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IS LEGAL RESPONSIBILITY ACQUIRED BY *EDUCATED* IMBECILES?

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The question of the legal responsibility of the insane has been frequently under discussion both by legal and medical writers; and its conditions and limits must, I fear, still be regarded as far from settled; divergent views being held, perhaps naturally, according to the standpoint respectively taken up by the lawyer and the physician. "A lawyer, when speaking of insanity," says Sir J. F. Stephen, "means conduct of a certain character; a physician means a certain disease, one of the effects of which is to produce such conduct." It is somewhat remarkable that the legal responsibility of the idiot, and of his milder congener, the imbecile, has hitherto hardly been deemed worthy of discussion; but a recent law case, in which several patients under my care were concerned, has led me to think that a few remarks on the subject may not be altogether uninteresting or unprofitable.

It would seem that the earliest legal definitions of madness correspond rather with the mental states now known as amentia and dementia than with the acute forms of insanity. Thus Bracton in the thirteenth century speaks of a madman (*furiosus*) as "one who does not understand what he is doing (*non intelligit quod agit*), and, wanting mind and reason, differs little from brutes." Littelton "explaineth a man of *no sound memorie* to be *non compos mentis*." Sir Edward Coke, commenting on the above, is the first to recognise different classes of mental unsoundness, describing four kinds of men who may be looked on as *non compos mentis*.† "1. Ideota, which from his nativitie by a perpetuall infirmitie is *non compos mentis*. 2. Hee that by sickness, griefe, or other accident, wholly loseth his memorie and understanding. 3. A lunatique that hath sometimes his understanding and sometimes not, *aliquando gaudet lucidis intervallis*, &c.; and lastly, Hee that by his own vitious act for a time depriveth himself of his memorie and understand-

* Throughout this paper the term *imbecile* is used to denote a person suffering from mental deficiency, either congenital or supervening in infancy, the degree of such deficiency being less than that denoted by the term idiocy.

† "Coke upon Littelton," 247A.

ing, as hee that is drunken." The first two classes are indeed in old writers both described under the name of *idiot*; No. 1 being *idiota a nativitate*, and No. 2, *idiota a causâ et infirmitate.* I note in Paris and Fonblanque's "Medical Jurisprudence"* cases cited in which it had been stated "that an inquisition finding that a person had not had any lucid intervals *per spatium octo annorum*, was a good finding of *idiocy*," *lunacy* being evidently regarded as possessing different characteristics from *idiocy*. It was reserved for a later age legally to confound and confuse under the common designation of *lunatic* "any person found by inquisition idiot, lunatic, or of unsound mind, and incapable of managing himself and his affairs" (16 and 17 Vict., c. 70, and 25 and 26 Vict., c. 86). Henceforward the essential difference between the imperfect and ill-ordered mental action of idiocy and the deranged and disordered mental action of insanity seems to have been somewhat lost sight of in the course of legislation; in some sense, indeed, idiocy may be likened to the Cinderella of the unhappy family under the jurisdiction of the Lunacy Commissioners.

Notwithstanding this confusion it would seem that there still lingers in legal authorities some notion of the idiot's individuality. Thus in a recent case of homicide, the proof of which, so far as eye-witness was concerned, depended upon the testimony of imbeciles,† "Archbold's Criminal Pleading" was quoted to the effect that "an *idiot* shall not be allowed to give evidence, but a *lunatic* during a lucid interval may." The case referred to was that of an imbecile lad, an inmate of the Royal Albert Asylum, who, having been startled and provoked by a younger patient suddenly denuding him of his bedclothes, jumped out of bed, knocked down his assailant, and bumped his head against the floor with such effect as to cause death from fracture of the skull, which was abnormally thin. The attendant was temporarily absent from the dormitory on a necessary duty, but the affray was witnessed by several imbecile boys who were awake at the time, and, of these, three, who seemed best able to give an account of what they had seen, were tendered as witnesses at the coroner's inquest. The Coroner (Lawrence Holden, Esq.), in opening the enquiry, said: "Some of the evidence would be peculiar in this respect—that they would have to rely on the evidence of boys who were imbecile if not idiotic. If the doctor, who would be called before them,

