Remarks

ON

CRIMINAL RESPONSIBILITY IN RELATION TO INSANITY.*

BY

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I COMMENCE this paper by saying, that I propose to discuss the criminal responsibility of the insane under such aspects only as are necessarily presented to all practitioners of medicine. The consideration of the subject under all its bearings would be more appropriately undertaken by those who have made the phenomena of insanity their especial study, and the care of the insane the main business of their lives. I need not remark, that our Branch has the honour of numbering among its members some very eminent representatives of this class of observers and practitioners, one of whom, in his presidential address last year, imparted to us some highly valuable information on points connected with his particular experience; and another has promised us a paper for this evening, to which my own may, perhaps, serve as a very slight introduction. The only other remark that I have to make in the way of preface is, that this paper was written just after the trial and conviction of Townley the murderer, and before the various discussions had appeared in journals and newspapers; which, could I have foreseen them, would very probably have deterred me from bringing before the Society a subject which, however important, has become trite and all but exhausted.

Among medical writers and medical witnesses in courts of law, there have been great differences of opinion as to what constitutes a man irresponsible for a criminal act. But these differences may be arranged under two or three heads.

1. There are those who think it must be proved, that the person under consideration was the subject of a delusion, an insane belief, the result of a morbidly erroneous action of the comparing faculty, and that this delusion originated the act for which the person is brought to trial.

2. There are those who would not limit irresponsibility to so narrow an issue. They say, that there may be no evidence of any particular delusion; but that the man before he committed the act manifested so much disorder in his feelings, disposition, character, and general conduct, that he ought to be held irresponsible.

3. A third class hold that, if a man were one of whom it might be said that he was in any way insane, whether in judgment, or in feeling, or in propensities, no matter whether or not there be any evidence of connection between the act and the special form of mental derangement, still the mere proof of dis-

eased mind ought to excuse the person from the legal consequences of his act, even though there might be evidence of an adequate motive for the act; the theory in this view being that, when it is once admitted that a man's mind is in any way unsound, no one can deny that this unsoundness may have extended to the feelings, motives, judgment, power of self-control, etc., so as to put the act out of the category of crime. In other words, the holders of this view do not require that, in order to exempt from responsibility, the delusion, or the known morbid state of the emotions and moral sentiments, should have been mixed up with the crime.

Now, the view which the law takes of this subject is briefly this. It is a mistake, according to Judge Maule, to speak of the "plea of insanity." It is not that a man is tried and convicted of a crime, and then that a plea against judgment is presented on the ground of insanity, like the plea of a general pardon or a previous acquittal. The issue is, whether, say in the case of murder, the man committed the act wilfully and maliciously. The prosecutor alleges that he did. The prisoner, in his defence, gives evidence that wilfulness or malice cannot be predicated of his act, because of the unsoundness of his mind.

Now, the stress of the evidence is all on this point. The jury have to decide whether the prisoner's act was wilful and malicious. The judge explains to them that he committed it wilfully and maliciously, unless he was in such a condition of mind at the time as not to know that he was doing wrong; or, as some put it, not capable of knowing the consequences of his act. It has been held by some great lawyers that, if the person committing the act know that it is illegal, he is responsible for the act. But the Judges, in their answers to questions put to them some years ago by the House of Lords, in the case of Macnaughten, for the solution of this point, decided that the jury have to find whether the prisoner acted wilfully, and knew that he was doing wrong, and thereby incurring the punishment of the law; or, as it might otherwise be expressed, that the law cannot allow acquittal, unless it be proved that the person was disabled by mental disease from knowing that his act was wrong. I think that, as the lawyers use the word wilfully as well as maliciously, their proviso ought to include those cases in which men, being driven by irresistible and motiveless impulse to crime (as in homicidal insanity), cannot be said to have committed the crime wilfully.

