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# EMOTIONAL INSANITY.

BY

DAVID DUDLEY FIELD.

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MEDICO-LEGAL SOCIETY

OF THE

CITY OF NEW YORK.

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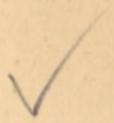
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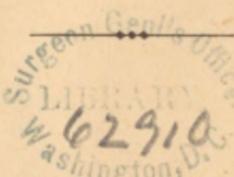


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# EMOTIONAL INSANITY.\*

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Is there such a thing as emotional insanity? and if there be, does it excuse an act otherwise criminal? These questions depend upon another, more general, that is to say—What is insanity in its relation to crime? Satisfactory answers would be, as we all know, of immense service in the administration of criminal law; and the aim of this paper is to contribute whatever I may be able toward their careful consideration. My point of view is, of course, the legal side of that two-fold science which we call Medico-Legal, or, as I should prefer to express it, "Medical Jurisprudence." The pathology of insanity is beyond my province.

A crime is an act or omission forbidden by law, to which is annexed, upon conviction, a certain punishment. Our present inquiry relates solely to human law and human punishment. The element of religion or morals does not enter into the question. No reference is had to a violation of the moral or divine law, however great may be the guilt or awful the punishment. For the present hour we are concerned only with a violation of those laws which depend upon human sanction; so that when I speak of the relation of insanity to crime, I mean the relation which it bears to a violation of the law of the land. Punishment is something annexed to crime, as a consequence, painful to the offender; or, in other words, a penalty which he is to suffer for his violation of the law.

What is the theory upon which punishment is inflicted? It is not to avenge. "Vengeance is mine saith the Lord." "To me belongeth vengeance and recompense." The purpose of human punishment is neither revenge nor retribution but the enforcement of the law. This is effected by annexing a penalty to their violation. The penalty operates not by way of satisfaction, but prevention. The object is to deter. The threat of punishment is addressed to all. An instance of

\* Paper read before the Medico-Legal Society of New York, April 24, 1873.

punishment has a twofold operation—first upon the offender, to deter him from a repetition of the offence, and then upon others like him, to deter them by force of the example. The measure of a just punishment is, therefore, that kind and degree which are necessary to such an end. The rightfulness of punishment depends solely upon its necessity. The test is not the greater or less ill deserving of the offender, but the safety of society. Laws are made for the protection of rights. If it be necessary to have laws it is necessary to enforce them. *Necessitas quod cogit defendit.* Show me that a certain rule is necessary to the public good, and that a certain punishment is necessary to the enforcement of the rule, and I accept the conclusion as irresistible that this punishment may be rightfully inflicted. The authority to take human life can only be justified by such a course of reasoning. The argument embraces not only penal laws but all human conduct. If four men are at sea in an open boat, three of them struggling to reach the land, and the fourth, maddened by distress, insists upon upsetting the boat, the three may rightfully throw him into the sea. When Sir John Franklin, on his perilous journey in the frozen zone, shot one of his men who showed signs of mutiny, dangerous to the rest, he exercised an inherent right to protect the company which he was endeavoring to lead to a place of safety. Every age of the world has seen monsters, *hostes humani generis*, whom it was justifiable to exterminate. So, in all regular government, the safety of society is the warrant which the Almighty has given for the punishment of those who infringe its laws. This necessity is not only the warrant but the limit of the power—for useless punishment is itself crime.

Starting from this point we enter upon the question of insanity in its relation to criminal responsibility. I say in this relation, because here lies the first distinction which it is necessary to bear in mind. There may be a degree of the disease which requires that the patient should be shut in a lunatic asylum, or which would invalidate his contract or his testament, but which, nevertheless, would not absolve him from the charge of a criminal offence or its consequences. Our statutes may declare, as they do, that “no act done by a person in a state of insanity can be punished as an offence, and no insane person can be tried, sentenced to any punishment, or punished for any crime or offence while he continues in that state.” But this is general language, which needs qualification in its application to the facts of particular cases.

