

On the Legal Doctrines of the Responsibility of the Insane and its Consequences. By THOMAS LAYCOCK, M.D., Professor of the Practice of Medicine and of Clinical Medicine, and Lecturer on Medical Psychology and Mental Diseases, in the University of Edinburgh.

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I do not know that a more useful question can occupy this our last hour of meeting together than that of the legal responsibility of the insane, and how it affects us in our relations to our patients; more especially in regard to moral treatment. Our visits to Millholm have enabled us to judge of the value of that method, as carried out in the largest private asylum in Scotland. At the Crichton Institution, where we were so kindly entertained by Dr. Gilchrist and the directors, at our late visit, we witnessed its highest present development, and learn, moreover, of what it is further capable. Dr. Browne was the first to introduce the method into Scotland, when appointed to be the medical superintendent of the Crichton Institution, at a time when the lunatic was treated worse than a felon. With the sanction of the Board of Lunacy he most kindly consented to accompany us on our visit, and to give us a discourse on the moral treatment of the insane.

It is worthy of mention that, twenty-three years ago, Dr. Browne delivered a course of thirty lectures on mental diseases and mental hygiene, in the same room, to an audience of two; at our visit it was crowded. I believe forty-eight students have voluntarily studied mental diseases in Edinburgh during the summer; thirty-two of these were enrolled members of this class. Great as is the difference, it should have been greater if the importance of the subject be considered.

Now there was one point that Dr. Browne more particularly dwelt upon, as to which his views had my entire concurrence; he objected to the enormous and costly institutions which have gradually grown up for the reception of the insane, since a more humane treatment prolonged their lives, and increased their numbers; and more particularly showed that the proper improvement in this direction was to establish quiet suitable homes for the infirm in mind, rather than places of detention. I cannot doubt that throughout Europe thousands of persons are now shut up for life in these large establishments who might be advantageously and happily placed in private families and cottage homes, and that the due treatment of the insane is thereby made more difficult and imperfect. Doubtless

there are numerous obstacles of an administrative kind to such a reform, but the chief hindrance will be found in the relations of the insane to the law and the administration of justice. It is generally believed that insanity and irresponsibility go together, but that is not the law; it holds all lunatics responsible. Any lunatic murderer, whether in or out of an asylum, may be found guilty and hung. It is true none has ever been hung for murder committed while a patient in an asylum, and hardly one suicide in a thousand is found to be *felo de se*, but these are exceptional cases, and arise out of expediency, and not justice. But let us suppose the insane treated in cottage or other homes. According to the legal dictum in criminal cases, a person to be considered irresponsibly insane, must be so deprived of understanding that he has no knowledge of right and wrong. Now, the great majority of the inmates of asylums not only have this knowledge, but the entire government of an asylum is founded thereon, and is, indeed, the only foundation of moral treatment. The majority, therefore, are legally responsible, and, consequently, if any of the insane treated in cottage homes were to commit theft, or homicide, or other crime of violence, they would be held legally responsible, and the law might find it expedient to punish them, and their position would be one of danger. Practically, George Bryce, lately executed for murder, was an imbecile taken care of at home, for as such he was employed as a carter, and kept and clothed by his father, and paid no wages, as is and would be the case with the class I refer to. He did work which thousands now in asylums are capable of. But the Lord Justice-General, in his charge to the jury, founded on this capability, that he was to be held responsible for his actions; and the Solicitor-General strongly pressed that he was a responsible member of society on the same grounds. What the courts would do with the insane generally, under like conditions, we cannot tell. There was a lunatic from Alloa, brought, just after Bryce, before the High Court, for the cruel murder of an innocent boy, who had maintained his family for three years previously, and had no supernatural hallucinations, only a crazy temper and delusion about church government, and yet he was found to be so insane, that he was not even put on his trial. There was no substantial difference, medically, between his case and that of Bryce. Bryce was certainly the more imbecile in intellect, and the less competent to transact business. In fact, he never feigned insanity, never instructed as to his defence, and was quite incompetent to do so. Expediency might, therefore, lead the courts to decide just as harshly against our insane patients if placed in cottage homes; for justice, gentlemen, is often of necessity administered expediently. It would shock our common humanity if justice ordered the murderous inmate of an asylum for execution, or visited the penalties of *felo de se* upon the corpse of the hapless suicide;

but the free homicidal lunatic like Bryce, not less insane than either, sometimes suffers the extreme penalty, because justice finds it expedient to satisfy public vengeance, or set forth the terrors of the criminal law. I do not mean to question the wisdom of this expediency, nor do I deny the doctrine that the insane are responsible. All that I wish to point out is, that if the insane are to have that modified freedom, as useful members of Society, of which thousands now shut up for life in asylums, at great cost to the country, are capable, the legal doctrine as to responsibility must be well considered.

