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ON
THE CRIMINAL RESPONSIBILITY
OF THE
I N S A N E.

BY

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1874.

THE ORIGINAL RESPONSIBILITY

BY H. W. H. H.

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ON THE CRIMINAL RESPONSIBILITY OF THE INSANE.

DISORDER of the mind is a prominent symptom in various diseases affecting the brain. It is not in itself the disease, but only a symptom, and it may arise, like difficulty of breathing or any other impairment of healthy function, from a variety of causes. It may result from some condition primarily affecting the brain, or from secondary brain disturbance, caused by disease in some other organ; but the special form of mental disorder which shall appear in a given case cannot with any certainty be foretold. In another person a similar illness might have evoked no insanity at all, or insanity of quite a different type.

This uncertainty as to the occurrence and the character of mental disorders shews how much depends on the temperament or mental constitution of each individual.

The special nervous organisation inherited by each of us has a power and significance in our daily life which we are only beginning to realise. It is the complex result of a long and most complex series of influences, for it has been variously modified by the training, habits, and history of all our ancestors, and transmitted by each with increasing complexity. We are each one of us but the latest link of a long and tortuous chain of complex human lives. Every life adds a link, but no two links are the same, and every link affects all that follow.

The inheritance of an unstable nervous organisation is the great predisposing cause of mental disorders, while their actual occurrence is determined by special circumstances in the life-history of each individual. In favourable circumstances the nervous system proves equal to its work, and insanity is never developed. In less favourable conditions the burden of life proves too great, and the unstable brain gives way. The sorrowful inheritance may reveal itself by eccentricity, defect, and failure; or it may be urged into excitement by vicious and intemperate habits; or it may sink into despondency, and form out of the sorrow which is the common lot of men a hopeless cloud of gloom.

Whatever the form of the insanity, its degree varies extremely, not only in different individuals, but in the same individual at different

times. None of the indications of disease are so indefinite, variable, and difficult to interpret as its mental symptoms.

Yet insanity is a symptom so distinctive, and involving such grave consequences, that we cannot wonder if it has often been regarded as in itself the disease, and if in doubtful cases men have demanded some clear definition of its nature, and some unfailing test of its presence.

But this demand is not easy to satisfy. The deviation from soundness to unsoundness of mind is so gradual that no absolute line of division can be drawn. There is no positive sign to indicate at once, with the accuracy of a chemical test, that insanity is present, and no pathognomonic Shibboleth which immediately betrays its existence. We witness daily around us the strangest diversities of character and the wildest absurdities of conduct among men who are regarded as sane, and we can observe in all stages of the deviation that divergence from mental health which constitutes insanity. We all know persons not confined in Asylums, whose conduct is so uniformly erratic and foolish, that if they did any judicious action we should hear of it with welcome surprise, while the news of any fresh absurdity would be received as a matter of course, with the comment that it was just like them.

In truth, we presumably sane folks are dwellers on a table-land called Mental Health. The surface is uneven, but still practically it is a table-land. Far below is the sad dark valley of absolute insanity; and connecting the valley with the table-land, passing into each so gradually that no division can be seen, is a long sloping hillside thickly peopled with a moving multitude of men, all of whom exhibit more or less pronounced and more or less permanent insanity. Some are so well that they are scarcely on the slope at all; others so ill that they have almost reached the hopeless valley. Some go down hill quickly, and as quickly rise again to prominent places on the table-land; others vainly struggling, and sometimes almost reaching it, ever and anon fall back again into the valley of gloom. This is no fancy picture; it is simple literal truth.

While all the dwellers on this slope are of unsound mind, the degree of unsoundness varies greatly as their relative levels indicate, and all of them possess some share of sanity. They are influenced by the same motives as ordinary men; they know right from wrong, and they act in many respects like reasonable and accountable beings. It is this mixture of sanity with disease which alone makes it possible to

govern a colony of the insane through the same motives and inducements which influence others, instead of by coercion and restraint.

But the influence of ordinary motives and the sense of responsibility for wrong doing, have power among the insane only to a certain extent and up to a certain point; they are overwhelmed and overborne—occasionally, periodically, or permanently, as the case may be—by morbid impulses or the force of delusions, and while disease is thus paramount the patient is certainly not a responsible being.

It may be, for example, that delusions so pervert his idea of right and wrong, that he murders his child in obedience to a divine command, and regards it as a holy deed; or he commits the same act under a motiveless, resistless impulse, and shudders at the horrible crime. But whether the insanity affect chiefly the intellectual or the emotional nature, the deed is the result of the disease, and the doer is innocent.

Yet in this very patient there are probably periods of time and portions of his mental life which are not dominated by disease, and within which he may exhibit the best traits of humanity, or may give way to its darkest passions, and practise falsehood, dishonesty, or violence, without the excuse which insanity affords. He may even be acute enough to feign his insanity in order to excuse his wickedness, like a patient who formerly had imagined himself to be Jesus Christ, and who told me with great satisfaction how easily he had robbed a garden and frightened its owners by declaring his divinity.

Such are the dwellers on the slope; no two of them are alike, and each one is a variable and difficult study. Yet it is across this slope that the law tries to draw a rigid red line of legal responsibility, pronouncing all above the line to be sane and responsible, and all below it irresponsible, because insane. Or perhaps it is more correct to say that the law ignores the slope entirely, and assumes that a sudden chasm or precipice divides the table-land above from the valley below.