* "Medical Jurisprudence," Paris and Fonblanque (London, 1823), Vol. i., p. 290.
† "Archbold, C. P.," p. 288.

said that the boys who witnessed the transaction were able to give evidence, he (the Coroner) should receive that evidence. It was for the Coroner to admit such evidence as he thought proper, and it was for the jury to decide afterwards upon the amount of credibility they would attach to that evidence." Accordingly as each imbecile witness was tendered for examination I was called on to state that in my opinion he was "capable of judging between truth and falsehood, and able to give credible testimony." Three imbecile lads were consequently allowed to give evidence, and in one case in which speech (owing to partial paralysis) was indistinct, I was permitted to act to a certain extent as interpreter, the Coroner being also good enough to accept some of my suggestions as to the form in which his questions would be most intelligible to the witnesses. Under these circumstances the evidence of the lads, who were sworn in the usual way without special interrogation as to their views of an oath, was sufficiently clear and consistent to obtain credibility from the jury, who accordingly returned a verdict of manslaughter against the accused.

At the magisterial inquiry which followed at the County Petty Sessions, the competency of the imbecile lads to give evidence was objected to by the solicitor for the defence, who quoted from Archbold the dictum that "an idiot shall not be allowed to give evidence," (this being founded upon "Coke upon Littelton," 6 B), and maintained that in the absence of any precedent to the contrary "a boy coming from an asylum for idiots could not give reliable evidence." Fortunately the Bench was particularly strong in legal acumen, amongst the sitting magistrates being W. H. Higgin, Esq., Q.C., and E. B. Dawson, Esq., LL.B., both members of the Bar. The former, while admitting a *primâ facie* objection to the competency of a boy coming from an idiot asylum, said that, nevertheless, if he should be found on examination "to believe in the existence of a God, and to believe in a future state either of reward or punishment; if he knew what telling an untruth was, and if in kissing the Testament he knew what that kissing meant, although that boy did come from an idiot asylum still he might be a perfectly competent witness." Mr. Dawson remarked "that the authorities quoted by the solicitor for the defence were old ones, though they might be very good for the time in which they were written, when it was considered that a person suffering from amentia could not be a credible witness nor his position improved; but they knew that by the care which had been bestowed in recent years upon such persons, a degree of

information had been imparted to them that they might be accepted as competent witnesses. The question was whether they should go back to the days of Coke and Littelton, and be ruled by their judgments which were given according to the lights they then had." Ultimately it was decided to follow the procedure in the case of Reg. *v.* Hill, and I was examined as to the first witness's information as to religion and the nature of an oath, and also as to the degree of his mental deficiency. I was able to say that he knew it was wrong to tell a lie, as he had stated to me that persons who told lies after kissing the Testament were (to use his own words) first "shut up in the Castle, and then if they died went to the old fellow with the fork!" Interrogated as to whether the boy was admitted into the asylum as an *idiot*, I explained that he was an *imbecile* of a comparatively high degree of understanding, and not an *idiot* in the sense of being entirely destitute of intelligence. He could now read and write imperfectly, and was a capital workman in the joiner's shop, though only fifteen years of age. Thereupon the lad was called into the box, and a number of questions were put to him by the Bench and through the honorary solicitor of the Asylum with a view of ascertaining how far he understood the nature of an oath. These questions being addressed to him by persons with whose converse he was unfamiliar, were evidently not fully comprehended by him. To the question, "What do you mean by an oath?" no intelligible answer was given; but when by way of explanation he was asked, "Can you tell us anything about swearing?" the reply, "It's what bad lads do," argued, I think, some acquaintance with the third commandment! In the result the magistrates ruled that in consequence of the unsatisfactory replies of this lad to their interrogatory, his evidence was not admissible, and the same ruling was held to apply to the other imbeciles who were to be tendered as witnesses. The accused was consequently discharged by the magistrates, but having been committed on the Coroner's inquisition, he was brought up (from bail) for trial at the Lancaster Summer Assizes.