But while the law thus interferes with the liberty of the mentally sick of one class, it affords to those of another class a very dangerous freedom. Within the last two years, at least four or five lunatic murderers have been hung in Britain; two or three others have been condemned to death, but had their sentences commuted to penal servitude for life; and several more are now awaiting in prison either their trial or execution. And if the law be faithfully and impartially administered, as the public has a right to expect, many more lunatic murderers will be executed. There is of late a notable increase in the number of insane murderers; it is indeed this increase which has rendered it expedient to hang the insane murderer. Now that is due, I think, not to the increase of lunacy, but to the fact that there is a greater number of dangerous lunatics at large, and these are so at large because of the legal doctrine as to insanity and the responsibility of the insane. For we all know, that in consequence of the numerous actions at law brought of late against them by lunatics, medical practitioners have now to consider well whether in case of action their patient will be legally considered insane before they venture to certify that he is of unsound mind medically, and a proper person to be detained under care and treatment. And as the worst and most dangerous kind of criminal lunatic offers in the early stages none of the symptoms of popular or legal lunacy, he is of necessity left uncertified, and wanders abroad in society, free to commit the vices and crimes to which his insane nature impels him, until, with increase of his malady, he finds his way to an asylum, or a workhouse, or a jail, or the hulks, or the gallows, according to the characters of his insanity. It is not to be supposed that the public, the bench, the bar, or the legislature, can desire that this state of things should continue. The judges in particular must feel deeply the painful position in which they are placed, when they have to pronounce on the weak and wayward murderer, with obvious mental infirmity, the same solemn doom which befits the cunning, able, deliberate assassin. It is, indeed, a saddening sight to see the toils of the law closing round these insane and imbecile homicides, and the instincts for sanguinary excitement and for vengeance on the wretched shedder of blood, pertinaciously seeking their gratification

in a crowded court, or at the gallows. Many more such sights will either familiarise the brutal with death, and so cause fresh murders, or disgust the wise and thoughtful, and lead to the abolition of capital punishment.

Such being the social and professional consequences of the legal doctrine of responsibility of the insane, let us examine whether the method and principles of the courts are equal to the duty imposed upon them, and whether some reform in these is not indispensable. The case of George Bryce is fresh in your recollection, and illustrates them well. Bryce was an unmarried man, of about thirty, of weak mind naturally, but rendered weaker by an attack of fever in boyhood, and during manhood by the use of stimulants. These, taken in small quantities, excited him to maniacal violence, and, in larger doses, induced a comatose condition, mistaken for natural sleep. Such a result almost always marks a tendency to morbid brain-action. That he had such a tendency hereditarily seems probable from certain family facts. On his mother's side he had relatives who were fatuous; one of his uncles, by his father's side, was executed at Edinburgh several years ago for murder, and another is now an inmate of the House of Refuge in this city, with failing memory, very irascible, and, when excited, frequently threatening violence. These hereditary tendencies are of great practical importance, even when the brain is well formed and the intelligence unaffected; but, as you will see by this cast of Bryce's head and face, taken shortly after death, the intelligence and the development of the brain in him must both have been very imperfect. The head is very small anteriorly, and almost idiotic in that aspect, as compared with the face; it is also very irregular in form generally, and appears larger than it is, because the cranium was covered with thick flabby muscles. Very significant, too, is a change in the face which you see on the cast of this idiotic man, who murdered his brother, and in this cast of another idiot. Both have heads no worse than Bryce's; both have a palsy-wasting of the left side of the face. That of the idiotic fratricide closely resembles the well-marked wasting of the left half of Bryce's face, which was not so obvious during life, because the cheeks were covered with whiskers. Indeed it was only clearly observable as to the nose. Now, this wasting corresponded to some internal brain defect of the same kind, the nature of which a careful examination of the brain after death might have revealed. Thus constituted, Bryce showed symptoms of gradually failing health, and at last became the subject of well-marked insanity of a morose, melancholic kind. In an aggravated state of his malady he furiously attacked a nursery-maid, regarding whom he had insane suspicions, and cut her throat with a razor. He was tried at Edinburgh for this murder, found guilty, and executed on the 21st of June last. I felt it my duty to express the opinion at his trial that he had a brain

disease which would progressively advance and end in complete deprivation of reason, if he lived long enough. Further inquiries have satisfied me as to the accuracy of this prognosis. Happily for himself, he was spared the proof.