This assumption is contrary to all experience and to all analogy. Nature has no straight lines nor strict divisions, and certainly there is none here. If a man understands the nature and quality of the act he is committing, and knows he is doing wrong, the law declares him responsible, even although he may be impelled to the act by insane delusions. This test includes, among responsible agents, not only all dwellers on the slope, but very many inhabitants of the hopeless valley. Certainly a majority of the insane understand the nature of their actions, and whether they are or are not contrary to law; but dis-

ease reckons nothing of moral or legal codes, and obeys only its own morbid impulses.

This legal definition of responsibility is so palpably at variance with our knowledge, that there is usually complete uncertainty as to the result of a criminal trial, in which the defence rests on the plea of insanity. An array of medical witnesses is summoned on either side, and being retained to support a certain view, they consciously or unconsciously see chiefly the facts in its favour ; hence result the disagreement of the doctors, the bewilderment of the jury, and the dissatisfaction of the public. If it be a capital charge, and the prisoner is condemned, the plea of insanity is assumed to have been fictitious, and the next lunatic prisoner may suffer innocently. If the prisoner is acquitted, we are told that justice has been defeated, because there was money enough to get up proofs of insanity, and that for the same crime a poor man would certainly have been hanged.

This very uncertain and unsatisfactory state of matters calls loudly for a remedy. The question to be determined is, whether the alleged crime was the result of disease, and whether the prisoner's mind was at the time so weakened by defect or disease that he was unable to control his actions ? The inquiry demands an intimate acquaintance with the history, causes, and manifestations of mental disorder ; it must be undertaken in a judicial spirit, and without the slightest bias.

This would be secured if the Court obtained the testimony of disinterested medical referees familiar with insanity, a course which is followed by the Secretary of State when he sees reason to question the result of the trial ; or it might equally be secured if the Judge were empowered to obtain the assistance in trying such cases of men specially familiar with them, a course which the law authorises in certain Admiralty and Chancery cases. The adoption of either of these courses would secure substantial and equal justice to the accused, would satisfy the public mind, and would greatly facilitate legal procedure. It would also secure just awards for offences committed during intervals of comparative sanity, or during the insanity produced by habitual drunkenness ; for there are cases where the mental condition should modify, rather than annul the penalty due to crime, and at present such cases either escape punishment altogether on the ground of insanity, or are punished with unjust severity.

Although it is in the case of capital offences that the existence of insanity attracts most attention, the connection between crime and

insanity is a far wider subject, and constitutes one of our chief social problems.

The slope of insanity supplies a large proportion of the criminals to our Courts of Justice ; and daily the perplexing question arises, whether the panel is more rogue or fool, whether the madness or the badness is uppermost? This question is the more complicated, because in certain cases sometimes the one and sometimes the other seems to have the supremacy, while each condition so taints the other, that the result is one of the most perplexing, most unmanageable, and most irreclaimable types of humanity.

Dr. Thomson, late Resident Surgeon to the General Prison for Scotland at Perth, supplied some very startling statistics on this subject from his experience there. He found that of the habitual female convicts, 1 in every 36 became insane, which is a liability to insanity about 10 times greater than in the ordinary population ; further, that of 6000 prisoners, excluding those classified as insane, 1 in every 8 was mentally defective, and that in the great majority the defect was congenital. Perhaps the views represented by these figures may be regarded as extreme, but they abundantly prove what the testimony of all medical officers of prisons confirms, that the degraded and vicious class of our population from which convicts are chiefly derived, is largely tainted with insanity ; and that the habitual criminal, with his low cunning, animal passions, blunted moral sense and vicious habits, readily degenerates and becomes weak-minded or insane.

Weak-minded criminals are found, as we might expect, to be specially addicted to crimes of reckless passion, hatred, and revenge. Although much wit is proverbially allied to madness, uncontrolled emotion is a much nearer ally.

Against criminals of this class the ordinary legal penalties are powerless ; they are received with indifference, however frequently repeated, and seem to harden, rather than to ameliorate or deter. For such cases, when all means of amendment have been tried in vain, the course at once kindest to them, and safest and most economical for the public would be their committal permanently to the Insane Department of a prison. It is humiliating and sad to be compelled thus to minimise the evil, rather than develop the good of a human life ; but experience proves that in such persons good can be developed only when the temptations and opportunities of evil are withdrawn.

When such criminals come within the grasp of the law, their madness is sometimes obscured by the crime to which it had prompted. The insanity unrecognised at the bar may afterwards be detected in

prison, but it is unsatisfactory and cruel both to the lunatic and his friends, that through our blindness he should be treated as a felon.

There is indeed urgent need for wiser and wider views as to the connection between depravity and mental weakness, that we may if possible distinguish the results of each, and in dealing with them may avoid, on the one hand, a sentimental and dangerous leniency towards crime, and, on the other, the cruel punishment of disease. But human justice must be rough and imperfect at the best. We cannot estimate the baneful power of inherited tendencies to crime, nor of vicious training in early years. We cannot detect hidden motives and temptations, nor measure the will and the power to resist them. Perfect knowledge is essential to perfect justice. Therefore is it most needful, as it is most comforting, that the final Judge of men should be the Omniscient God.