FOREWORD

The tenth volume of the Proceedings of the Medico-Legal Society of Victoria is published only one year after the ninth volume, but contains the papers read before the Society in the past three years. The Editors are able at last to report that this volume of the Proceedings is up to date.

The papers published cover a very wide variety of topics but this volume includes some important contributions on the assessment of damages for injury. The paper read by Dr. Henry Miller of Newcastle-upon-Tyne has been supplemented by reprinting as an appendix to this volume his Milroy Lectures delivered in 1961 before the Royal College of Physicians of London. For permission to reprint these lectures we acknowledge our gratitude to the Editor of the *British Medical Journal.*

This volume begins with a paper by another distinguished English visitor, Dr. Rupert Cross, which had been omitted from the last volume of the Proceedings.

For abridging the discussion on all papers the Editors accept responsibility.

R. K. Todd
John T. Hueston
Honorary Editors

Melbourne, December, 1965

DIMINISHED RESPONSIBILITY

By Dr. A. R. N. Cross, D.C.I.

Delivered at a meeting of the Medico-Legal Society held on 12th May, 1962, at 8.30 p.m., at the British Medical Association Hall, 426 Albert Street, East Melbourne.

THE MAIN object of this transaction is to say something about diminished responsibility, which we have in England, and which you have not got in Australia, as a defence to a charge of murder, and to show it to you, and offer it to you, to see if you would like to have it in Australia, and I can well see that there may be a variety of opinions on that subject.

Before getting down to the details of our diminished responsibility, I suppose I had better say just a little about its background, and the background of anything whatever to do with the mentality of the accused, in the common law world, all goes back to the M'Naghten Rules. There you have those Rules, stated in 1843, that what the Court has to decide is whether, at the time that he did the act with which he is charged, the accused, by reason of a defect of reason, due to disease of the mind, knew the nature and quality of his act, and if he did know the nature and quality of his act, did he know he was doing wrong.

What it comes to is that the Rules, laid down in England in 1843, require the jury, under the guidance of the Judge, to determine whether the accused, through a disease of the mind, knew what he was doing, and whether he knew that that was wrong.

Then, as you all know as well as I do, the major criticism of those Rules—certainly not the only one, but the major one—is that they are purely cognitive, and they purely inquire into the question whether the accused knew what he was doing, whether he appreciated or knew that that which he was doing was wrong.

As you all know as well as I do, criticism of those Rules set in at a fairly early stage, and, on the whole, I should have thought that the critics were more vociferous from the medical side than from the legal side, and, as this lecture proceeds, I think we will be able to see that there is some reason for that.

The gist of the criticism was that they make no allowance whatsoever for the cognitive aspects of the problem, they make

no allowance whatever for the man who might have known perfectly well that it was wrong, but, at the same time, would have experienced more than the normal difficulty in preventing himself from doing that which he did.

That usually, or often, is put in the rather clumsy way that the M'Naghten Rules make no allowance for irresistible impulse. No doubt, in the habit of lawyers, I shall inadvertently, in the course of this lecture, use that expression, "irresistible impulse". In this, you can rely on it as being perfectly sound that I do not really mean what I say—which is a common characteristic of lawyers. I agree it is a beastly expression but no impulse is wholly irresistible. This question, "Would he have done it with a policeman at his elbow", is pretty good common sense, and a lot of people who have the greatest difficulty in helping themselves in what they do, are very ill-described as "impulsive". One thinks of sudden pressures and so on.

I will try to avoid that. At any rate, as far as the background to the defence of diminished responsibility to charges of murder is concerned, we do have the M'Naghten Rules of this entirely cognitive nature. Then, as you all know, Sir James Stephen, who was in some senses of the word, I should have thought, the ablest and cleverest Judge of the nineteenth century in England—although it is a disputable point—was very much in favour of a very broad construction of the M'Naghten Rules which would in fact—I do not care whether you call it the back door or the front door—have let in a defence on the part of the man who had extreme difficulty in preventing himself from doing what he did do, because Sir James Stephen said that a man who is under great pressure from his urges would not be able dispassionately to consider or to know, within the meaning of the M'Naghten Rules, whether what he was doing was wrong. Then, in spite of the fact that presumably most of you are Australians, you know as well as I do that the English case law became much more defined and much more crystallized after Sir James Stephen's death, and that so far as English law is concerned, it is settled beyond a peradventure, beyond a doubt, that we do have with regard to the defence of insanity nothing but the M'Naghten Rules, nothing in the nature of a defence of impulses which are difficult to control or uncontrollable, nothing let in so far as English law is concerned by the back door that the inability of the accused to control his urges or his subjection to urges may make it difficult for him to know or appreciate what

is wrong. In that, in my opinion, the Australian Courts were —I do not know whether they are now—much more enlightened than the English Courts, because the English Courts had firmly set their faces against allowing what the English Courts call "irresistible impulse" in through the back door. I personally do not hesitate to say "more power to their elbow". Australian Courts let things in more frequently by the back door than do English ones. There is the horrible case of *Brown* v. *Attorney-General for S.A.*, or more accurately, *Attorney-General for S.A.* v. *Brown*,[1] which may have put difficulties in the way of that. I will refer to Brown's case again at a later stage. Since it became fixed in England that the M'Naghten Rules were purely *cognitive*, there have naturally been agitations for reform, and the last and far and away the best and most important suggestions came from the Royal Commission on Capital Punishment which sat between 1949 and 1953 and made various recommendations with regard to reducing the incidence of capital punishment, but not in any way, of course, towards abolishing it, because that was not part of their terms of reference. With regard to these M'Naghten Rules, the Royal Commission—a body of some sixteen strong—had one stalwart fellow, and need I say that he was a lawyer, who was in favour of leaving everything just as it is. Everything in the garden, according to Mr. Fox-Andrews, Q.C., was lovely. You had a majority of, I suppose, about twelve, if I am right in saying the original number was sixteen, in favour of allowing the jury to determine whether "at the time of the act the accused was suffering from disease of the mind or mental deficiency to such a degree that he ought not to be held responsible".