At the Assizes the Judge (Sir James Fitzjames Stephen) ordered an indictment to be drawn and submitted to the Grand Jury, who consequently examined the witnesses upon their depositions, and apparently took no exception to the imbecile evidence, as they found a true bill against the accused. The accused was accordingly put forward in Court to be arraigned, but the Judge, interposing, directed that the jury should be sworn to decide "whether the poor boy was in a condition to

plead in answer to the charge against him—not whether he was guilty of manslaughter." I was thereupon called to depose to his state of mind, and deposed that in my opinion he was not able "thoroughly" to understand the nature of a criminal trial; that his mental condition was that of imbecility; and that he was unable to plead. On his Lordship's direction the jury found that "the prisoner was not able to plead," adding also "that he was not answerable for his acts." The accused was consequently discharged to the care of his father, who was bound over in his own recognisances to produce the lad for trial when called upon, the Judge having previously satisfied himself of the safety of that course.

This case involves the two-fold question of the civil capacity and the criminal responsibility of educated imbeciles; for I presume that, had it been established that the imbecile witnesses were competent to give evidence on oath, the penalty for perjury would certainly have attached to them in the event of false statements. The further question of the degree of responsibility for crime which may fairly rest upon an imbecile according to the degree of his mental development was, owing to the prisoner being declared unable to plead, not entered upon in court, though it comes within the scope of our present discussion.

In considering the question of civil capacity we will first look at that aspect in which it has already come before us, viz., the competency or otherwise of an imbecile to give evidence in a court of justice. The ancient objection already quoted, that "an *idiot* shall not be allowed to give evidence," may, I think, soon be disposed of by inquiring what meaning formerly attached to the term idiot. If we turn to "Blackstone's Commentaries," Book I., p. 302, we shall find this definition: "An idiot, or natural fool, is one that hath no understanding from his nativity, and therefore is by law presumed never likely to attain any." For such an idiot no one could possibly claim competency to give evidence. But on p. 304 we read: "A man is not an idiot if he hath any glimmering of reason, so that he can tell his parents, his age, or the like common matters." We may, I think, therefore fairly cite Blackstone as not shutting out from personal rights such imbeciles as are found in the higher classes of our Training Institutions. Having regard to the very various gradations of mental power which we find even in the same school-class of imbecile pupils, it seems to me it would be impracticable to formulate any test of competency of universal application;

but some analogy may perhaps not unreasonably be traced between the lucid or illuminated portions of the imbecile's intellect and the lucid intervals of the insane, and competency be measured by lucidity. Thus an imbecile may be able to give a correct account of the successive incidents of a transaction which he has recently seen, because his general powers of observation have been cultivated; at the same time, he may go utterly wrong if asked (for instance) how many times a blow was struck, from his incapacity to count or comprehend the meaning of figures. It would be as unjust to reject the whole evidence of such an one on account of his failure with regard to numbers, as it would be to reject that of a colour-blind man with regard to the incidents of a street fight because he might mis-describe the hues of the costumes of the combatants. Then, again, with respect to the understanding by an imbecile of the nature and moral obligation of an oath, it may (I think) be fairly argued that if he understand that he is punishable both here and hereafter for falsehood after having solemnly promised (by kissing the Testament) to speak the truth, he understands all that is essential, though he may not be able to explain his theological views in open court. On the important subject of the testimonial capacity of imbeciles, I may quote the remarks of Mr. Balfour Browne.* "In many cases," says he, "imbeciles are competent to give very useful evidence, and to further the ends of justice, which but for their evidence could not be efficiently promoted. The question of the credibility of a person of weak mind, which is left to the jury, is very much the same as that which falls to be considered by them with respect to witnesses who have scarcely reached the years of discretion. In the case of R. *v.* Perkins, Alderson, B., said: "It is certainly not the law that a child under seven cannot be examined as a witness. If he shows sufficient capacity on examination a judge would allow him to be sworn." In many respects idiots are to be regarded as children, and their evidence, where it is unsatisfactory, will have failed in virtue of the same, or similar, qualities which take from the excellence of the testimony of very young children." The mental plasticity of imbeciles is another point in which they resemble children, and the possibility of their being tutored to relate as matters of observation what is really but an "oft-told tale" must not be lost sight of. Some caution also is necessary with regard to their evidence on matters which are

* "Medical Jurisprudence of Insanity," p. 305.

not recent, as many educated imbeciles have but indifferent memories for events at all remote.