It is curious to observe with what different views different persons regard the question of insanity. The lawyers do not agree with the physicians, or among themselves. The physicians do not agree

with one another. Scarcely any two writers, or, for that matter, any two judges, agree upon the same definition or test. This strange disagreement it may be worth our while to illustrate by a few examples :

In 1843 the Judges of England answered certain questions propounded to them by the House of Lords, in reference to McNaughton's case, to one of which the answer was as follows: "The jury ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction, and that, to establish a defence on the ground of insanity, it must be clearly proved that, at the time of committing the act, the party accused was laboring 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." The test thus given is rejected by Bucknill, who, in his essay on "Unsoundness of Mind in Relation to Criminal Acts," says: "We must therefore conclude that this, the main portion of the Judges' condition of exemption from responsibility and punishment, on the plea of insanity, is erroneous in principal and inapplicable in practice." And Dr. Hammond says: "Neither is the knowledge of right and wrong a test of the mental condition of an individual, except to a very limited extent. The faculty in question is not inherent, but is the result of education."

In this country, nearly twenty years ago, on the trial of Huntington for forgery, an attempt was made to establish the defence of moral insanity, which is but another name for one species of emotional insanity. On this occasion the City Judge of New York, Judge Capron, charged the jury in these words :

"But it is insisted for the prisoner that insanity, either general or partial, may exist, and the subject be totally unable to control his actions, while his intellect, or knowing and reasoning powers suffer no notable lesion. By this theory insanity is regarded as a physical disease, an affection of the brain, by which the freedom of the will is impaired or destroyed, and the subject is thus wholly deprived of the ability to govern his acts. It is claimed that persons thus afflicted may be capable of reasoning or supporting an argument or any subject within their sphere of knowledge. In a more practical sense, it is claimed that a person may steal your property, burn your dwelling, or murder you, and know that the deed is a criminal offence, and that he will be punished if tried and convicted, and may be able to reason on the subject, and yet be guiltless on the ground of insanity! This

affliction has received the name of MORAL INSANITY, to distinguish it from intellectual insanity; because the natural feelings, affections, inclinations, temper, or moral dispositions only are perverted, while the mind, the seat of volition and motive, remains unimpaired. I will not assert positively that this theory is unsound. It may be reconcilable with moral responsibility for human conduct, but I am not reluctant to confess *my own mental inability to appreciate* harmony between the two propositions, if it exist. This theory may afford a more just and humane standard by which to test the presence of insanity in a particular class of cases than the existing rule; but, until the proper authorities sanction that theory, it cannot be regarded here."

On the trial of Sickles for murder, a year or two later, the Judge of the Criminal Court in Washington gave these instructions to the jury:

"If, from the whole evidence, the jury believe that Sickles committed the act, but at the time of doing so was under the influence of a diseased mind, and was really unconscious that he was committing a crime, he is not in law guilty of murder. If the jury believe that, from any predisposing cause, Sickles' mind was impaired, and, at the time of killing Key, he became or was mentally incapable of governing himself, in reference to Key as the debaucher of his wife, and at the time of committing said act was, by reason of said cause, unconscious that he was committing a crime as to said Key, he is not guilty of any offence whatever."

In Willis' case, decided by our Court of Appeals in 1865, Chief Justice Denio observed: "The Judge might have said that if the prisoner, when he killed the deceased, was in such a state of mind as to know that the deed was unlawful and morally wrong, he was responsible, and that otherwise he was not. This would, perhaps, have been more precise and discriminating."

In Wagner's case, tried in New York the same year, this language was addressed by the Court to the jury: "I have been requested to charge you that if the prisoner committed the act in a moment of frenzy he cannot be convicted of murder in the first degree. I not only charge that proposition, but, if his mind was in that condition, he cannot be convicted of any offence. The true test of responsibility for acts committed is commonly known as the test of right and wrong. If the jury are satisfied that the prisoner knew the difference between right and wrong, in regard to the particular act in question, then the law holds him responsible for the act. If they are not so satisfied, of course it would be their duty to acquit him absolutely."

