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INSANITY AND CRIME.

Paper read before the York Law Students' Society.

BY

S. W. NORTH, M.R.C.S.ENG.

*Visiting Medical Officer to the York Retreat, and Medical Visitor
to Private Asylums in the North Riding.*

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The questions I propose to consider are :—

1. The relation of insanity to crime.
2. The question of responsibility.
3. How far the legal dictum on the responsibility of alleged lunatics is true in fact.

In every civilised community, however imperfectly the wish may be fulfilled, the desire is to do equal justice to all ; to uphold the law as a terror to evil-doers, and the protector of the innocent.

Whether punishment is to be regarded as an act of vengeance against the wrong-doer, or simply as an agent for deterring others, is a question about which it is possible there may be divers opinions. For myself I prefer to regard punishment as an act of lawful vengeance, whereby society, with all the safeguards of law, marks its sense of wrong and its determination to prevent it—this state of the public mind being itself the great deterrent.

Accepting this view, and that the vengeance of the law should be sharp and implacable, never wavering and never hesitating when once satisfied that the wrong has been done and the wrong-doer secured, it behoves those who have the administration of the law, and society whose highest behest it obeys, to weigh with all diligence, and with all the aids which knowledge can bring to bear on the matter, the question of personal responsibility, so that no man may say that the sword has descended on one whose actions were not of his own free will.

Liberty of action is the very essence of responsibility, and in this lies the great difficulty, not only as regards the question of

mental competency for the commission of crime, but in the affairs of daily life. The wise man often forgives because he recognises the difficulty of deciding the question of personal freedom, and courts of law are not unmindful, when sentence is pronounced, of mitigating circumstances.

It is the very quality of charity, human and divine, to forgive them, "for they know not what they do."

The limitations on personal responsibility arising from social conditions and the acts of others are not within the scope of this paper. I refer to them simply to remind you that such limitations exist, and are recognised as such.

The same act in the eye of the law is not invariably a crime, and when it is an offence, its legal magnitude may be diminished by evidence showing limited freedom of action.

The law does recognise limitations on responsibility, though knowledge be abundant and the offender thoroughly understand the nature and quality of his act, and that it is in itself unlawful. Your experience and knowledge will supply abundant illustrations of the fact.

The object of my paper is to show that limitations on freedom of action arising from disease, equally cogent, nay, often far more so, do exist; that these disordered conditions of personal health give rise to such disturbances of the mental powers as may and often do operate as agents in impelling the sufferer to acts of criminality, overmastering or, it may be, destroying his moral sense and power of restraint, even at a time when he may retain a full knowledge of the nature and quality of his act and that it is contrary to law; that these mental disturbances exercise a coercive influence over his actions, far more powerful than any influence which can be brought to bear by others; that persons so diseased, being deprived of their freedom of action, are of necessity, and in fact, and in justice ought to be held, irresponsible to the law for their acts; that the question of what they know or what they do not know is of no importance, and in the light of knowledge of no value in determining their power to control their conduct; such persons are slaves despite their knowledge, unable to resist that which to them is more than a master.

Remembering with admiration the extreme care bestowed in our courts of law to protect the accused, the diligence with which all irrelevant evidence is excluded, and the minute attention which is paid to every fact which may show a want of legal responsibility, it does seem strange that so little con-

sideration has been given to those excuses for criminal acts which are afforded by disorders of the intellect, and that so little respect has been paid to the teachings of experience, and the observations of men whose lives have been devoted to the study of these disorders.

Though during the past century there has been an enormous advance in our knowledge of disorders of the mind, and in hundreds of hospitals and asylums opportunity has been given for investigation—and though the whole literature of the subject is directly opposed to the legal dogma—it remains unchanged, and the same definition of responsibility may still be heard from the bench whenever the question is raised. Except in the domain of theology, I know no region of human thought in which a dogmatic adhesion to a phrase having no basis in fact is so rigidly adhered to as in this corner of our jurisprudence. If, happily, in spite of judges and judge-made law, few insane persons are hanged now, it was not so thirty years ago. The question is rapidly becoming one of historical rather than practical interest, and the day is probably not far distant when this judge-made law will become a question of the past, and some happy judgment in a Court of Appeal will extinguish it for ever.

Before I proceed to discuss the main questions at issue it may be well, and will probably serve to clear the ground for argument, if I endeavour to define and limit the question before the Society. In all controversy more than half the difficulty and nearly all the obscurity in which complex questions are involved is due to the want of a clear definition of terms and a full appreciation of the limits of knowledge.