I want first of all to draw your attention to the recommendation of the other three, which I will for present purposes describe as the "minority recommendation". They recommend that one retains in effect the M'Naghten Rules, but adds a clause. The accused shall be entitled to the defence of insanity if, owing to disease of the mind or mental deficiency, he did not know the nature and quality of his act; that is, knew what he was doing, or if he did not know that it was wrong or if he did, he found it difficult or impossible to control himself or prevent himself from doing what he did. So much for the recommendation which I am calling the minority recommendation of the Royal Commission. Three people subscribed, I think, to that. You had one who said everything in the garden was lovely, and

[1] *1960 A.C. 432; 34 A.L.J.R. 18*

you have got the majority proposal which really boils down to saying, "Go away, Jury, and consider was he mad enough not to be responsible". That is the background of the defence of diminished responsibility about which I want to talk, but I will come back at the end of my talk to these recommendations of the Royal Commission, because quite obviously one's attitude towards the merits and demerits of the defence of diminished responsibility will be enormously affected by one's views concerning recommendations of the Royal Commission on Capital Punishment. Now, the Royal Commission did not recommend the adoption in England of the defence of diminished responsibility. Nevertheless, as happens in England, most of the report of the Royal Commission on Capital Punishment, which I think is one of the more important things which have happened in the common law development in criminal law this century, was, of course, shelved, as one would expect with this kind of thing, and one of the things that it did not recommend was, of course adopted in a matter of four years, and you have Section 2 of the Homicide Act, 1957.

In England, as a defence, or as a partial or qualified defence to a charge of murder, you have the possibility of a verdict of manslaughter on the ground of diminished responsibility.

Now, before going on to analyse this defence of diminished responsibility, I want to talk to you about one or two cases on the subject, and before making one or two other points with regard to it, I should say a little more about this defence, having got its background. It is quite clear that the idea of the Statute is that you can have the circumstances where although it would not be right to punish the man as if he were a normal person, at the same time, some degree of punishment is proper. His responsibility is impaired, but not, one would infer from the words of the Statute, extinguished altogether, so you have this complicated idea of degrees of responsibility.

It is only fair to mention at this stage that a lot is going to depend on the view you take with regard to the emendations of the M'Naghten Rules, because it is at least arguable that if you take the view of the majority of the Royal Commission and if you are in favour of saying to the jury, "Was this man mad enough to be responsible?", then you do not want a defence of diminished responsibility. On the other hand, it is arguable that, even if you adopt that recommendation of the majority of the Royal Commission, you will continue to need a defence of

diminished responsibility, on the basis that even if the man is not fully punishable, he should be punished just a little or quite a lot.

Well, that is another thing which you shall have to consider. Before coming down to the cases on the subject, and trying to place it in its proper perspective, and then ask you whether you really want it in Australia, I wish to give a picture of the different things that happen to persons who are accused of murder in England, and it is important to remember that, at the moment, so far as diminished responsibility is concerned, we are confined to homicide so far as the M'Naghten Rules are concerned. That applies throughout the whole of the Criminal Law, although the number of times that a man pleads he is within the M'Naghten Rules, when the case is not a capital one, is somewhat limited.

Well now, in England, as most of you probably know, the Homicide Act, 1957 did not only create a defence of diminished responsibility by Section 2. It did do other things. It did reduce, for good or ill, the incidence of capital punishment. It did provide that only certain types of murder should be capital, and the most important of those types of murder were murder by shooting and murder in the course of theft. For those, capital punishment was retained, and for certain other types of murder which do not matter for the purpose of the present discussion at all. However, on other kinds of murder, there is the fixed punishment of imprisonment for life. Therefore, a man is charged, in England, either with ordinary murder, which means imprisonment for life, or capital murder, which means what it says—sentence to death, subject, of course, to the possibility of a reprieve. Therefore, when the Homicide Act, Section 2, provides that there, in cases of diminished responsibility, shall be a verdict of manslaughter, what it comes to is this, that where the man is charged with capital murder, diminished responsibility is, in a sense, a life or death question so far as he is concerned. Where he is charged with a non-capital murder, diminished responsibility is a fixed sentence for life question, if he is guilty of murder, or a flexible sentence, which might be imprisonment for life; and in many of the cases, diminished responsibility could be an unconditional discharge—"You have been convicted, but you leave the Court without any stain on your character", or words to that effect, and that would not often happen in these cases.

The only other thing I want to say, in placing the English

legislation in its background, is this. I must say a word about our Mental Health legislation. In the Mental Health Act, of 1959, there is provision that the Courts may, in certain circumstances, even after conviction, and, in some instances, before, but this does not apply to these diminished responsibility cases, it is after conviction so far as these cases are concerned, the Court may make what are described as "Hospital Orders", and that is in respect of the man going to prison or the other various things that might happen to him—being put on probation, et cetera. He may be confined in a hospital, normally a Mental Hospital, until the hospital authorities see fit to discharge him.

A Hospital Order may be called "A Hospital Order with Restriction", or a "Restricted Hospital Order", which means he stays there until the Home Secretary is prepared to let him out.

That is all I want to say so far as the background is concerned. In other words, when a man pleads diminished responsibility in reply to a charge of murder, if the charge is one of capital murder, he is fighting for his life; if it is one of non-capital murder, he is fighting for the possibility of a flexible sentence, which may include a Hospital Order against a fixed sentence of imprisonment for life. I do not think I need say any more about Section 2, except just for these two points, that those who are interested, as I am myself, in the theory of the law, ought, I suppose, to include this among the things which amount to extenuations rather than excuses (analogous, so far as lawyers are concerned, although it is pretty far-fetched), as with provocation or infanticide—the kind of thing that reduces the crime but does not excuse altogether, as opposed to things like self-defence and so on, which do excuse altogether. It is a pure matter of theory, but I suppose that is where it does fit into the theoretical armoury of a lawyer, and as I am about to pass on to the cases and shall not dream of referring to it again in the course of this talk, it is important to bear in mind that the burden of proving that he comes within the defence of diminished responsibility is borne by the accused, but it is a burden on the balance of probability, just like someone who is pleading the M'Naghten Rules.

Well, with that rather discursive kind of introduction, what I want to do now is to draw your attention to three or four English cases on the subject, just to see how it does work in England and to see if you want it in Australia or not. Then I want to say something about how the matter is dealt with by

the English Courts under the description of "disposal of the criminals", how people who succeed in the plea of diminished responsibility are disposed of, and then I do want to say something about a very important, interesting, academic or theoretical question to both lawyers and doctors, a criticism by Lady Wootton of Abinger, a very distinguished person, on this subject, and then I want to raise questions which seem to me to be good things to discuss.