In Cole's case, tried in Albany in 1868, Mr. Justice Hogeboom told

the jury that, "If reason was in fact dethroned; if Cole was not at the time in the possession of his faculties; if they were suspended and lost in the presence of and under the influence of an overwhelming domestic calamity; if Cole was at the time incapable of distinguishing between right and wrong in regard to this transaction, or of appreciating the moral quality of his act, he could not be held criminally responsible."

In MacFarland's case, tried in 1870, Recorder Hackett, of New York, charged the jury that: "Sanity is the state in which a man knows the act he is committing to be unlawful and morally wrong, and has reason sufficient to apply such knowledge, and to be controlled by it."

On the trial of Montgomery at Rochester, in 1871, Mr. Justice Darwin Smith charged the jury that: "There is now no room for doubt as to the rule of law in this State. 'A man must have sufficient knowledge, reason, capacity, judgment and mental power to understand not merely that his act is a violation of law, but that it is intrinsically wrong.' Every human being endowed with reason knows that to take the life of a human being is against the law of nature and of God. It is not sufficient that he knows the thing is an offence against human laws, but he must have reason and capacity sufficient to know that he is not only violating the laws of man but the laws of God and nature."

On Scannell's trial, a month ago, Mr. Justice Brady charged the jury as follows:

"Insanity, considered in its legal aspect, may be stated thus: It means such a defect of reason as would render the prisoner unconscious of the nature, and character, and consequences of his act, and of its unlawfulness and immorality. A man is, by the law of this State, responsible for his acts when he knows what he is doing, is capable of distinguishing right from wrong, understands the consequences of his act, and that it is in violation of the laws of God and man. In other words, if the prisoner was in such a state of mind as to know that the deed was unlawful and morally wrong, he is responsible; otherwise not. If he was incapable of distinguishing between right and wrong, did not know that the act he was committing was unlawful and morally wrong, you cannot convict him of murder."

Balfour Browne, in his late work on the medical jurisprudence of insanity, gives the following as his conclusions: "We are now in a position to consider the capacity to commit crime. The statement of the proposition that the criminal law looks mainly to the intention

which actuated the accused, has been said to imply the presumption that the individual whom it is sought to bring within the operation of the law has mental capacity, is a free agent, and possesses the power of electing to abstain from what is forbidden, rather than suffer the consequences of offending; and the criminal law of England, therefore, declines to punish where the actor, from want of understanding or mental disease, is not in a position to choose freely; and it might properly be added where, through such enfeeblement or derangement, motives have lost their power of making a man choose the good rather than the bad, and the pleasant rather than the disagreeable.

“It is the same principle that induces the law to exempt very young children from the criminal responsibility of their acts; and the same principle is to be found as the reason for the non-infliction of legal penalties where the individual is, against his will, compelled to do a wrongful act, inasmuch as the dread of distantly future penalties cannot, in reason, be expected to prevail against the fear of present suffering.

“Were it more generally understood—were it more thoroughly appreciated—that it is really the same fundamental principle which induces the law to forego its penalties, even after proof of the criminal act done, in these two classes of cases, less difficulty would undoubtedly arise in practice as to what amount and what kind of insanity is sufficient to establish a claim to immunity from punishment. Were it once held that the proof of that amount of insanity would relieve from the consequences of a criminal act which deprives the individual, either by amentia, dementia or mania, of that amount of free will or choice, of that power to balance and appreciate motives which is found in the ordinary ranks of mankind—were it held that the amount of insanity which deprives a man of this, as the amount of duress which deprives a sane man of the same power, would relieve an individual of criminal responsibility, no doubt could, it seems, in any case, arise.” \* \* \*

And again: “A German jurist (Mittermaier), appreciating the weight of the medical testimony in criminal cases, has maintained that two conditions are required to constitute that freedom of will which is essential to responsibility, viz., a knowledge of good and evil, and the facility of choosing between them.