There is no precise definition of the word responsibility. So far as I know, no such limitation of the term is possible as would enable us to use it as the basis of a scientific argument. Hence the diversity of opinion which men form of the conduct of others. In the mind of the multitude the estimate of duty, justice, and honour, what men ought and ought not to do under given circumstances, is as shifting as the wind, and as diverse as the thoughts, habits, education, and social position of the individuals who compose the multitude.

In morals, the question of responsibility has never been clearly defined; no theologian has ever, except in the matter of belief, itself vague and illusory, dogmatically stated what he means by man's responsibility to God or to his fellow-men.

Read by the light of history, responsibility is a shifting and probably advancing quantity, increasing with the progress

of knowledge, and with the complexity of our social state. In some vague and indefinite way, when we speak of responsibility we imply knowledge and freedom of action, terms in themselves almost as ill-defined. When we are obliged to consider the application of them to some given case the difficulty confronts us. The individual forgives the wrong or foregoes his right. The Church devises means of escape from the consequences of error. The law weighs all the facts with care, giving the full benefit of doubt to the accused, and society at large breathes more freely when it can forgive—so thoroughly do all men recognise the difficulty of defining responsibility.

In like manner there is no definition of insanity. No one has ever yet framed a definition of mental unsoundness capable of embracing all cases of derangement of the intellectual faculties, and at the same time of excluding sanity. The difficulty of defining what we mean by sanity or insanity is as great as that of defining responsibility, and for the same reasons. Probably the more we advance in civilization and social complexity the wider and more evident becomes the area of man's incapacity. Whilst, in the lowest stages of social development, mental powers of an elementary order might suffice, it is obvious that these would become inadequate in an advanced social state to enable the individual to discharge all the duties of citizenship, or to be held responsible for the due performance of them. From him that has little we have no right to demand much.

If these opinions are sound, and it seems to me difficult, if not impossible, to say they are not, then it is clear that we have no data which enable us to say beyond doubt what constitutes responsibility and what does not, or what constitutes insanity or its converse sanity. Both conditions are undefinable, and no definition which can guide others to our meaning is possible.

Notwithstanding all this, we have a legal definition of responsibility, expressed in words clear and distinct, enforced on the attention of juries with all the solemnity of assured truth, by which the range of freedom of will is defined, not in the sane, but in the victims of disease.

The human mind is parcelled out into divisions, and it is boldly declared that some portions may be unsound, yet that which guides the whole, the will, is sound, and able to control the vagaries of the rest, provided the subject of disease has an intellectual knowledge of what he is doing and of its legal rela-

tions. This dogma, held and enforced for at least a century and a half, became crystallized into a formula by the opinions of the judges expressed in answer to questions submitted to them by the House of Lords in 1843.

Men of great ability, of wide learning and experience, deemed it right, and their successors follow them, to affirm the dangerous and unsound doctrine that knowledge is power.

They tell us in their books, and often with scant courtesy from the bench, that medical men are not lawyers, that they do not understand the law. The members of our profession never, so far as I am aware, claimed either the one position or the other.

We do not understand the law—it is not our province to do so—but we do claim to have the ordinary understanding of jurymen, and to comprehend the law as it is laid down for their guidance in cases where insanity is pleaded in defence. Jurymen, as a rule, are not lawyers; they do not understand the law, but they are expected to understand the exposition of it by judges. The medical profession claims no more. With this exposition of the law to guide me, I say unhesitatingly, and of knowledge, that the law as laid down by all the judges, living and dead, for the guidance of juries, with possibly one or two exceptions, is unsound in reasoning and untrue in fact. I do not say it is bad law—of this I am no judge—but I do say the law is bad, in that it is not true, and that scores of helpless lunatics have perished on the scaffold in consequence.

Every form of incapacity for crime is protected by law and the opinions of judges, except that which springs from disease. It is a wise and generous provision that no act done by a person over seven and under fourteen years of age is a crime, unless it be shown affirmatively that such person had sufficient capacity to know that the act was wrong.

On what conceivable basis can this presumption of law have been founded, except that persons of tender age, by lack of experience and habits of independent action, are supposed to be deficient in self-control?

