THE PLEA OF INSANITY

By Reg. S. Ellery, M.D., B.S.

A Meeting of the Society was held at the B.M.A. Hall, East Melbourne, on 2nd April, 1932.

In the absence through illness of the President (Mr. Justice McArthur), Dr. Mark Gardner presided. Dr. Gardner introduced the speaker of the evening, Dr. Reg. S. Ellery, M.D., Honorary Psychiatrist to the Alfred Hospital, Melbourne, and Consulting Alienist to the Women's Hospital, Melbourne, who would read a paper on "The Plea of Insanity."

Dr. Ellery: While it is recognised that the aims of our two professions should lie in the same direction, subject to the common ideal of serving humanity, it has been found difficult to unite them in practice. The main difficulty lies in the widely different attitudes of the doctor and the lawyer, the former dealing with a somewhat new and developing science, the latter burgeoning under the shade of tradition and past usage. The doctor, seeing crime as an individual problem of behaviour, is seized with the necessity of a radical alteration of the criminal law; the lawyer still falls to the lure of such shibboleths as "free will" and "criminal responsibility," doubting the doctor's deterministic doctrines, and viewing his psychological theories with alarm. It is, I take it, one of the aims of the Medico-Legal Society to bring the divergent attitudes of our two professions into better focus. And unless this can be done—unless the doctor and the lawyer can be brought to a closer understanding of each other's views than is possible in the contentious atmosphere of the court, where as witness and cross-examiner they split a few mouldy straws in the interest of the client or the Crown, the old, harsh, clumsy and unjust methods will obtain, and legal medicine will continue to play a plaintive "second fiddle" to the "pomp and circumstance" of the law.

I am conscious that, in choosing this subject, I have entered directly into a realm which bristles with controversy,

and presents problems of great complexity and delicacy. But I have chosen the subject deliberately because I am convinced of its importance to both our professions and to the community at large; because I feel that our present criminal procedure has utterly failed to cope with the problems of crime and delinquency; that the legal machinery and many of our current legal and medical concepts are hopelessly at variance with modern psychiatric attitudes; because I believe, with all due respect to the persons concerned, that judges are sentencing to terms of imprisonment, men whose actions are conditioned by forces over which they have no vestige of control, and committing others to sentences of a few years whose psychiatric make-up plainly foreshadows a lifelong propensity for viciousness and anti-social behaviour, while captious politicians and unenlightened Parole Boards are releasing men from custody who lack the mental stability to make satisfactory adjustments in modern society. And finally, again with due respect, because I believe it utterly impossible for twelve ordinary laymen to be able to appraise the mental condition or "responsibility" of a prisoner whose mentality has been called into question, and that the criminal trial for a capital offence, where the conflicting opinions of lawyers and doctors argued in court to the bewilderment of the jury, and ventilated in inflammatory headlines in the public press, tends to "elevate crime, debase law and prostitute medicine."

To raise a plea of insanity in any criminal case at the present day is to raise also a nasty suspicion in the minds of many. As with nearly everything connected with the insane, the public are misinformed and prejudiced. So strong is the suspicion of something sinister in the public mind at the mere mention of insanity that they are almost certain to jump to the wrong conclusions. And the plea of insanity has gained popular disfavour because the unenlightened public thinks, and presumably will go on thinking, that such a defence is invoked only as a last resort in hopeless cases where shady lawyers and dishonest doctors have put their heads together.

There are several reasons for this unpropitious attitude on the part of the majority to the plea of insanity. The most pertinent is perhaps the inevitable clash of so-called expert testimony—inevitable because the accused and the Crown both produce alleged experts whose evidence is essentially partisan. The expert medical witness is in an invidious position. On the one hand there will always lurk the suspicion that he can be "bought"; that unmindful of the ideal of justice, he can be induced to pick over the evidence for facts which might bolster up the plea of insanity; while on the other hand, the doctor, unused to legal procedure, and ignorant, as many are, of all but the very rudiments of psychiatry, may be misled by clever barristers into giving evidence and presumed expert opinion which in reality is fallacious and unfounded.

The phrase "legally qualified medical practitioner" has led many jurymen astray. The layman has, in most cases, an almost unmerited respect for the "legally qualified medical practitioner." He stands somewhat in awe of the doctor's alleged knowledge, and he presumes on account of his legal qualifications that he must be privy to a complete knowledge of psychiatry. Nothing, alas, could be further from the truth. Every practising medical man is now a "legally qualified medical practitioner"—whether his job be surgery, radiology or oto-rhinology. But in the court of law, the title of "legally qualified medical practitioner" is presumed to confer upon the dermatologist or the obstetrician the right to give expert medical opinion upon the mental state of the accused.

Which of us is not familiar with the pantomime of a criminal trial where insanity is pleaded as a defence? Dr. X.Y.Z. tells the court his full name, and describes himself as a "legally qualified medical practitioner" residing at —— and carrying on the practice of his profession at ——. He examined the accused. She was complaining of a sore throat and a headache. She did not appear to have any delusions. Urged on by counsel, he gives his opinion that she was quite normal. Dr. A.B.C. is then called. He is

described as a "legally qualified medical practitioner," albeit an obstetric surgeon. He attended the accused at her last confinement, six weeks prior to the crime. After telling his Honour, and incidentally the official shorthand writer, the details of her obstetrical adventure, he will be led into giving his opinion regarding her mental state. He will be asked by counsel whether she had any delusions, whether she thought she was Joan of Arc or Amy Johnson (this, after all, is what the jury wants to know), and his denial will be emphatic.

Dr. A.B.C. will then be bombarded with questions by an opposing attorney, but while made to surrender a grudging admission that he is not a psychiatrist, he will maintain his original opinion that the accused is perfectly sane. "Thank you, Dr. A.B.C., that will do." And so the dreary farce proceeds!

The fact that a psychiatrist is called by the defence to say that the accused is now suffering from *dementia praecox,* and that her crime was committed at the dictation of auditory hallucinations, makes no difference. The psychiatrist deals with lunatics: he is naturally a little queer. He is prone to see a delusion lurking in every queer idea; and even if she had a delusion, her mind was such that she could distinguish right from wrong. So says the jubilant prosecuting counsel: "Gentlemen of the Jury, three eminent and reputable doctors—legally qualified medical practitioners —have gone into that witness box and testified on oath to this woman's sanity. Is it possible that three legally qualified medical practitioners could make so grievous a mistake?" And so the verdict of guilty is returned, sentence is passed, and an unsuspecting primary dement departs this life. . . . How pathetically human the whole thing is! How naive our worship of this tawdry justice! The cold impartiality, the purely intellectual considerations, the dispassionate weighing of evidence, the reasoned deliberations of the jury are human, all too human! The vaulted ceiling, the sepulchral judge, the uniformed police officers lend an air of solemnity and awe to the ritual of a criminal

trial as we sit and watch round after round of the legal prize-fight where the battle must go to the strong.

