## *Suggestions for rendering Medico-Mental Science available to the better Administration of Justice and the more effectual Prevention of Lunacy and Crime.* By T. Laycock, M.D., &c., &c., Professor of the Practice of Medicine, of Clinical Medicine, and of Medical Psychology and Mental Diseases in the University of Edinburgh.

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That medico-mental science is often at variance with the doctrines and decisions of the courts of law is a fact too well known and too generally admitted to need formal proof. It is almost as generally assumed that the scandalous failures of justice, which too often result, must be attributed to the defective education and knowledge of the profession. It is alleged that, as a body, we are for the most part ignorant and theoretical in matters relating to insanity, and if not ignorant, then presuming, and often using the little knowledge we possess, rather with the intent to rescue thieves and murderers from the legal consequences of their crimes than to help the administration of justice. It is certainly a fact which many of us lament that the corporate bodies of the profession generally, including the general medical council, ignore the subject as a distinct department of medical education; and consequently medical practitioners, not being duly trained, do sometimes appear to great disadvantage in courts of law. Medical shortcomings are not, however, the subject of my paper, but certain fundamental defects in the principles and procedures of the law which render medico-mental science sometimes even worse than useless, and always less useful to the commonweal than it might be, if rightly adapted to the needs of modern society. Nor would it be difficult to show that some of the crime and folly which occupies our courts and fills our reformatories, prisons, workhouses, and lunatic asylums, is capable of prevention by a well-devised use of medico-mental science. As these matters are wholly beyond the powers of the profession, I shall ask leave to move at the close of the discussion that a committee be appointed, with power to take such steps as may be thought necessary to secure a thorough inquiry by the Government into the relations of medical science to the administration of the law in regard to

all persons mentally disordered or defective, with a view to such improvements as may be practicable.

I do not presume to controvert the legal *dictum* that in this department, as in others, law in the abstract is the perfection of reason and common sense, but the contrary. The principle of the law is perfectly just and reasonable, namely, that both the legal responsibilities and the rights of an individual may be either limited or wholly abolished, provided that it be proved that he is mentally incapacitated for his duties or for the use of his rights by either bodily disorder or defect. So that in any trial, thus involving either the responsibilities or rights of an individual, two distinct questions arise,—firstly, whether the individual is or was mentally incapable; and, secondly, whether the incapacity is or was due to bodily cause, and not to ignorance and vice. The first is a question for a jury, to be established by evidence of the conduct of the individual; the second can only be determined according to the rules of medical art, and by those versed in the kind of facts which constitute evidence of bodily disorder and defect. It is obviously in recognition of this principle that the opinions of medical practitioners are held to be necessary to the administration of the law in these cases. Existing defects are not, therefore, due to error in the fundamental principles of the law, so much as to imperfect interpretation and application of those principles; and I shall shew that these are imperfect, partly because guided by obsolete medical doctrines, and partly because of defects in legal and medico-legal procedures. Some of these doctrines, indeed, so far from being in harmony with modern science, have really no ground in the common sense and experience of mankind. The legal responsibilities and rights of the young, termed infants in legal phrase, may serve as an illustration. The law in the abstract justly and rightly affirms that the young members of society are legally incapable and irresponsible in proportion to the incompleteness of their development, whether it be of body or of mind. Marriage is one of the first and most important of social duties, and the law therefore rightly undertakes to fix the age at which young persons are sufficiently developed to procreate and duly bring up children. This question, which is strictly within the domain of physiology and medical psychology as well as common sense, is thus settled by the law as to females:—In Ireland, a woman cannot marry without consent until she is 18 years old; in England she may marry at 16; but in Scotland a girl of twelve and a boy of