In regard to the cases, you have Section 2 of the Homicide Act, and in the beginning that was greeted by the English Judges with the degree of enthusiasm that you would expect from a Ministry of conscientious objectors greeting a declaration of war. The English Judges began by saying: This is M'Naghten diluted and nothing else, and furthermore we do not want it diluted very much", and the tendency was to say to the jury, "Well, now, first of all here are the M'Naghten Rules on which we were brought up man and boy and we know them and we can recite them to you. Of course, you won't understand them, but that is neither here nor there. Next we have this absolutely beastly statute which we do not understand a word of, and furthermore we do not think it part of our duty to—and indeed we regard it our duty not to—explain the meaning to you. So you have the M'Naghten Rules and the statute, for God's sake go away and decide how this man should be disposed of." That undoubtedly was the approach of the English Courts, and in many ways the very shocking approach, in the first two years of the Homicide Act. Of course, if there are difficult lawyers who say, "We would like your authority for that", I am prepared in discussion to cite my authority for that. I think it is a perfectly shocking approach to it. Fortunately, a change did come with a very important case, *R.* v. *Byrne* in 1960,[2] and I am not going to trouble a body of this kind with references, but it is reported in 2 Q.B. I shall talk about the cases at slightly greater length than they appear in the Law Reports, because the ones I want to talk about I know about, and the case of Byrne is certainly a very vital case in relation to diminished responsibility.

Byrne was charged with the murder of a girl in a hostel in Birmingham at the end of 1959. I should say, in case I forget to tell you, the result of the case in the excitement of going into all the evidence, that Byrne was only convicted of the non-capital crime of murder, because he had only cut her up and not shot her. He was sentenced to imprisonment for life, and he

[2] *1960 2 Q.B. 396*

succeeded in the Court of Criminal Appeal in the sense that his plea of diminished responsibility was accepted there. The facts of this case were that Byrne, toward Christmas-time, had done a little bit, and only a very moderate amount—the psychiatrists who gave evidence said it made no difference—a little bit of drinking with his mates on the building site. He was the building worker type. He then went along the streets of Birmingham and saw some girls entering a hostel where they were staying. Byrne was a voyeur and peeper, and he went and peeped at the goings on of girls in the hostel. Then Byrne went into the hostel, seized hold of a girl, throttled her, grossly mutilated her body sexually, had sexual intercourse with the body after death, and so on. He left a note in the girl's room, ran away from the hostel, and no one could trace the murderer of that girl. Two months later, Byrne gave himself up to the police, and made a very, very detailed statement, a full confession, about his feelings on the occasion in question. The note Byrne left simply said, "I never knew that such a thing could happen". Two months later, in the statement which he made, Byrne went into great details about the urges that he felt with regard to this girl after his peeping, and the urges that he felt with regard to other girls. His statement was in the most revolting and unpleasant, but at the same time the most circumstantial, detail. The type of remark that Byrne made in that statement was, "I knew she was dead after I throttled her. I tried to have intercourse with her, but that was difficult, and then I cut her breast off and it all went flat and I was very disappointed," the type of remark that only a wholly abnormal person would make. Byrne was charged with the murder of this girl. He pleaded diminished responsibility, and the defence of diminished responsibility was supported by the prison doctor and two psychiatrists from Birmingham Mental Hospitals. The evidence was entirely one way in the sense that the prosecution did not dispute the propriety of the defence of diminished responsibility. The prosecution, through the prison doctor, had in effect said, "we think this is a case of diminished responsiblity. Do what you can, and here is our evidence." Now, the medical evidence on the subject was interesting. All the doctors, and need I say it to a medico-legal body, said that Byrne was a sexual psychopath. They all said, and this is peculiar, because it can vary, that he was a little dull, average intelligence, and I think only two of them said there was anything peculiar about his electroencephalograph test. They

all went into great details about what Byrne had told them about his previous life. Byrne had not, so far as history records, committed any crime before, but they were all agreed he was a fetishist and a voyeur. He had done a great deal of peeping, etc., before and they were all quite clear on his sadistic urges. He had told the psychiatrists in question and the prison doctor about different moments in his life when he had wanted to mutilate girls and preserve their mutilated parts, and he had told them gory details about his dreams, how he wanted to see women pushed through circular saws, and so on.

Well, that type of evidence was taken in the Court, the Judge being unsympathetic, and there being difficulty in that point. I know that because it has happened in lots of other cases, about the taking of medical evidence in these cases of diminished responsibility, and, in particular, in these cases where it is not contested between the prosecution and the defence, and the only trouble arises with the Judge.

There is something, I think, a little inept about the question and answer method of taking that evidence, and the Byrne case, where honest and good psychiatrists were giving evidence to the best of their ability, and ran into a bit of trouble with the Judge, no one could say whose fault it was. That is one of the things which caused a Committee to be sitting in England about the right ways of taking medical evidence.

Two questions arise from that. Those are, firstly, whether it is really correct to do it by question and answer method; whether there ought not to be some statement from the psychiatrist, or some statement of any other doctor giving medical evidence on any other point on which he should be examined or cross-examined; and then the other question which arises is whether it is really desirable to have these chaps as witnesses on behalf of the parties, and whether it might not be possible to have them as witnesses on behalf of the Court.

The Byrne case is one that does draw attention to that problem, although not in that form. There have been other cases in England, and not necessarily ones of diminished responsibility, which did draw attention to that problem.

However, the Byrne case jogged along in its normal way, with the only person who was in favour of a conviction for non-capital murder being the Judge, on the whole, but some interesting questions are raised in this, as in lots of other cases of diminished responsibility and insanity in England. The question

put, as soon as the defence psychiatrists have been examined in chief, was, "Are all people who commit sexual crimes of violence sexual psychopaths?", and the second question is a perfectly clear one, "What do you mean by a psychopath?". Dr. O'Reilly, of the Holywell Hospital, Birmingham, when confronted by this question, said he meant a person who has diminished control, a person who responds to impulses, without the possibility, apparently, of bringing reason to bear, and then, when specifically asked about the wording of the Section 2 of the Homicide Act, 1957, "All right, what is this man's mental abnormality due to—arrested development, injury, et cetera . . .?" he said "Inherent causes", and he criticised, and I do not blame him, the wording of Section 2, and I shall be very grateful for the opinions of psychiatrists here about how silly or not, as the case may be, that wording may be.