“This definition is, perhaps, more nearly correct than most that have been given; but it seems to us, looked at in reference to the most recent philosophical researches, and also in relation to the duty of the law to protect the sane from injury, as well as to protect the insane

from unnecessary, useless punishment, that the best definition that can be given of legal responsibility is a knowledge that certain acts are permitted by law, and that certain acts are contrary to law, and combined with this knowledge the power to appreciate and be moved by the ordinary motives which influence the actions of mankind."

The various definitions of insanity, or of that degree of it which exempts from criminal responsibility, contained in the extracts that I have here given, not only differ among themselves, but fail, as I think, to furnish a true and plain rule for judicial investigation—such a rule as would be scientifically exact, and, at the same time, easily understood by juries.

It may be rash for me to try where so many have failed; but unless there be trial there cannot be accomplishment, and it is the privilege of all to endeavor, though only one may succeed. Let me, then, offer my contribution to the work of this society, by helping, even though it may be in a small degree, to answer a most important and interesting question.

It appears to me that the true answer is to be evolved out of the theory which I have given of crime and punishment. The ideas of crime and punishment are correlative. That only is crime to which punishment is annexed as a consequence, and everything to which punishment is annexed is criminal. Crime being, as we have seen, an act or omission forbidden by law, to which punishment is annexed, and the object of punishment being to deter, it should seem to follow that punishment is to be inflicted only when it will be likely to deter. But the rules of law are general, and must provide for punishment upon general considerations. They should annex a penalty to an injurious act whenever, according to the general experience and judgment of mankind, the penalty will deter the actor from the repetition of the act, and others like him from imitating it. If it will probably have that effect, society may inflict the punishment; if not, not. The question, then, of insanity, in relation to criminal responsibility, is not merely whether the offender is of unsound mind, but whether his unsoundness is of that kind and degree that he would not, according to the general experience and judgment of men, be deterred by punishment from a repetition of the act, if committed by himself, or of committing it, if seen by him to be followed by punishment when committed by others. And all this depends upon the question whether the offender was or was not a free agent; that is to say, whether he acted from compulsion so strong that the fear of punishment could not overcome or withstand it. There must have been freedom of choice

between doing and not doing, and capacity to choose. Since the object of punishment is, as I have said, to deter an offender and others like him, and since one can be deterred so far, and so far only, as his act is voluntary, the question of legal responsibility must come to this : Was the person accused capable of knowing that the act or omission was a violation of law, and of refraining from it? Was he *capable of knowing and refraining?* I do not ask whether he *did know*, but whether he was *capable of knowing*. If he was *capable of knowing* and of *refraining*, then he was, in the sense of the law, a free agent. The points to be submitted to a jury are these : Was he *capable* of knowing that what he was about to do was a violation of law, and, being thus capable, *could* he have refrained from doing it, or, to use a common phrase, "could he help it ;" and I venture to say that upon these two ultimate questions hangs the decision of the issue of insanity in criminal cases.

The questions assume, of course, that the offender is of the age of discretion, and being thus advanced in years is now below it in mind. Children under seven years of age and idiots are not within the scope of criminal law, though they can be operated upon by motives and restrained by punishment. Two boys, five and six years old, playing together, we will suppose, have been taught that one must not strike the other, or, if he does, that he will be punished for it, and, ordinarily, this knowledge will control him ; but if one should happen to strike a blow, causing death, no one would think of hanging or imprisoning him for it. Why ? Because the fear of such a punishment would have no greater effect in deterring the child than the slight discipline of the nursery. It is not that he does not know the act to be wrong, or that the fear of punishment would not, in most instances, deter him from striking his companion, but because his reason is too feeble, and his will is so little under subjection to his reason that a sudden impulse overcomes him. You may even suppose that he intended to kill, not from malevolence, but from curiosity or an imagination excited by stories of killing, but he has no idea of death as a consequence of the blow ; and if he had, as a small object present is stronger with him than a great one future, so an impulse of the moment upon his feeble mind overcomes any idea of consequences at a distance. The same reasoning which would exclude a child from the scope of criminal law would exclude also an idiot or an imbecile. There must be a capacity to reason, and a power of reason over the will sufficient to deter.