Into this hushed and awesome stadium the expert witness is introduced, hired and paid by the accused. Another, whose services are paid for by the Crown, is hired to give contradictory evidence, while the Crown Prosecutor and counsel for the accused proceed with all the mental acuity and verbal dexterity at their command to tear to pieces the testimony of the respective expert witnesses. In such a partisan conflict, or "battle of wits," as the newspapers prefer to call it, the wonder is not "that medical expert testimony is so bad, but that it is so good."

There is certainly much which requires alteration in criminal procedure relating to the plea of insanity, but there can be no effective reformation while it remains the practice of the court to allow any legally qualified medical practitioner to pronounce as an expert upon questions of psychological medicine; nor while it allows such questions to remain in the hands of experts who are open to hire among the cranks, the psychopaths and the mentally unstable dregs of the underworld.[1]

I venture to say that one of the most outstanding features in present-day criminal procedure is the discrepancy which now exists between the knowledge acquired by the psychiatrist of human conduct and the static concepts which have given birth to substantive laws and the judges who interpret them.

It is patent to all who study the question that criminal law still leans on the medical teaching of a century ago. To-day the lawyer and the psychiatrists are talking in different languages.[2] Not only are their points of view entirely different, in that the physician sees the crime from the point of view of the criminal as a disorder of conduct, while the lawyer sees it from the point of view of society—as an anti-social act. But the lawyers see insanity as a disease, which should be defined according to his preconceived ideas of responsibility—the defendant being entirely responsible or completely irresponsible for his actions.

In this cut and dried manner, if a defendant is shown to be without delusion and to be capable of knowing right from wrong, he is adjudged to be legally responsible, no matter how mentally ill he may be from the medical standpoint.

Adequate to the demands of yesterday, criminal law does not embody the best of the medical teaching of to-day. And possibly the main reason of its inadequacy is that it still regards insanity and mental disease as synonymous and interchangeable terms, whereas in reality they are quite different.

Insanity is and must remain a purely legal concept.[3] Mental disease is a medical concept. At the present time, insanity depends upon medico-legal decisions; mental disease is an affair of medicine alone, which the court is loth to recognise. Insanity means legal irresponsibility, and nothing else—legal incapacity for making a will, for executing a conveyance, or for entering into a contractual relationship, and as such it is determined by the court on such evidence as the knowledge of right and wrong, the presence of a delusion or, in some cases, irresistible impulse. The modern medical man's knowledge of human behaviour and the springs of conduct make it impossible for him in many cases to give categorical answers to or make dogmatic statements upon such questions as legal responsibility. It comes about, then, that the medical man in the witness box, if compelled to answer in terms acceptable to law, must say of a case as follows:—

"As an alienist, I consider this man sane. As a psychiatrist, I know him to be suffering from general paralysis. That is, as an alienist, I believe he fulfils all the tests of criminal responsibility; he knows the nature and quality of his act; he knows right from wrong, and therefore he is legally sane; but as a psychiatrist, I know that he has got syphilis of the brain, that he is impulsive and hallucinatory, exalted in his ideas, and forgetful, and that his present mental ill-health may at any time cause him to run down Collins Street naked, or seek a fortune at Flemington." Or again, in another, the medical man upon

oath may find himself in this quandary, and be forced to speak as follows:—

"As an alienist, I regard this person as sane, knowing the nature and quality of his act, and quite able to appreciate right from wrong. But as a psychiatrist, I know he is suffering from exalted paranoia of great severity. This mental disease, in which I find, as a psychiatrist, that he believes himself to be the Pope, I regard as of no public interest when I review the findings as an alienist."

And I ask you, Gentlemen: Is it any wonder that expert testimony sometimes clouds far more than it clarifies, and in the simple minds of the twelve good men and true, makes confusion worse confounded?

Perhaps I should turn back for a moment and, for the benefit of those medical men present, point out the current legal view of crime and criminal responsibility. "Criminal intent," say our legal friends, "is an essential element in crime.[4] If a person is mentally unable to form such intent, he cannot be regarded as guilty under the law." Assuming, as our legal friends are wont, that "since a crime includes both the act and the intent, and an unsound mind cannot form a criminal intent, insanity is a complete answer to a criminal charge." "A lunatic," they say, "cannot be guilty of a crime, as he is not a free agent, and is therefore incapable of guilty intent." He is not a free agent, presumably, because he is possessed of a devil—that being the cause of insanity, in the minds of the law makers. So far, this all sounds very simple. If a man is mad, he cannot be bad. The law relieves him of responsibility. He becomes as one with the gods, forces of nature, wild animals and little children. "Forgive them, Father, they know not what they do." But—all this is where the catch comes in—"insanity will not constitute a proper ground of defence to a criminal accusation unless it is shown to exist to such an extent as to blind its subject to the consequences of his acts and deprive him of all freedom of agency."

This so-called classic legal definition is based upon the now celebrated rules in Macnaughton's case—the answers

of a committee of English judges to a series of questions propounded in the House of Lords nearly a century ago. In explicit terms, the cogent part of the judges' answers may be stated:

"That in order to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act, the accused was labouring under such a defect of reason from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong."

This unfortunate ruling has been the basis of nearly all the misunderstanding and controversy between the medical and legal opinion since its publication. It is a kind of *pons asinorum* between our two professions. It entirely ignores dynamic psychology, ignores the unconscious motivation of conduct, and the now established fact that our notions of right and wrong are complexly intertwined ideas with emotional colourings and beliefs crystallized under the dominance of different standards and changing ideals.

Again, the questions put to the learned judges arose out of a case of delusional insanity—the paranoia of Macnaughton himself; while the answers upon which this classical opinion was founded, have been "generalized in subsequent decisions to cover all mental disorders." And further, the answers themselves are not answers arrived at from judgments upon definite facts proved by evidence, but are replies to merely hypothetical questions. In two of these celebrated questions, the learned judges have restricted their replies to "those persons who labour under partial delusions only, and are not in other respects insane."