Three medical questions were raised at Bryce's trial. 1. Was he insane at all when he committed the murder? 2. If insane, was he insane to that extent of insanity which relieves a man of responsibility? 3. Was he insane at the time of his trial? I say these are medical questions, because they plainly involve subordinate questions as to the nature and extent of disorder or disease of the brain; but the Lord Justice-General most clearly laid before the jury that the determination of these questions rested with them, and not with medical practitioners. In this he obviously is in accord with the Lord Chancellor of England. He said—"Gentlemen, the question of insanity—insanity to the effect of relieving a party of responsibility—the question of whether a man was insane to that extent, is a question for you to determine. It is a question upon the whole facts of the case. It is not a medical question." Nothing can be clearer than this. But the Lord Justice-General went farther: he gave the jury to understand that he directed thus, although well aware of the importance of medical opinions to the due administration of justice in such cases. He said—"Medical gentlemen have opportunities of observation which make their testimony frequently very important in reference to such matters. Their experience and observation make it important, but the question is not a medical question. It is a question of fact, whether the man was at that time in that state in which he is not to be responsible for his actions." In accordance with these legal doctrines, neither my able co-witness, Dr. Ritchie, nor myself, was asked whether we thought Bryce responsible or not. See now in what a position the jury is thus placed medically by the law. Like other diseases, insanity occurs in very different degrees of extent and intensity. We often meet with patients who are just beginning to show symptoms of a palsy or a consumption, when it is difficult to decide, without the most careful examination of the patient and weighing of the symptoms, whether he is affected with the disease or not. So it is with insanity in its beginning; it is often very obscure; indeed so obscure that it is only the medical "detective" (if I may so speak of the experienced physician) who can discover it. Now, it is precisely this greatest medical difficulty of all which the law hands over to a dozen or fifteen men who are supposed to know nothing of insanity whatever, while it takes the solution of it from those who are supposed to know all that is known. The Lord Justice-General then proceeded to lay down what was the degree or extent of disease the jury had to determine, and how. He explained thus:—"It is a question of fact whether the insanity did

amount to this, that he was doing a thing which he considered himself—and had grounds for considering himself—warranted in doing.” And again:—“The question you have to decide is the question before you—Has it been established, or has it not, that this act was perpetrated through insanity—insanity in this sense, that the party was bereft of mind, and believed that he had good grounds which warranted him in committing a violence against an individual?” As “mind” was probably used in the sense of “understanding,” the question in another shape is this—Was Bryce bereft of understanding, and were his beliefs of a certain kind during the five minutes within which the deed was done? This question is not precisely the same, however, as that which is put to the jury by judges in England, who set it forth more specifically thus—Did the prisoner know right from wrong at the time when he committed the act? And I think the Solicitor-General had that in view in his cross-examinations, and in his very able speech, although he quoted the dictum of our great constitutional writer, Baron Hume, to much the same effect as the Lord Justice-General. The essential point in the question is, however, the same in all—namely, whether the degree of the disease termed insanity was of such extent as to constitute the criminal an irresponsible agent, by sufficiently affecting his belief and his knowledge of right and wrong.

Let us now try to realise what principles would guide a well-informed jury and well-informed physicians respectively in weighing the facts, so as to determine the metaphysical questions submitted to them. I have looked into a book published in 1858, and entitled “An Inquiry into the Constitution, Powers, and Processes of the Human Mind,” which is from the pen of the Rev. Dr. Pirie, Moderator of the General Assembly, and Professor of Divinity in the University of Aberdeen. It may be held to indicate the state of opinion current amongst our most educated non-medical thinkers. Dr. Pirie is, we may assume, in advance of the class constituting a jury; nay, perhaps, if not in advance of, at least fully equal to, Baron Hume. Now Dr. Pirie tells us something of practical importance in his preface; for he says that he could find nothing satisfactory as to the processes and powers of the human mind in the systems of mental philosophy now current, and had, therefore, to attempt the analysis of mental processes for himself. And in the body of his work, when discussing the mode of investigating the nature of the mind, he remarks that “all classes dogmatise on the profoundest doctrines of theology, morals, politics, education, &c., without apparently having any solid foundation on which to rest their speculations.” This is certainly true as to a disordered mind and its relations to morals, government, and education. You will often hear men and women of excellent understanding expressing the most decided opinions as to the morals, responsibility, and

government of the insane, who have not the slightest knowledge of the disease, either theoretical or practical, nay, perhaps have never even seen a lunatic. The moral responsibility of the imbecile and insane has close relations to the legal responsibility. Upon this point so eminent a divine as Dr. Pirie must be considered to give the opinion of an "expert." Well, he says, and very truly, the question is "awful, dark and mysterious." In insanity Divine Providence visits most emphatically the sins of the fathers upon the children, even to the third and fourth generation; so that we can often answer the question as to an imbecile, whether this man sinned or his ancestors, that he was born mentally blind? The great and final tribunal will, we are sure, judge rightly; but as to that before which the lunatic Bryce stood, we can only hope a proper sense of incompetence so to judge was felt by some at least of its members.