Excluding, then, children under the age of discretion, idiots and

imbeciles, as not within the range of our immediate inquiry, I recur to the question of insanity in reference to other persons; and taking the rule of criminal responsibility as I have stated it, let us apply it to the different stages of mental disease. In doing so we should bear in mind that whatever be the true rule, it is, in the present state of the law, applicable to every kind of crime and punishment, whether the crime be in act or omission, or the punishment be death, imprisonment or fine.

And here let me observe that I think much of the difficulty, in regard to the defence of insanity, has arisen from the desire to avoid the extreme punishment of death. Juries shrink from taking the life of one who may, by possibility, be guiltless of intentional wrong, and catch at any plausible excuse for treating the case as one of insanity. We should, however, not be influenced by such considerations, and must treat the question as independent of particular punishments. If insanity is a defence when the charge is murder, it is also a defence when the charge is harboring a fugitive slave or smuggling goods over the frontier.

Insanity, in its general pathological sense, is thus defined by Dr. Hammond, than whom there is no higher authority: "As no two brains are precisely alike, so no two persons are precisely alike in their mental processes. So long, however, as the deviations are not directly at variance with the average human mind, the individual is sane; if they are at variance, he is insane." The medical profession thus pronounces that person insane whose mental processes are directly at variance with those of the average human mind. Now, whatever may be the real essence of the mind, we know it only by its phenomena, and these manifest themselves in four different forms, namely, in the perceptive faculties, the reasoning faculties, the emotional faculties and the executive faculties; or, in other words, as affecting the perceptions, the reason, the emotions and the will. Under the head of emotions I place the passions, the appetites and the affections. I do not forget that the present most generally accepted division of the mental faculties is into intellect, sensibility and will—the intellect including both the perceptive and the reasoning faculties; but the division I have here given is sufficiently accurate and more convenient for my present purpose. And taking the definition of insanity shown us by the medical profession in reference to the mental faculties as thus divided, we say, that person is insane whose mental processes are directly at variance with those of the average human mind, in respect either to his perceptions, his reason, his emotions or his will; that is

to say, there may be perceptual insanity, intellectual insanity, emotional insanity and volitional insanity. I have not time to give instances as illustrations of these different kinds of insanity. It is enough to say that, in perceptual insanity, those parts of the brain only are disordered which are concerned in the formation of perceptions, and the results are the formation of false perceptions, which are designated as illusions or hallucinations, as they proceed from without or from within. In intellectual insanity the essential feature is delusion or false belief, in respect to material objects; in emotional insanity those parts of the brain only are disordered which are concerned in the production of emotions, and in volitional insanity the will has passed beyond the control of the reason.

This is the medical side of insanity. Now, let us look at the legal side. Here the question is, not whether there is insanity in the medical sense, but whether there is that kind and degree of it which, as a general thing, would make punishment useless, considered as a motive to deter. Have we not the key to the answer in what has been already said? The will is the executive department of the mind. Whenever a crime is committed, or the temptation to commit it is resisted, the commission and the resistance are acts of the will; and whenever the will acts in resistance of temptation it acts in obedience to the reason; the temptation generally comes from the perceptions or the emotions; the resistance from the reason and the will. It is the will which executes and the reason which guides. Choice is an act of reason; execution is an act of the will. Whenever, in respect to a particular transaction, the subject of a criminal investigation, we find reason left sufficient to retain the power of choice, and control of the reason over the will sufficient to make it obey, then the person charged is, in the eye of the law, responsible for his acts and amenable to punishment.

