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CRIMINAL LUNATICS:

ARE THEY RESPONSIBLE?

BEING

AN EXAMINATION OF "THE PLEA OF INSANITY,"

IN

A Letter

TO THE

RIGHT HON. THE LORD HIGH CHANCELLOR.

BY

J. RUSSELL REYNOLDS, M.D. LOND.,

LICENTIATE OF THE ROYAL COLLEGE OF PHYSICIANS, FELLOW OF UNIVERSITY
COLLEGE, ETC. ETC. ETC.

LONDON:

JOHN CHURCHILL, 11, NEW BURLINGTON STREET.

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ROYAL COLLEGE
OF
PHYSICIANS
OF
LONDON

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A LETTER,

ETC.

MY LORD,

THE two questions, "What is insanity of mind?" and "According to what principle are insane criminals to be treated?" are constantly asked by the people of this country; they are as constantly answered by its legal and scientific advisers; but they are answered in such manner that the questions recur for solution whenever the "plea of insanity" is raised as the ground of exemption from punishment.

It is in order to remove, if possible, some of the obscurity in which these two questions are involved, that I have taken the liberty of addressing your Lordship; and, in my endeavour to accomplish this end, I shall refrain from criticism of the several answers which have already been given to those questions; and shall avoid, as completely as possible, those points for philosophical debate, which are not immediately concerned in the inquiry.

The method which I propose adopting in this investigation will be apparent, when it is stated that I shall endeavour to answer the following questions:—

- I. What is sanity of mind?
- II. What are the proofs that an individual is sane?
- III. What are the responsibilities of the sane?
- IV. What is insanity of mind?
- V. What are the proofs that an individual is insane?
- VI. What are the responsibilities of the insane? and,
- VII. In what manner are insane criminals to be treated?

It is because the answer to the question "What is insanity of mind?" has been given without any distinct reply to the prior question "What is sanity?" that so much uncertainty exists; and it is on this account that I purpose adopting the order of investigation stated above.

I. WHAT IS SANITY OF MIND?

Sanity of mind may be defined to be that normal state which results in the recognition or correct appreciation of things as they are.

This correct appreciation, which constitutes sanity, affords results in three different directions, viz., the distinction between truth and error, between right and wrong, between the advantageous and injurious; these distinctions depending upon the recognition of facts, of duties, and of advantages.

1st. The distinction between truth and error, results from the recognition (subjectively) as truth, of that which exists (objectively) as fact. There, is, doubtless, some hidden harmony, the laws and full extent of which we cannot grasp, but which nevertheless exists between our minds and external nature, so that the impressions which the former receive from the latter convey with them the stamp of truth. That which exists as "order," we recognise to be order:—that two and two make four is not only the fact with regard to all objects whatsoever, but the proposition that $2 + 2 = 4$ is truth, and is recognised as such by all sane minds:—that the human body is not composed of the material called "glass" is the fact, and the sane mind recognises that fact as true. On the other hand, the propositions that $2 + 2 = 5$; and that the human body is made of "glass" are at once perceived to be false.

2nd. The distinction between right and wrong, and the sense of duty, result from an analogous harmony between the mind of the sane man, and the laws of rectitude. There are in the minds of all sane men these ideas of right and wrong, and their existence involves the recognition of two principles, viz., that there is a law of rectitude, and that there is also a power to keep within its requirements or to transgress them. It is beside the question to inquire whence these ideas are derived; the sane man is assured that the distinction between them exists;

he recognises the points through which the line of separation must be drawn; and that course of conduct which is right or wrong, he believes to be right or wrong, respectively.

3rd. The distinction between the advantageous or disadvantageous, is one which the sane man is able to make by recognising correctly the mutual relations of different kinds and degrees of gratification. Apart from all considerations of abstract right and wrong, there are certain courses of conduct which open to a man definite and pleasurable results, such as the gratification of passion, of vanity, or it may be of simple taste: such immediate gratification may exclude the individual from society, may so employ his time that he loses hold of a more substantial good, or it may render him liable to a criminal prosecution. The sane man recognises that which it is the more desirable for him to adopt; and acting, as all men must do, upon the strongest motive (or, all things considered, the most powerful inclination), he chooses that which has the most advantageous results. The sane man thus restrains impulse within its appropriate limits, and maintains the balance of his mind: recognising, amidst his various motives, that which it is the safest and most desirable for him to follow.

In forming the several distinctions which have now been noticed, the mind acts according to laws of thought. The sane man's mind is so constituted that it is not a matter of choice with him. Perverted though that choice may be; obscured as the mind may be by incorrect notions which have in them some fraction of the truth; or determinately set as the will may be in opposition to the evidence brought before him; nevertheless, if the terms of the proposition are definite and understood, the sane man must intellectually arrive at the right conclusion. The diversity of opinion which exists upon many questions agitating the mind of the community at the present day is a fact not in opposition to this general law. It affords an illustration of the endless diversity of mind, and also of the indefiniteness of language, but it does not discountenance the belief in laws of the human mind as fixed and definite (though not defined) as those which govern the motions of the planets. The rotation of our world upon its own axis, the revolutions of the moon, the ebb and flow of tides, the rise and falling of the

winds concur with other physical conditions to produce the infinite diversity of "weather:" but at present we can form no previsionary calculation of any value from one day to the next; yet we do not doubt that all the phenomena are due to causes operating in definite order, and according to determined law, although it is only too evident that we cannot appreciate as yet all the conditions of change. It is the same with that more mysterious "weather" of mind: individuals are acting according to the laws of their mental constitution, but the diverse circumstances by which they are surrounded, and the numberless considerations which must be employed in forming a judgment upon questions of even little complication, leave us in wonder at the uniformity, rather than at the difference, of opinion when questions of great complexity are under consideration.

The sane man may make mistakes through inadvertence or misapprehension of terms, but he can correct them; and although upon questions of considerable complication there is, and must be, diversity of opinion, the general truth remains. that the same man can and does upon simple matters separate truth from error, right from wrong, and the advantageous from the prejudicial.

II. WHAT ARE THE PROOFS THAT AN INDIVIDUAL IS SANE?

The proof of sanity in an individual is the concurrence of his opinions, beliefs, and choices with those of the race or nation to which he belongs.

This concurrence of the part with the whole is the proof of sanity, because the common consent of humanity is the statement of what is fact, duty, and advantage; and because the sane man is supposed to seek truth, to believe in moral, and social obligation, and to desire the greatest good: upon each of these propositions I propose offering comments.

A. That the consent, or concurrence of human opinion is the standard of appeal, in regard of,—

1st. What exists as fact. The simplest illustration of this principle is afforded by the every-day application of our senses. Thus, the facts of hardness and softness as possessed by different bodies subjected to the sense of touch; of distinct colours presented by different objects to the eye; of varie-

ties in tone emitted by different instruments and appreciated by the ear, afford sufficient examples of recognisable phenomena. With regard to such phenomena, humanity has agreed that certain things are hard and others soft, that some objects are blue and others red, that the tone of a trumpet differs in quality from that of a violin, that certain substances are bitter and that others are sweet; and it matters not by what name these properties are described, the fact remains, that humanity has decided the point that they exist. It is beside the question whether these properties inhere in the objects themselves, whether they are forms of our minds, or whether they are a compound, conflict, or harmony of the two. It is equally unimportant for us to inquire now, as to the manner in which we become so affected by these properties that definite ideas arise in our minds with regard to them. The simple questions are,—do not these facts or properties, in some way, produce similar effects and beliefs in all sane minds in healthy bodies; and is not this concurrence of effect, and consent of opinion the test of truth? The answers to each of these questions must be in the affirmative.