It cannot be based on lack of knowledge. It can never be said that a boy who may be in the front rank in a grammar school does not know the nature and quality of his acts, and that they may be illegal. Yet men without number have been hanged, under the solemn direction of judges, whose capacity was far behind that of the schoolboy, on the assumption that this knowledge made them responsible and liable to punishment.

Let us for a moment briefly consider in broad outline the faculties which may through disease of the organism be disturbed.

Without raising the question of what mind in the abstract may be—whether it is simply a function of matter, a quality of the organism, or something having an independent existence, and only for a season abiding with the body as the spirit within the temple—it may be asserted, without fear of contradiction, that we know nothing of mind apart from a material organism. We know that through infancy and childhood to manhood it grows with the growth and maturity of the brain; that in advanced life it fails as the fabric fails; that its manifestations are destroyed or disturbed by injury or disease. A blow on the head may extinguish it for weeks or months, and enfeeble it during the life of the individual; an effusion of blood, as in apoplexy, will produce the same result. Various forms of food and drink disturb its operations. Drugs may steep the brain in oblivion or develop wild excitement. The abuse of alcohol and opium too sadly testifies to the truth of this.

States of health affect it, as every one can bear witness. Who has not felt the joy of health and the misery of disease? Disorders of digestion and disease of the liver notoriously produce depression and melancholy, the very word melancholy being an ancient term expressing this fact.

The joys and pleasures of daily life, ease, and plenty, produce their marked effect on the human faculties; so pain and sorrow, poverty and despair, make their impress. What the poet says of the body may with equal, if not greater, truth be said of the mind :—

Danger, long travel, want and woe,
Soon change the form that best we know;
For deadly fear can time outgo,
And blanch at once the hair.
Hard toil can roughen form and face,
And want can quench the eyes' bright grace,
Nor does old age a wrinkle trace
More deeply than despair.

We may recognise three great divisions in what as a whole we call the human mind: faculties which bring us into relation with the outer world; faculties which enable us to reason on the facts perceived; and, lastly, faculties or a faculty of the mind which enables us so to conduct ourselves as to render the social state possible—broadly, our sensations and appetites by which we perceive and live, and by which our own existence is continued and the race

perpetuated; a power of reason by which we are able to combine facts and events and avail ourselves of the knowledge and experience of others; a moral sense by which we understand our relation to each other, and our duty to society at large, culminating in the religious sense. I do not pause to ask whether these are separate portions of the human mind or simply faculties of the whole. They are, we know, one or other, more or less prominent in different individuals.

The whole of the human faculties may be grouped under one or other of these three divisions, and so may the disturbance of their operations which we designate insanity.

So surely as disease of structure or arrest of function may disturb the motion of a limb, as certainly will disease of structure or arrest of function disturb any one of these departments of the mind.

As certainly as no organ of the body can be diseased or lost without disturbing the well-being of the whole, and limiting its powers, so surely no portion of our mental organism can be disturbed without disturbing the whole, and thereby limiting the power of the whole.

To regard the body as a series of independent parts is absurd, as every physician and every sufferer knows. A tooth is, perhaps, as independent of the rest of the body as any part. Will any one who has ever suffered from toothache assert that it does not disturb the whole body? The nutriment of the body is supplied from one common source, the blood, elaborated and prepared in certain organs of the body, extracted from the food we eat and the air we breathe. Is it conceivable that disturbance of these organs or the defective performance of their functions will not affect the whole body? It is only necessary to state the proposition in its baldest form to see its absurdity.

If it be unphilosophical, and, as I believe, contrary to sound knowledge, to assert the independence of one part of the body of another, to say that disease of one organ may exist without more or less affecting the healthy performance of function in all the others—that the hand may say to the foot, “I have no sympathy with thee,” that the brain may say to the stomach, “We have nothing in common”—how much more unphilosophical and contrary to sound knowledge must it be to say that our mental faculties can be parcelled out into divisions so distinct that disturbance of one does not disturb the other, that one portion of our intellectual organism may be in ruin whilst the rest is in sound working order?

That a man may be deprived of his moral sense whilst his reasoning powers retain their integrity, or that his appetites and passions may be disordered without disturbing his moral sense, that his powers of ratiocination may be defective in some points and not as a whole, seems to me a proposition so absurd, and so utterly at variance with all experience, that I marvel how in any form it could be possible to accept it. Yet this startling assertion is, if not in precise words, yet in practical effect, the deliberate opinion of the law as expounded by judges for the guidance of juries in cases where insanity is pleaded in limitation of responsibility.