fourteen can enter legally upon this duty. Now, puberty, even in the South of Europe, is not attained so early, and is still later in Scotland, so that such a law, if prepared now for the first time, would be at once repudiated, as only applicable to other races of men in other climes. If we inquire how this strange notion came to be part of the law of Scotland, we find it was transmitted from ancient Rome; further inquiry shows Rome received the law from more ancient Greece, the great source of Latin literature and law; and going still deeper into antiquity, it seems probable that Greece received it from more ancient Egypt, or else from the great and still more ancient Aryan source of Western language and customs. The question of mental incapacity from disease or defect entered into and regulated all the proceedings as to person and property of the ancient Roman law. This principle has also been preserved to a great extent in Scotland as to property. But in England, while a person, equally as in Scotland, ceases to be a minor or an incapable at twenty-one, if he be at that age imbecile, foolishly prodigal, facile in temper, and weak in judgment, because undeveloped in brain and intellect, the ancient common sense distinction between idiocy as defect and insanity as disease is not merely lost sight of, but repudiated. Lord Westbury said approvingly in the House of Lords "originally there was a difference, but it has long since disappeared." And Lord Chelmsford said, on the same occasion (viz., the discussion of the Lunacy Regulation Bill, March 12th, 1862), "under the existing law no person, however extravagant, foolish, or prodigal, could be made the subject of a commission of lunacy unless his acts were such as to lead a jury to the conclusion that he was of unsound mind, and a verdict founded on imbecility or weakness of mind would be set aside as contrary to law." In short, the courts, abandoning the true principle of law, proceed to discuss the metaphysical questions of a man's sanity or insanity. Milton has represented the fallen angels as sitting apart in hell, and discussing insoluble metaphysical questions like those raised in the courts, and a witty friend of mine affirms that the great poet did this to show that evil spirits were tormented, even in their recreations, by their bad propensities, and that their appropriate punishment was to be "in wandering mazes lost." So, in truth, too often is the course of things in our courts when insanity is the question discussed. Adults are subject to disorder and decline of the faculties which place them in the

same position in regard to property as infants and minors. Senile dementia — that "second childhood" which surely comes to every man and woman that lives long enough—may come on at an early age. In Scotland the same sound principles apply to these cases as to the others; but in England there must be the inquiry, not into incapacity, but into insanity. In Scotland the patient may secure protection privately, and avoid a jury-trial; in England his private affairs must be subjected at great cost to a commission sitting publicly, or to a jury.

The vice of irresistible, inveterate drunkenness is an apt illustration of the transitional form of incapacity and irresponsibility, in which physiological and pathological conditions combine. Nothing is more certain than the fact that a man having attained adult age, with all the responsibilities of a husband, father, and a citizen, becomes an incorrigible drunkard, and utterly incapable, from bodily causes, of performing his duties. He is too often a brutal ruffian, commonly a prodigal and a fool, yet the law of England does not provide for an enquiry into his capability of self-control, except in so far as to whether he be insane or not. Pending the solution of this insoluble question, he breeds drunkards to the third and fourth generation, ruins his family, and too often it is only bodily weakness, suicide, raving insanity, or an early death from disease, which saves him from the gallows. Surely common sense, Christian ethics, and medical science are agreed here that it is a question of capability for the performance of duty with which society has to deal, and not a metaphysical question as to insanity. Probably, in practice, such a method of dealing with these cases would prove the most efficient check on the vice itself.

That numerous vices and crimes originate in disordered brain function is one of the principal discoveries of modern medicine. Up to a late period the subjects of the disorder were classed with those who yielded to the temptations of either the world, or the flesh, or the devil; and even now those subtle morbid suggestions and impulses to do evil, which are of the essence of the disorder, are not unfrequently attributed, as formerly, from a very remote antiquity, to supernatural influences. A transitional kind, in which there are fixed ideas and delusions, yet a certain coherence of ideas, is termed partial insanity, monomania, and the like. To understand how the law deals with this class of cases it is necessary to examine its general principles. The Roman law treated raving maniacs