But, passing beyond these simple sensations, the sciences of number and magnitude may be adduced in illustration of the same general proposition. Let the meaning of arbitrary signs, of figures, and algebraical expressions be once understood by a thousand, or a thousand thousand men, and their solution of an equation, though it may be performed by different methods, will be the same. Let the definitions, axioms, and postulates of Euclid's Geometry be mastered, and the truth of his problems and theorems must be recognised by all who take the pains to study them. If some among the thousands commit errors in their work, it is because they have either misunderstood the terms, or have employed them incorrectly through inadvertence: but the errors, when once pointed out, are immediately perceived and rectified.

Advancing still further to the more complicated sciences, the same rule applies; but consent of opinion is more tardy in its arrival because, in many instances, fractions of the truth have been mistaken for the whole, because the terms employed have been misapplied, or differently applied by different men,

and because the errors committed through inadvertence in some portion of the work, have been allowed to remain uncorrected, and thus affect the whole after-process.

The dicta of humanity are the statements of what is truth for the time being, in regard to those classes of fact with which there is only a partial acquaintance. The answers given to many questions are of a provisional nature only, embracing the sum of knowledge at the time, and not pretending to comprehend that which will be, or may be afterwards acquired. Its dicta may be incorrect through bigotry or ignorance; and there may be again, as there have been before, Martyrs of Science; but prejudice and imperfect acquaintance with facts must gradually or eventually yield to the force of conscience and the growth of knowledge.

Our trials by jury proceed upon the supposition that where twelve men hear the statement of a case and the evidence adduced, and, acting uprightly, arrive at the same conclusion, that conclusion is the right one. If the evidence is sufficient to convince one man, it is sufficient to convince twelve; if it is insufficient to convince twelve, it ought not to convince one, or any one. The consent of opinion is the test of truth; and the "debates" in our own country at the present day, as well as the fine polemics of all ages, are but so many appeals to the universal common sense, and so many expressions of the belief of their authors that the mind acts according to fixed laws of thought, and that universal assent is the object to be attained, inasmuch as it conveys with it the stamp of truth.

2nd. The concurrence of human opinion is the standard of appeal as to what is right and what is wrong. There are two classes of obligation which it is convenient practically to separate, although it is the effort, or avowed effort of nations and of lawgivers to make these two identical. There is, on the one hand, the abstract, absolute, unconditioned right and wrong; and, on the other, the concrete, social, or contingent. The first includes many groups of actions of which the second takes no cognisance: the latter embraces many particulars and details which do not, as such, enter into the requirements of the former. The actions of our inmost life are tried by an internal court; the conduct of our outer life is tried by an external

court. Conscience pronounces its verdict in the former instance; society in the latter; but neither conscience nor society can frame its judgments except in accordance with certain fixed standards already long-since established. What those standards are, humanity must decide. It must do so, and has done so:—

a. In regard of absolute right and wrong, humanity, as a whole, decides wherein moral obligation consists. In some instances this is accomplished by a reference to authority, which it considers beyond further appeal; in other instances the appeal is to human consciousness alone. For example, there are classes of thought and emotion, of word and action, presented more or less by every individual, which may have no influence upon others, either for good or evil, in their minds, bodies, or estates. Allusion is made to such phenomena as eccentric notions upon physical, mental, or moral constitution, upon past or present motives, upon religious duties and the like, which (unless sought after) may affect the individual holding them alone. Men may believe that it is right for them to do this thing, wrong for them to do something else; they may adduce arguments in defence of the positions they assume, and these arguments may be logically accurate upon given premises. But the conclusions are at variance with all the beliefs of humanity; so are the premises, and yet it may be that the premises are of such nature that no satisfactory argument can be raised about them. There is, in such cases, the direct conflict of consciousness with consciousness; and in this case it is evident that the individual must be deemed wrong and humanity must be considered right. Eccentric individuals may disbelieve the existence of the external world, but humanity believes in it, and in its own existence; and, although it may not be able to demonstrate either proposition, its dicta must be considered true, and the man who bases his conduct upon universal scepticism must be considered wrong.

b. The dicta of humanity are the statements of what is right and wrong in respect of social relationships. The individual is placed within many circles of laws, established by the family, society, state, or nation to which he belongs. In each instance, the larger consensus determines the limits within which the

lesser shall pronounce its verdict; and thus the nation delegates discretionary power to the town, company, or family.

If two men agree to a certain course of conduct, each of them is bound by the mutual understanding. If a hundred men combine to form a society, and frame laws for the conduct of that society, those laws which express their combined opinion are the statements of right and wrong for that society. It is the same principle which is involved in our national edicts. Unjust and unequally oppressive as they may have been in times gone by, they were nevertheless the standards of social right and wrong for the time then being, and much of their oppression and injustice arose from the fact that they were the formation of a privileged class, and not those of a fairly represented commonwealth.

Society is so constituted, that many of its enactments touch upon matters which ought not, in the opinion of some, to come within the scope of its legislative power. It is the object of political legislation to frame such laws as affect man only in his social relationships, leaving all that is simply personal to individual discretion and arrangement; but where the line separating these two classes of obligation is to be drawn, is one of the most difficult questions which any legislature has to decide. Health, education, and religion are matters upon which, in the opinion of many, each individual is at liberty to judge and act for himself; but if he does not do this, and if his neglect on the one hand, or his wrong action on the other, is prejudicial to those around him, then society has a right to interfere. Whether the community is at liberty to frame such enactments as shall prevent or determine certain results which it considers to be for its general good; and this, no matter in what way, or to what degree such enactments may infringe upon individual liberty, is a question still *sub judice*, and answered practically by the legislature in different manners, as the vaccination bill, the present condition of religious institutions, and the attempts at a system of state-education abundantly prove. But the general principle remains unaffected by these contrarieties in the mode of its application to details. The legislative enactments of our country are the statements of social right and wrong.

3rd. Human opinion, when expressed collectively, is the statement of what is really the most advantageous to the individual; or, in other terms, which of several is the greatest good. This greatest good is the object after which all men, sane or insane, strive; and the common sense of humanity can determine which selection is the right one. The question is one of choice, or of balance, among several conflicting, or it may be concurring motives; and it is often answered by the individual without any distinct consideration of right or wrong.

Society has, however, expressed its dicta upon several points of this character, in the form of laws; the principle underlying the construction of many of them being, that the sane man, even if he have no other motive, should prefer acting in accordance with their spirit and letter, to bearing the penalty which their infringement would inflict. In other words, placing self-interest as the highest motive, laws are so framed that a sane man, by keeping within their requirements, derives greater advantage than by transgressing them. Thus then, although two individuals may, from the differences of their constitution, differ as to the choice they may make, the consent of human opinion would decide which of them is right and which of them is wrong.

B. The second principle involved in the proposition, that the concurrence of the individual with the people to whom he belongs is the proof of sanity, is, that the individual desires, and endeavours to obtain that which is true, right, and advantageous.

Each man is supposed to act as all would act if placed in similar circumstances, and it is upon faith in this principle that the confidence of one man in another is a possibility.

We cannot judge of the condition of mind in itself, or directly; but our judgments must be based upon the words, manners, and actions of the individual. These expressions of the mind are assumed to be the correct expressions; or, in other words, every man is supposed to act and speak in conformity with his knowledge and belief. That in many instances this is far from being the case, is doubtless true, but by the common consent of humanity, the hypocrite is despised, and regarded as his own real enemy, as well as the enemy of those

around him. Mistakes may be made, falsehood may be held to be truth, right may be confounded with wrong, and the lesser may be taken for the greater good; but the sane man recognises his error, and corrects it. He believes that humanity is right and that he is wrong, when his own opinions are out of harmony with the general consent; his conduct is, when according to the standards already erected, in concurrence with the best judgments of the race; if he is wise and honest, as well as sane, his conduct will be truthful, right, and advantageous; if it is neither one of these, it is because the man is either foolish, dishonest, or insane.