Some have contended, that it is unreasonable to ask a jury to solve problems so difficult as right and wrong. But, after all, it is only a common-sense view that is required of the jury; it is not a metaphysical subtlety. The law is founded upon right and wrong—principles which people decide upon and act upon in the common affairs of life; and it is presumed that most persons know that such principles are the foundation of the law.* The great difficulty, as I have hinted, which the jurors have to meet, is that of determining whether the prisoner was disabled by mental disease from knowing that his act was wrong. Medical witnesses are summoned to give evidence on this very point. One, as we have already seen, would say that it is enough to prove any unsoundness of

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* For a luminous statement of the legal aspect of this subject, I beg to refer to a paper by Mr. Fitzjames Stephen, published in Part I of the *Transactions of the Juridical Society*.

mind, because this may vitiate, more or less, all its judgments, feelings, or motives. Another, with more limitation, would say that the man's insanity bore particularly on his feelings, disposition, emotions, and motives to action; and, therefore, that it was specially liable to lead to an act of violence; and that as our feelings, in our soundest condition, affect our judgment, so, when morbidly perverted, they are particularly liable to warp it and disable a man from perceiving the quality of his act. A third will maintain that there was a special delusion which led to the act in question, and made it of a quality claiming irresponsibility. But this argument of delusion must be accompanied by proof of its emanating from a diseased mind; for, without this qualification, the strange opinions held by sane men might exculpate any criminal act. Again, others have argued with considerable justice, that you may grant the delusion, and that the act flowed from it, but yet it does not follow that the man did not know his act to be wrong. The lords put this question to the fourteen judges. "If a person," ask the lords, "under an insane delusion as to existing facts, commits an offence in consequence thereof, is he thereby excused?" The judges answer: "Assuming that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation, as to responsibility, as if the facts with respect to which the delusion exists were real."

This judgment leaves it open to the jury to take in the delusion as a part of the evidence as to the prisoner's mental condition, though the delusion itself does not justify the act. In the case of Hadfield, his delusion consisted in his belief that he was our Lord; that his death was necessary for the salvation of mankind; and that, though he ought not to kill himself, yet for firing at George III he would be hanged, and so the world would be saved. It is clear, here, that he did not feel that, in acting on his delusion, he was doing wrong, but quite the reverse. In Bellingham's case, he was under the delusion that Mr. Windham had injured him; and, having mistaken (which any sane person might have done) Mr. Perceval for Mr. Windham, Bellingham shot him. There was no evidence to prove that he did not know that he was doing wrong, so he was convicted; for, if Mr. Windham had indeed injured him, and Bellingham in revenge had shot him, he (Bellingham) would, of course, have been convicted. The feeling that followed upon the delusion or upon the real fact, and which feeling brought about the murder, was the same in either case. But still it might have been argued, that such a delusion was so absurd as to indicate great unsoundness of mind; and the jury in such a case would have to settle in their own minds, whether it was enough to disable the subject of it from knowing that his act was wrong.

Cases are not uncommon in which persons have been afflicted with a false impression that they heard voices maligning, denouncing, and threatening them. Under such an impression, they have taken loaded pistols and rushed out of their houses in search of the imaginary offenders. Supposing that such a person had met some one on the spot, and, under the influence of rage at the fancied insult, killed the unoffending individual, was the insane man answerable for his action? A man under any violent passion does not consider much the consequences of his act; and even had the insane man been really insulted in

this way, it would not justify his act. In such a case, the medical witness may give an opinion that so strong a delusion indicated a diseased brain, and that the man was disabled by the state of his brain from knowing at the time that his act was wrong; or that he was for the time so mastered by the delusion as to have lost all power of self-control; so that, though his act was malicious, it was not wilful.

If the delusion proved to exist in a case had nothing to do with the act, the quality of the act must be judged on other evidence. In Buranelli's case, it was pretty clear that his delusion had nothing to do with his crime; and that there was sufficient evidence of malicious motive. But there were eminent psychopathologists who thought that, independently of those delusions, the prisoner presented other evidence of unsoundness of mind sufficient to make him irresponsible. In a recent case (Townley's), the prisoner was held responsible because he knew the consequences of his act, and he was actuated by evil passion, and he premeditated the crime. But a question might be raised whether he knew that he was doing wrong, seeing that he held the notion that an engagement made the lady his property, and that he might dispose of her as he liked. Though I should have joined in the verdict of "guilty" on the whole evidence, I confess that there is a difficulty in distinguishing what one might call a strange eccentric individual belief or crotchet from what another would call an insane belief in this case. But, seeing that the object of punishment is prevention, it would be dangerous to admit that a young lady's life might be left to the mercy of a lover's crotchets.