But what would be the notions of a jury as to morbid mental states? Dr. Pirie indicates the most common. He says that in these and in sleep, and even when violent passions are in operation, there is "a partial disjunction of body and mind." This is perhaps the most ancient as well as the most popular theory. It is the foundation of all popular doctrines of ghosts and apparitions; upon it, indeed, rests the whole fabric of so-called spiritualism. It is a very probable theory to be held by an intelligent jury, knowing nothing of mental physiology. If, then, the jury in Bryce's case adopted any theory, they would probably try to determine to what extent his body and mind had been "disjoined" by disease. But then Dr. Pirie further affirms that "the action of body and mind, be it what it may, is utterly undiscoverable by us," and, "even if it could be discovered, we should be as far as ever from knowing anything of the mode under which the ideas resulting therefrom could be regulated;" so that ignorance on this point is both admitted and justified. Now, conceive two or three physicians in consultation on a case of insanity attempting to determine its nature, and extent, and treatment on these principles, and we can form some notion how unpractical and absurd popular medical art would be in the jury-box. I do not allude to these doctrines in a critical spirit, but only as representative of the state of knowledge popularly current, and what would probably be found in the most intelligent jury. It is obvious to us, at least, that the best thing for such a jury to do would be to say that they felt incompetent to decide the serious questions submitted to them. It would at all events be the honest thing, and here honesty would surely be the best policy for the public. For if a few juries empanelled to determine questions so manifestly beyond their capacity were to bring in a primary verdict to that effect, a reform in the judicial proceedings regarding the insane would become imperative.

Practically, however, these questions are and must be decided by those professionally competent. But while all liberal and advanced jurists concede the principle, they hesitate as to how they shall be submitted to physicians, and how far our opinions should be adopted. They want a firm faith in us. They say, How can we take your doctrines as our guide when you differ so much in opinion among yourselves? They see, too, that physicians differ according to the side they take. Now, that is mainly due to the fact that we are forced to take a side, although we occupy a position with regard to the medical evidence as strictly judicial and impartial as that of the jury with regard to the whole facts of the case. If the medical practitioners called on both sides in the case of Bryce had been constituted into a jury to determine the medical value of all the facts, they would have been just as impartial as an ordinary jury. But, by the existing system, they are made to take a side, and, in spite of themselves, are forced to a judgment, *ex parte*, before at least they come into court as witnesses. For it is not likely that agent or counsel will collect and lay before the physician the facts which do not favour the conclusion they desire with the same care and zeal as those which do. My friends Dr. Craig and Dr. Littlejohn, who were witnesses for the Crown in the case of Bryce, could not have had all the facts bearing on his insanity laid before them previously to the trial, and they were not asked their opinion as to those which were stated in the course of the trial. I presume they had chiefly before them the facts which proved he was not insane—facts of a wholly different kind from those which proved that he was. Physicians, for obvious reasons, necessarily differ in opinion as to the conclusions to be drawn from facts, when the facts submitted to them differ wholly in kind. Here, then, is a very common source of the medical contradictions complained of, and which can only be remedied by so treating medical witnesses that they shall no longer be *ex parte*, but impartial investigators, like the bench or jury itself. Undoubtedly, another source of difference of opinion would remain in acknowledged differences of doctrine. Independently of physiology, the speculations, contentions, and doubts of mental philosophy have infected medical inquiries into the nature of healthy and morbid mind, and rendered a subject most difficult in itself still more difficult. Unanimity as to doctrine is therefore simply impossible. But I may affirm this—that, however we may differ as to doctrine, we seek to get rid of all subtle metaphysical questions in practice. Our fundamental principle is purely practical; it is this—that the action of the mind on the body, and of the body on the mind, is through the brains. So that, whatever a man feels, or thinks, or does, is medically referred of necessity to the action of his brains. If the mind suffers disorder from the action of the body, it is through the brains; if it causes disorder in the body, still it is through the brains. Man, in short, acts

mentally and consciously in virtue of his cerebral organisation, and of the changes which go on in that. Mental science, from this point of view, has not, during the last twenty-five years, lagged behind other sciences; and if it has not had applications more important to society than those of the physical sciences, it is because they have had no hindrances to practical progress, such as medicine experiences from the influence on public opinion of ancient, deeply-rooted, and barren systems of philosophy. In the magnificent development of the Copernican system of the universe, which only became possible after the Ptolemaic system was overthrown, we have an illustration of what a mental system founded on biology is capable in the world of mind and morals, when it shall be free to evolve into all its multifarious branches, and be developed practically.