III. WHAT ARE THE RESPONSIBILITIES OF THE SANE?

The sane man, when exercising any power which affects his fellow man, is bound to know what is truth, and what is right; and at the same time to act in accordance with his knowledge and belief.

The sane man is responsible for the condition of his mind, and for the direction of his conduct.

A. He is responsible for the condition of his mind.

1st. In regard of truth. It is not intended to make any such absurd proposition as that every sane man should possess "all knowledge," and be as competent in every branch of learning, as some only can be in each. But it is affirmed that every man should possess such knowledge as shall enable him to fulfil the conditions of his social relationships without injuring those with whom he may come in contact; and that if destitute of such knowledge, he is responsible for his ignorance. Thus, the scientific man, whose vocation it is to make his scientific knowledge of service to his fellow-men, is responsible for his conduct if injury arrives to them from his undertaking to perform duties for which neither the kind nor amount of his information duly qualify him. He is as responsible as the engine-driver who brings destruction upon the train he has undertaken to drive, because he was ignorant of the manner in which such duty should be performed.

2nd. The sane man is responsible for his knowledge of right and wrong, whether this be in relation to God or man.

a. In respect of absolute right and wrong, this is not the

proper place to speak, as the responsibility has to be measured by a higher tribunal than that of earth. One remark, however, upon the religious teacher. He is bound to know, as closely as possible, the relations of right and wrong in their highest aspect; and the clergyman who, from imperfect acquaintance with a class of facts beyond or out of the range of his particular education, talks nonsense to his parishioners, or to strangers in a railway carriage, upon table-turning or rapping, and spiritual manifestations, is responsible for the substitution of superstition instead of faith in the minds and hearts of those who hear him, inasmuch as he has lent the sanction of his professional position to a belief in absurdities, which the common sense of humanity has recognised as such.

The same kind, although not the same degree of responsibility, attaches to all, and men are in duty bound either to keep their peculiar notions of moral obligation locked up within their own minds, or so to place them before the court of common sense that they may be tried and judged, rather than by stealthy means to influence the minds of others over whom they may exercise some personal influence.

b. In regard of contingent right and wrong, or of social obligation, every sane man is responsible for his knowledge; and he is amenable to the penalties due to offences committed in ignorance of law.

Considered as a matter of policy, it is at once obvious that this position should be established and acted upon. For ignorance of law, if allowed as a plea for exemption from punishment, would be otherwise a frequent means of escape for those who the least deserved it, and its establishment or refutation would be among the most difficult results of evidence.

Considered as a question of equity, it is right on the ground of its practical utility, but it is equally so when arrived at from another starting point. Each individual has to take his part in a general organisation, into which he is born, by which he is for a long time maintained and protected, and to which he is therefore under obligation. This obligation is that he should know the general plan by which it has deemed fit to govern itself; inasmuch as he can do nothing which affects

his fellow-man, without incurring the risk of inflicting injury, unless he is acquainted with such general plan expressed in laws.

If a man belong to a society, he is bound by the laws of that society, and he is responsible for his conduct when it has been incorrect through ignorance. This ignorance may have been his misfortune or his fault; but in the former case, his responsibility is undiminished, and the individual must be sacrificed in defence of the general principle which is greater than he. The same is true with regard to the nation's laws. Parents, guardians, and others protect the "infant" until he is competent to protect himself; and then one of the duties imposed upon the man, by the common consent of his countrymen, is that he should become acquainted with the laws by which their intercourse and mutual dependence are rendered possible and safe to both. The mere artisan is not supposed to know all the laws of property in which the skilled conveyancer may be expert; neither is he required to know the laws which regulate those regions of social intercourse into which he is not called upon to pry; but he is required and supposed to know those which have relation to the circle of life in which he moves; and if at any time he removes to a higher or larger circle, he is required and presumed to become acquainted with those by which it is accompanied. Thus the artisan, if he takes a room or a house, or if he subsequently advances and becomes the owner of a factory and the employer of others, is required and supposed to become acquainted with the obligations of landlord and tenant, or with those of employer and employed; and in the event of his failing to possess this knowledge, he is visited with the punishment due to his responsible ignorance.

There is nothing oppressive in this principle, when carried out as it should be by the representative government of a country. We have, *i.e.*, the majority of Englishmen, have sufficient faith in the principles of the English constitution to feel assured that it is the endeavour of those who have the power of framing and of executing our laws, so to construct them that they shall measure out equal justice to all classes of the community; and at the same time to bear with fortitude, while they strive to remove by all lawful means, those inequalities which may appear to inflict only evil upon some, and good only upon others.

3rd. The sane man is responsible for his mental power of discriminating between the lesser and the greater good. He is expected and presumed to have weighed possible advantages in such manner that he can detect the greater. It is no excuse for him to urge that he knew this to be right and that to be wrong, but that he so preferred the latter that he made it his choice. It is no excuse for him to urge that dishonesty was easier for him at the time than honesty, though his better judgment told him which was the safer course. He is not excused because his bad impulses were strong and his better resolution weak. He is responsible if, with a good intention, he has made a fallacious choice. He is responsible if, without intention or thought, he has allowed himself to be guided by emotion, prejudice, or passion. He is presumed to know what is true and what is false, what is right and what is wrong; if he is ignorant of them, he is responsible for his ignorance. He is supposed to know what is best, and if he fails to know it, the failure is his fault.

B. The sane man is responsible for his actions.

The principle upon which this proposition rests is that the will of every sane man is free, that he has a faculty of choice, and a power of acting in conformity with that choice. It would be quite out of place in this letter to argue in defence of this assumption. Appeal is made to the consciousness of our common humanity, whether such is not the practical, everyday, universal belief. No matter how forcibly objections may be raised upon philosophical grounds; no matter how difficult it may be to harmonize such doctrine with certain religious creeds; no matter how strongly it may be argued against from the starting-point of material organisation; no matter how confidently some individuals may assert the involuntariness and necessity of their so-called volitions; the general belief of humanity remains unshaken, and each individual is conscious that his will is free. Without such supposition all idea of moral obligation ceases to exist; there can be neither right nor wrong for the being whose actions are occasioned or directed by a power over which he has no control. As it has been already stated, the ideas of right and wrong presuppose the existence of a moral law, and also of a power to obey it. It has been urged that the sane man is responsible for his know-

ledge of that law, and it is now affirmed that he is in duty bound to direct his conduct in accordance with it, because he possesses the power of so doing; and humanity, having decided what is true, what is right, and what is best, determines that the individual shall know and obey its dicta, and be held responsible for either ignorance or crime.

Society does not believe that man is a mere machine, played upon and directed hither and thither by every passing circumstance or passion; but, on the contrary, it holds that every sane individual can make his choice, and direct his conduct. Society has laid down its laws, and expecting every sane man to know these laws, it holds him responsible for his transgression whether that transgression has been brought about through ignorance, through a fallacious choice, or through, as the result of that fallacious choice, the want of resolution to carry it into effect. Much may be said, and justly said, of those differences between the temperaments of men, which lead to different lines of action, some being driven by emotion to the exclusion of all judgment, others being guided by judgment, and little influenced by feeling. Within certain limits, such differences are allowed, and the peculiarities, eccentricities, or impulses of individuals are pardoned by those who ascribe them to their proper source; but actions passing beyond these limits, and becoming injurious to those whom they may affect, are not allowed, society holding men responsible for what they do, no matter how peculiar their temperaments may be. If a man is so impulsive that he is frequently injuring himself by want of self-restraint, and losing his friends by taking hasty offence at intended kindness, society may still tolerate him as one of its eccentric and unprofitable members; but if his impulse leads him to assassinate an imaginary foe, it is thought no reasonable excuse for him to urge that he was a passionate, ill-governed man. If another is so lethargic or so wasteful that he makes no provision for a future day when ample opportunities are present, he is responsible for his poverty, should that arise; and society cannot afford him any special protection, should he need its aid, because he was either lazy when he had plenty, or because he gratified his love of present ease and enjoyment to the ruination of his future prospects.