It may be worth while to dwell on the instances of delusion to which I have just alluded. In all but Buranelli's the delusion was mixed up with the act. In Hadfield's case the delusion was not only an utterly wild and absurd belief, but it also affected his sense of the morality of his act, and his act had little or no personal passion mixed up with it. In Bellingham's case the delusion, though concerned in the act, did not affect the right or wrong of the act, and natural passion entered largely into it. In the hearer of imaginary voices, the delusion *per se* again might not justify the act (for it is wrong to shoot a man for abusing you). In Townley's case, his particular notion did affect his view of the quality of his act in a pre-eminent degree, but it was combined with violent personal feeling. And the delusion, if so to be called rather than an eccentric notion, was not enough to prove a diseased state of mind.*

What is delusion or insane belief? Let us take one or two examples. Suppose a man proposes to you to form a company for draining the Mediterranean Sea, and making of the recovered land a magnificent cherry-orchard; this proposal is so contrary to all your notions of what is probable or practicable, that you pronounce it at once to be insane. Another comes to you, and avers that he can produce a change in your body by administering to you decillionths of a drug, and persists even when you have explained to him the numerical meaning of a decillionth, which is equivalent to *reductio ad absurdum*. This is quite as opposed to your notions of what is possible or practicable.

* Since the above was written, it has been made highly probable by the investigation of this case by the special commission, that the alleged notion was an after-thought set up in vindication of the crime. See a very able medico-legal commentary on Townley's case, entitled *Insanity and Crime*, by the editors of the *Journal of Mental Science*.

able as the former notion, but do you call it an insane belief? A third tells you that he believes that a *clairvoyante* girl can read a writing placed on the epigastrium, or form a judgment of the bodily and mental condition of a person hundreds of miles away, by means of a lock of hair. Is this an insane belief? and if insane, is it so insane as to argue disease of the mind which entertains it? A fourth tells you that he was justified in killing his betrothed, because a marriage engagement gives a man absolute possession of the woman, and the right to deal with her life. There is nothing more insane in this belief than in the others which I have noticed. The first and the fourth are the most dangerous; the one to the property of the speculator; the other to the life of the affianced lady. The second and third may be only dangerous in the way of superseding more reasonable and salutary methods of medical investigation and treatment.

I think that the more we consider delusions, the more surely we shall come to the opinion that a delusion, like a symptom of a disease, must be viewed in connection with other mental facts before we can arrive at a correct notion of the unsoundness of the mind, and the correlative irresponsibility of its owner; and it will be found that different species of insanity, like the groups of diseases in our nosological classifications, run into each other. Not the less, however, do we recognise the value of such classification. There is a class of cases in which delusions or intellectual aberrations are the prominent phenomena; but they are rarely, if ever, unattended by an abnormal condition of the emotions and feelings. There is another class in which the feelings and sentiments which constitute disposition, temper, and character, and which incite and govern actions, are disordered without marked disturbance of the understanding (the moral insanity of Prichard, the *manie sans delire* of Pinel); but if we examine them carefully, we may often discover indications of impaired or disordered judgment. And the same may be said of the group characterised by violent disturbance of the lower propensities, while mania may present in the same person manifestations of all the forms of derangements which characterise the above groups.

Our excellent associate Dr. Davey, in an interesting pamphlet on *The Law of Lunacy in Relation to Crime*, gives it as the result of his observation and experience, that mental disorder generally, and especially that which is likely to be mixed up with criminal charges, has its beginning, and betokens itself mainly, in the emotions and propensities.