Let me now very briefly call your attention to the relation between insanity and crime. Whole groups of acts, in themselves criminal, may be, and often are, the direct outcome of insanity—acts of destruction, murder, arson, every form of violence, and the acts of lust and appetite—that which calls the passions into play being disease and not vice.

The same motives may influence an insane as a sane man. Investigation alone will prove their character, and in which category the act should be placed.

It is said by those who have had much intercourse with habitual criminals that they are all more or less mentally unsound—persons in whom the moral sense is in abeyance; men without forethought, pity, or remorse; criminals because they recognise no control except their own appetites and passions; men who rob and excuse themselves on the ground that all property is theft, that it belongs to those who require it; men who covet and desire other men's goods, and take them when they have the chance, on the ground that property, if it is not, ought to be a common possession; assertors of the rights of men, forgetful only that others have claims besides themselves. It would not be difficult in some popular assemblies to find men elected by the free choice of the people who still retain traces of this opinion. Yet these are not insane. Such men not only fully know the nature and quality of their acts, but dread and shrink from punishment, and take every means to avoid it if possible. Theirs is the insanity of bad habit, and not of disease. This is neither the time nor place to discuss how far defective social conditions may be responsible for the creation of these people. They are a criminal class in every sense of the word, and no one would desire to shield them from the due reward of their works. They differ in a very essential degree from those we recognise as insane, both in their life history, the circumstances surrounding their acts of

criminality, and their feelings and opinions on the subject. They have no delusions, no divine command impels them, nor are they hurried to destruction by devils. They are haunted by no visions, hear no voices of men, of angels, or of demons telling them what to do. They have no belief that some command is laid on them different to other people, obedience to which must override all law and all regulations. They are impelled by no fancied wrongs, and know no grievances unless it be the grip of the law.

No man of experience could by any possibility confound the habitual criminal with the lunatic, or would suggest that he should escape the punishment due to his crime. It is only when metaphysical subtleties come in, when lawyers and judges seek to confound a medical witness, that voluntary crime is confounded with the criminal acts of the lunatic.

The distinction in words between the two is difficult, and it is easy to confound a witness by this dilemma. Crime itself is no proof of sanity or insanity, though the method of the criminal act may be.

There are three well-marked aspects of mental unsoundness, about one or other of which the dispute between law and medicine ranges itself. These are:—

1. Deficiency of mental power from whatever cause, including every form of imbecility and dementia, forms of mental unsoundness, either congenital or the direct result of positive disease.

2. Delusions—embracing every form of illusion or hallucination—auditory, optical, &c.

3. Impulse—destructive fury without necessary delusion, or any marked weakness of intellect.

Let me briefly describe each form with an illustrative case. They each contain many sub-divisions, and were I writing for a medical audience I might consider them under a variety of aspects. For the purpose of legal discussion and administration I have always thought this minute sub-division unnecessary, serving only to create obscurity and confusion. Minute sub-divisions are in courts of law the hope of lawyers, the horror of judges, and the destruction of the witness. Medical witnesses are too apt to forget that capacity or incapacity is the sole question before the court, and how incapacity is to be proved the sole business of the defence. For this purpose and for the ends of justice learned sub-divisions and minute distinctions are worse than useless.

Cases illustrative of the first group, viz., simple defect of

intellect without evidence of other unsoundness, are common in every class of life.

They may be divided into two great classes, viz., those who, born with feeble intelligence, continue so through life, and those who, for the most part, somewhat late in life pass into a state of mental feebleness, as the result of paralysis, brain softening, and other diseases. These latter seldom if ever figure in our criminal courts. They are the great subjects of dispute in civil courts, when business or testamentary capacity is called in question.