That sane men commit crimes is unfortunately too often true to need illustration here, but it may be well to allude to three principal classes of motive which lead to their commission.

(1.) The sane man may "do evil that good may come."

(2.) He may deliberately balance evils, and prefer committing an illegal act, and taking the risk of discovery and conviction, to resisting the temptation of foregoing an immediate gratification.

(3.) He may be impelled by some strong passion, which he at the time does not control.

In the first case there is a misapprehension of both truth and rectitude, although there may be the desire to act in accordance with each. In the second there is a determinate ignoring of moral obligation; and in the third there is a temporary suspension, or a perversion of the faculty of discriminating between the lesser and the greater good. In each of these cases the sane man is responsible, inasmuch as he is supposed not only to know what is right, but to have the power of acting in accordance with his belief.

IV. WHAT IS INSANITY OF MIND?

Insanity of mind is the absence or diminution of those qualities which constitute sanity.

It is important that the negative character of this definition should be insisted upon and understood; for very often the term insanity is made use of as synonymous with delusion, delirium, or maniacal raving, than which there are few greater systematic errors, since such an application of terms is the confusion of a general condition with one or more of its specific phenomena, or particular effects. What we need is such a definition that it shall include these phenomena by expressing that which is common to them all.

Considered in regard of its etymology alone, the definition of insanity is necessarily negative, and is that already given as the immediate answer to the question of this section. But, having in the preceding sections stated wherein sanity of mind consists, it is now comparatively easy to describe the leading features of its absence.

If sanity of mind is the correct appreciation of things as they are, insanity is the absence of this correct appreciation, such absence displaying itself in three principal directions. The insane man is unable to distinguish between truth and error; or between right and wrong; or between the advantageous and disadvantageous. It is not asserted that every insane man loses the faculty of forming each distinction; but unless he loses one he is not insane, and if he loses either one, he is, *pro tanto*, of unsound mind.

1st. The insane man receives as truth that which does not exist (objectively) as fact, and *vice versâ*. In other words, the man of unsound mind believes that something exists which has no real existence, or he disbelieves that which is substantial or true. His mind is so constituted that from a given fact he receives a wrong impression, a wrong idea, and determines a wrong course of action. The incorrectness of appreciation is the result of neither ignorance nor inadvertence: it exists in spite of information, care, and the desire to be right.

The sane man can correct his errors when they are pointed out; the insane man cannot: the resulting belief is in each case the necessary product of the laws of thought; but in the former they are normal, in the latter they are disturbed. The harmony between mind and external nature is perverted or destroyed: the true appears false, and the fallacious true.

As one phenomenon of this intellectual change, the insane man may lose his power of discriminating in particular instances between right and wrong, although his moral sense of their general distinctness may remain intact. He may, though insane, admit the existence of moral obligation; he may be anxious, even unduly anxious, to comply with its requirements; but, as the result of incorrect appreciation of some particular fact, he may believe that it is incumbent upon him to do that which is unquestionably wrong, or that it would be wicked in him to do that which is as unquestionably right. This condition of mind is quite distinct from that which will be referred to in the next subdivision of the present section.

The sane man believes the dicta of humanity, when fairly uttered, to be the statements of truth; and if he and humanity differ, he believes that he is wrong, and that the race is right;

but the insane man believes that he alone is sane, and that the whole human race is mad.

2nd. Insanity of mind may consist in the loss or diminution of the sense of right and wrong. The misapplication of the ideas of right and wrong to particular instances is due to a perversion of the faculty of recognising as truth that which is in reality true. It is not to this change that reference is now made; but to that other condition in which the fact of moral obligation ceases to be recognised. Many insane men lose all idea of its existence, and their actions are characterised by an utter recklessness.

But, short of this utter extinction of the moral sense, there is another condition of the insane mind in which the individual admits the existence of distinctions between right and wrong, but loses the idea of their relation to himself. He thinks that other people are under moral obligation, but that he is above, or out of the circle which it includes; that there is some other law which he is called upon to obey; and in accordance with its requirements, he will direct his conduct.

In other instances, there appears to be a distinct and almost isolated perversion of the moral sense; right is considered wrong, and wrong right, and actions are determined in complete dis-accordance with all common notions of propriety and order. This condition merges into that already described as resulting from an erroneous interpretation of fact; but it appears sometimes to exist as a distinct perversion.

3rd. Insanity may consist in the absence of the faculty of choice between the lesser and the greater good. The sane man has an idea of advantage, and endeavours to adopt that line of action which shall be productive of the highest. He discriminates between his motives, and chooses to act upon that which for him is best in its results. The insane man frequently exhibits a total absence of this idea; he may be motiveless, and played upon by every passing circumstance. But more commonly he presents a perversion of the faculty, and, believing the lesser to be the greater good, determines a course of conduct which can be characterised by no other term than madness. The most frequent mistake that he makes is the belief that momentary gratification of an idea or fancy is the

best thing for him to obtain; and, in order to obtain it, he loses all consideration of the consequences. In doing so, he may know that he is doing wrong, that he will afterwards repent his conduct, or that it will entail upon him considerable evil; but nevertheless he pursues his course. It may be said, that, in these cases, there is an uncontrollable impulse, or a disordered will, and that the actions depend upon no intellectual choice. But the same individual has the power of controlling impulses, he has an energetic will, and it appears to me that the error is one of intellectual character alone, and consists in a faulty discrimination between the presenting motives or desires.

V. WHAT ARE THE PROOFS THAT AN INDIVIDUAL IS INSANE ?

The proof that an individual is of unsound mind depends upon a recognition of the fact that his opinions, beliefs, and choices are at variance with the common sense or consense of humanity.

This is true, because, according to the principles already laid down, the consent of humanity is the standard by which truth, right, and advantage are determined, and because the sane man is pre-supposed to desire them.

It is at once obvious that in endeavouring to determine the sanity or insanity of an individual upon a given subject, the difficulty will be in proportion to the complexity of that subject, and the consequent diversity of human opinion; and that the facility will be in proportion to the simplicity of the subject, and the consequent concurrence of opinion.

Fortunately, it generally happens that, when the plea of insanity is raised in criminal cases, there has been the commission of some action from and towards which mental processes may be traced, and the ideas of the individual confronted with facts apparent at the time or adduced in evidence. It is not so in all cases, and it is necessary to dwell with some particularity upon the means by which the discovery of insanity may be conducted.

1st. The insane man entertains ideas with regard to facts which are at variance with the common sense of humanity. Much has been written and said about delusions, illusions, and hallucinations, and therefore these words require explanation.

Hallucination is a term which should be, and is now very

generally restricted to mean, the recognition by an individual of some sensory condition which has no objective counterpart, or which does not correspond accurately with any real existence, the individual at the time recognising the fallacy of the appearance.

The term *illusion* has been often employed in the same sense, but more often to denote a very different condition, viz., the belief by an individual that certain parts, or organs, or conditions of his own body are different from what they are easily proved to every one else to be.