(termed *furiosi*) as irresponsible agents; furiosity in Scotland is a term borrowed from Roman law, and means precisely what raving madness is in England. That persons who commit vice and crimes in consequence of disease are to be excused from punishment, is a natural principle of justice. And Lord Coke therefore truly says, that to execute an insane person is contrary to all law and pregnant with the greatest danger. The Code Napoléon—the criminal code, not less of ancient than of modern France—provides thus:—"With respect to every crime and every kind of misdemeanour, no man can be made accountable who, at the time he does the act, is under aberration of mind." The French courts avail themselves of the knowledge of experts in determining the state of mind of alleged lunatics, but even with this help the French judges cannot understand the true nature of will-insanity. If it be alleged that a criminal has an irresistible impulse to commit crime, they epigrammatically say the law has equally an irresistible impulse to punish him.

In England the old Roman notion of furiosity or raving madness is the measure of irresponsibility. If there be coherence of ideas with insanity of the will, the case is held to be partial insanity or monomania. Chief Justice Hale, notorious for his superstitious persecution of decrepit old women under the name of witches, is curiously, but significantly enough, a leading authority amongst modern judges, and was quoted as such in the House of Lords by two Lord Chancellors. It is needless to say that he disregarded in his *dicta* alike the principles of pathology and common sense, and of ethics founded thereon.

"Partial insanity," he says, "is no excuse. This is the condition of very many, especially melancholy persons, who for the most part discover their defect in excessive fears and griefs, and yet are not wholly destitute of reason; and this partial insanity seems not to excuse them in committing any offence, for it is matter capital. It is very difficult to determine the indivisible line that divides perfect and partial insanity, but it must rest upon circumstances to be duly weighed and considered both by judge and jury."

What this judge meant by determining an indivisible line, and what are the circumstances a jury has to weigh, have never been clearly explained, although the attempt has often been made. Hale's *dictum* has, nevertheless, become practically part of the law of the United Kingdom. If an insane man commit homicide in consequence of his insanity, he is amen-

able, provided he be not wholly destitute of reason, and he is held to be not so destitute if at the time he committed the act he knew right from wrong. When public vengeance was balked by the acquittal of McNaghten, who shot Mr. Drummond in mistake for Sir R. Peel, a discussion arose in the House of Lords on 13th March, 1843, as to the law. The then Lord Chancellor, Lord Lyndhurst, declared that there was no doubt as to the law—that it is clear, distinct, and defined. In support of this opinion, he quoted from the charges to juries in cases of alleged insanity made by very eminent judges, and he showed how all concurred in the legal principle that a man is not to be held judicially insane, when tried criminally, if he knew right from wrong. Lord Brougham followed. It does not clearly appear (see Hansard, Vol. 67, 3rd series, p. 727) what opinions he held. He certainly differed from Hale and the other judges when he said, "It is perfectly clear that what was called partial insanity and what was called, very incorrectly, monomania, if it existed at all times, made a person a lunatic;" apparently meaning thereby a lunatic in a legal sense., *i. e.*, irresponsible. And although he seemed to agree with the current legal dictum in the main, he criticised the judicial explanations of it very severely. "What," he asks, "was the test as laid down by their lordships? Here he might observe that he could have wished those learned persons had always used the same language, and that they had been pleased to substitute for certain vague indefinite expressions a more specific and precise phraseology. Their lordships had sometimes said that a man must be 'capable of knowing right from wrong.' That was the most common definition; but at other times they said he must be 'capable of distinguishing good from evil'—a totally different expression, more vague and lax. A man might know right from wrong, and not know good from evil. Then there came in a third expression—'capable of knowing what was proper.' Another expression used was 'what was wicked.' So that there were four different tests in four different forms of expression—every one of them more vague, more uncertain, less easily acted on than the original one of right and wrong." With that politeness, however, which became the august body he addressed, Lord Brougham added that although he was not sure that juries always knew "right from wrong," when thus vaguely charged from the bench, he knew, and their lordships knew perfectly well, what those learned judges meant by "right and wrong;" but he