It is easily conceivable that in the prevailing psychiatric ignorance of 1843, both the Lords and the learned judges believed that people could become possessed of partial delusions and remain otherwise quite sane. To-day, this idea is quite untenable. It was equally untenable forty years ago when Henry Maudsley[5] pointed out that "an insane delusion will not spring up and grow in an un-

suitable soil: and the soil which is best suited to it is insanity; let the mind apart from the delusion be sound, and this will dwindle and die." The practical effect of this knowledge then, is to nullify completely these two answers because they are seen to be restricted to a class of offenders that does not exist and never has existed.

The presence or absence of a delusion may modify the nature of mental disorder, but it cannot be taken as a criterion of sanity or insanity. Its presence or absence is neither more nor less important in the psychiatric make-up of a mentally disordered person who commits a crime. What is important is not the delusion but the loss of reason and judgment which allows the delusion to be entertained. The delusion may appear quite unconnected with the nature of the crime, but its existence will indicate that the accused's whole mind is pervaded by a warped judgment and influenced by his emotional absorption in his delusional beliefs. To allow the disposition of a case to hinge upon the evidence of a delusion is wrong in medicine, and should be wrong in law, because it neglects "the fundamental notion of the unity of the mind and the inter-relationship of mental processes and the fact that a disturbance in the cognitive, volitional or emotional sphere, as the case may be, can hardly occur without affecting the personality as a whole and the conduct that flows from that personality."[6]

I have dwelt at some length upon these classical judicial answers because they still function as the basis of legal opinion in cases where insanity is pleaded, and because, as you will have seen, they are open to criticism of the most trenchant kind—not only from the point of view of legal interpretation, but also from that of modern psychological medicine in that they are based upon the outworn metaphysical conception of "free will."

The learned gentlemen who formulated these answers truly believed that there was an entity called "free will" which presided over the manifold activities of the mind, and therefore guided conduct. So long as this mythical entity was correctly functioning, a man's conduct was ethically

sound. He possessed responsibility for his actions. He did the right thing. He trod the path of righteousness. God was in heaven, all was right with his world. But at times this mythical "will" fell sick, a palsy came upon it, and lo, evil thoughts arose and the man did evil in the sight of his fellows. Reason let him down. Desire broke loose: conduct became uncontrollable—and like a wild beast, he had no responsibility for his actions. He was then deemed insane, and was immune from the rigour of the law.

Unfortunately, science finds no place for this charming metaphysical belief. "Will" has been deposed in favour of determinism. We are just as unable to think of an uncaused psychical phenomenon as an uncaused physical phenomenon. Conduct is the expression of a conflict between the repressed and the repressing forces which are instinctive to or impinge upon the human mind. Therefore, there is no such thing as "free will." It is a myth invented and perpetuated to minister to the dignity of *homo sapiens* alone.

It is only natural that the abolition of the theory of free will and its replacement by that of psychic determinism should create a rather heated antagonism, seeing that it robs mankind of another of his cherished illusions. Just as the ideas of Copernicus and Galileo in other eras shattered man's illusions about the earth in relation to the rest of the solar system, and the doctrines of Darwin which emphasized our animal descent and robbed us further of our feelings of self-confidence and uniqueness, so the teachings of modern psychology have swept aside those cherished beliefs in self-determinism with which we were wont the day before yesterday to flatter ourselves as God's most glorious creatures.

The present legal tests of insanity, Gentlemen, rest upon outworn and anachronistic beliefs related to a time when psychological medicine was still dominated by demonology, and a theory of responsibility which now sags under the weight of profitless and pointless controversy.

"Insanity"—using the word in the legal sense—does

not necessarily lead to crime any more than it is a necessary ingredient of crime. While crime may result from the grossest insanity as well as from a mere transient psychopathy, there yet may be no single criminal act committed during the whole lifetime of a lunatic.

Crime is pre-eminently a psychiatric event. It is an instance of abnormal conduct, and while conduct is psychologically motivated, disordered conduct must be the direct concern of the psychiatrist.

"The driving force for conduct," as White[7] has phrased it, "comes from this region which is not illuminated by the light of consciousness; it is the region that has been called the unconscious; and it is the repository of all those traditions, prejudices, and desires which in their totality serve to give direction to the mental operations to motivate conduct."

As long as there are human beings who, by reason of inherited tendencies or environmental agencies, are rendered inadequate in their capacity to achieve a working social adjustment, so long will their conduct be abnormal, which, when anti-social in its expression, leads them into the legal realm of criminality.

Seen in this way, crime is the reaction of a specific personality make-up to the specific problem with which it is faced. One person faced with starvation will beg; another, faced with the same situation, will steal. The difference between the man who begs and the man who steals is due to the different reactions of their specific personality components to the factor of starvation. There is no other way to arrive at the springs of human behaviour except by an intensive study of the individual and his environmental state. To consider the crime and not the criminal, to regard the act and not the actor, is to waste time over an abstract event.

There are a number of crimes which are acts not specifically directed against society, but represent particular emotional outlets for the individual.[8] There is no conscious desire to defy society, and the offence is of no economic

benefit to the offender. There is often a deep remorse following the offence, and punishment has no effect in re-preventing repetition. I refer to certain sexual offences, notably homosexual practices, exhibitionism (i.e., indecent exposure), kleptomania, pyromania, sadistic and fetishistic crimes, and murder.

Individuals who perpetrate such offences may be able intellectually to distinguish between right and wrong, and fully appreciate the nature and quality of the act, yet may be unable emotionally to choose between right and wrong. They are not "insane" in the legal sense, but they are nevertheless victims of gross mental disorder. It is such people who suffer most under our present legal methods.

Man's mind is like an iceberg, the greater part of which is below the sea level and invisible. The present legal attitude to crime takes into consideration only that part of a man's mental process which is obvious and visible in consciousness. What is going on in the depths below the level of consciousness, is at present ignored. Yet this region makes up the bulk of our minds, and, like the iceberg, is the part which is acted upon by currents and crosscurrents in the sea of our environment so to modify the direction of our action.