The word *delusion* is commonly used to describe the belief of an individual in the existence of certain things, persons, or influences outside himself, such belief being without foundation in reality. Delusions may frequently have relation to a class of ideas which cannot be brought into direct conflict with the sensory impressions of either the individual or his friends. Such are the delusive notions which a man holds with regard to his own motives, past or present, his relation to the Supreme Being, to time, to futurity, &c. In all such cases, however, the delusion may be recognised as such by others, by making appeal to their common sense or opinion.

Hallucinations are separable from delusions and illusions by the fact that the individual believes in the reality of the latter, and that he at once recognises the former to be fallacious. The separation of illusion and delusion by a mere consideration of the so-called subjectivity of the one and the objectivity of the other, is fallacious, if it is intended to imply a difference of kind. They may differ in degree, and they may be indices of the amount of mental disturbance; but a man's liver or his legs are as objective to his mind as are the legs and liver of his next-door neighbour; and the hypochondriac who torments himself groundlessly about either, and allows his ideas with regard to them to influence his conduct, is, *pro tanto*, of unsound mind, and differs in degree rather than in kind from the lunatic who imagines that he is made of glass, and who wraps himself up in cotton-wool to avoid the catastrophe of breaking.

The question to be asked is not, Had the individual a delusion, illusion, or hallucination? but, Had or has he exhibited a conviction of the truth of something which was or is to every

one else, demonstrably untrue? The former question may be answered by lengthened philosophical dispute; the latter may be answered by a statement which shall determine whether the man was, upon that subject, of sane or of insane mind.

The discovery of delusion is the discovery of insanity; but the non-discovery does not prove that the man is sane; for not only may the lunatic very cleverly conceal his error, but he may possess no tangible and distinct delusion, his insanity consisting in the domination of an idea, right in itself, but to which undue importance is attached. In this case, there is an absence or diminution of the faculty for discriminating between the true and false; but the error is in regard of relations, not of facts. The extreme of this condition is general incoherence of thought.

The presence of delusion may lead the insane man to an incorrect application of his ideas of right and wrong, and this without any diminution of belief in moral obligation. Thus, an insane man may believe that he hears the voice of God commanding him to kill his brother, and he may forthwith proceed to execute the commission with which he believes himself entrusted. But in this case, the sense of moral obligation remains, it may be so far heightened that he would act up to its requirements at the expense of deep personal feeling; but the delusion consists in the belief that he hears that voice. This condition of mind is very different from that to which attention is now invited.

2nd. The insane man may exhibit a condition of the sense of moral obligation which is different from that of humanity. He may ignore its existence altogether, and act quite independently of any idea of right and wrong. This is comparatively rare, the moral sense is developed early, and is with difficulty destroyed; in the mind of the lunatic it may pass out of the range of common observation, or it may apparently be dormant for a time, but by careful watching, its presence may be traced, and by careful teaching, its action may be evoked.

But short of absolute extinction, there is almost every degree of diminution. One insane man may feel that a certain group of obligations are not binding upon him, and another

feels this with regard to a second group. The laws of the family are not considered binding by one, those of the country are disregarded by another; and these varieties are independent of any definite delusion, but result from a negation of the feeling of duty. In others there is a general obtuseness in the sense; they do not of themselves find out that this course of conduct is right and the other wrong; but they adopt either with an utter disregard of such considerations, although they may recognise their correctness when they are pointed out.

The moral sense may be altered in a totally different direction, for it may be heightened to a morbid and most painful degree. In such cases, the lunatic torments himself and others with considerations of the rectitude or wickedness of actions in themselves so trivial, or of such kind that the sane man scarcely appreciates their bearing upon moral obligation. Every little passing thought, or word, or action is made the occasion of an internal struggle; the unfortunate sufferer whose mind is the field for such conscience-battles, commonly taking a most gloomy view of his own moral condition, and trembling with anxiety, or sinking to despair at the thought of his manifold short-comings.

3rd. The insane may differ from humanity in their discrimination between the lesser and the greater good. The actions of men are determined by motives, and choice of action is dependent upon choice between motives. Simple sensations, feelings, and ideas concur to make up the sum of motives by which the will is guided, or amongst which it has to choose. The several classes of motive may be coincident in their direction, or they may be various; but in either case the individual acts in accordance with the most powerful incentive; the gratification of this incentive being, no matter how complicated the circumstances which conspire to make it so, the greatest good in the estimation of that individual. With regard to the sane man, we have assumed as true, because the common human consciousness asserts that it is true, that the will is free, and that the individual has the power of making choice. It has been further asserted that the mind acts according to fixed laws, from which it can by no means escape; and that those laws are such that thoughts are so directed in harmony with

truth, rectitude, and advantage, that the sane man, unless he is wilfully dishonest, or responsibly careless, will arrive at the right conclusions. What those conclusions are, humanity has decided, and the concurrence of the individual with the race is the proof that he is sane: his nonconcurrence with those conclusions is the test of his insanity. Humanity being the judge, the sane man is right, the insane man is wrong. The laws of thought are so constructed that they impel the man who honestly employs his faculties, to the right conclusion: his will is free; if he exerts it honestly, by endeavouring to discover truth, he himself is free to do, and he does "do the right." But, on the contrary, the mind of the insane man is out of harmony with truth, rectitude, and advantage; and he, though acting, it may be, carefully, and with the desire for rectitude, may arrive at the wrong conclusion: the laws of thought are so perverted that they impel the insane man to a choice which, humanity being the judge, is wrong.

This misdirection of the faculty of choice between motives, consisting in the non-appreciation of the really greatest good, is one of the commonest phenomena of insanity. There is a morbid, or unhealthy relationship between the different groups of motive; dominant, or delusive ideas may exert undue influence in one, emotions may similarly affect another, while a third may be under the almost exclusive direction of sensations or animal instincts; the insanity, however, in each instance consists in the fallacious recognition of truth with regard to motive; the insane man receiving, as his strongest incentive, that which demonstrably is not his greatest good.

VI. WHAT ARE THE RESPONSIBILITIES OF THE INSANE?

This question must be resolved into the following three:—

- (A) Is the insane man responsible for the condition of his mind?
- (B) Is he responsible for his actions? (c) If responsible at all, is he as responsible as the sane? These questions I propose considering *seriatim*; but wish it to be distinctly understood, that in replying to the first and second, there is no answer intended to the third. If it is urged that an insane man is responsible, it is by no means necessarily asserted that he is responsible to the full extent.

A. IS THE INSANE MAN RESPONSIBLE FOR THE CONDITION OF HIS MIND? By this question I mean,—is he responsible for the fact of being insane? Having committed a certain criminal action, which is distinctly attributable to insanity of mind, is he, under any circumstances, responsible for that insanity? It is supposed, in accordance with the statements already made, that the particular form of his insanity is the necessary result of certain present conditions, and the question is, can the insane man be responsible for the existence of those conditions? To these questions I make the following replies:—

1st. *That the insane man is responsible for his insanity when the latter has been produced or occasioned by circumstances over which he either has or had control.*

If a sane man who is fond of sporting, persists in making use of a fowling-piece which he believes to be insecurely made, he has no one but himself to blame if it bursts, and destroys his hand: and if in its bursting it should deprive some other man of a limb, the latter is justly entitled to receive due compensation from the former. In the earliest times, the Mosaic dispensation was explicit with regard to the responsibility of the man who knew that his ox was vicious; and in all time there has been general assent to the proposition that the individual is responsible for the evils which may accrue to himself or others, as the secondary or indirect results of conduct which common sense and special information gave him the power to alter and prevent.

