moral insanity followed immediately by a plea for more humane treatment of prisoners. In 1855 when the Worcester Lunatic Asylum was opened a great many of its early inmates were taken thence from prisons and the Fourth Annual Report of Dr. Samuel Woodward, Superintendent,⁷ gives a lurid account of their treatment in prison and the condition in which he found them. The report of Thomas Hazard in 1854 gives similar examples from Rhode Island. Gradually, the policy of removing the insane from prisons was definitely established, but there was a plague spot in the determination of sanity. One of the earliest expressions of this and one of the best is an account of an individual in a Dublin asylum which is quoted as follows:⁸

-
5. Wines, Frederick H.: *Punishment and Reformation*. New York, Crowell. 1895, 192-228.
 6. Rush, Benjamin: *Medical Inquiries and Observation upon the Diseases of the Mind*.
 7. Woodward, Samuel: *Senate Document No. 13—Fourth Annual Report of State Lunatic Asylum*. 1836.
 8. Sampson, M.B.: *Rationale of Crime and its Appropriate Treatment: Being a treatise on criminal jurisprudence considered in relation to cerebral organization*. New York. Appleton. 1846. 2nd London edition.

"In the Richmond Lunatic Asylum, Dublin, Mr. George Combe saw a patient in 1829, who has been confined for ten years. He exhibited a total want of moral feeling and principle, yet possessed considerable intelligence, ingenuity, and plausibility. He had been a scourge to his family from childhood—had been turned out of the army as an incorrigible villain—had attempted the life of a soldier—had been repeatedly flogged—had since attempted the life of his father. Respecting this man, Dr. Crawford, Substitute Physician at the Asylum, made the following remarks:—'He never was different from what he now is; he has never evinced the slightest mental incoherence on any one point, nor any kind of hallucination. It is one of those cases where there is great difficulty in drawing the line between extreme moral depravity and insanity, and in deciding at what point an individual should cease to be considered as a responsible moral agent, an amenable to the laws. The governors and medical gentlemen of the Asylum have often had doubts whether they were justified in keeping him as a lunatic, thinking him a more fit subject for a Bridewell. He appears, however, so totally callous with regard to every moral wrong, so completely destitute of all sense of shame or remorse, when reproved for his vices or crimes, and has proved himself so utterly incorrigible throughout life, that it is almost certain that any jury, before whom he might be brought, would satisfy their doubts by returning him insane, which, in such a case, is the most humane line to pursue. He was dismissed several times from the Asylum, and sent there for the last time for attempting to poison his father; and it seems fit he should be kept there for life as a moral lunatic: but there has never been the least symptom of diseased action of the brain, which is the general concomitant of what is usually understood as insanity. This, I consider, might with propriety be made the foundation for a division of lunatics into two great classes, those who were insane from original constitution, and never were otherwise; and those who have been insane at some period of life from diseased action of the brain, either permanent or intermittent.'"

With the rapid development of hospitals for mental disease there grew up a specialty called psychiatry dealing at first with those gross mental disorders called insanity, but gradually coming to concern itself with behavior disorders of every nature. As early as 1905, Dr. Guy Fernald, a psychiatrist, was appointed physician to the Massachusetts State Reformatory at Concord and began a life of service in the interests of a scientific criminology. This was followed by similar appointments elsewhere and elaborate systems of classification developed. This effort grew more and more

complex, but, alas, cures were infrequent. It was recognized that a varying percentage of inmates were insane, and these were taken to hospitals for mental disease. It next appeared that a larger percentage were feebleminded. An attempt to handle this group resulted in the passing of laws for the committing of defective delinquents, especially in such states as New York and Massachusetts. Then came the great schism over personality disorders. Some important persons believed that all gross vagaries of conduct were in themselves *prima facie* evidence of a certain degree of mental aberration, while others insisted upon gross evidence of psychopathy as a criterion. This question is still undecided and perhaps is no better stated today than it was by Sampson.⁹

The question of the mental status of prisoners in actual practice is largely an academic one except in the field of juvenile delinquency and in the case of particularly serious crimes. The great mills grind on. The courts in our large cities see hundreds and thousands of cases each year with little regard as to the mental condition of petty offenders.

Perhaps the greatest contribution of the psychiatrist has come through the fact that careful histories of offenders were taken which not only brought out the mental attributes of the individual offender, but also portrayed the environment from which he had sprung. This led to extensive research in the field of sociology by many of the leading sociologists of the country.

The writer has for many years regarded the vast majority of criminals as handicapped persons. Society has recognized three types of persons needing public aid. These have been called the sick, the poor and the bad, and have led to the establishment of hospitals, poorhouses, and prisons for their care. All that we can say of these three groups is that certain individuals are preponderantly sick and therefore their illness is what calls for first attention. Others are preponderantly poor or bad. In the field of etiology their difficulties appear to spring from the same source. They all tend to be handicapped, each one with a large medical component. A most cursory scrutiny of the several types of institutions for these individuals shows that there is a tremendous overlapping. The relation between poverty and disease is a very definite one, although there is still a great

9. *Id.*

deal of debate as to which is primary. This is a good deal like the proverbial debate as to which comes first, the hen or the egg. Obviously, there are certain persons who are physically ill and because of this handicap become impoverished and because of their impoverished condition are led to crime. Although it will be possible to fix the blame in individual cases, in general, crime, vice and disease are triplet sisters all springing from the same social sources. Needless to say the mental status of the individual is often very fundamental and for this reason it may truthfully be said that basically crime is a social disorder. Mental disease, defect, or peculiarity is important in that social stress often bears hardest upon those who are least able to withstand its pressure. It seems helpful, however, to have some working classification of this very complicated and mixed social and medical problem. The following classification has served the writer's purpose in this matter.¹⁰