So much for the tribunal. Let us now inquire how the facts of a case of alleged insanity are judicially ascertained. Bryce committed the murder suddenly, furiously, in the short space of five minutes. What was his mental state at the time, and just before he committed the act? Now this might be shown by his state shortly after it; for if insane before, he was probably insane after the act, and so it might be concluded he was insane at the time of committing it. Was he insane, then, shortly after? He was taken a few hours after the murder (which was committed in open day and in the presence of witnesses) before the sheriff and the procurator-fiscal of the county, when he "emitted" a declaration, chiefly to the effect that he recollected being in Mr. Tod's kitchen (at whose house his victim was nurse-maid) that morning, and after that he recollected nothing till he found himself lying in a plantation a little to the west of Mr. Tod's house. Both these gentlemen asked him a few questions, and got coherent answers, and thence concluded and witnessed that without doubt he was then in his "sound and sober senses." In other words, they formed the medical opinion that he was not insane a few hours after he did the deed. I am sorry to say that this method of inquiry sometimes satisfies our professional brethren. I need not tell you, however, after the experience you have had at Millholm Asylum, that probably one third of the inmates of our asylums would manifest the same coherence when questioned. You know practically that you cannot be too guarded against erroneous conclusions, nor too careful in your investigations. At a first interview, five weeks afterwards, Bryce did not appear to me to be insane, only of weak mind; and I stated as much to the Procurator-Fiscal, when he precognosed me two days before the trial. But then I took care to add, I had further inquiries to make before I formed a decided opinion. At a second interview, on the day before the trial, I advanced towards a decision, but it was not, in fact, until after hearing evidence in court that I came to the conclusion that he was insane then, and for some months previously. The Commissioners in Lunacy

examined Bryce shortly before his execution, and did not find any positive symptoms of insanity. But then they were well aware that between the murder and that date he had been subjected to important moral influences, which of themselves exert a decided curative action on the diseased brain. It was thought by many, indeed, that he was at all events restored to sanity before his execution: in so far as I could learn, and I weighed all the statements, there was no proof of this, but the contrary. Confessions and statements made in prison are notoriously of little weight, even when the prisoner is of sound mind. Jurists of eminence, indeed, have laid it down as a principle of jurisprudence; for experience abundantly shows that the innocent may, by dint of bad treatment, apprehension, solicitation, and the like, be made the victims of hallucinations and delusions, and confess to crimes of which they are wholly guiltless. Hundreds of wretched women, imprisoned and then burnt as witches, were formerly thus led to confess to personal intercourse with the devil, with full particulars of time, place, bodily appearance of Satan, and the like.

In Bryce's case the valueless negative evidence adduced in proof of the negative opinion that he was not insane a few hours after he committed the murder, was, of course, made available to the further proof that he was not insane at that time; and, taken in connection with other negative evidence, equally inconclusive and valueless, helped also to prove that he was not insane before. All this could only serve to mislead a jury; they were not warned how fallacious negative evidence is, and they judged erroneously. This was probably due to the fact that the courts do not recognise the important principle in medicine that all the evidence of insanity is, strictly speaking, circumstantial. We cannot see, or hear, or feel the brain-disease or disorder which leads to the morbid mental manifestation. Then the patient, if he do not feign symptoms, as he often does, either states hallucinations, as if they were facts, or conceals them; so that our chief witness is untrustworthy. It follows that the practitioner has to be constantly on his guard against attaching much weight to negative evidence, or even to uncorroborated positive evidence; and the more experienced he is as to these sources of error, the more cautious he is in his scrutiny of the facts. It is not so with the inexperienced public. They know nothing of these difficulties; they think negative evidence as good as positive evidence, if not better; and hence the wide gulf which so often divides the medical and non-medical conclusions in cases of insanity.

Now positive evidence, though not free from fallacies, is infinitely more reliable than negative. Eliminate the doubts whether Bryce feigned or not, and it was abundant and conclusive as to his mental condition previously to, and at the time of, the murder. Positive evidence is often, moreover, very microscopic, for you know that not