was not sure the public at large did. Again, Lord Campbell declared, in concurrence with Lord Brougham, that "he had looked into all the cases that had occurred since Arnold's case, and looking to the directions of the judges in the cases of Arnold, of Lord Ferrers, of Bellingham, of Oxford, of Francis, and of McNaghten, he must be allowed to say that there was a wide difference, both in meaning and in words, in their description of the law." The real cause of these acknowledged defects in the declaration of the law from the bench is in the utter obscurity and impracticability of the original *dictum* of Hale, upon which it is founded. There is, as the metaphysicians say, knowledge in *esse* and knowledge in *posse*—knowledge that is or can be remembered and applied, and knowledge that is not or cannot. When a cobbler, working at his last, tells me he was brought up to be a priest, and is in truth the pope, it may be fairly inferred, that at the time he affirms the fact his knowledge that he has been brought up, and is, a cobbler, is only in *esse* and not in *posse*. So it is, undoubtedly, in many daily actions of life, and never more commonly from disease than in insanity. In short, in insanity as in many other mental conditions, the conduct often depends, not on what the man knows in the abstract, but on what he remembers at the moment—a state of mind to which no one, nay, not even the individual himself, can give evidence except as to mere probabilities.

It is not surprising, then, that when a medical witness is asked to state his opinion in accordance with the *dictum*, the results are so unsatisfactory. It cannot be otherwise in the nature of things, and it may be a subject for consideration whether the practitioner should not always decline to answer the questions put to him, as being in a matter beyond his knowledge. I know of no parallel to the position of a medical witness, when asked whether the culprit at the bar knew right from wrong at the time he committed a certain act, than that of the Prophet Daniel when he was called upon to act professionally by a historical melancholiac, the great King Nebuchadnezzar. He has to divine both the judicial dream and the interpretation thereof.

Let us further inquire how other fundamental principles of law are applied to the procedure of the courts in cases of alleged lunacy. The law as to witchcraft held that a woman accused of it must be held to be guilty until it was proved she was innocent, and the result was that multitudes of innocent persons were found guilty in default of proof. In like

manner, the law holds that every man must be held to be of sound mind when he committed a certain act, and with like results from the like difficulty of proof. If the act has been done by a raving maniac, that he is insane is plain to the dullest understanding; but if he be an ordinary lunatic, poverty stricken and perhaps imbecile, what chance has he of fulfilling the requirements of the law? Even if charitable persons were to undertake the costly duty of securing the requisite proofs (which is rarely done), it may be, and often is, impossible to satisfy the judicial requirements. Thus a failure in evidence which would, and too often does, allow a ruffian to escape the punishment due to his crime, because the law holds every man innocent until he is proved to be guilty, establishes the guilt of the insane criminal, who otherwise would be held to be innocent, and an object of pity. I will quote a case in point as recited by Lord Lyndhurst in the House of Lords. "A man was indicted (in a Scotch court) for the murder of another by shooting him whilst he was going across a moor. The defence set up was insanity, and the delusion the prisoner laboured under was this:—He supposed the man whom he had shot to be an evil spirit, whom he was commanded by the Almighty to kill. No one doubted that if the facts necessary to support the defence had been made out to the satisfaction of the jury, the judge would have considered it a sufficient defence; but the facts were not made out, and the man was found guilty." Lord Lyndhurst related the case simply in illustration, and not in disapproval of the law. Indeed, it seems never to have occurred to the high legal authorities who discussed this question, that in cases like this, and in all cases of delusions, the only direct evidence possible of the fact is the statement of the subject of them. All that medical science can do is to say whether such statement is probably a true statement or not; and as to this, the evidence upon which he gives his opinion must be not only necessarily circumstantial, but only valid even to that extent, in proportion to the scientific and practical knowledge of insane delusions. This points to the need of experts to administer the law. I might add much as to the influence of strong prejudices upon the courts, to the disadvantage of medical witnesses as well as of the insane prisoner and his plea for mercy. These are so strong that even eminent men like the late Archbishop Whateley have not hesitated to advocate the indiscriminate hanging of all who plead insanity in cases of homicide. Yet if law, in the abstract, which