Take the simple crime of larceny. The law looks upon larceny as a specific act for which there is a set punishment. With the criminal it has no concern other than to apprehend and punish him. Yet there are a dozen or more psychological motives for this crime. It may perhaps have come about owing to the moral obliquity of a chronic alcoholic. It may have been the impulsive action of an incipient primary dement; it may have been perpetrated by an epileptic during a period of automatism; it may have been the compulsive act of a sexual fetishist. It may have been due to the loss of inhibitory control in one attacked by transient mania. It may have been the deliberately planned theft of one suffering from a neurosis of hate, or the clumsily conceived crime of a moral delinquent. And,

finally, it may have been the symbolic crime of a kleptomaniac obsession.

In no one of these cases could a plea of insanity be entered and upheld. Every one of these individuals knows right from wrong—none is possessed of a single delusion. Legally they are fully responsible, yet, medically, how obviously is their conduct the expression of mental illness. To call a crime a wilful deed is psychologically incorrect. Since it has been shown by analysis that in every human action there is an unconscious as well as a conscious motive, and that both are subject to minute and molecular abnormalities no less than to gross deviations, the whole problem of criminology is seen to come within the scope of psychopathology. And while criminal law remains bound up with its obsolete "tests" for an altogether fictitious "responsibility," and legal opinion stands opposed to the dynamic concepts of determinism, the judge must appear like a quack doctor with a "cure-all."

To what scorn nowadays would we hold the doctor who, in the conduct of a busy general practice, essayed to treat each of his patients with one or the other of three stock remedies—say a dose of castor oil, a linseed poultice and aspirin! And yet the judge, annually confronted with a host of crimes committed by a multitude of different criminals, is supposed to deal out justice and satisfactorily dispose of each case by means of one or other of the three stock remedies—death, imprisonment or fine!

I have put the matter a little tersely in order the more strongly to emphasize the need for some more adequate means whereby to deal with the individual criminal in the court. At present he is either adjudged responsible or irresponsible, and dealt with accordingly; so that where a plea of "insanity" would obviously fail to be upheld under the existing tests of responsibility, it becomes necessary to plead guilty, throw the case upon the mercy of the court, and plead mental disorder in mitigation of punishment.[9]

This is a legal compromise frequently effected at the present day. But it is a poor compromise, and one which,

so far as I can gather, has never gained great judicial favour.

"Mitigating circumstances," according to legal definition, "are such as do not constitute a justification or excuse of the offence in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability."

This is the position then of a person convicted of crime to-day; unless his mental disorder is gross and obvious to the degree that he is unable to appreciate right from wrong, or is unable to know the nature and quality of his act, or to know that it was wrong, he is regarded as a sane and responsible citizen. The law makes no exception. It presumes everybody is sane. Further, if a person is proved to be insane, he is still held legally responsible unless he can satisfy the legal tests of irresponsibility. Even a raving lunatic "is presumed to come up to the law's standard of responsibility" until it can be shown further that he "fulfils that condition under which alone the law excuses a madman who has done an act otherwise criminal."[10]

The plea of mental unsoundness in mitigation of punishment following a plea of guilty is the only way the majority of criminals can approach justice. And even this procedure is only suggested in cases where there is some very obvious psychopathic symptom such as the presence of epilepsy or gross emotional instability. Then an expert medical witness is hired to give evidence regarding the mental state of the accused at the time of the crime, and of such influences which, operating at that time, might have modified conduct. The judge listens to this hired expert explaining conduct in terms of modern psychology. Sometimes he is impressed. Sometimes he is bored. More often, I would say, he regards all this psychology as fiddlesticks. As one learned gentleman has said: "I think I know what a psychopath is. A psychopath is a man who shoots you, and after he has done it, says he could not help it, and then proves it by an expert."

If the evidence of the hired expert is lucid and explicit

the judge may be convinced and the accused may be released on bond. If, on the other hand, the hired expert talks too learnedly, the judge may think his stream of unfamiliar polysyllables is an attempt to cloak ignorance or bolster up a weak case, the plea in mitigation misses the mark and the accused is sent to gaol, to nurse his psychopathy for the term of his sentence.

Were I asked, in a criminal trial, to give evidence upon the mental state of the accused, I would want to say that mental unsoundness is no mere lack of knowledge of right and wrong, but is a profound and widespread molecular change affecting the whole organ of the mind; that long before delusions become pronounced or other palpable evidence of stability is manifest, there are subjective disturbances at work modifying conduct in a subtle but none the less profound way. I would want to say that although the criminal appears to have a conscious motive for his offence, it did not preclude his having an unconscious motive also, and that this would have the greater effect in conditioning conduct. Instead of which I should no doubt be asked questions which were formulated a hundred years ago by gentlemen whose knowledge of individual behaviour was founded upon the false doctrine of "free will." I would doubtless be asked to answer hypothetical questions involving the definition of "lunacy," and to make pronouncement upon those intangible concepts of religious and legal tradition—"responsibility," "punishment," and "moral culpability," in which I have neither interest, concern nor experience. I would therefore find it impossible to mobilize my knowledge of psychiatry so that its disposal would be of maximum value to the court.

I say again, Gentlemen, the plea of insanity is an anachronism. It is out of date. It is bogus. Belonging to the crinoline age, its usefulness is long outworn. In time to come there will be no need for the plea of insanity. Every criminal indicted on a major charge will be examined by an impartial board of trained psychiatric experts. The court may be called upon to decide on evidence whether or

not the accused committed the crime with which he is charged, and there the function of the court will end. The treatment of the criminal will thereafter rest in the hands of the psychiatrists, who will have the necessary legal authority to restrain such person in a suitable psychopathic hospital or other institution for proper treatment or until a successful cure is effected and he can be allowed at large with safety.

That which antagonises most jurists to any suggestions regarding the alteration of criminal procedure is the thought that the criminal will go unpunished, will go out into the community to wreak the same evils as before. This is not at all the idea I have striven to present; it is not that the criminal shall be released on the ground of insanity, but that he shall be treated for whatever psychological disorder may have given rise to his crime—that he shall be compulsorily treated—segregated.

The idea of legal responsibility is of no real importance. What is important is that the criminal is a menace to society. He is a danger to the community whether he is labelled "responsible" or "irresponsible"—with this difference only: that if he is called "responsible" he is sent to prison, while, if he is regarded as "irresponsible," he is committed to a mental hospital. The law makes a purely artificial distinction, wreaking vengeance upon the one individual while prescribing treatment for the other. Whereas that which seems to be overwhelmingly obvious to the psychiatrist is that they both need treatment.