If a man is habitually intoxicated, so that he can protect neither himself nor his property, he can blame no one but himself when either injury or poverty arrive, as the result of his voluntary degradation. If through drunkenness he is unable to perform a duty with which others have entrusted him, he is responsible for that inability; and if, through the same cause, he is led into the commission of crime, he is responsible for that crime, because he could have avoided the conditions upon which the commission of that crime depended.

If through want of exercising due forethought and control, individuals are brought into circumstances of such passionate or emotional excitement,—or if they have, as is too often the case, voluntarily and deliberately chosen to pursue their imme-

diate gratification at the hazard of all evil consequences, foreseen, but not avoided,—and if, as the result of this mental or emotional excitement, they are unable to discriminate between truth and falsehood, or between right and wrong, they are responsible for that want of power.

If, through love of ease, idleness, carelessness, and the indulgence of accreditedly wrong feelings, ideas, and propensities, an individual has allowed the balance of his mind to become so far disordered that he loses the power of correct appreciation, he is responsible for that loss.

If temper and passion are so unrestrainedly and constantly indulged that, in course of time, the individual loses all power of self-restraint when excited by any real or imaginary cause, he is responsible for the absence of control.

But in all these conditions, the individual is, for the time being, of unsound mind; his drunkenness, excitement, weakness of intellect, or rage, have rendered him for the time incapable of a better choice; it may be quite out of his power to avoid, at the moment alluded to, the commission of certain criminal acts; but he has voluntarily brought these conditions upon himself, by disregarding, when his will was free to do the right, his own perceptions of truth and error, and of right and wrong; and now that his will is free to do only what is wrong, because driven by a disordered mind, he is to be held responsible for that past voluntary choice of evil which has produced the incapacity or insanity of mind.

This may be readily granted, but how frequently is it ignored? Avowedly, the plea of drunkenness is held to be no excuse; but practically it becomes so in daily instances. The excitement brought about by circumstances that might have been avoided is, confessedly, no palliation of a crime; but, practically, "child-murder" is pardoned under the plea of insanity, when the vicious attempt at "concealment of birth" has been the voluntarily adopted cause of circumstances which could alone render such murder possible. Weakness of intellect may not be considered tantamount to irresponsibility; but it does form the basis of a "recommendation to mercy." Passion is not allowed as an excuse for a crime; but it often happens that when crime is committed, its exhibition through

a long series of years is practically urged in the establishment of insanity.

These fallacious results are due to the fact, that the question raised in legal inquiries is often simply this, Was the individual at the time he performed a certain action, of sound or of unsound mind? But the answer to this question does not alone furnish a reply to the further question of responsibility; and it is now argued that, allowing the man to be or to have been demonstrably insane, he is responsible for that insanity, if it has been occasioned by circumstances which it was in his power to avoid.

2nd. *The insane man is not responsible for his insanity when the latter has been occasioned by circumstances over which he has or had no power of control.*

The circumstances alluded to may be arranged into two classes, physical or bodily, and psychical or mental and emotional. Without entering into any discussion of the question whether insanity is a disease of the mind or of the brain, or necessarily of both, it may be readily asserted that the causes inducing it act in some instances primarily and predominantly upon and through the one, and in different cases upon and through the other.

a. There is no responsibility for the insanity which arises from unavoidable physical or bodily disease, whether this is either hereditary or acquired. The artisan who has healthy limbs, can use them, and is offered work, is responsible for the employment of his faculties; but the unfortunate man who is crippled from birth or palsied by disease, is not responsible for his inaction, but is an object for the sympathy and protection of society. The man who, by his physical organization, is not precluded from the exercise of a healthy mind, is responsible for the mode in which he employs his faculties; but the unhappy being who is born with defective brain, or who, by disease of that organ, is prevented from exercising the ordinary properties of mind, is not reprehensible for the absence of his faculties, but is another object thrown upon the kindness and protection of mankind.

It is not to be supposed, that because a man is afflicted with any cerebral disease, he is therefore irresponsibly insane; but

it is necessary, for the establishment of this position, that the disease should be shown to be of such nature as to affect the mind.

b. There is no responsibility for the insanity which results from the disturbing influence of overwhelming mental or emotional affliction, such affliction arising from circumstances beyond the individual's control. A limb may be palsied by fear; the mind may be paralysed by emotion; and of all causes of insanity, emotional disturbances are the most frequent and effective.

These two propositions, with regard to irresponsible insanity, need no further comment or defence. They meet, at once, with that common consent of human judgment which conveys with it the stamp of truth. The sympathies and not the reproaches of humanity are freely accorded to those who, from either disease, or unavoidable calamity, are plunged into that direst of all misfortunes, insanity of mind. On the other hand, the insanity which results from selfish vice, may awaken the sentiments of pity and of mercy, but the common sense of justice demands that the vice shall not be committed with impunity.

B. IS THE INSANE MAN RESPONSIBLE FOR HIS ACTIONS? Supposing that the previous question has been answered either in the negative or affirmative; or supposing, that, from different circumstances, it is impossible to answer it; this second question occurs for solution. Reference is especially made to criminal actions; and it is supposed that the man is undoubtedly insane; but it is affirmed that the answer should, under certain conditions, be in the affirmative, and, under other circumstances, in the negative.

1st. *The insane man is responsible for actions which present no discoverable relation to the definitely morbid condition of his mind.* In other words, the insane man is responsible for those actions which cannot be traced to his insanity.

This proposition is opposed to the opinions of many, who, feeling the great difficulty which exists in tracing the operation of an insane man's mind, would allow that some relation invariably exists, although undiscovered, between the act and the mental derangement; or who would argue that the existence

of any degree of insanity exempts a man from the degree of responsibility which attaches to the sane. It is freely admitted that the difficulty is great; and also that there may be, from the fact that any insane delusion exists, some diminution of responsibility; but, on the other hand, it is urged that the proposition is correct, viz., that some degree of responsibility remains, when, after careful examination, no trace of relationship can be discovered between the insanity and the act.

The proposition is defended upon the following grounds:—
 (1.) That society presumes every man to be sane and responsible until he is proved not to be; and, trying an individual for a particular crime, he cannot be shown to be either insane or irresponsible with regard to it. He is supposed to possess the knowledge of right and wrong, not only in the abstract, but in its relation to this particular act. He admits the existence of social responsibility by his endeavour to avoid detection. He has made a fallacious choice, but it is one which he recognises as such. His motives for committing the crime may be readily detected, and traced to their source, which is in itself vicious, but not insane. He, thus, though exhibiting insanity upon other points, presents no insanity upon this. (2.) That the insane man may be virtuous or vicious in the same manner as the sane: that numbers of them, and especially those which constitute the class now under consideration, are susceptible of education, improvement, or deterioration; and that for their own sakes, when they have committed criminal actions, they should be subjected to such punishment or discipline as may be beneficial to them in their after life. (3.) That the assertion of responsibility should not necessarily include that of full responsibility; so that the charity which would protect the unfortunate need not be violated. (4.) That it is important for the well-being of society, consisting of the sane, that the plea of insanity should confer freedom from punishment for crime with no undue facility, so that there should be no diminution of just reverence for laws, as the nation's broad lines of demarcation between right and wrong.

2nd. *The insane man is responsible for his criminal actions, when there is no evidence of insanity beyond that of the act performed.* It may be questioned in many cases whether the

individual is insane at all. But it is assumed that the plea is raised, and that the case is considered one of so-called "insane impulse."

A man without any apparent provocation or sufficient motive commits a murderous assault, attempts to destroy himself, or does some other outrageous thing, the extreme character and apparently motiveless origin of which have led to the establishment of the plea of temporary insanity, because no other explanation of such conduct can be discovered. After the commission of the crime, there is no further, nor can there be discovered any prior evidence of unsoundness of mind.