That is one thing that looms itself up in all these cases, "What do you mean by psychopath?", and the other thing that looms up is the Judge who has views on this subject, and that is the difficulty which not only laymen but some lawyers have. It somehow seems the more wicked the man is, the easier it does seem for him to say that he is suffering from diminished responsibility because he is a psychopath, and the Judge, Mr. Justice Stable, put the question to the Birmingham Prison Doctor, Dr. Coates, and what he said was this, "It is a curious result, is it not, that the worse the act, the more vicious and utterly depraved the act, the nicer we call it by name?", to which, of course, the only thing Dr. Coates could say was, "Yes." Dr. Coates then made some remark which I will come back to later, about some people being outside the vicinity of a human being, and then you get the Judge concentrating on the wording of the Statute, saying "Yes, the Act may have been designed to protect the afflicted and not the vicious", and then, of course, anyone might have guessed the summing-up there would be to the jury after all that. The summing-up to the jury included the passage telling the jury that if they came to certain conclusions, nevertheless, the defence of diminished responsibility would not be established. Mr. Justice Stable said to the jury, "If you come to the conclusion that from an early age Byrne suffered from diverted violent desire, and in some cases even indulged them, if you come to that conclusion, and if you come to the second conclusion that he suffered from sexual urges of such a nature that he found it hard, if not impossible, to control them, even

if you reach those two conclusions, and even if you come to the third conclusion that the act of killing was done under such urges—a man who has these things from an early age, finds it difficult to control them, and kills under the urge—and if you find he is perfectly normal in all other respects, then he is not let to have a plea or defence of diminished responsibility".

In the face of that drection, the jurors of Birmingham, being honest men, naturally convicted him of murder, not capital murder. Byrne appealed to the Court of Criminal Appeal, and the Court of Criminal Appeal, in an elaborate, and in my opinion, extremely good judgment, said there were certain deficiencies in Mr. Justice Stable's conduct of the case, and that clearly this was a case of diminished responsibility, and I will give you the text of their judgment in a moment, and as I say, they changed the conviction to one of manslaughter. That is the best they could do for Byrne. They said that imprisonment for life was probably the best way to deal with someone of that sort.

Well now, the Court of Criminal Appeal said "We have to consider this Statute, and with regard to this business of abnormality of mind, it does mean something different from the M'Naghten Rules".

They do not expressly in this case say that their previous decision was wrong, but they have been understood to do that much in later cases. They make two very good points. Abnormality of mind" in Section 2 (1) of the Homicide Act "means a state of mind different from that of ordinary human beings" —and I attach a lot of importance to that—"that the reasonable man would term it abnormal", and that is a question for the jury. But "the aetiology of the abnormality of mind (namely, whether it arose from 'a condition of arrested or retarded development or any inherent cause' "—and that, of course, is citing the wording of the Act—was a "matter to be determined on expert evidence". So you have to decide whether the man is mad enough or bad enough or abnormal enough, but on the question of what led up to that, they must accept, particularly if it is undisputed, the medical evidence. An attempt is made to define abnormality of mind in non-M'Naghten Rules terms, and then the Court of Criminal Appeal went on to say, where the abnormality of mind is one which affects the accused's self-control, and this of course is a different one, the step between "he did not resist his impulse" and "he could not resist his impulse" is one which, in the present state of medical knowledge, is not capable of scientific proof—and

I shall come back to that question. He did not resist, therefore he could not resist is circulatory of argument. The Court of Criminal Appeal in Byrne's case contrasted the abnormality of mind referred to in the statute with the defect of reason mentioned in the M'Naghten Rules and said quite clearly the term "abnormality of mind" can cover cases where the man finds it difficult to prevent himself doing what he did. "It appears to us to be wide enough to cover the mind's activities in all its aspects, not only the perception of physical acts and matters, and the ability to form a rational judgment as to whether an act is right or wrong, but also the ability to exercise will-power to control physical acts in accordance with that rational judgment". So you do get in the cognitive idea. The same way with regard to mental responsibility, the Court of Criminal Appeal said, "The expression 'mental responsibility for his acts' points to a consideration of the extent to which the accused's mind is answerable for his physical acts which must include a consideration of his ability to exercise will-power to control his physical acts". Therefore, it seems to me that the significance of the Byrne case, and that is why I dwelt on it at length, is that it takes one right away from the M'Naghten Rules, and you do now have the question of what lawyers would call irrestible impulse coming in, and the question of the man's cognitive powers also comes in entirely under the defence of diminished responsibility. The other importances of Byrne's case are to draw attention to problems of medical evidence in these matters, and it also gives one a definition or an attempt at a definition of "mental responsibility" and "abnormality of mind". That importance of Byrne's case is not only pointed out by me, but also pointed out by English Courts in subsequent cases.

There is a reported case of Rose,[3] which came from the Bahamas, where they have a Homicide Act like our own, and it came to the Privy Council. Mr. Rose was charged with capital murder because he was already in prison and the man he murdered was a prison officer, and that is capital murder according to English law. He stabbed a Bahaman prison officer to death because he would not give him the key to the prison—a fairly venial offence one would have thought—and Mr. Rose pleaded diminished responsibility. One of the witnesses who appeared on behalf of Mr. Rose was a psychiatrist, and as she is a Bahaman woman doctor I suppose it does not matter how much one attacks her in Melbourne, but I think it is fair to say

[3] *Rose* v. *R.* 1961 A.C. 496

she was, at any rate, a little bit consciously learned. She had examined Mr. Rose and discovered he had head injuries, delusions and hallucinations. She also said, in response to a question, that she would say he had post-traumatic constitution, with paranoid developments, and then just to give full measure she said, "and furthermore, he is suffering from a punch-drunk syndrome". I often feel as if I was suffering from that myself. The trial judge in the Bahamas summed up by saying, "M'Naghten Rules—go away and consider whether he is a borderline case". The Privy Council said, "We are not very good at punch-drunk syndromes, but at the same time it cannot be right in a case like that to sum up in the terms of the M'Naghten Rules".

They applied Byrne, and they said the earlier cases were wrong. Now, I would just like to refer to one other case in England, which is not reported, but it does show, again, I think, how the defence of diminished responsibility is miles away from the M'Naghten Rules, and it does raise what, to me, is a tremendously important question which is best resolved by a Medico-Legal Society, because it is not very well resolved by Legal Societies.