It is time we relinquished our homage to the mediaeval law-maker's ideas of absolute morality. Punishment is but a sublimation of the vengeance motive. It has no effect in making the so-called "wicked" good. Experience has taught us that punishment administered as an example to others has not proved in any sense a deterrent to the criminal in the making; nor does the capacity to feel remorse imply the power to control conduct. We must seek other means whereby to solve the ever-increasing problem of crime. But this cannot be found while our view-points

are antagonistic. And I wish to state this very clearly: there can be no solution so long as the legal profession regards the criminal as a person to be punished and the medical profession looks upon him as a person to be treated.

Anyone who thinks that by sending a criminal to prison he is going to rehabilitate that criminal, is merely behaving like an ostrich, burying his head in the sand so that he remains unaware of the true facts. The present penal system has endeavoured "to make men industrious by driving them to work; to make them virtuous by removing temptation; to make them respect the law by forcing them to obey the orders of an autocrat; to make them far-sighted by giving them no chance to exercise foresight; to give them individual initiative by treating them in large groups; in short, to prepare them again for society by placing them in conditions as unlike society as they could be made."[11]

Its failure has been tragic!

The idea of retributive punishment must be abolished in favour of the idea of treatment, that is the social rehabilitation of the criminal. The obsolete "plea of insanity" must be replaced by a "routine compulsory psychiatric examination of all offenders, with latitude and authority in the recommendations made to the court as to the disposition and treatment of the offender." Irrespective of the nature of the crime committed, those offenders who are found, on examination, to be "incurably inadequate, incompetent and anti-social" must be permanently segregated—not in prison, but in an institution where they may be suitably cared for and employed, applying their legitimate earnings to the reimbursement of the State for their care and maintenance.[12]

This reform—and this only—will abolish the problem of recidivism which at the present day occupies so much valuable time and wastes so much public money.

I quite realize that what I have just said may sound like a far-fetched dream, and that the majority of us will certainly not live to see its fulfilment. But it is no more

impossible of achievement than many of the things we accept to-day must have seemed to our respected grandparents. The fact that the ultimate maturity of such reform of criminal procedure lies in the future is no reason why we who see clearly the flaws and imperfections in the present scheme should stand aside, apathetic and content with the mistaken methods of our ancestors.

The big stumbling block in the path of legal reform is that any alteration of the law requires political enactment; and to abolish this hoary old plea of insanity and substitute the proper psychiatric attitude to crime would mean a revision and transformation of the entire penal system as well.

The mental daring and audacious improvisation which have achieved spectacular success in every department of present-day science are replaced in the squalid sphere of politics by a "timorous tinkering with admitted evils." The scientist has forged the tools; the politician talks, but neglects to take them up; and will continue in his muddle-pated foozling until roused by some more lively body. What would be more fitting then, than that this awakening of political interest and subsequent guidance should come from the Medico-Legal Society, whose members are fitted, both by training and occupation, to understand human behaviour as the expression of the biological unity of mind, in reaction to physical and psychological forces which condition good conduct and crime also?

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10. Ibid.

11. T. M. Osborne.—"Society and Prisons," quoted by M. Hamblin Smith in "The Psychology of the Criminal."

12. Report of the Committee of the American Psychiatric Association (K. A. Menninger), American Journal of Psychiatry; October, 1926.

DISCUSSION

Mr. Justice Dixon said that he had been invited to make a few remarks on the subject which had been stated from a medical point of view so ably. A lawyer does not identify himself with the law. His humble function is to seek to know what the law is and to explain it. Explanation often produces the effect of justification, but it is not part of a lawyer's duty, on the one hand, to justify or defend the condition in which he finds the law, or, on the other, to attempt to secure its alteration. But it happens that upon this particular matter many lawyers have felt the need of acquainting themselves with the progress which has been made in other departments of knowledge, and of attempting to restate the principles upon which insanity as an excuse in criminal law is based in such a way as to give the law an intelligible application to the conceptions of mental disorder which now prevail. It is only during the last few years that the Court of Criminal Appeal in England has declared that it is not now possible by judicial decision to enlarge or improve the legal conception of insanity as a plea to a criminal charge. The theory lying behind that plea is very old. It was recognized before Elizabeth's reign, and it underwent a long course of development, which was arrested, so to speak, by the declaration of the Judges in Macnaughton's case in 1843.

The trial, in 1760, of Lord Ferrers, whose execution was described in the first lecture heard by the Society, occasioned a discussion of the kind of infirmity of mind which would amount to an excuse. He had fatally shot his victim after a long career of irrational conduct. The House of Lords, before which, as a peer, he was tried, considered that he had sufficient capacity to form a design and understand its consequences, and that one, who could comprehend the nature of his actions and discriminate between moral good and evil, was liable criminally for his conduct. From that time up to the beginning of the nineteenth century, the matter arose, so far as appears, only before single Judges presiding at the trial of offenders. But, in the earlier part of the nineteenth century, the question of the immunity of the mentally disordered from criminal liability assumed much importance because of attempts to murder eminent persons. In 1800, one, Hadfield, attempted to assassinate George III. at Drury Lane Theatre. Erskine, who defended him with much eloquence, made a case of delusional insanity, which he attributed to head injuries received in active military service seven years before. Lord Chief Justice Kenyon, who presided, was of opinion that the prisoner was not accountable and he was acquitted. Twelve years later, Spencer Perceval, the Lord Treasurer, was killed in the lobbies of the House of Commons by Bellingham. He was tried before Sir James Mansfield, C.J., on the fourth day after the homicide took place, and was executed within a few days. The deed was clearly that of a madman, and the proceedings have always been considered discreditable to the administration of the law. The test propounded by Sir James Mansfield was whether the prisoner at the time of the commission of the criminal act was deprived of all power of reasoning, so as not to be able to distinguish right and wrong. In 1840 an unbalanced youth named Oxford fired on Queen Victoria. His trial was conducted with a moderation and fairness strikingly in contrast with the trial of Bellingham. The result was his acquittal on the ground of insanity. His insanity was by no means apparent to the public, and his acquittal caused much criticism and misgiving. The dissatisfaction became great, when twice, during the year 1842, the Queen's life was attempted by persons found to be unaccountable. Early in the following year, one, Daniel Macnaughton, took the life of Sir Robert Peel's secretary, mistaking him for Peel. His acquittal on the ground of insanity provoked an