unfrequently phenomena are most important as to their meaning, which are most trivial and insignificant as to their manifestation. Thus, neither the Solicitor-General nor the Lord Justice-General would admit Bryce's hallucination that John and George Peat had told him his victim had said to them he was a drunken blackguard, to be of any adequate value. If he had had strange and supernatural ideas as to himself and those about him—such as that he was the Divinity and they devils, and the like—he would not have been held responsible, but a mere eccentricity of opinion like that, they said, could not be entertained. Yet it was a very important symptom of the kind of insanity he was affected with. He might certainly have had supernatural delusions if he had had any imagination, but he was so defective mentally that he had very little of that faculty. It is true he said, weeping, to Dr. Craig, after a paroxysm, that he could not tell how it was the devil had tempted him to attack his mother; and before his execution he appears to have said the same as to his murder of Jane Seaton. But then we know that this marks no delusion; on the contrary, it is very common for persons who have insane impulses to commit crime to designate them in this way. Both the clergy and the medical profession know this. It is, in fact, an opinion as to their cause, founded on a very ancient theory of insanity—current long anterior to the Christian era—to the effect that the strange feelings, thoughts, and conduct of the insane are due to evil spiritual agents. This opinion is still held, indeed, in many parts of the world, and insanity is treated by exorcisms. As to these minute indications of Bryce's insanity, I may remark that they were more numerous as delivered *viva voce* in court than appears from the reports of the evidence in the newspapers; and I have no doubt that if I could have cross-examined the witnesses, I should have elicited others. The mother's description of his nightly states was, however, most graphic, and clearly showed that Bryce had nocturnal paroxysms of acute melancholia, which, in a man constituted like him, are sure, if not relieved or checked, to end in homicide or suicide, or both. We can speak of the course of such a case as confidently as we can of a case of epilepsy or spasmodic asthma. I have before me the opinion of my friend Dr. Browne, who, as you know, is greatly experienced in insanity, and a medical commissioner for lunacy for Scotland, as to the mental condition of Bryce, deduced from the evidence as reported in the papers, and it is in general accordance with what I expressed at his trial.* Neither do I think a physician practically acquainted with mental diseases would come substantially to any other conclusion. Nor is it venturing beyond general medical experience to affirm that if Bryce had been detained under care and treatment as a lunatic, both he and his victim would be alive now, in so far as the murder influenced their fates. They both suffered a

* See note by Dr. W. A. F. Browne, at end of this paper, p. 365.

violent death for want of the due and proper application of medical skill. Nay, it is not going too far to say that since many similar lunatics are at large in the United Kingdom at this moment, a proportion of innocent persons now living will perish by the hands of some of them before the year expires.

All this applies mainly to the simple question of insanity; but how is that degree of insanity ascertained judicially which constitutes irresponsibility? In Bryce's case, besides the delusions, the state of the memory was a leading point. It certainly was very defective, as I clearly ascertained by personal inquiry, independently of the abundant evidence of his father and mother, and others who knew him well; and in my judgment, the defect was of that peculiar kind which is seen in the epileptic and others in whom brain-disease is slowly progressing. He said to me, as to others, when charged with the murder, that he did not recollect killing Jane Seaton. Was this true, or was it not? and whether true or untrue, how did it affect the two distinct questions of his insanity and responsibility? I think, gentlemen, after what you have heard in this room as to the connection of memory with organisation, you will agree with me that it is one of the deepest and the most wonderful questions of mental science. From this point of view, it was curious and interesting to see how the judicial inquiry was conducted in the absence of all knowledge of the vital laws of memory (which are modified so strangely in insanity), and of digested experience of its morbid manifestations. The court and general opinion believed that the assertion was not true; they formed the hypothesis that it was a cunning trick, and that on numerous other occasions when Bryce had manifested destructive and homicidal furiosity, and when he invariably made the same declaration, it was equally false, and merely given as a foolish excuse for his bad conduct. The hypothesis was reasonable enough; but if admitted to be true, of itself it proved neither sanity nor responsibility, and might, indeed, when taken with other circumstances, prove the contrary. Cunning of a very remarkable depth is common in homicidal lunatics of a certain class. But then so is want of recollection. Now, as the evidence proved that Bryce's mental state just previously to the attack was morbid, it is reasonable to conclude that it was morbid at the time of the attack; and, consequently, we appeal to our experience of homicidal lunatics to determine the question whether he recollected or not. It is generally believed that the memory and recollection are enfeebled in all kinds of insanity, and more especially in the furious kinds of mania; but this is not strictly accurate. So that when I read the report of the Chancery visitors in Lunacy on the mental state of Townley, and found that they concluded he was not insane when he murdered his victim because he said he did remember, I did not hesitate to doubt their conclusion. So far from the memory thus suffering in all cases, the