admits of extenuating circumstances, were duly applied instead of a hard-and-fast-line, metaphysically invisible as well as "indivisible," there would be little difficulty. Just as in those cases in which insanity is not pleaded, but great and sudden provocation, or infirmity of health and temper and will, the law mercifully recognises the validity of the plea, so that murder only becomes manslaughter or culpable homicide; so it might be held that when insanity is pleaded, while the culprit is declared guilty, an inquiry might be made as to how far there was in his state of health an extenuation of the crime, and what punishment, if any, be inflicted. I by no means overlook the fact that the treatment of the so-called partially insane in the courts has its origin in the deep-rooted conviction that they are capable of self-control, that they are, therefore, responsible agents, and that it is necessary to punish them criminally, so as to afford a salutary example to others. I shall not enter upon so large a question, but would simply state here my mature conviction that a graduated scale of detention would act far more powerfully as a deterrent than the punishment of death, which latter, indeed, is not only insanely desired in some cases of lunacy, but rationally desirable in preference to life-long detention.

The safety of life and property must, however, always be the great end of all law and justice, and to this end medico-mental science is most available by the prevention of vice and crime, whether by lunatics or not. A certain number of individuals in the United Kingdom lose their self-control and commit suicide, to the extent of one in about every six hours. This is the result of causes—exciting and predisposing—of imperfect brain nutrition, which, to a considerable degree, are preventible. So also with the majority of murders which are committed in defiance of an ignominious death, as is proved by such phrases as "I'll do it, if I swing for it," and the like. Further, there is a large number of criminals, termed in France the "classes dangereuses," and in English phrase "known to the police," and another still more numerous body, not exactly of this class, but incorrigible vagabonds, drunkards, mendicants. All these, numbering tens of thousands, are really so constituted corporeally that they possess no self-control beyond that of an ordinary brute animal—nay, less than a well-bred horse or dog. They are, for the most part, immoral imbeciles, so that however frequently they may have been subjected to prison or other discipline, the moment they are set free, they resume their vicious and criminal course.

Many of the imbeciles confined to life in asylums and workhouses only differ from these creatures in wanting the opportunity or the training for vicious crimes. They are all the mere weeds of society, but, like weeds, they multiply their kind, and thus continually keep up the breed. The law of hereditary transmission of mental and moral qualities, in them as in all other organisms, is inexorable. An army of police is required, in two divisions—one to watch and capture, and the other to restrain those moral imbeciles; one division being in the field, the other in the garrisons—the borough and county prisons. What would common sense indicate as the proper method of treating these cases? Surely, as what they are—*i.e.*, cases of incapacity—and would detain them under curators who would make them work. And as they are for the most part of the fertile age, and naturally propagate their kind, it would take care at the same time to prevent an increase of the breed. The law, however, allows them freedom to commit crimes, and add to the vicious population. The surgeon of a large prison in Yorkshire told me of one of these incorrigibles—a woman whom he delivered of twins in the prison—that the birth took place just nine months after a previous dismissal from prison—ripe, no doubt, for immediate conception. An illustration of how the jail bird begins its career as a nestling I quote from a number of the *Pall Mall Gazette* for May last, in the form of a dialogue which is stated to have taken place between a visiting Magistrate at one of the city jails and a juvenile offender serving out his three months:—"How old are you?—Please, sir, I'm thirteen. How often have you been in jail?—Please, sir, eight times. Have you ever been in Reading jail?—Please, sir, once. Have you ever been in Westminster jail?—Please, sir, once. How often have you been here?—Please, sir, six times. Why do you come here so often?—Please, sir, becos at Westminster the turnkeys knocks yer about with their keys. How do you contrive to get sent here?—Please, sir, I allus prigs in Holborn now."

This poor jail-bird had even learnt politeness, yet he "allus prigs" when out of prison.