To return to the principal question of this paper. How far does mental unsoundness affect a man's responsibility? Perhaps we may get a little additional light by looking at the question from a fresh standing ground. Instead of looking at it from the side of insanity, let us regard it from that of the rights, liberties, and interests of society. Was the criminal under trial a free agent, enjoying all the advantages and privileges of a person at large? If he was, can the law distinguish between him and other members of society? Law is a social contrivance for the preservation of life and property. As at present constituted, it cannot without difficulty enter nicely into the motives and antecedents of crime. It views the acts of men as they are done, and deals with them according to its prescriptions. The legal judge is not the maker and searcher of hearts. It is hard for him to decide what motives or passions are

irresistible; or what temptation was unduly yielded to, what bias was pardonable. If the biography of every criminal could be fully unfolded, if his original organisation could be laid bare, if the outward conditions of his moral life could be described in detail, showing how every influence that should educe and nourish the moral sense, was wanting, while all that could feed and foster and develop the tendency to evil, was working upon him from the cradle up to manhood, it might appear that, on a righteous and equitable survey of the agencies and instincts to which the criminal had been subject, he was perhaps a less culpable person than nine-tenths of the members of the court at whose bar he is arraigned—persons whose propensities to commit legal offences have been held in check by, or received no encouragement from education, position, habits, customs, conventions, and worldly interest. Much of temptation is hidden under social propriety. And, were hearts to be unveiled, perhaps more might appear than might be pardonable even among the most respectable members of society. But such adjudications are not for human tribunals, at least in the present imperfect state of society. Men must be tried by their acts; and the known consequences of certain acts are the preventives to crime set up by society in its own defence. Society does severe things. It is hard, though perhaps unavoidable, to send brave, ignorant peasants to incalculable suffering, and with the certainty of a large percentage of deaths, in fighting battles for the defence of pestilential territories acquired on most questionable titles. It is hard to imprison, and it ought to have been felt very hard (in a former state of our penal code) to hang men for crimes prompted by the most primitive of human needs. "You are not hanged," a humane judge might say, "for stealing a sheep in behalf of your craving stomach and famishing children, but you are hanged in order that henceforth sheep may not be stolen. Your fate must conform to the necessities of society."

But though society cannot nicely balance and allow for the natural incentives to vice and for the faults of education, may it not allow for morbid aberrations of judgment or for morbid propensities? Unquestionably, when they amount to a certain degree. But what is that degree? This question we have already in part considered. But let us ask another question. Why was the criminal at large? Why was he in the enjoyment of the privileges of society, if he were not answerable to the law which protects those privileges? This question points out to our minds a test that may be a help to us as medical witnesses, whatever may be the value of it to the public, or to the deliberations of a court. If we are considering whether a prisoner is responsible or not for his act, let us ask ourselves whether the facts testifying to his unsoundness of mind were such as would have justified us in certifying him as a person fit to be confined. And if we can satisfy ourselves that we should not have judged him to be a person who could be entrusted with his liberty, we may safely pronounce him irresponsible for his actions. But if we must have left him at large, then he must be treated as a free agent, and one who was not disabled by mental disorder from knowing that his act was wrong.

I think my fellow-members will give due consideration to this suggestion. And were it brought before the attention of the public as likely to be carried into practice, it might probably have an indirectly bene-

ficial operation on those unfortunate persons about whom is the question. Were the partially insane to know that so long as they have liberty they are answerable to the law, I believe that this knowledge would lead them to that self-restraint which is the object of deterrent penalties. And as to the public, they would take more heed of those individuals who, by reason of their unsoundness of mind, are dangerous possessors of liberty. The test would not only diminish the odium or obloquy which at present is so often attached to those who place such persons under control, but it would impel the friends of such persons to the performance of a duty from which it is often natural to shrink. But here comes a difficulty which must be familiar to all who have had to deal with these debatable cases. There is no friend or relation willing to incur the responsibility and the expense of consigning the case to an asylum. What is to be done? This difficulty points to a great public want, which will, I trust, be some day supplied. I mean the appointment of public medico-legal functionaries, whose business it shall be to investigate and take the responsibility of determining upon, and providing for, the seclusion of the cases alluded to. I think it would eventually appear that it is better, nay, that it is fiscally and economically preferable to deposit a brain-sick man in a hospital for the insane, where he may be *cured* as well as kept out of the way of harm to himself or others, than to allow him to remain at large till he has committed some crime which will cause him in one case to be maintained at the public expense as a convict or prisoner for life, or in another to be executed as a doubtful criminal.