There was tried in Oxford, at the Oxford Assizes, in October 1957, a man called Edginton. He was charged with the non-capital murder of his daughter who was aged between 2½ and 3 years, whom he indubitably killed, and his defence was diminished responsibility. Mr. Edginton was the only son of an unmarried, epileptic, and occasionally violent mother. Mr. Edginton's schoolteachers gave evidence that he was educationally backward, to the extent of being two or three years behind everyone else, and that he was a strangely lonely kind of person. He had intermittent employment, and lots of changes of employment. There was no delinquency or no evidence of it so far as Edginton was concerned. At the age of 24, he married a wife who was pretty nearly as dull as himself. By the time he was 27, they had a daughter of 2½, and his wife, at that stage, left him. Edginton traced his wife to her adulterous caravan where they were living, and made a very half-hearted and poor attempt to strangle his wife. Edginton was very concerned about the future of the child and made inquiries through various social agencies in England as to what could be done with regard to the child. Edginton then went to Birmingham, from Oxford, where he was living, to try and consult some relations to see if they would assist with the child.

His wife and he had a meeting, it is reported, and she and he, with the child, went for a walk along the path of the canal and could not decide what to do about the future of the child, and he, there and then, killed the child, in very clumsy circumstances, making several unsuccessful attempts first. Mr. Edginton then threw the child in the pram into the canal, made no effort to conceal it, he and his wife went to the pictures, and then, the next day, the wife reported the murder.

The Oxford Prison Doctors and Dr. Spencer from Oxford gave evidence suggesting that he was suffering from diminished responsibility and that evidence was not disputed by the Crown, but evidence was that Edginton was a sub-normal psychopath, that his I.Q. was 75 per cent, that throughout the whole of his time in the prison, his only questions were: "Will they hang me?", and "When do I get some cigarettes?"; that otherwise he appeared to be completely unconcerned with things.

Mr. Justice Sachs summed up to the jury very much in favour of finding diminished responsibility, and that was found, and now, the interesting thing is, after that, Counsel for Edginton addressed the Judge that "This is a case for a hospital order". The Judge did not like that. Obviously, he had in mind something to do with punishment, and Mr. Justice Sachs put this question to Dr. Spencer, and I would like to hear psychiatrists on this subject, "Now, Dr. Spencer, you have estimated the intelligence quota of the accused as 75 per cent, 75 average, can you do the same thing with regard to his responsibility?" Now, to a mere layman lawyer like me, this seems to show some misunderstanding of the I.Q. business, and a preposterous question, "Can you estimate his responsibility?" However, nothing daunted, Spencer said, "Yes, 50 per cent". Now, obviously, he meant by that very substantially diminished responsibility. Mr. Justice Sachs said, "50 per cent—15 years!", and he said, "Mind you, a lot of that is punishment. You are half responsible." Seven and a half years punishment. Seven and a half years to rest, that is what it appears to be!

Those are two very illustrative English cases and you do have other cases which show that diminished responsibility applies where the M'Naghten Rules do not apply, where there are delusions and so on.

Now, I would just like to say a little about the disposal of these people, and a little about Lady Wootton's famous lecture. You have a typical instance of its application. Now I am speaking

without the English Criminal Statistics for 1961, for the very good reason that they have not been published yet, but, down to the end of 1961, as far as I can make out, there have been about 130 cases in which diminished responsibility has been pleaded successfully. Of that 130, about one-third have received life sentences of imprisonment, which, in England, means that they are, broadly speaking, in the discretion of the Home Secretary; that he reviews the cases from time to time, that they can stay in there for up to life, but they do not, in practice. They are let out at different periods.

Of the others, about a half, by that I mean you have one-third life sentences, two-sixth life sentences, three-sixths sentenced to imprisonment varying from one to ten years, and the average of that is about five to seven years. Of the remainder, the question of probation orders, conditional discharges, (it is the same thing —the man goes out and commits another offence!), Hospital Orders, and it is made up to as much as one-sixth, mainly by the Hospital Orders, but there are cases where they put on probation, notably the women just outside the Infanticide Provisions, either because the child they have killed is not the child with regard to whose birth they have not recovered from lactation or childbirth, or else because the child is outside the Infanticide Provisions because it is over 12 months. The thing that makes it as many as one-sixth who have not been sent to prison or detained in any way is largely this Hospital Order business, and I think you will have quite a large number of the English cases of diminished responsibility which are dealt with exclusively by treatment rather than punishment. That is all I think I need say about sentence and the disposal of those suffering from diminished responsibility.

Now, the other important thing that has happened, and this is interesting again from the point of view of lawyers and doctors, is that Lady Wootton gave a very famous lecture in Cambridge, and it is published in the *Law Quarterly Review* for April 1960. Lady Wootton rather scathingly makes two points with regard to diminished responsibility. She defines responsibility as "capacity to resist temptation", and then her first great point is, you can never prove scientifically—she is not a lawyer, otherwise she would know you do not have to worry about scientific proof—you can never prove scientifically that people are under difficulty in resisting their urges, their pressures, etc. You are always, according to Lady Wootton, up against the problem of the

circular argument "he must have been mad to do what he did", or how can you really distinguish between psychopathy and wickedness? She really puts this in a very telling way, and she says that to treat propensity as synonymous with irresponsibility is to make an enormous leap in the dark, a leap, in fact, from science to philosophy. Lady Wootton has in mind free will and determinism and so forth. Her first point is this impossibility of proving that a man was under difficulty in controlling himself. Her second great point is that it is completely illogical, because logically the more nearly a man approaches to utter irresponsibility, the more nearly he approaches to complete madness, and then, of course, he ought to get a very light sentence, only imprisoned for a very short time, and the further away he is so that he is very nearly responsible, he ought to have very heavy punishment, whereas, in point of fact, the men who are for all practical purposes mad are imprisoned for life and the others very frequently go free. I must now come clean about my own position on that. That is, I think that her first point is probably answerable, and I want to consider how it is answered. I think her second point is right, and I sympathise with her general approach to the problem. The reason why I think her second point is right is because we are in this problem of punishment and treatment. If you deal with this diminished responsibility partly by punishment and treatment or treatment without punishment, then you are going to get into the sort of logical difficulty she mentioned. Those who ought to be detained very little on the punitive basis have to be detained for a comparatively long period on the protection of Society basis; those who ought to be detained for a very long time on the punitive basis have a good chance of getting out. That is not a criticism of diminished responsibility. That is simply where we are in logical difficulty. We are always confronted with the same difficulty over the treatment of the mentally abnormal. I will come back to why I am sympathetic with her general position in a very few moments. Just dealing with Lady Wooton's first point—and I should be very interested to hear psychiatrists on this subject—the question of whether one can prove scientifically before a Court of law that someone is finding difficulty in preventing himself from doing what he did do, I think you can build up a case there against Lady Wootton. The point to my mind, the point that clinches it, is that, outside courts of law, if a man does say to you, "I did have terrible urges, and I found it im-

possible to deal with it", you accept his evidence without any doubt. One hears of women during puerperal fever experiencing extraordinary sensations. The only reason why you have reservations about diminished responsibility is because those persons pleading it are very interested persons.