Such is the rule which appears to me philosophical and easily intelligible. It should seem thence to follow that though there be such a kind of insanity as perceptual, and also such a kind as emotional, yet that neither of them taken by itself, nor both together, can justly exculpate the offender or relieve him from punishment. For example, if a person suffering under perceptual insanity thinks he sees an angel, and hears a voice, as of the voice of God, commanding him to kill his child, and acts in obedience to the supposed command, I insist that, nevertheless, he should be punished for it. So, if a person suffering under emotional insanity, caused by brooding thoughts of intolerable wrong, real or fancied, shoots his enemy in the street, I would deal

with him in the same way; and so I would deal with one who, under a morbid, or, as it is sometimes called, irresistible impulse, pushes another over the side of a ship or over a precipice. Such impulses should not be accounted uncontrollable. I commend the answer of that sturdy English judge who, when told that the defendant had committed homicide under an irresistible impulse, replied that the law of England had also an irresistible impulse to punish him for it. Many persons have a morbid impulse to leap from a high rock, but they can restrain themselves. There are thousands who cannot lean out of a window without feeling an impulse to throw themselves to the ground. The drunkard has a morbid impulse to drink. He who uses tobacco to excess is, in common parlance, mad for it, but none of them is beyond accountability for the indulgence of these impulses and desires.

The government of insane asylums is a standing contradiction of some prevalent theories respecting insane criminals. It goes upon the assumption that the unsound of mind are influenced by motives, and can be restrained by fear. One of the most eminent of our physicians, on being asked by me whether the insane are not affected by the fear of punishment, answered: "Yes; there is scarcely one of them who, if he wasted his butter, and were told that if he wasted it again it would be taken from him, would not refrain from doing so."

Bucknill, on this point, makes the following observations: "On the other hand, freedom of will, the fountain head of responsibility, is interrupted by the cerebral disease, but not wholly interrupted. If strong motives are addressed to the patient, he is capable of controlling the manifestations of the malady under which he suffers. 'I am convinced,' says Langerman, 'that, even in the highest degree of insanity, there still remains a trace of moral discrimination with which we may connect the train of the patient's ideas. The extent to which the insane are capable of controlling their actions is conspicuous in the wards of a well ordered lunatic asylum. The medical officers of such an institution find some two or three per cent. of the patients whom no moral influences appear to touch; but the vast majority are enabled, with a little encouragement and assistance, to control their passions and emotions with nearly as much success as the people out of doors.'"

The law contradicts itself, moreover, in a remarkable manner. It will not excuse a man who violates it ignorantly, even though the act done be harmless in itself, as, for example, ferrying without a license, or buying lands in suit, both of which are misdemeanors; nor will it

excuse one who, in a fit of intoxication, commits an act of violence upon another. The reason given for the former is, that all are bound to know the law, though ignorance may enter into the question of motive. He who does not know whether an act is contrary to law has not a knowledge of right and wrong, as determined by the law in reference to that act. So the reason given for the latter is that the offender made himself drunk, but the punishment inflicted is not for getting drunk, for that is only a slight fine, but for the greater offence, the law taking no account of the mental disturbance which the intoxication has wrought. Then the insane are, with rare exceptions, admitted as witnesses; but witnesses who swear falsely are amenable to the charge of perjury, and it would be absurd to allow one to testify, and by his testimony to cause another to lose his estate or his life, and yet, when the witness is called to account for his testimony, to excuse him on the ground that he was insane.

My position then is, that emotional insanity does not excuse an act otherwise criminal. In saying this, I consider emotional insanity by itself. I might say the same thing of perceptual insanity. Neither of these forms, considered by itself, or in connection with one another, exculpates an offender; but I by no means assert that either, or both, may not lead to or be mingled with those other forms of insanity which do exculpate.