The first group, as every one knows, may be seen in every phase, from the man whose intellect is not quite up to the average of his class to the simple idiot. It is with this class of cases that the question of responsibility becomes difficult to answer. Such people behave themselves like other men, only on a lower platform. Their friends and neighbours pity them for their weakness, or blame them for their vices, as temper or circumstances may chance to direct. Every variety of opinion as to their responsibility and criminality may be honestly obtained, when they are charged with any offence, from those who have known them intimately. Large numbers of such people are amiable, harmless individuals when surrounded by kindness and comfort, capable of much useful occupation and of much happiness and enjoyment; amongst the poor, of much useful work under proper guidance. They have no initiative power, and little or no capacity for adapting themselves to circumstances. In the rough world of every-day life they are thrust aside; they interest no one; they are but fragments of humanity cast on the shore by the torrent of that busy life which can take no thought for the feeble and the helpless. On the other hand, with feeble mental power, large numbers of these people have strong animal passions. Enraged by the slightest provocation, they are guilty of inordinate violence towards those who cross them. Driven by lust, they are prone to acts of violence in its gratification. They have full intellectual knowledge of the nature and quality of their acts. They know that society is prone to punish such deeds, but, as in the brute, passion and appetite overmaster their fear of punishment, the deed is done; remorse is slight if it exists at all. Such men are often found amongst the lowest dregs of the criminal class, where friendly care has not kept them apart, or where early crime has not placed them in safety. Except in the case of murder, where the sanctity of life is in question, their mental condition is seldom the subject of inquiry. Now

and then society is startled by some crime of great brutality, homicide or rape, committed by a person who, from social position or parental kindness and care, has not been allowed to sink into the lowest depths, and the question of competency is raised. Offences of a less atrocious kind than murder committed by such people seldom attract attention. They are accompanied by no mystery. The facts are generally easy to prove, and no interest is felt in the accused. Hence it is that the whole interest in the question is more or less associated with homicide, and the cases reported are for the most part cases of murder.

Yet the same principles are applicable to many other forms of crime.

I will briefly state three cases in illustration of my previous observations.

1. *Deficiency of Mental Power.*

A case tried in this city (York) in 1859, in which I was largely concerned, will serve as an illustration of this class.

James Atkinson, aged 24, was indicted for the murder of Mary Jane Scaif, at Darley. The man and woman, who had been reputed lovers for some years, left chapel together on the evening of August 1st; took the usual direction to the girl's home. She was found the next morning in a ditch by the road-side with her throat cut, there being eight distinct wounds. There were reasons to believe that the man had some cause for jealousy; further, the girl's mother strongly objected to their marriage. There was no doubt but that immoral relations had existed between them for a long time. After the murder the man hid the knife in a wall, washed his hands in an adjoining pond, and went home. He seems not to have slept. At an early hour in the morning he awoke his brother, who slept in an adjoining room, and said he had murdered his sweetheart. He said he must have done it, and seemed confused. Before the magistrates he made a full confession, describing the particulars of the crime and the attendant circumstances. He was imperfectly educated, but could read and write, and had done some arithmetic. He acted as mechanical overlooker in a mill, and his father had named him an executor under his will. A medical man who had known him for several years said he considered him a man of weak mind—weak, frivolous, and vain, easily excited when crossed, and subject to violent outbursts of temper on the slightest provocation. His manner of speaking was slow and hesitating. He manifested no emotion when speaking of the murder, and talked of it as of other things. The common testimony at the trial was that he was more or less of weak intellect, but capable of doing some regular work and

apparently of such capacity that his friends did not object to his marrying.

The defence was that, being of weak mind, he was not able to control his actions. After a trial lasting three days, and a deliberation by the jury of nearly four hours, he was acquitted on the ground of insanity. Newspapers, from the "Times" downwards, spoke disparagingly of the verdict, and disrespectfully of the medical opinions. Many clergy said that such opinions confounded all moral distinction between right and wrong.

The verdict was beyond all doubt at variance with the ruling of the judges on the question of responsibility. The man knew right from wrong, and knew full well that to kill another was wrong, a wrong for which he might be punished.

Viewed by the light of our present experience, it seems strange that there should have been a moment's hesitation as to the verdict. Viewed by the light of thirty years ago, his acquittal was a surprise to those who honestly believed him irresponsible, and who, at the risk of a good deal of odium, so testified in court.

This is one of the clearest and best cases I have met with of the acquittal of a man guilty of homicide on the evidence of simple defect. No witness in so many words said that he did not know the nature or quality of the act he was doing, or that he did not know that it was wrong.

The medical testimony asserted that, being of weak intellect, he had not reasonable control over his actions, and could not be held responsible as other men. This case did something in practice, if not in ruling, to break through the legal dictum.

2. Cases characterised by Delusion.

Persons suffering from delusions, using the word in a very general sense, either see visions—this is rare—or hear voices—which is common—or are the subject of some extraordinary and unreasonable belief, as, for example, that they are royal personages, or some other and different person from what they are; that they are the victims of conspiracy or the subject of machinations of one kind or another. Their delusions are as various as the events of daily life.