contrary condition is manifested in some ; so that whatever is done or suffered during the paroxysm is ineffaceably recorded on the morbid brain. I was lately told the case of a gentleman who, being a furious maniac, had the strait-waistcoat put on ; his physician on the occasion of a visit took off his night-cap to feel if his head were hot, and did not replace it properly, but left it awry. This slight neglect so deeply offended the patient, that although subsequently quite restored to continued mental soundness, he for several years felt a strong sense of hatred for his physician. Happily, he recognised the morbid character of the sentiment, and kept it in check—at least, so long as he continued well. I had a young lady under my care, naturally of a most excellent disposition, who became the victim of moral insanity in consequence of changes in her bodily health. Although naturally truthful, one of her symptoms was an addiction to the utterance of the most malicious falsehoods. I spoke somewhat severely to her as to her sad vice, and when she recovered, which she did completely by a restoration of her bodily health, she always showed the utmost gratitude to me, but at the same time confessed that she had such a deep-rooted and painful recollection of my reproof that she felt she hated me. Exaltation of memory is, in truth, as I have already shown you, a leading sign in certain kinds of mania, and I do not think it was likely to have suffered in Townley's case. But there are reasonable grounds for believing that Bryce's declaration as to his want of recollection on the various occasions when he was violent might be true, for such an allegation is very common in cases like Bryce's in other particulars, and has been made under circumstances which precluded any reasonable belief that it was feigned. It is shown, for example, in persons in whom a morbid state is produced artificially, as by chloroform or mesmeric manipulations, or more morbidly by some brain-disease, as epilepsy. Homicidal delirium, with want of recollection, is a well-known accompaniment of epilepsy, and when it is manifested in an epileptic compels his seclusion, although in the intervals of the fits he is of sound mind and memory. Somnambulism is another of these diseases in which recollection is involved, and a cause of homicidal impulses, although less generally known to be such. In fact, so common is the allegation of want of recollection in cases like Bryce's, and the tendency to epileptic attacks so striking, that my friend Dr. Morel, of the large asylum at St. Yon, near Rouen, has termed them "masked epilepsy." From the evidence, I suspected epilepsy in him ; and if I had been consulted would have directed him to be carefully watched, especially at night, to ascertain the fact. And I may add that my personal inquiries led me to the conclusion that Bryce was a true somnambulist, and that some of the curious freaks he perpetrated were probably of a somnambulistic or epileptic kind.

The manner of the murderer previously to, during, and after the

attack, is of diagnostic value. A blacksmith's apprentice was so struck by the expression of Bryce's countenance a few minutes before he committed the deed, that he mentioned it to his master. The Solicitor-General cross-examined the lad, with the object of showing that it was merely the look of a man who had been dead-drunk the night before. But expressions of countenance cannot be described. How would it help a jury to a decision if none of them had ever seen a smile, to tell them it was "a look of pleasure or kindness," as Walker defines it; or "a contortion of the countenance," according to Johnson? Now, this was precisely their position as to the look which Bryce had. It was morbid—its true nature is known to us who have seen it; but those who have not seen it (and it is very rarely seen) could not conceive what it was like, nor what it meant. Mrs. Tod, who was present when he made his attack, said he "gazed" at her when she seized him, and she could not say he recognised her; and Davidson, who saw him half an hour after, noticed his "raised" look. The probability is, that as he had just awoke from a prolonged comatose sleep of eleven hours' duration, his brain was in a state something like that of somnambulism; and the look which was so peculiar as to attract the notice of a blacksmith's boy was of the kind observed in sleep-walkers.

Another peculiarity was, that after this furious attack and bloody murder, Bryce was seen by two witnesses walking composedly away; and another, that during the attack he was not heard to speak. These two symptoms have a peculiar diagnostic value medically. The Solicitor-General, in his cross-examination of me, asked me whether, if the prisoner had been running for an hour and a half after he committed the deed, did I think the fit passed off while he was running? Now, the evidence on all sides was clear that he did not run at all after he committed the deed, nor at least for three-quarters of an hour after. He walked composedly away, and about forty minutes after was observed by Davidson walking in a plantation a mile distant from the scene of his crime. His account to me was that he came first to his recollection there. He made no attempt to escape until—after talking with him for ten minutes to amuse him, so as to give time for others in pursuit to come up—Davidson told him what he had done; on the contrary, he was quite ready to go to a neighbouring village to drink whisky. He told me himself that he would have gone to Ratho, his own village, for the drink, but he was afraid of meeting his father. It was only when he saw men coming up to capture him that he tried to make his escape and cut his throat. Davidson evidently treated him as an imbecile, and Bryce's whole conduct was in accordance with the notion. He never thought of running away until he was told what he had done, and saw men coming to take him.

As an example of how medical opinions are arrived at in the courts, I may observe that when the Solicitor-General asked me the hypothetical question as to his running for an hour and a half after the act, I objected that that was an assumption, and that I understood I was in court to give an opinion as to the facts of the case. The Solicitor-General replied—"You are quite mistaken, Doctor. You are here entirely to give opinions upon assumptions; you are not here to give opinions upon facts." When, therefore, the Solicitor-General cross-examined me as to Bryce's knowledge of right and wrong, and of what he was doing during the time that he committed the crime, I answered, perforce, the various metaphysical questions put to me—which no man could answer, or pretend to answer, scientifically—to the best of my ability. As a consequence of the method of reporting, all the questions and answers were so mixed as to make the reader understand I was the originator of the assumptions. I gather this from the fact that journalists, in commenting on the case, charged me with bringing forward crude and ill-developed contentions in favour of the murderer. I was, in fact, compelled to speak of what I knew were metaphysical assumptions, and wholly irrelevant to the case practically, and was no more in favour of the murderer than any one of the jury. In this way medical witnesses are often forced into theoretical statements of no value whatever.