When a bill for providing that the sheriff might have power to send these habitual offenders to prison for a lengthened period, was discussed lately in the Convention of the Royal Scottish Burghs at Edinburgh, Lord Provost Chambers said he knew of a case in Edinburgh of a man seventy years of age who had spent forty years of his life in prison, a month

at a time. He had been somewhere about 103 times in prison for small offences.

Nor is the prison management of these imbeciles satisfactory. They are sometimes treated as lunatics used to be treated. At an inquest held upon a prisoner who died insane in Milbank Prison, the deputy governor testified that previous to his death the man was ordered to be placed in a penal service cell, having matted walls, for six months. And upon a late occasion there were observed at Milbank as many as a hundred imbecile and epileptic convicts confined in long galleries, padded several feet high with thick matting, to prevent the prisoners from injuring themselves against the walls. It has been alleged that each of these incorrigible moral imbeciles cost the country, including the cost of depredations, an average of £300 annually. If treated exactly as what they are, viz., as hopelessly devoid of that moral sense and judgment which give the power of self restraint, and in the spirit of Christian forbearance, kindness, and charity, they would be prevented multiplying their kind and made in a great degree self-supporting. A too apt illustration of the evil results which follow upon this gross neglect of the simplest principles of medical psychology is shown by the condition of the children brought up in the workhouses. They are described by Miss Hill ("Children of the State; the Training of Juvenile Paupers") as dull of apprehension, ill-tempered, indolent, and listless—incapable, spiritless, stupid to the last degree—in short, mere imbeciles. They indicate the traits of the rising generation of incorrigibles outside. Of the 300,000 educated in the workhouses, 80 per cent. are failures when brought into the world. A large proportion pursue evil courses, join the predatory classes, or fall stupidly into crime, or else they either return to the workhouse where they were reared or become inmates of the county asylum. I might, if time allowed, point out how drunken, vicious imbeciles, tainting their offspring to the third and fourth generation, serve to fill our asylums to overflowing, and that unless means be taken to restrict their personal liberty during the fertile period of life there must of necessity be a continual increase in the insane, imbecile, vicious, and degraded part of our population.

*Conclusions.*—If a royal commission were issued to inquire into these important matters it would have abundant evidence brought before it to shew:—1. That the present state of our jurisprudence in regard to persons mentally incapable and irre-

sponsible is in every way defective. 2. That the existing defects are not due so much to defects and errors in the fundamental principles either of law or of medicine, but rather to error and defects in the interpretation and application of those principles; partly in consequence of their obsolete character, and partly because of corruptions of the law. 3. That the doctrines laid down in 1843, by the twelve English judges, are of this obsolete character, and are, therefore, out of relation to the present state of medical science and experience. 4. That although medico-mental science is still imperfect, it has advanced so rapidly, concurrently with other sciences, during the last half century, as to be largely available not only to the better administration of justice, but also to the prevention of lunacy and crime.

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*On Aphasia, or Loss of Speech in Cerebral Disease:* By Frederic Bateman, M.D., M.R.C.P. Lond., Physician to the Norfolk and Norwich Hospital.

*(Continued from Journal of Mental Science, April, 1868, page 74.)*

Having in the preceding pages endeavoured critically to review the question of the localisation of the faculty of speech, as illustrated by the labours of the French, Dutch, and German pathologists, as well as by those of the different branches of the Anglo-Saxon race, I now proceed to place on record a certain number of cases which have been observed by myself, and in several of which the clinical history was completed by a careful *post-mortem* examination.

In some instances it may be thought that I have described the clinical history with too much minuteness, and with a fastidious attention to apparently unimportant details; but the question we are now considering is involved in so much obscurity, that it seems to me that it is only by carefully studying the various phases of cases which we have an opportunity of closely watching, that we can hope to contribute anything towards the solution of one of the most complex questions in cerebral pathology—a question about which so much has lately been written, and about which it seems to me so little is at present really known.

It will be observed that in several of the following cases I have given the volumetric analysis of the principal solid in-