I quote a historical example of this form of mental unsoundness in the words of the judge who tried the case, as given by Mr. Justice Stephen in his history of the criminal law.

McNaughten, being under an insane delusion that Sir Robert

Peel had injured him, mistaking Mr. Drummond for Sir Robert Peel, shot Mr. Drummond dead with a pistol. His acquittal on the ground of insanity made a great sensation. Certain well-known questions were by the House of Lords propounded to the judges, their answers forming the rule on which juries are to this day directed.

The medical evidence was that a person of otherwise sound mind might be affected with morbid delusions; that the prisoner was in that condition; that a person labouring under a morbid delusion might have a moral perception of right and wrong; but that in the case of the prisoner it was a delusion which carried him away beyond the power of his own control, and left him no such perception, and that he was not capable of exercising any control over acts which had a connection with his delusion, and that it was the nature of his disease to go on gradually until it reached a climax, when it burst forth with unmistakable intensity; that a man might go on for years quietly, though at the same time under its influence, but would at once break out into the most extravagant and violent paroxysms.

I have never been able to see the full medical testimony in this case. I am not sure that the learned judge gave a correct interpretation of it in every particular.

It is a very common thing for persons of unsound mind to hear voices, to receive commands from heaven or suggestions from the devil as to what they shall or shall not do. They are forbidden to eat or to drink, or to walk in a certain direction; or they are directed to destroy themselves: with a firm belief that others are conspiring to injure them, they revenge themselves by acts of violence on persons who have done them no wrong, or where the wrong is of the most trivial or imaginary character, their acts far exceeding what the real or imaginary wrong might justify. They neither reflect, reason, nor investigate. To them, as to the jealous,—

Trifles light as air
Are . . . confirmations strong
As proofs of Holy Writ.

Yet all such people know well enough what is right and wrong. They will tell you plainly enough what you ought to do or ought not to do under the same conditions. But then they say they are different; you may have hope, they have none; no voice commands you, but it does them; you are the victim of no conspiracy, but they are; the law will protect you, but not them: and in this way, separating themselves from others, they

become a law unto themselves. Their acts are not subject to the same controlling influence as the acts of sane people. Their moral purpose is perverted because their reason is disturbed. They have the knowledge. Should we hold them responsible for their acts? I am sure we ought not, even though the act may very much exceed what would be justifiable were the delusion a fact.

3. *Impulse. Transitory Frenzy in Persons otherwise Sane.*

These cases are beset with considerable difficulty.

Destructive fury, without necessary delusion or marked defect of intellect.—I distinguish these from the violent outbursts of imbecile persons. They (the imbecile) are violent when provoked, and act like other people when angered, but, by reason of their imbecility, cannot control their actions, and should not be held responsible because of this want of reasonable power. The cases I refer to are fortunately rare, though well known and understood. They differ from the imbecile in the fact that their ordinary intelligence may be good, and that for long periods they may show no symptoms of disease, but in all things act as other men. The violence they commit is not of necessity the outcome of provocation, but in the majority of cases seems without a cause.

A case affording a good example of this form of mental unsoundness was tried and acquitted on the ground of insanity some year-and-a-half ago at the York assizes.

Martin Kioll was indicted for the murder of his child by killing it with a hatchet in his own house.

This man's wife had for two or three years complained of repeated acts of violence, apparently unprovoked, or, at all events, on very trivial provocation; that he would strip himself and go out into the yard naked; that he did not work. There was no evidence of intemperance. He was under my observation for some time, about two years before the murder. Beyond the fact that he was dull, somewhat stupid, and subject to fits of violent temper, he showed no signs of insanity. He was taken by his friends to a holy well in Ireland, but without effect. He left his family and went to America alone, returning to England in about eighteen months, apparently having earned his own living whilst there. He came home in good condition and joined his family.

Early on the morning of the third day after his arrival he was heard by a lodger speaking kindly to the child. He carried it downstairs, speaking kindly to it as he went. Within a very short time of this the child was found downstairs dead, horribly

mutilated—a hatchet covered with blood, and a block of wood, on which sticks were cut for firewood, in the same condition.

There was not the slightest reason to believe that he had seen any one between the time he brought the child downstairs and its murder. The child was too old to raise any suspicion of his wife's fidelity during his absence.