My first build up against Lady Wooton would involve a reference to the famous American case of Sergeant Kunak, who is referred to in many other places in the Appendix to the American Law Institute's Draft Criminal Code, Fourth Draft, page 175. There is an extraordinary case—there you have the case of the American Sergeant who goes to his Army people and says, "Look here, there is a terrible thing. You must do something about it, because I feel a terrible urge to annihilate someone, and, in particular, the officer who is always near me!". You may say anyone who has been in the Army always feels that, but in the case of Kunak, he said, "You must lock me up". They did not, and so he went away and killed the officer.

Well then, I think the second thing that tends to refute Lady Wootton is that, as far as I can make out, all psychiatrists depend on the statements of the accused, as did the Byrne case turn. You will always, of course, have questions whether he was shamming, and there has been a famous English case in which the whole thing turns on were the psychiatrists gullible, or weren't they?

I think the third build-up—the first one being his own statements generally, second is his own statements to the psychiatrists —thirdly, I think anyone who testifies with regard to having interviewed the accused and talked about his mental age, then you are getting proofs right outside the question of the deed, you are right away from the business, "He must have been mad to do it", and, then, fourthly, I think, you have cases where people have observed people who do not go to the extreme of committing crimes or killing people, but who find they have difficulty in controlling themselves in certain circumstances, and have an allergy for other people. That would be the fourth point I would make, and, finally, I think there is an excessive concentration in Lady Wootton's criticism of Section 2 on the type of man who finds it difficult to control himself and not making allowance for anyone who suffers from delusions, etc.

That is all I have to say except that I want, just now, to draw your attention to four questions which seem to me to be suitable ones for this Society.

First of all, is the idea of diminished responsibility a good thing or a feasible thing, and, most important of all, is it fit for reception in Australia? Well, I would not be capable of talking on the last point, but my own attitude is that I regard it as a half-way house. I am in favour of the Royal Commission's majority recommendations. I am in favour of it always being left to the jury—"Is this man so abnormal that he is outside the sphere of criminal liability?" I am not necessarily a determinist, but I think that once you have evidence of an acute mental abnormality, then the sooner we forget altogether any talk about punishment or responsibility the better. Once you have the clear-cut evidence he did it, he is acutely mentally abnormal, then the matter is purely a question for doctors and treatment. There is no question whatever of punishment. My reason for that is simply the impracticability of applying the criminal law to people who are acutely mentally abnormal. It may be too soon for that, but as a half-way house, I do not disapprove of diminished responsibility.

My second question, which I have answered to the best of my ability, rightly or wrongly, is, "What about Lady Wootton's general criticisms?" Is it possible to prove to the satisfaction of a Court of law—not to prove scientifically, that is asking too much —that someone did find it difficult to prevent himself from doing what he did do?

My third question is, granted we have this defence of diminished responsibility, am I right in saying that this stuff of Mr. Justice Sachs about "Was he 50 per cent responsible" is, frankly, nonsense?

My fourth point, which is appropriate to a Medico-Legal Society, is: "What about this question of taking medical evidence?" Am I right in thinking—and that particularly in these cases of diminished responsibility—that it would be desirable if one could, in some way, contrive to have medical representatives of the Court and not medical witnesses on behalf of the parties, and thus avoid what has happened in England, a lot of shopping around for psychiatrists so as to find some saying they are very sure the man was shamming and others being less sure, and, secondly, this applies to medical evidence in general, and particularly running-down cases—is this business of question and answer, examination and cross-examination really suitable?

DR. SPRINGTHORPE: Firstly, I would like to say that I have for long been in agreement with Dr. Cross's remarks on the

M'Naghten Rules, and I do not wish to bring that up again, because I talked to you about that a little while ago. I think it is in urgent need of extension, or preferably, in the terms of the Royal Commission on Capital Punishment, abrogation. This Homicide Act, I think, is a very good move to modify this in a sensible way in accordance with at least modern psychiatric knowledge, and presumably modern legal knowledge.

The question of diminished responsibility presents no theoretical difficulty to a practicing psychiatrist at all. We have in our work with individual patients for a great many years, realized that many people have this difficulty at certain times of controlling their activity because of emotionally determined motivation, which is sometimes quite often subconsciously determined, but, of course, like most things it is not so much a matter of practice as a matter of degree. Many things that I do, and most of you do, from time to time, I think if we had to argue them in Court we would claim some diminished responsibility, that is to say, that we were not entirely masters of our fate, although our heads may be somewhat bloody from time to time.

Coming to Lady Wootton's first point, semantically she was on pretty good ground. I suppose anybody who was not a practising psychiatrist would tend to think in the way that she does and would not have the ability to express it so forthrightly. The fact is, I have no doubt whatever that any concourse of psychiatrists presented with certain case histories would have no difficulty, no reasonable difficulty, in deciding that some people's behaviour was outside of their control to a greater or lesser degree, sometimes to a very great degree. I admit there could be malingering, there could be collusion, and it might be difficult, but that does not alter the fact that psychiatrically I have no doubt whatever that there are some people who, if you like to use the word, act under a more or less irresistible impulse. However, once one admits this possibility, a great many practical difficulties ensue, particularly in the administration of the law. In psychiatric practice we do not have to bother about these features. We are dealing with individual patients and trying to help them to the best of our ability. Sometimes we can, and sometimes we cannot. My views on this point are so moderate that if I expressed them further, I expect most people would think they were not in line with modern psychiatric thought. However, I propose to read a very short paragraph from a document produced by a