Impulses are normal to mankind, but in different degrees. Some people lead an altogether impulsive life, and the force of their unreasoning motives becomes greater, in proportion to those based on judgment, after each repeated neglect of self-restraint. The establishment of such an impulsiveness of character that it merged into insanity should diminish the degree of responsibility of those who had committed some criminal action from apparently no other cause than an insane impulse. But in the case supposed, such evidence is wanting, and the individual should be held responsible. He should be held responsible, because there is no evidence that he was not; and if this judgment upon him is one of harshness in some particular instance, it is one of great kindness to the community, for there are certainly no lunatics more dangerous to society than those of this motiveless and impulsive character.

3rd. *The insane man is not responsible for those actions which are the direct result or expression of his insanity.* The presence of a distinct delusion or erroneous belief, which the individual cannot correct, but upon the faith of which he acts, and it may be criminally, is sufficient to establish his irresponsibility.

If the mind is so far deranged that the individual receives wrong ideas, and labours under them with persistent belief in their correctness, and especially if these ideas are of such sort that their fallacy is immediately evident to all who are not insane, the unfortunate individual cannot be held responsible for what he may perform. The order of his mind is gone; he is impelled by those disordered laws of thought which yet retain a force, though one of misdirecting power; and, although

his moral sense may remain intact, he is not amenable to the punishment which the sane man might justly deserve.

If, in another case, the particular form of insanity is that in which the sense of moral obligation is extinct, there is still further ground for exempting the criminal from punishment.

The same is true with regard to that form of insanity in which the power of discrimination and choice is so far diminished or perverted that the individual acts under a constant delusion with regard to what is desirable and what is best. It must, however, be rendered evident that such perversion is the result of insanity and not of wicked choice; and it must in each instance be proved that the condition of mind is one for the production of which the individual is not responsible.

4th. *The insane man is not responsible for criminal actions when, without any distinct or persistent delusions, the whole tenor of his mind is deranged.*

This proposition, which is the reverse of that with regard to insane impulse, needs no comment. The individual is devoid of those properties which constitute responsibility, and as such he must be treated by society.

C. IS THE INSANE MAN, WHEN RESPONSIBLE, AS MUCH SO, OR EQUALLY RESPONSIBLE WITH THE SANE?

The answer to this question must be affirmative under certain conditions, and negative under others. The question is one which obviously cannot be asked in regard of the relative responsibility of the sane and insane for the condition of their minds. It refers to the responsibility for action, but in determining the degree of responsibility for the latter, the origin of the mental condition must be taken carefully into account, and the answers given can be general only.

1st. *The insane are as responsible as the sane for actions committed through insanity which they have voluntarily brought upon themselves.* They have possessed and employed the faculty of choice; they have recognised possible advantages and probable evils; they have preferred self-gratification to every other good; and if, by a continued course of this description, they have become criminal, they are justly responsible for the crime, and as responsible as if they were

sane at the time of its commission. Insanity is merely one of the links in the chain of causation, and the man who intoxicates himself, knowing that when intoxicated he is mad, is only justly treated when he receives the punishment due to his offence.

2nd. *Under all other conditions of insanity there is some diminution of responsibility*, inasmuch as the benefit of doubt should be extended to those who have this claim upon the mercy of society. But, granting that responsibility is diminished, no definite lines can be drawn for fixing its amount, except from a consideration of the requirements of particular cases.

All that can be done now is to indicate the principles upon which such discrimination or estimation of degree may be conducted.

(a). If the individual is responsible because no connection can be traced between his insanity and the particular crime of which he stands convicted, his responsibility will be in proportion to the extent of his sanity, and the distinctness of his delusion from the act. In fixing the measure of responsibility it may be of importance to ascertain whether the individual presents illusion or delusion; inasmuch as the existence of the latter indicates a more extensive derangement than would the simple presence of the former.

(b). When the insane man is deemed responsible because there is no evidence of insanity beyond that of the act committed, the degree of responsibility may be estimated by a consideration of his temperament, and of the circumstances in which the individual has been involuntarily placed; and it will be deemed to exist in proportion to the power which he has previously exhibited of controlling other impulses, and of leading a mentally and morally sane life.

VII. IN WHAT MANNER ARE THE INSANE TO BE TREATED ?

The question, "What is to be done with the lunatic?" must be divided into two other questions, viz. (a), what course of treatment is to be adopted for the lunatic who has not committed crime? and (b), what is to be done with the lunatic who has offended against the laws, or become in other ways obnoxious to society?

A. WHAT IS TO BE DONE WITH THE LUNATIC WHO HAS NOT COMMITTED CRIME ?

He is to be, so far as this may be possible, prevented from becoming criminal. Society is under obligation to protect the sane as well as the insane; and in order to accomplish this end, there must be some restriction or limitation imposed upon the latter. At present, unless an individual has distinctly exhibited some mischievous tendency, he is very generally allowed to be at large; and only when the mischief is done is the culprit confined as a "dangerous lunatic."

The triumph of science, whether natural or social, is prevision; and in no instances do we see more melancholy examples of its neglected application than in the criminal acts of lunatics. Our towns, and even villages, abound with the so-called harmless insane, who are at liberty, because hitherto they may have exhibited no dangerous tendency; but it is preposterous that the lives and properties of thousands should be endangered on the ground of a quasi-sentimental kindness to these unfortunate creatures.

If it is urged that these individuals should be at large because it would be a hardship to impose restraint upon those who, in all probability, would lead a harmless life; it may be replied, that such hardship is inconsiderable when compared with the possible and frequent evils to which the sane may be subjected from those confessedly irresponsible persons. But society is bound, when protecting itself, to protect the innocent insane, and to take great care that no greater hardship is inflicted than shall be absolutely necessary for its own safety.

Still further, every well-adapted means should be employed for the discipline, education, and improvement of these unfortunate beings; and there can be little doubt that if this were done, the results would prove much more satisfactory and encouraging than is now generally supposed.

B. WHAT IS TO BE DONE WHEN THE PLEA OF INSANITY IS RAISED IN CRIMINAL CASES ?

1st. *The first point to be ascertained is, whether the plea is right; or, in other words, whether the individual is in reality of unsound mind. This may be ascertained by the combination of two processes—(a) The distinction of sanity from insanity;*

and (b) The distinction of real insanity from pretended madness.

a. The distinction of sanity from insanity is commonly based upon medical testimony; but this principle is by no means satisfactory in its results, for conflicting opinions are adduced; and too often the Jury, whose business it is to decide the question, are confounded by finely-drawn distinctions, and are compelled to shift the real responsibility of a verdict from themselves to either the Judge or the Secretary of State.

An ordinarily intelligent Jury is fully competent, upon the evidence adduced, to decide whether a man is sane or insane. The common sense of humanity is the standard to which appeal must be made, and that common sense may be represented and expressed correctly by twelve men delegated to perform that function. But in order to accomplish this end, every kind of evidence should be laid before those who have to decide the question, and among this evidence that of the practised physician is of first-rate importance. It is not required that he should express opinions upon the point at issue; but what it is required for him to do, is, to state the differences which his scientific education has enabled him to detect between the conduct of the accused person and that of ordinarily-constituted men. These differences are often of such character, that those who have paid no special attention to the subject would be unable to discover them; but, when once pointed out, they are readily perceived; and it is for the Jury to decide, in accordance with its own judgment, as the expression of our common humanity's common sense, whether these differences establish the fact of insanity.

b. The distinction of real insanity from feigned or pretended madness is one of another character; and, although it has to be determined by the same authority, the importance of medical testimony is much greater than in the former case; for here the practised eye and judgment of the medical practitioner enable him to detect differences which would pass unnoticed by those who are unaccustomed to the investigation.