I saw him several times after he was taken to prison. He was dull and sullen. To all questions put to him he replied, "I do not know." He seemed to have no thought as to the murder—manifested no emotion when spoken to about it. I have not the least doubt but that a large proportion of his ignorance and stupidity was assumed.

He was acquitted on the ground of insanity, and was of sufficiently sound mind to express some satisfaction at the result. I have since heard that he has had several attacks of fury.

I have no doubt whatever that this man on all occasions knew what he was doing, and knew whether it was right or wrong. I am equally certain that he was not responsible for what he did. The summing up of the judge, though in favour of his acquittal, was marked by a singular evidence of the decay of the old ruling as to responsibility. No witness was pressed with the impossible question of what the man knew or did not know at the time of the murder.

This case was a good example of the form of insanity—marked by simple outbreaks of sudden fury of an epileptic character—well known to those who have charge of the insane. Such men are not, in the intervals of their attacks, quite like other men. There is, or would be if it could be ascertained, always a history of some change in habits and character, of some loss of mental power, often obscure, but still a clear and distinct history of the fact.

The mere mention in a court of law in times gone by of the existence of such cases, and that an accused person was an example of them, was received by judges with scorn and derision. If the unhappy outbreak of fury was spoken of as an irresistible impulse (not a happy phrase), it was quickly met by the statement from the bench that the law had an irresistible impulse to punish such people, *i.e.*, hang them, and hanged they were.

These three cases will serve as illustrations of the three conditions of unsound mind under which the question of criminal responsibility is likely to be raised.

The *first*, one of defective intellect, in which the moral and intellectual powers were of a low and limited order.

The *second*, one in which crime was the direct outcome of a delusion.

The *third*, an example of what is known as insane impulse.

In all, I say the plea of insanity was justly raised—their acquittal right—because they were not in any sense able to control their actions as other men. Yet every one of them was acquitted in direct violation of the ruling of judges on the question of responsibility. Every one of them knew full well the nature and quality of his act, and that it was contrary to law. In the single case of delusion, the delusion, had it been a fact and not a delusion, would not have in any sense excused the crime.

The whole of my paper thus far may be regarded as an answer to the last question—How far the legal dictum on the responsibility of alleged lunatics is true in fact?

It may not be out of place, however, to say something further on this question.

I have no doubt but that the opinion expressed by the judges on this question is good law—that is, that it has ancient prescription and abundant precedent for its justification. What I say is that the law is wrong, being contrary to knowledge; that, under its sanction and by the direction of its administrators, irresponsible lunatics have been hanged and may be again; that for this reason the law on this question is not respected as it ought to be, and the most righteous punishment of death for wilful murder is jeopardised by doubts as to the possible sanity of the accused. A man guilty of wilful and deliberate murder should be hanged without doubt and without hesitation. But manslaying is an act often committed by lunatics, whose execution would shock the moral sense of the community did it know and believe they were lunatics.

That the vengeance of the law may be sure and unmistakable, I urge that this question of responsibility needs to be settled on a clear and unmistakable basis and in accordance with knowledge.

The law of responsibility as defined by the judges is this:—

That to establish a defence on the ground of insanity it must be clearly proved that *at the time* of committing the act the accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong (illegal). If the accused was conscious that the act was one which he ought not to do, and

that the act was at the same time contrary to the law of the land, he is punishable.

Mr. Justice Stephen, in his history of the Criminal Law, puts it thus—adding some important modifications of his own—modifications which would go far to secure the end I have in view, if adopted, as the authoritative interpretation of the law as regards responsibility in criminal cases. Mr. Justice Stephen is not, however, quite satisfied that his exposition is sound law. His illustrative cases clearly show that under the existing ruling palpably insane persons might and ought to be punished. He says:—

First, then, what is the law of England as to the effect of madness upon criminality?

No act is a crime if the person who does it is at the time when it is done prevented (either by defective mental power or by any disease affecting his mind) —

- (a) From knowing the nature and quality of his act, or
- (b) From knowing that the act is wrong, or
- (c) From controlling his own conduct, unless the absence of the power of control has been produced by his own default.

But an act may be a crime, although the mind of the person who does it is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act.