I do not propose to do more than make a passing reference to the capacity of educated imbeciles to enter into contracts and otherwise manage their own affairs. Personally I have known very few who might prudently be allowed to do so, for figures and accounts are almost invariably ill understood by imbeciles, though, if my memory serves me, I have read of a former patient of an idiot asylum who was acting as agent of a loan society! With the majority, however, the safest course is certainly a life-long tutelage, and now that the Crown no longer claims the profits of the estate of one found *idiota a nativitate*, there seems but little hardship in a perpetual infancy under the guardianship of Chancery. The contract of marriage is certainly one into which no imbecile, however well educated, should be permitted to enter.

Passing now to the question of the criminal responsibility of idiots and imbeciles, I think I cannot do better than quote from the admirable chapter on the Relation of Madness to Crime in Sir J. F. Stephen's "History of the Criminal Law of England."* The learned author, after referring to the hypothesis "that certain forms of insanity cause men to live as it were in waking dreams," goes on to say that "knowledge has its degrees like everything else, and implies something more real and more closely connected with conduct than the half-knowledge retained in dreams. This last observation is specially important in connection with the behaviour of idiots, and persons more or less tainted with idiocy. Such persons will often know right from wrong in a certain sense, that is to say, they will know that particular kinds of conduct are usually blamed, but at the same time they may be quite unable to appreciate their importance, their consequences, and the reasons why they are condemned, viz., the suffering which they inflict and the alarm which they cause. An idiot once cut off the head of a man whom he found asleep, remarking that it would be great fun to see him look for it when he woke. Nothing is more probable than that the idiot would know that the people in authority would not approve of this, that it was wrong in the sense in which it was wrong for a child not to learn its lesson, and he obviously knew that it was a mischievous trick, for he had no business to give the man the trouble of looking for his head; but I do not think he could know it was wrong in the

* Stephen's "Hist of Crim. Law," Vol. ii., p. 166.

sense in which those words are used in the answer of the judges to the House of Lords "—(*i.e.*, in McNaghten's case). The view thus lucidly set forth by a distinguished judge will, I think, commend itself to all who have had practical acqaintance with imbeciles. Truly "knowledge has its degrees," and the degree of knowledge in the case of the educated imbecile will, of course, vary with his original capacity and the degree of mental development which has resulted from education. It will require but little capacity or education to know that a blow hurts, or even to learn that it is wrong to hurt a companion. To know that a blow on the head may cause death by fracturing the skull is a higher degree of knowledge, only to be imparted to the imbecile by special instruction; for without this he may very possibly imagine that such a proceeding may produce no more grievous bodily harm than it apparently does in the case of Punch and Judy. It is obvious that the same measure of criminal responsibility cannot justly be held to attach to the imbecile with the higher and to the imbecile with the lower degree of knowledge, though in both cases there may be said to be *some* knowledge of right and wrong. While I should be the last to advocate the plenary punishment by law of any congenital imbecile, however much improved by education, I think it a dangerous doctrine that such persons should escape all punishment simply because they have been imbecile. The punishment should (it seems to me) bear some relation to the degree of knowledge of right and wrong possessed by the individual, allowance being moreover made for the defective judgment which may, in a particular case, interfere with the application of such knowledge. At best, the knowledge and judgment even of an educated imbecile must be reckoned as imperfect by the side of those of his "normal" fellow-man; and though committing things "worthy of stripes" his stripes should in comparison be few. Yet I think we may fairly claim that, along with the knowledge imparted by education, the imbecile does acquire responsibility in measure and degree, so that to him also society may apply, always with a wise discretion, the Scriptural maxim, "To whom men have committed much, of him they will ask the more." *

* It may perhaps be well to add that the unfortunate subject of the judicial investigations above referred to was but little improved by education, so that his case hardly falls within the scope of the concluding remarks.