In making the latter distinction, it may be of service, to depute scientific men to visit the accused, examine his condition, and point out the differences which they detect between

the phenomena of the individual in question and those of either real or pretended madness, as the case may be. But for the purpose of arriving at the former distinction such a method is utterly inadequate, except in cases where such assistance is unnecessary: and it is practically highly injurious, inasmuch as it tends more to confound than to assist the minds of the jury, with whom the responsibility of decision really rests.

Within a very recent period there have been two important trials for murder which have afforded painful illustrations of the truth of these remarks. In each the medical testimony adduced was of the most conflicting character: in the one, questions were raised with regard to the objectivity or subjectivity of delusions and illusions respectively: the real condition of the unfortunate criminal's mind, which might have been readily appreciated from the other evidence adduced, was obscured by finely drawn distinctions of little or no practical utility, and the criminal's life was pending on the difference between a subjective and objective error. In the other case, which has so recently engaged public attention, questions with regard to the origin of insanity were so skilfully raised and argued that the jury could by no means decide, according to the terms employed, whether the man was insane or not. There was no doubt that his intellect was weak, his habits vicious, his temper ungoverned, and his conduct strange; but the relation of these conditions to that of either his insanity or responsibility was so deeply covered over with theories and contending opinions, that the jury found him guilty of a most cleverly conducted crime, could perceive that he recognised its atrocity and the force of social obligation by his clumsy endeavours to escape detection, but they forbore to take upon themselves the responsibility of deciding whether he was sane or not, and have thrown the onus of that decision upon the Secretary of State.

It is monstrous that such things should be; but such things will be, so long as theories are placed in evidence instead of facts, and so long as opinions take the place of observations in our criminal trials. It is the jury, I repeat, which is to decide these questions, by the exercise of its ordinary judgment; and it is so because the standard by which sanity is to

be tried is the common sense of humanity, and not the opinion of a few scientific men.

2nd. *If it is ascertained that a man is really of unsound mind, it has then to be discovered whether or no he is responsible for the act he has committed.*

In order to accomplish this end, there are two classes of inquiry:—(a) What was the cause of his insanity? and (b) what was its relation to the criminal act? The principles upon which these questions may be answered have been stated in the preceding section; it now remains to point out the mode in which the inquiry should be conducted.

a. The discovery of the cause of insanity, will be made by an examination of evidence adduced as to the previous history and habits of the individual. Medical evidence will be of great service, in pointing out the existence or non-existence of physical disease, and, should it exist, in tracing its relation to the course of life which the individual has led; whether this relation has been one of cause or of effect.

It may happen, that in many cases the origin or starting point of insanity cannot be discovered; but the establishment of this non-discovery will be of great value in arriving at a conclusion with regard to responsibility.

b. The recognition of the relation between insanity and the particular criminal act may be, and often is, an extremely difficult task to perform; but it is one which the jury has to make by the exercise of its ordinary judgment. Medical evidence or the opinions of medical men will have little value in this inquiry, it is the consent of general opinion which must decide the question.

3rd. *Provided that the plea of insanity is established, and that the question of responsibility is answered in the negative, the insane criminal is acquitted from the consequences of his crime, but society protects itself from any further chance of danger by placing the unfortunate man within restraint. If, on the other hand, he is deemed responsible, the man, though insane, should be amenable to punishment; and then it has to be determined what that punishment should be, and how far it should be inflicted.*

The degree of responsibility, ascertained in accordance with the general principles already stated, must be taken as the

guide. The nature of the punishment should be selected in relation to the nature of the criminal act, and should combine the several objects sought after in the punishment of the sane; viz., the protection of society, the amelioration of the individual, the rendering of the criminal useful to the state while he is within its keeping, and the advantage of the community by the example of regard for law.

As it has been already stated, much might be accomplished by these means for the improvement of the insane; but I do not now pretend to say by whom either the nature or amount of punishment should be awarded. This discretionary power might be exercised (as it is in civil cases, by the award of "damages") by the jury; or it might be affixed, as it is in certain criminal trials, by the judge; or a special court of discipline might be empowered to make the award; but upon this point it is not my object to treat.

RECAPITULATION.

- I. Sanity of mind is the correct appreciation of things as they are, viz.:
 - A. The recognition as truth of what exists as fact.
 - B. The recognition of the obligations of right and wrong.
 - C. The recognition of the greatest good as the strongest motive.
- II. The proof of sanity is the concurrence of the individual with the race or people to whom he belongs: because
 - A. The general belief of humanity is the correct statement of—
 1. What are facts.
 2. What are duties,
 - a. In the abstract, and
 - b. In regard of social relations.
 3. What are advantages.
 - B. The sane man is supposed to desire truth, duty, and advantage.
- III. The sane man is responsible for
 - A. The condition of his mind in regard of

1. Truth or facts.
 2. Duties or obligations.
 - a. To God (morality).
 - b. To his fellow-man (social obligation).
 3. Advantages (choices).
- B. The determination of his actions, because
1. It is in his power to know.
 2. His will is free to choose.
- IV. Insanity is the absence of those qualities which constitute sanity, resulting in
- A. The non-appreciation of facts.
 - B. The non-recognition of duty.
 - c. The non-perception of advantage.
- V. The proof of insanity is the non-concurrence of the individual with the race.
- A. In regard of facts (delusions, illusions, &c.).
 - B. In regard of duty (loss of moral sense).
 - c. In regard of advantage (impulsive conduct).
- VI. The responsibility of the insane.
- A. For the condition of his mind.
 1. The insane man is responsible for insanity which is his own fault (drunkenness, vice, temper, &c.).
 2. He is not responsible when it arises from
 - a. Physical unavoidable disease.
 - b. Psychical unavoidable disturbance.
 - B. For his actions.
 1. The insane man is responsible
 - a. When the action has no discoverable relation to the derangement.
 - b. When there is no evidence of insanity beyond that of the act committed.
 2. He is not responsible
 - a. When the actions result directly from the delusion.
 - b. When the whole tenor of the mind is deranged.
 - c. He is as responsible as the sane when his insanity is his own fault.
 - d. He is not equally responsible under any other circumstances.

VII. The treatment of the insane.

A. When non-criminal is

1. To protect society by his restraint.
2. To place him in the most favourable circumstances for improvement.

B. When criminal,

1. He is to be proved insane.
 - a. By the distinction of sanity from insanity.
 - b. By the distinction of insanity from pretended madness.
2. His responsibility is to be discovered,
 - a. By an examination of the cause of his insanity.
 - b. By a recognition of its relation to the act.
3. His degree of responsibility is to be affixed.

My Lord, I fear that I may already have trespassed too far upon your Lordship's time; but an examination of the "plea of insanity" is one of such vast importance to the well-being of society, that I will trespass no further by making any apology for the course I have adopted.

The answers given to the questions raised are not supposed by myself to be either completely satisfactory or final; but if the rearrangement of those questions,—the answers which are suggested to them,—and the direction indicated by the method I have adopted,—should eventually lead to a more satisfactory solution of the problem, your Lordship will, I am confident, feel no regret that this Letter has received so high a distinction as to be associated with your Lordship's name.

I have the honour to be,

My Lord,

Your Lordship's most obedient humble Servant,

JOHN RUSSELL REYNOLDS.

38, GROSVENOR STREET, GROSVENOR SQUARE,
July 26th, 1856.

By the same Author.

THE DIAGNOSIS OF DISEASES OF THE BRAIN, SPINAL
CORD, NERVES, AND THEIR APPENDAGES.

AN ESSAY ON VERTIGO.

LONDON: JOHN CHURCHILL, 11, NEW BURLINGTON STREET.