attack upon the condition of the law. Public opinion was against the latitude which the Courts were thought to display in defining the disorder of mind which in law amounted to a defence, and in applying the law to this succession of assailants of public personages. The House of Lords summoned the Judges, and propounded to them abstract questions, with a view of ascertaining what exactly was the state of the law and whether the criteria of insanity were sufficiently strict and, in the case of Macnaughton, had been accurately and properly stated. Mr. Justice Maule, with commendable prevision, objected to being required to formulate abstract answers, because he feared that the answers would embarrass the administration of criminal justice. But the Judges complied with the request of the House of Lords, and gave answers which, in the result, have had the effect of reducing the law from a principle to a formula, a formula which has proved incapable of adaptation to widening knowledge and changed conceptions of mental phenomena. The effect of the formula is to limit insanity, as a ground of exculpation, to cases in which there is so high a degree of mental infirmity that the prisoner either cannot appreciate the physical nature of the act he does and its physical consequences or characteristics, or, if he can, is unable to understand that it is a wrong thing to do. Notwithstanding this formulation of the legal conception of insanity as an exculpation for crime, modern Judges have considered that the legal principle, which it sought to express in, or translate into, terms appropriate to the then existing state of knowledge, retained sufficient vitality of its own to enable them to apply it to conduct which the prisoner was without any capacity to control or direct. A formidable number of Judges, sitting alone, had given considered rulings which departed from the Macnaughton formula. But unfortunately, the English Court of Criminal Appeal in 1926 finally declared that such departures were inadmissible.

This narrative shows that the adoption of a restricted and inflexible standard has not been altogether the fault of the lawyers. Before Macnaughton's case, the lawyers appear to have been in advance of the general sentiment of the community. More recently judicial tendencies towards a more rational and liberal rule have been restrained by the Court of Criminal Appeal, which rightly or wrongly considered the Macnaughton formula remained conclusive. It must be remembered that the decision of such cases is confided to a jury. The jury represents the beliefs and stan-

dards of the community, which appears to share neither the opinions of lawyers nor the outlook of psychiatrists. Moreover, no very subtle or refined test of insanity as an exculpation for criminal acts can usefully be submitted to such a tribunal.

Dr. Godfrey said the remarks he had to make were concerned more with the ultimate disposal of a person who had successfully presented a defence of insanity. In his experience—and it was the experience of all members of the medical and legal profession and of the psychiatrists—this matter has always been regarded as a serious one, one which has caused very great thought and distress. When a person in a certain case is found not guilty on grounds of insanity he is subjected to one of two alternatives—to live in an asylum or live in a prison. In the majority of cases, unfortunately, there appears to be no other alternative. But there are cases in which one realises in these times an absolute lack of proper provision for such cases, except to deprive them of all the social conditions to which they had been accustomed. What he wanted to emphasize he would illustrate by a case which occurred a few years ago, a case of a youth of seventeen who was presented on a charge of murder. The facts were as follow: His history showed that he had had a fair education, was a clean-living lad and a hard worker. But he was a somnambulist, and had for the greater part of his life been observed to get up and walk about. Sometimes he would converse with people, but nothing unusual occurred. Sometimes he would go out and saw and chop up wood. On the occasion of the tragedy, the youth and the farmer by whom he was employed had been kangaroo shooting, a pastime the boy was very fond of. While the boy had not been able to get a shot, his employer had been very successful. This appeared to distress the boy, and he showed it at tea in the evening. At about eight o'clock, when the exploits of the members of the party were being discussed, he retired to bed. The farmer retired about the same time. The lad did not sleep, and after lying awake for some time went outside to answer a call of nature. He then went back to bed and fell asleep. About half an hour afterwards, the employer heard his name called. Getting up, he went out and saw the youth standing near the gun locker door. He then received a shot, was mortally wounded, and eventually died. The youth seemed surprised to find himself with his gun in his hand, but assisted the wounded man to a car, and brought him to a neighbor. At

the trial a plea of insanity was raised, but the difficulty was to establish the lad's mental condition. It could not be said that he was insane, for there was no recognized method or test that could be applied to him. All that was shown was that he was a somnambulist, and, incidentally, his sister and, I think, his mother for the greater part of their lives had also been somnambulists. It was argued that a plea of somnambulism was an adequate defence, because guilty intent could not be shown. There were suspicions about other conditions, but no evidence was produced, and eventually a verdict of not guilty, on the grounds of insanity, was given. Now, that youth who had lived a decent life in decent conditions, was placed in prison during the Governor's pleasure. He was a case in which no one could say a similar condition might not arise in future, and consequently he could not be set at liberty and the only treatment for this insane youth was to submit him to prison conditions. He was to associate with undesirable persons and to be subjected to incarceration for an act for which he had had no responsibility. One thinks that there ought to be some place or institution, some home where such a person could retain the conditions of life that he has been used to. Here was a case where the amount of control necessary was merely to guard a youth's unconscious actions at night. The case was rather an unusual one, and to some extent it supported Dr. Ellery's view. Any hard and fast rule of sending a man to prison or permanently to an asylum is at least an inhuman one, and in a case such as the one cited one might almost say a barbarous one.

Mr. F. W. Eggleston said that it was in a society such as this that views on matters such as that under discussion should be exchanged, and he expressed the hope that their efforts may lead to a changed public opinion on them, eventually leading to some reforms. In his unfortunate past he had been Attorney-General, and had to consider a number of the questions upon which Dr. Ellery had spoken in the exercise of the Royal prerogative of mercy. A great gulf existed between the professions on questions of this kind, and particularly on that of the plea of insanity. In one case a judge was almost furious in his attitude towards a medical witness when he gave evidence on that question. The attitude was very largely due to the difference in the character of the professions—one was almost completely deductive and the other inductive. It seemed that the legal profession is prone not to recognize the scientific character of the evidence of witnesses in fixing the degree of respon-

sibility. It held instead that punishment was deterrent. Whippings, for instance, were held to have a deterrent effect, also it was considered that frequent remissions of the death penalty did actually encourage the commission of some crimes. At the same time it has been pointed out that crime has not been encouraged nor has it increased with the idea, strangely prevalent, that the death penalty was abolished. But nevertheless it is quite clear that the question of punishment is a scientific matter, and a great deal of consideration should be given to Dr. Ellery's suggestion that the question of the mentality of an accused person should be considered by a board of assessors or experts, and he strongly supported the idea that the question of the punishment should also be reviewed by a board of experts. At the present time, the position is that the judge who has no experience to guide him in the principle of punishment, metes out punishment. It is a system that tends to an absolute lack of discrimination of the way in which punishment should be inflicted, and a suggestion that would be well worth consideration is that after a decision of guilt has been arrived at, the question of the punishment to be imposed should be left to the decision of experts. The question of punishment should and must be considered, and if this Society can bring the professions together on this question—a reconciliation of the scientific and legal aspects of the question—it will achieve something of not inconsiderable value. He hoped the Society would arrive at some unanimity and bridge the gap now separating views of the professions.