sub-committee of an association in the United States called the Group for the Advancement of Psychiatry, a small group of some 150, many of whom I have met, and I think it is fair to say that they represent and they are, but not exclusively, some of the leading psychiatrists in the United States, and they have a number of sub-committees, one dealing with Law and Psychiatry. They published a Report on Criminal Responsibility and Psychiatric Expert Testimony in 1954, so it may be a little out of date, although I do not think its conclusions are. I will only refer to one relevant chapter in which they discuss the limitations of the psychiatrist as a medical witness. In Paragraph 3, they say, "He cannot within the framework of present court requirements determine degrees of legal responsibility calibrated to medical degrees of psychopathology. The severity of ego impairment"—which means personality impairment—"manifest in symptoms or in acts appears to be a measure of lessened responsibility, but psychopathological features do not lend themselves to the making of a reliable and teachable guiding scale. The majority of offenders do not exhibit frank symptoms and are more often counted among border line problems of diagnosis and analysis. Any attempt to scale responsibility in terms of symptoms will inevitably lead to endless forensic contentions over degree, fractions and percentages of responsibility." Then in a footnote, they add, "Mental illness is a behavioural expression of ego impairment. With this in mind, the psychiatrist attempts to take a measure of the ego, translated into some kind of intuitive scale and curve, which enables him to refer to the severity of the illness and to anticipate the effect of treatment. By corollary, the ego impairment would appear to be a direct measure of responsibility. Ego impairment implies lessened control in maintaining behavioural norms of social interaction. In law, such would be the basis of exculpation. The offender with impaired ego is said to have diminished responsibility. On this level of abstraction, the lawyer and psychiatrist can agree. The psychiatrist can determine that ego impairment exists, and the lawyer can transpose the fact into his terms of intent and responsibility. Beyond this neither can move, since in this area of observation no meaningful dimensions and scale have been worked out; thus the question of *how much* is left unanswered. The matter is less troublesome by 'common sense' criteria in the case of the manifestly normal or the manifestly psychotic, but such are exceptional—the routine case is that of the intermediate

borderline which cannot be fitted into either normal or psychotic. Certainly, in keeping with our concepts of mental life and behaviour, there can be little question of differences of responsibility for given acts, but we have not as yet devised a formula for measuring them. Consequently, in workaday practice, we perforce cling to the expedient of 'common sense' in estimating diminished responsibility in all cases. Here the psychiatrist may do somewhat better than the man on the street, but not much".

Now, with that opinion, sir, I am in entire agreement and if other people would like to speak on the subject, I think that is all I would say, except to thank you for what, to me, has been a most enlightening and refreshing experience, and I hope that the continent of Australia is ripe for this extension in legal practice.

SIR JOHN BARRY: "Criminal responsibility" is a phrase which has a certain magniloquence about it, but this magniloquence is not equalled by its intelligibility. Having said, "Criminal responsibility", one has a frightful feeling that one has said something with meaning, but frequently the context in which it is uttered is a context which really lacks meaning.

For legal purposes, Sir James Stephen said what was undoubtedly true, that criminal responsibility means liability, punishment under the existing law, and he offered a very acute criticism of the psychiatrists—that their discussions on this matter were rarely relevant because they were discussing not what the law is, but what it ought to be. Now, in the context of social progress, the second form of discussion is permissible, but where you have a person charged before the Court, then the only question which the Court is concerned with is the application of the existing law.

I share entirely Dr. Cross's approach to the subject of diminished responsibility. It is, I think, a very unhappy compromise, a compromise which is rendered necessary by the retention of captal punishment, because, as he pointed out to you at the beginning of his discussion, while the M'Naghten Rules operate throughout the whole ambit of criminal law, diminished responsibility operates only in respect of murder, and accordingly, in New Zealand, the provision as to diminished responsibility, which is contained in the Criminal Code, which was under debate in 1960-61, was argued, and there you have the very unusual situation of the Minister who introduced the Bill

intimating to the House, as he introduced the Bill, that at the first opportunity, he would vote for the abolition of that provision, and he did vote on a free debate over the provision as to capital punishment and the provision as to capital punishment was deleted from the Criminal Code, but the New Zealand provisions, which I brought with me and on which I had no intention of speaking this evening, have a great deal, as I read them, to recommend them over the English provisions. To me, the English provisions are substantially unintelligible, because I do not think that you can give any meaning to the expression "mental responsibility". There just simply is not such a thing as "mental responsibility", because responsibility is not a characteristic of the individual, it is a demand by society that the individual shall possess certain characteristics, shall be amenable to certain punishment, and to speak of it is just to use a "blah-blah" word which sounds all right and for the purpose of grammar it may pass, but it just simply has no meaning at all, and it was that, I think, which disposed the English Courts to take their utterly inexcusable attitude—inexcusable legally, or from the point of view of "responsibility", but utterly unintelligible from the point of view of human behaviour.

A Judge who has not had the misfortune of endeavouring to grapple with the terminology of the psychiatric lecturer, who seeks to make sense out of this provision, would be under a considerable disability, and then, if he had the inestimable advantage of being familiar with psychiatric lecturing, he would be under, perhaps, an even greater disability! I have a section here which contains a great deal of "gobbledy-gook", and the lawyers reacted as all sensible lawyers do to gobbledy-gook, and said: "If Parliament passes such an utterly unintelligible piece of verbiage as this, we will give it to the jury and they can take a copy of the section to the jury room and make what they like of it."

In New Zealand, they did a bit better because their section reads "(1) Culpable homicide that would otherwise be murder may be reduced to manslaughter if the jury are satisfied that at the time of the offence the person charged, though not insane, was suffering from a defect, disorder or infirmity of mind to such an extent that he should not be held fully responsible." You will notice the last words which are a euphemism, "That he should not be held fully responsible." That means, if you translate it into intelligible language, that he should not be hanged,

but for some reason or other they will not say these things in the Statute, and indeed the English statute means the same thing. What it says is, if you find in the unintelligible description a state of affairs answering to it, then you shall not return a verdict which will result in the execution of the prisoner. The New Zealand provision went on to say, "(2) On a charge of murder it shall be for the defence to prove that by virtue of this section the person charged is not liable to be convicted of murder. (3) If the offence is reduced from murder to manslaughter under this section the jury shall state, at the time of giving their verdict, that the verdict is one of manslaughter on the ground of diminished responsibility. (4) The fact that by virtue of this section one party to a homicide has not been or is not liable to be convicted of murder shall not affect the question whether the homicide amounted to murder in the case of any other party to it." Then it is provided that "Where on a charge of murder the jury return a verdict of manslaughter on the ground of diminished responsibility, under Section 180 of this Act, the sentence to be passed on the person convicted shall be a sentence to detention during Her Majesty's pleasure."