The interpretation of the law on the question of responsibility by this learned author, if generally adopted by the judges, would give a wider liberty in directing juries, and enable a judge to include in his category of limitations of responsibility many forms of mental defect hitherto excluded, and at the same time to admit as evidence many facts now excluded. For I take it that a judge is bound to keep from the jury all evidence which is not in accordance with the law, and to prevent its being given. With this principle, if I understand it aright, I entirely concur. Were it not so, witnesses in matters of opinion would become advocates assigning reasons for acquittal outside and beyond the law. What I assert is that this limitation of evidence, and of that which is laid before a jury in accordance with the ordinary and accepted ruling of the judges on the question of responsibility for crime, is unwise and unjust, because it deprives the accused of the benefit of existing knowledge—knowledge which is none the less a fact relevant to the case in question because it has to be given in evidence as a matter of opinion. If it be true that

there are hundreds of persons whose insanity and inability to control their own actions is beyond all doubt, who nevertheless do, with equal certainty, understand the nature and quality of their acts and that they are illegal, *i.e.*, wrong in the sight of the law, then surely where insanity is pleaded as an excuse for crime a witness should be at liberty to say so, and this knowledge, gained by experience and observation, should not be withheld from the jury. As the law is now administered, a witness, after giving evidence of facts which have come within his own observation and examination of the accused, is asked if the accused at the time of doing the act knew what he was doing, and knew that it was wrong. A conscientious witness, unlearned in legal subtleties, anxious to keep strictly to the letter of his oath, answers "Yes" to both questions. He would like to say more, but he is stopped. He has brought the accused within the law of responsibility; all else is irrelevant. A more adroit witness, or one who has studied the matter from a legal point of view, takes his own view of what is meant by knowledge and answers "No," and unless his evidence be discredited the accused is acquitted, the conviction or acquittal of the accused being more dependent on the skill of the witness than the justice of the case. This cannot be right. I am certain it is true. What is the practical outcome of the exclusion of well-ascertained facts and opinions? It is this: Two or more men of experience examine an alleged lunatic before his trial. They are satisfied of his insanity, but equally so that he knows right from wrong and the nature and quality of his acts. The conviction of his insanity arrived at, one says: "Well, he is a lunatic. Are we to save the man or hang him, because it rests with us? If we think he is insane and ought not to be hanged we must take care to say so; that is to say, that he does not come within the legal definition of the knowledge of the nature and quality of his acts, or that they are wrong, which constitutes legal responsibility."

To save the life of a criminal now it is only necessary to raise some modest doubt of his sanity—to furnish a few facts, more or less doubtful. Conviction may follow, but not execution. An official expert visits the prisoner, and he is not hanged. The execution of the law on persons charged with murder is removed from the proper authorities and the direction of the court to some irresponsible person, no doubt a man of knowledge and experience, but one who seldom, if ever, dare take upon himself the functions of executioner. Mercy is more acceptable than severity, and Home Secretaries must err on the side of mercy.

The contention of this paper is, that the law of responsibility in criminal cases is wrong in fact and contrary to knowledge and experience—that the result is to introduce great uncertainty into the administration of justice, especially where persons are charged with murder—that the punishment justly due to the greatest of crimes is rendered halting and uncertain.

I contend that the ruling of judges should be altered in accordance with knowledge and experience, so that the whole truth may be submitted to the jury, that this modification would restore the certainty of punishment in a department of our criminal law which of late years has become uncertain.

The error in the ruling of the bench on the question of criminal responsibility has chiefly arisen from the fact that they have studied the sound mind only, and not the unsound. Applied to the sane man, the opinions seem to me sound and just; applied to the insane man, unsound and dangerous, fraught with peril to the accused and to that sense of right which all men desire to see characterise the administration of justice. That the views of the judges on the responsibility of persons alleged to be lunatics is derived from a study of the sane mind is confirmed by the following quotation from the work of Mr. Justice Stephen, to which I have previously referred. Speaking of the law generally, under the head "Knowledge of Fact," he says:—"The degree of general knowledge usually presumed in criminal cases may be inferred from the law as to madness. It appears to contain two elements; first, a capacity of knowing the nature and consequences of the act done, and next, a capacity of knowing the common notions of morality current in England on the subject of crime." Herein lies the error. The acts of the lunatic cannot be compared with those of the sane man. His motives and his actions are ruled and modified by different causes. Whilst it is reasonably possible to predict what a sane man would do under any given circumstances, it is impossible to say what an insane man would be likely to do.

With these observations I bring this paper to a close. I have entered on the discussion of the subject in no spirit of cavil, but from a simple desire to lay before you the leading features of the question as seen from a medical point of view.