Now, if a medical jury had had to determine the question of Bryce's insanity and responsibility, the whole procedure as to the collection and weighing of evidence would have been different. The cross-examinations of the witnesses would have had distinct reference to the origin, cause, and duration of the alleged insanity, and to the particular brain-condition at the time the deed was done; and special points (as to the bearing of which on the case a professional and experienced inquirer could only judge) would have been brought out. Care would have been taken to keep the witnesses themselves in the best mental state for recollecting and clearly stating what they had seen or heard; and I need not say that all puzzling and irritating modes of cross-examination would be avoided. Nay, it would hardly be necessary to solemnly swear these witnesses to tell the truth, although they should be informed that wilful misstatements were punishable. If necessary, the inquiry would be adjourned from time to time for the production of further evidence. In this way the utmost possible accuracy as to both the facts and the conclusions would be attained. Speaking for myself as to the conclusions, I would say that no metaphysical questions whatever should be submitted to either a medical or non-medical tribunal. The question should not be as to the knowledge or beliefs of the prisoner, but this plain proposition—did he commit the crime in consequence of a diseased state of the brain—such that, if he had not had such disease,

there was reasonable probability he would not have committed it. Difficulties would, of course, arise. For example, bad, vicious habits, though uncontrollable, are not disease, but they too often induce mental disease, and then the difficulty would be to distinguish between the vicious habits and their morbid effects. This is often experienced as to habitual and insane drunkenness; but medical experience enables us to distinguish these cases. Again, vicious habits may be induced by disease or defects in persons otherwise moral. This is not uncommon as to drunkenness, and even as to theft, lasciviousness, malicious attacks on person and property, and the like. But medical art, if allowed free action, would satisfactorily determine the question of disease or defect even in these cases. I do not say we can as easily determine the question of degree of responsibility, because that is beset with the greatest difficulties; but in all cases of murder I would certainly fix responsibility somewhere, and if the prisoner were himself found irresponsible, then those whose duty it was to have restrained and controlled him as a lunatic should bear the responsibility. The courts, in fixing who should bear it legally, would perform an appropriate function. This plan would tend at least to diminish the number of dangerous lunatics now abroad. For complete efficiency, however, the medical profession should be protected in the exercise of their difficult and personally dangerous duties towards this class of patients, so that they should be exempt from actions at law for damages, and have security against malicious attacks and personal violence. Their duty is wholly judicial, and in performing it they are as much entitled to protection against such actions as judges and jurymen.

Note by Dr. W. A. F. Browne (see p. 360).

* *The opinion alluded to by Dr. Laycock is as follows:*

Memorandum.

“ From a consideration of the evidence given on the trial of George Bryce for murder, as published, I am of opinion—

- “ 1. That he was originally of weak or limited capacity.*
- “ 2. That a fever occurring in youth may have caused a change in his cerebral structure.*
- “ 3. That a marked change in his condition took place about a year ago, probably owing to his intemperance, or to the unusual effects which stimulants are said to have produced upon him.*
- “ 4. That his soliloquising, restlessness, loss of memory, and other peculiarities, may fairly be regarded as phenomena indicative of an imperfect and unsound organization.*

" 5. *That in a person so morbidly constituted trivial and ordinary impressions often acquire the force of powerful influences ; and*

" 6. *That the will, participating in the feebleness of the general understanding, may fail to regulate or control these impulses.*

* * *

" 7. *That, although I observed nothing in my interview with Bryce strongly to confirm these inferences, I observed nothing inconsistent with them.*

" W. A. F. B."

Remarks on the Refusal of Food in the Insane. By S. W. D. WILLIAMS, M.D., L.R.C.P. Lond.; 'House-Surgeon to the Northampton General Lunatic Asylum.

THERE are few cases more distressing for a physician to witness, or difficult for him to manage, or in which he incurs greater risks or responsibilities, than those varieties of insanity in which refusal of food is a marked and prominent feature. To fix the exact moment when exhausted nature must be replenished; to determine when persuasion shall be given up and force, as a last resort, had recourse to; to estimate the quantity and quality of food required; to distinguish where medicines are life or death; to recognise the variety of medicine necessary to meet the requirements of the particular case; and, lastly, to decide on the mode of administration, are all matters of such primary importance, and require such a sound knowledge and extended experience, that one might deprecatingly exclaim, *Nemo tenetur ad impossibile.*

That, however, the subject is one of primary importance may be inferred from the single fact, that refusal of food is mentioned in the case-books of the Northampton General Lunatic Asylum under the head of "History," of at least 50 per cent. of the admissions during the last two years; not that I would wish to have it inferred that 50 per cent. were required to be subjected to forced alimentation, although, at the same time, I honestly believe that a large proportion, if not judiciously handled, would ultimately have had to be fed by force, and, indeed, such a course was really necessary in 10 per cent. of the cases.