The Child: As has been said above, the child is by nature a non-conformist. The law recognizes his helplessness in some ways until he is twenty-one years of age. He is entirely dependent upon the status of his parents and home and the task of being taught the ways of prudent conduct. Furthermore, many criminal careers begin during adolescence and it appears to be a phase through which they go. This is well expressed by Cabot in the introduction to Dr. Glueck's book.¹¹

The Aged: Likewise the helplessness of old people is proverbial and yet, they are often obliged to lead a competitive life. For this reason their handicaps frequently lead to delinquency. Furthermore, there are factors in their sexual life which lead to difficulties.

Handicapped Classes: There are many groups in our society against whom great odds are arrayed. Differences in race, sex and religion render the task of a conventional life more difficult for a substantial proportion of our population.

10. Stearns, A. Warren: *The Personality of Criminals*. Boston. Beacon Press. 1931.

11. Glueck, Sheldon: *Five Hundred Criminal Careers*. New York. Knopf. 1930.

The Insane: Nobody knows how many insane there are, but their clashes with the law are such that it is necessary to confine in Massachusetts about 1/150 of the population.¹²

The Feebleminded: Certain children do not develop intellectually and are called feebleminded. It is estimated that about 2 percent of the population should be so classified. We have just been through an age when the feebleminded have been pictured as peculiarly criminalistic and now their helplessness seems to be a larger factor. They often come from feebleminded families and so are neglected. Those needing the most training often get the least.

The Neurotic: While not specifically criminal, the handicap of the neurotic person is occasionally associated with crime.

The Disordered Personalities: This group occupies a vague zone in the social hierarchy and is still ill-defined by the medical profession. It has to do with those persons who, through personal peculiarities, are unable to adjust and adapt themselves to the requirements of society, and so become social problems in one way or another. The morbidly contentious find it difficult to obtain employment. They are continually agitating, and nobody wants them. They are frequently found on relief, in prisons and even in hospitals for the insane. The inadequate personality often gives up without a struggle and is feebly resistant to alcohol, and the emotionally unstable are often incapable of sustained productive effort. This group not only forms an important component in definite social disorders, but makes up a large number of those who are found in clinics appearing on the surface as neurotic. Needless to say, many of these persons appear in the sedimentary stratum. Certain states have passed laws for the commitment of such individuals if their conduct is criminalistic.

Drug and Alcohol Addiction: Addiction to habit-forming drugs, including alcohol, has long been considered a medical problem, and, in the past, there have been many programs under medical stimulus and leadership attempting to attack

12. Stearns, A. Warren: *The Role of the Physician in a Competitive Society*. *New England Journal of Medicine*. 224: 879-890, 1941.

this problem in an intelligent way. We have no census of alcoholic patients, but every index tends to show the load to be tremendous. There are approximately 84,863 arrests in Massachusetts every year for drunkenness. Thirty-two percent of the patients admitted to the state hospitals are said to be intemperate. Alcoholism has been shown to be a very large component in the admissions to the Boston City Hospital. There is no more discouraging problem with which to deal than that of alcoholism. The police handle the same cases over and over again. Certain persons have literally hundreds of sentences to jails and houses of correction. At the present moment, although there has been very recently a vigorous attempt to promote attention to this group, there is no state-wide program for prevention or cure, nor is there an adequate meeting of the minds of police, welfare and medical authorities. Quite a bit of beneficent effort to raise the level of living of certain of the dependent groups is almost entirely vitiated through diversion of relief from the home to the saloon. The drug problem is similar, but, of course, very much less flagrant. A surprising number of those who fail to meet their obligations in life are alcoholic and get into the sedimentary immobile stratum of society.

Physical Disease: Wherever criminal populations have been studied by physicians there has been found to be an excess of physical disease or defect. There is often a direct relationship between the criminal career and ill health although it is often difficult to say which one stands in a causative relationship.

CONCLUSION

1. From the above it would appear that criminals are handicapped persons. We have at one end of the scale cases whose difficulties are entirely due to mental disease. At the other end are pure social problems with all possible gradations in between. I would not be bold enough to place a median.

2. It seems obvious that attempts of society to handle criminals as a class by a general rule of treatment applied to all has not worked satisfactorily in the past.

3. This leads to the hypothesis that the best way to handle the problem of crime is through individual study.

In certain cases this calls for elaborate psychiatric investigation, in others for equally elaborate sociological study, but in the main all offenders should have preliminary social case work carried out, in order that the needs of the individual can be brought into focus and assigned to the proper persons for treatment and care.

4. Studies of prisoners at the present moment have not resulted in startling cures, but have furnished the basis upon which better social engineering can be done. The knowledge of the personality of criminals today is far in advance of the procedures by which they are handled in any society.

5. It is to be hoped, as knowledge accumulates, that in the course of time general laws can be discovered which will enable preventative measures to be carried out in a large scale. For instance, in medicine the discovery of the infectious nature of diarrhoea in children has led to the control of milk supplies in our great cities and thus practically controlled this disease which once carried off a very large percentage of children during their first year. Unfortunately, at present very few such laws are known and we are still obliged to handle each case empirically, often almost on an instinctive level.