Dr. Adey said that to a certain extent the same attitude to crime prevailed now as in Charles II.'s time. He did not agree with Dr. Ellery that modern psychology taught that there was no such thing as free will. Action, as Professor MacDougall put it, was determined not only by a careful and intellectual consideration, but also by subconscious and hereditary characteristics formed by past and present associations.

Mr. C. Gavan Duffy said that the Rules in Macnaughton's case, whether good or bad, were now the law, and could be altered only by Parliament. It had been suggested that this Society should bring what influence it had to bear, to bring about certain alterations which Dr. Ellery urged were desirable. The adoption of Dr. Ellery's proposals would radically alter the present system. To have them adopted by the community—and to enact them without popular approval would render them impossible of

enforcement—it would be necessary to persuade the community that there was no such thing as free will, that punishment did not deter the offender, and did not operate to deter by example other members of the community from committing like crimes. That done, it would be necessary to show that there was ready to function, scientific knowledge and equipment of such completeness and efficiency as to command public confidence. The exact object to be achieved, and the precise method of attaining it, must first be determined. If that be done, and it is demonstrably right, public opinion will command its adoption.

Mr. P. D. Phillips said that in other countries, notably Germany and America, there existed systems of submitting delinquents to psychological examinations, and the results of the systems seemed to be not unsuccessful. Dr. Ellery was not advocating a new doctrine, and there were available records and material compiled in the systems to which he referred. While Dr. Ellery maintained that the rules in Macnaughton's case were too narrow and provided too illiberal a test, he did not suggest any test which could be applied. The law had perforce to lay down some definite rule. If modern psychology did not provide some working rule, it only showed how helpless we were with the new knowledge, and the solution of the difficulties had to be left to legal rules, which, however open to criticism they were, at least had the merit of working under present conditions. The law existed to deter crime, and if punishment was part of the legal equipment to deter crime it was reasonable to use it. The law can only abandon an existing test when one more satisfactory and efficient is found.

Dr. Cowen said it had been pointedly brought home to-night that the law is simply bound to a recognition of the sanctity of the sense of words. He agreed that before any definite rules can be laid down, greater investigation and study must be applied to the subject. It must be clearly recognized, however, that in many respects mere memory sense and a will to acknowledge certain rules of conduct, and to perform certain acts in daily life, is not at all sufficient. The profession was hardly yet in a position to formulate definite rules, but the discussion suggested what should be done. He did not wish to imply that psychiatry had not anything to offer—it had a great deal to offer. And if both professions were to approach the matter that psychiatry

had a great deal to offer, but is not yet in a position to offer anything definite, not a little would be accomplished towards finding a solution to a problem of great social importance.

Dr. Dale said that anyone who has been engaged in the investigation of crime has learnt that there have been many actions regarded as crimes that have not been determined by free will, but were the result of the working of many forces. There was the case described by Dr. Godfrey in which the definition to determine the difference between sanity and insanity was a particularly narrow one. The adoption of a too narrow definition may have serious effects, for it may take quite a small difference to change, judicially, a respectable citizen into a criminal. Take the influences or forces to which men engaged in war were subjected. The many have remained respectable citizens in spite of those influences, but there are others whose lives have been sadly affected by those destructive forces. It was easy to give numerous examples of borderline cases in which the action of human forces cannot be subject to definite rules. The problem of motives and crime has undergone no little investigation. It seemed useless to attempt to modify the law before educating public opinion regarding the problem of dealing with criminals. Any reform must give cognizance to the important matter of free will, and must work on a plan that would yield to crime fluctuations. Any determination that would cause the public to say that in a given case there was evidence of responsibility, and that the test adopted was inadequate, and that delinquents could not be dealt with satisfactorily, would be dangerous and harmful. If this Society can influence public opinion to a realization that a certain type of delinquent is quite irresponsible for its actions, and that provision was necessary for its treatment, a good starting off point would have been found.

Dr. Maudsley said his contribution to the debate was to inform the legal members that there was a Society or Council of Mental Hygiene which is actually interested in the very question referred to by Dr. Dale. One of its objects, through child guidance, was to pick out tendencies at the earliest stage, in time to prevent a criminal development. Eventually, it was hoped to have a properly equipped centre in Melbourne, and this perhaps was an opportune occasion for bringing the movement under the notice of

the professions, for he believed that it was really a movement that aims at the crux of the whole question. If a potential criminal could be taken at the earliest stage, it would probably be found possible to check the potential criminal traits before they actually become criminal.

Dr. Ellery replied to the speakers upon the matters he had introduced for discussion. He said that on commencing to prepare his paper he had been overwhelmed with the magnitude of his subject, and the omission of many of the matters to which the speakers had adverted, had been due to a desire to confine his paper within reasonable limits. It was for that reason that he had omitted a discussion of the systems employed in other countries. He had deliberately approached the matter in a controversial spirit, in the hope of provoking discussions. His hope had not gone unrealized.

A vote of thanks to Dr. Ellery was carried by acclamation.

EDITORS' NOTE

The Editors have felt that it would be both of use and interest to members to refer, in connection with the preceding address and discussion, to his Honour Mr. Justice Dixon's charge to the Jury in the case of *The King v. Bertram Edward Porter.* This case was tried in the High Court of Australia, in its criminal jurisdiction, on the 31st January and 1st February, 1933, at Canberra, F.C.T., and the extracts that follow are taken from the official transcript. The prisoner was charged with the murder of his infant son by administering strychnine. After informing the jury that there was a legal standard of disorder of the mind which is sufficient to afford a ground of irresponsibility for crime, His Honour said:

"Before explaining what that standard actually is, I wish to draw your attention to some general considerations affecting the question of insanity in the criminal law in the hope that by so doing you may be helped to grasp what the law prescribes. The purpose of the law in punishing people is to prevent others from committing a like crime or crimes. Its prime purpose is to deter people from committing offences. It may be that there is an element of retribution in the criminal law, so that when people have committed offences the law considers that they merit punishment, but its prime purpose is to preserve society from the depredations of dangerous and vicious people. Now, it is perfectly useless for the law to attempt, by threatening punishment, to deter people from committing crimes if their mental condition is such that they cannot be in the least influenced by the possibility or probability of sub-

sequent punishment; if they cannot understand what they are doing, or cannot understand the ground upon which the law proceeds. The law is not directed, as medical science is, to curing mental infirmities. The criminal law is not directed, as the civil law of lunacy is, to the care and custody of people of weak mind whose personal property may be in jeopardy through someone else taking a hand in the conduct of their affairs and their lives. This is quite a different thing to the question, what utility there is in the punishment of people who, at a moment, would commit acts which, if done when they were in sane minds, would be crimes. What is the utility of punishing people if they be beyond the control of the law for reasons of mental health? In considering that, it will not, perhaps, if you have ever reflected upon the matter, have escaped your attention that a great number of people who come into a criminal court are abnormal. They would not be there if they were the normal type of average every-day people. Many of them are very peculiar in their dispositions, and peculiarly tempered. That is very markedly the case in sexual offences. Nevertheless, they are mentally quite able to appreciate what they are doing, and quite able to appreciate the threatened punishment of the law, and the wrongness of their acts, and they are held in check by the prospect of punishment. It would be very absurd if the law were to withdraw that check on the ground that they were somewhat different from their fellow creatures in mental make-up or texture at the very moment when the check is most needed. You will therefore see that the law, in laying down a standard of mental disorder sufficient to justify a jury in finding a prisoner not guilty on the ground of insanity at the moment of the offence, is addressing itself to a somewhat difficult task. It is attempting to define what are the classes of people who should not be punished although they have done actual things which in others would amount to crime. It is quite a different object to that which the medical profession has in view or other departments of the law have in view in defining insanity for the purpose of the custody of a person's property, capacity to make a will, and the like. With that explanation, I shall tell you what that standard is. The first thing which I want you to notice is that you are only concerned with the condition of the mind at the time the act complained of was done. That is the critical time when the law applies to the man. You are not concerned for the purpose of finding out how he stood at that moment, with what his subsequent condition was, or what his previous condition was. He may have been sane before, and he may have been sane after, but if his mind were disordered at the time to the required extent, then he should be acquitted on the ground of insanity at the time he committed the offence. It is helpful in finding out how he was at the time to find out how he was before

and after. It is merely because it is helpful that we go into it in this case, not because it is decisive. The next thing which I wish to emphasise, is that his state of mind must have been one of disease, disorder or disturbance. Mere excitability of a normal man, passion, even stupidity, obtuseness, lack of self control, and impulsiveness, are quite different things from what I have attempted to describe as a state of disease or disorder or mental disturbance arising from some infirmity, temporary or of long standing. If that existed, it must then have been of such a character as to prevent him from knowing the physical nature of the act he was doing or of knowing that what he was doing was wrong. You will see that I have mentioned two quite different things. One state of mind is that in which he is prevented by mental disorder from knowing the physical nature of the act he is doing; the other is that he was prevented from knowing that what he was doing was wrong. The first relates to a class of case to which, so far as I am concerned, I do not think this case belongs. But again, that is my opinion of a matter of fact, and it is for you to form your opinion upon it. In a case where a man intentionally destroys life, he may have so little capacity for understanding the nature of life and the destruction of life, that to him it is no more than breaking a twig or destroying an inanimate object. In such a case he would not know the physical nature of what he was doing. He would not know the implications and what it really amounted to. In this case, except for the prisoner's own statement from the dock that after a certain time he remembered nothing of what he did, there seems to be nothing to support the view that this man was in such a condition that he could not appreciate what death amounted to, or that he was bringing it about, or that he was destroying life and all that is involved in the destruction of life. It is for you to form a conclusion upon that matter, but I suggest to you that the evidence of what he said to the police when he was found after he had given the poison to the child and was about, apparently, to administer it to himself, shows that he understood the nature of life and death and the nature of the act he was doing in bringing it about. But you are at liberty to take into account that he said he knows nothing of what he did at that time. If you form the conclusion that notwithstanding the evidence which I have mentioned the mental disorder of this man was such that he could not appreciate the physical thing he was doing and its consequences, you will acquit him on the ground of insanity at the time he did the thing charged. The other head is of quite a different character, namely, that his disease or disorder or disturbance of mind was of such a character that he was unable to appreciate that the act he was doing was wrong. It is supposed that he knew he was killing, knew how he was killing, and knew why he was killing, but that he was quite incapable of appreciating the

wrongness of the act. That is the issue or the real question in this case. Was his state of mind of that character? I have used simple expressions, but when you are dealing with the unseen workings of the mind you have to come to close quarters with what you are speaking about, and it is very difficult to be quite clear as to what you mean in describing mental conditions. I have used the expression "disease, disorder, or disturbance of the mind." That does not mean, as you heard from the doctor this morning from certain questions I asked him, that there must be some physical deterioration of the cells of the brain, some actual change in the material, physical constitution of the mind, as disease ordinarily means when you are dealing with other organs of the body where you can see and feel and appreciate structural changes in fibre, tissue and the like. You are dealing with a very different thing—with the understanding. It does mean that the functions of the understanding are through some cause, whether understandable or not, thrown into derangement or disorder. Then I have used the expression "know," "knew what he was doing." We are dealing with one particular thing, the act of killing, the act of killing at a particular time a particular individual. We are not dealing with right or wrong in the abstract. The question is whether he was able to appreciate the wrongness of the particular act he was doing at the particular time. Could this man be said to know in this sense whether his act was wrong if through a disease, or defect, or disorder of the mind, he could not think rationally of the reasons which to ordinary people make that act right or wrong. If through the disordered condition of the mind he could not reason about the matter with a moderate degree of sense and composure, it may be said that he could not know that what he was doing was wrong. What is meant by "wrong"? What is meant by wrong having regard to the everyday standards of reasonable people? If you think that at the time when he administered the poison to the child he had such a mental disorder or disturbance or derangement that he was incapable of reasoning about the rightness or wrongness, according to ordinary standards, of the thing which he was doing, not that he reasoned wrongly, or that being a responsible person he had queer or unsound ideas, but that he was quite incapable of taking into account the limits which go to make right or wrong, then you should find him not guilty upon the ground that he was insane at the time he committed the acts charged. In considering these matters from the point of view of fact you must be guided by his outward actions to a very large extent."