The disrepute into which the defence of emotional insanity has fallen is owing to the fact that this form of the disease has been put forward as a defence by itself; but it must not be forgotten that it may and does often lead to the other forms, viz., those of intellectual or volitional insanity. Bucknill says: "Of late years the opinion has been gaining ground among the best psychopaths that, with few exceptions, the embarrassment of the intellect is secondary, and consequent upon the disorder and perversion of the emotive faculties." \* \* \* "Insanity is always in the first instance emotional." \* \* \* "Intellectual insanity is always secondary." And in another place he says: "Sound philosophy points to the emotive part of our nature as the common if not the only source of mental disease."

Intent is a necessary ingredient of crime. There must be a union of act and intent. What is here meant by intent? Not the intention to do a moral wrong, as judged by the conscience of the actor, but an intent to do the act which the law pronounces wrong. This intent the actor must be capable of forming before he can commit a crime and be justly subject to punishment.

It must never be forgotten that insanity is a disease, and whether it

be scientifically accurate to say that the *mind* is diseased, it is true that whenever there is insanity there is a disease of the brain, so that if the brain is not diseased there is no insanity. This consideration disposes of all those cases in which the act is done in the heat of passion or in a moment of frenzy. Few homicides are committed except in passion or frenzy. A murder in cold blood, deliberated on beforehand, is a rare occurrence; but no matter how hot the passion, or how fierce the frenzy, that is not insanity; and the question comes at last to this: Was there a disease of the brain? which is to be proved, like any other fact, by those competent to testify in the matter.

I cannot leave the subject of this paper without expressing my earnest conviction that the knowledge of mental disease has now arrived at such a degree of accuracy that there should be a new classification of punishments. The present classification is a great improvement, doubtless, on its predecessors, which were the product of a ruder age; but we have not yet, by any means, reached that perfection of classification which the present state of our knowledge justifies and requires. The quality of the act, as measured by the degree of intelligence, should enter into the question of the degree of punishment; and, while it may be true, as I have already said I think it is, that perceptual and emotional insanity should not exempt from punishment, I still think that the punishment should be graduated more than it is according to the mental condition of the offender. It does not accord with our notions of justice that the strong and hardened ruffian and his weak and greatly tempted brother should, for the same outward act, suffer the same punishment. What I contend for is this, and this only, that emotional insanity should not exempt from punishment; and that so long as the law affixes only one degree of punishment to the outward act which the offender has committed, whatever may be the inward thought, that degree of punishment should be inflicted.

And I must also think that, whenever the administration of the law is brought to that state to which our advancing civilization must bring it, the question of insanity will be separated from other questions, and medical men will sit with the judges, as assessors or experts, to aid in the decision, in some such manner as nautical men now sit in the English Admiralty upon cases of collision.

Having passed thus rapidly over this vast field of inquiry, we are able, I think, to state the following propositions as the results:

1. Children under the age of discretion, idiots and imbeciles are not within the discipline of criminal law.

2. The mental unsoundness of other persons, commonly designated as insanity or mania, is, in itself, or is attended by, disease of the brain, so that no heat of mere passion and no degree of mere frenzy can in any just sense be pronounced insanity by either of the professions.

3. The defendant's notion of the moral quality of his act is not a proper element in the determination of his guilt or innocence before the law.

4. The questions to be submitted to the jury, in cases of alleged insanity, are—first, was the defendant capable of knowing that the thing charged against him was a violation of law? and next, was he capable of resisting the temptation thus to violate the law?

5. Neither perceptual nor emotional insanity by itself, nor both together, can be accepted as excuse for criminal responsibility.

6. Intellectual or volitional insanity absolves from criminal responsibility when, and only when, the reason has lost either the power of choice or the power of controlling the will.

7. In every case of acquittal on the ground of insanity the defendant should be forthwith placed in a lunatic asylum, and there kept until it is proved that he is restored to such a state of sanity as to remove all apprehension of a recurrence of the disease.

8. The present gradation of punishments is unsuited to the present condition of medical learning, and a change is required which shall make the law punish, not only according to the harmfulness of the outward act, but according to the quality of the inward spring of action.