There are two obstacles, but not, I think, insuperable, against the practical utility of the criterion which I have proposed. One is presented by such cases of madness as begin abruptly, and are, indeed, first betokened by the very act for which the perpetrator is under trial. Such are the cases of impulsive mania, called Phemonomania, Pyromania, and Kleptomania. Now, I think, if these cases are studied carefully, it will be seen that they are so flagrant as to prevent any question about them; that, although the person affected manifested no such indications of mental unsoundness previously to the act as would have justified any one in depriving him of liberty, yet the act itself was so motiveless, so obviously the result of an irresistible impulse, as to take it out of the legal category either of wilfulness or of malice.

Another difficulty would be offered in cases in which a delusion, though long held, has only been manifested by the act itself. If it be plain that the delusion did exist at the time of the act, then we may consider whether, had we known of such delusion, we should have deprived the person of his liberty. But if the delusion would not have been strong enough to justify such interference, then let the criminal be held responsible.

But here I beg to remark that, in debating these questions of responsibility, we are taken somewhat beyond our strictly medical functions. Sometimes, we willingly, almost officiously, pass out of our province; but oftener we are dragged out of it. I do not think, that it is our business to say what is moral, much less legal, irresponsibility. It might be well for us to resolve and agree to say no more than what we know as medical practitioners. Let us declare the man to be, in our judgment, sane or insane; just as, in examining for an insurance-office, we pronounce

the candidate to be sound or unsound in body. Having declared him to be unsound in mind, let moralists and legal judges settle the question whether he was responsible for his actions. For my own part, I do not hold that, in the abstract, unsoundness of mind should, necessarily and in all cases, exempt from culpability. Every case must be examined on its own merits; and the questions on which the individual case must turn are, as it seems to me, legal and moral, not medical. We have enough burthens on our minds; enough of difficult problems to solve; and it is hard to have forced on us those which do not belong to our calling.

But whether we like it or not, we shall still have these troublesome questions pressed upon our consideration. Was the prisoner insane to such a degree as to take his act out of the category of malice and wilfulness? Was he ignorant that he was doing wrong and breaking the law? Had his disorder deprived him of the power of self-control? I repeat what I have said, that, in determining these points, we must study the whole man; and consider, whether had we known his history, we should have allowed him to be in possession of his liberty. And we must remember that, while it is our duty, on the one hand, to save an irresponsible man from punishment, we must not, on the other, push our theories as to human actions so far as to weaken that check which punishment gives to crime; ever bearing in mind that, while one man may be so overmastered by morbid propensity, and another by wilfully indulged passion, either of which may set all fear of punishment at defiance, there are vast numbers of persons with feeble moral sense, moderate passions, and exposed to strong temptations, whose premeditation of crime is arrested by the dread of punishment. For, putting aside the fear of criminal punishment, are we not all aware that even minor penalties are strongly operative? What would be the safety of virtue and what of integrity, were there no such punishment as social loss of caste and social dishonour?

In conclusion, and to gather up the more important practical points of this paper. It will be our duty to inquire in any case: 1. As to delusions, whether they were of so gross a nature as in themselves to argue a diseased state of the understanding; or whether, though of an insulated nature, and not involving the whole mind, they had a direct bearing on the crime, or whether they were mixed up with morbid emotions and sentiments. 2. As to cases without manifest delusions, whether the state of the emotions and moral feelings was so perverted, either with reference to the ordinary standard, or with reference to what was the patient's former temper and character, as to indicate a morbid condition, that condition telling in particular on the power of self-control. In distinguishing such cases, it will be a help to view the inordinate emotion in relation to the object which excited it—as in the common cases of revenge, hate, jealousy, and cupidity; and to consider the proportion between the passion and its provocation. 3. As to the impulsive forms of mania, these ought not to be admitted but on the strongest evidence. But luckily, in such cases, the evidence is usually very convincing; or if not so to the merely legal mind, it is conclusive to those who have any practical acquaintance with the great variety of the forms which mental disorder can assume.