Well, if you have got to have it—and as I pointed out, you have only got to have it if you have capital punishment—the New Zealand provision seems to me much more intelligible than the English provision. I do not think it is a satisfactory solution. As Dr. Cross has indicated, the difficulty is connected with your punitive measures, because the question of punishment is largely a moral question, and the question of the propriety of punishment in a given case very often raises moral difficulties.

May I say to my old friend, Dr. Springthorpe, that I disagree entirely with your estimation of Baroness Wootton of Abinger. I think she is an extremely able woman who has brought a great deal of common sense into a field where it was badly needed. Her intelligence equals her forthrightness, and I think it is a matter of very great satisfaction that the legal and psychiatric fields have been subjected to the insight that is commonly thought to be a characteristic of the female and a certain masculine approach, which I think results in a very healthy and iconoclastic attitude to matters both our professions seem to have no very clear thoughts about.

I should like to join with Dr. Springthorpe in thanking Dr. Cross. He kept the attention of his audience riveted. His mastery of his material was such as to command universal admiration,

and I for one am entirely grateful to him and express my gratitude for the opportunity of being here this evening.

MR. R. K. TODD: Mr. Chairman, if I may have permission to phrase my contribution as a question, which I think is raised by Mr. Justice Barry, and I think Dr. Cross referred to it, is it the necessary inference that any doctrine or rule of diminished responsibility is only to be brought in in the case of murder.

I may be wrong, but my understanding was that diminished responsibility made its first appearance in Scotland in the eighteenth century, was confirmed there in the later part of the last century, and, that, in that Court, it has been a general defence to criminal charges, and is not related only to murder.

If this is so, I would be very interested to hear Dr. Cross's comments on it, and, in particular, as to whether this is merely one more unsuccessful border raid made by those south of the Tweed.

DR. CROSS: So far as the Scots thing is concerned, diminished responsibility started with some decisions of Lord Deas in the middle of the nineteenth century, but they were all on the question whether murder could be reduced to manslaughter or culpable homicide, which really means the same. There was one decision of another Scots Judge, in the 1880's, where he does suggest that it might be applicable to other cases. It is really one where he used the statements about diminished responsibility as a reason for letting a burglar or house-breaker or something of that sort—the English would call it a burglar—off fairly lightly. The whole matter of these Scots things is very interesting. They do not go in for an analysis of the accused's mind or impaired responsibility, they do go in much more without refinement, and I agree with Mr. Justice Barry on this, the New Zealand provisions—well, you have heard the whole thing—"Ought he really to be punished?"

DR. BARTHOLOMEW: I would like to say straight away that I would be most unhappy if we did bring in diminished responsibility here. I have had the pleasure, or otherwise, of working under both systems, in England and over here. I think the M'Naghten Rules are extremely difficult to use at all. When one is asked to interpret medical findings in terms of responsibility, one gets into an awful mess. Very often, it has always been my impression, that one does it emotionally, as Baroness Wootton would agree. When I was writing reports in England, I was, as

regards diminished responsibility, more emotional. You could not get into the M'Naghten Rules, and this was a good way out. I was only over there for the first two years, which Dr. Cross says was the time the Judges were up in arms against it. It seems to me that diminished responsibility, particularly in capital murder cases, would be a very good defence to take if you could make it ultimately succeed. I am wondering how many people who are really insane would take the defence of diminished responsibility, and on how many occasions in the last few years have the prosecution themselves tried to prove insanity to get the man, in fact, into Broadmoor or such places like that, rather than have him imprisoned for a limited time. The same sort of problem occurs over here in connection with the question of automatism. I would like to know how many times the Crown have tried to prove insanity.

MR O'SULLIVAN: I understood that Dr. Cross in making his introductory remarks said he was going to refer to Brown's case, and give us his view on the decision, both here and in London, and I was wondering whether he does intend to deal with that case at all.

DR. CROSS: Of course, as might have been expected, I agree entirely with Mr. Justice Barry's observations that all this nonsense is due to capital punishment. I think if we could escape capital punishment, we would escape diminished responsibility, and I think escape a great deal else too. Our only problem, if we did escape capital punishment, would be on the *pros* and *cons* of having a fixed punishment for murder, a lesser punishment for other forms of homicide, and what do you do with the people I am going to definitely call the "nuts". But I do agree, of course, that the whole thing would be very, very much easier without capital punishment.

Then Dr. Bartholomew raised questions which I did not go into because English law unfortunately does not afford an answer to them. That is, firstly, about the number of times on which, as against the plea of diminished responsibility, the Crown have said, "No—Broadmoor". In other words, of course, there is this point, that if you are found guilty but insane—to use the entirely anomalous verdict which we have to have in England because of Queen Victoria's objection to logic—then if you have diminished responsibility, the one thing you do not get is a sentence to Broadmoor. If you are found guilty but insane, you do get a

sentence to Broadmoor. There used to be a doctrine when I learned my criminal law that it is only the defence who can plead insanity, and only the defence who could ask for a verdict of guilty but insane, and that the prosecution could not ask for that, and I will not say that is a good, salubrious or honest doctrine. It has the merit of being a simple one. On that, as I understand the English case law, the matter is one of complete and utter confusion. As the Court of Criminal Appeal put it in a case in 1946, "the matter is open". You take a thing like that case of the House of Lords, the House of Lords' contribution to the statement of the difficulties of English law, on that subject they said that the old rule under which the prosecution could not press for a verdict of "Guilty but insane" is no longer law, but, to my knowledge, there have been two reported cases, but how many unreported ones I do not know, in which, in reply to diminished responsibility, the Court has taken the very logical point of view that the man's state of mind is in doubt and the Crown can press for "Guilty but insane". There has also been a reported case the other way around, and the prosecution has said, "Now, what about a little bit of diminished responsibility instead?"

I agree, of course, the same problem does arise over automatism, and I hope I will not be misunderstood, but all I can suggest to Dr. Bartholomew is to read Bradley's case and I hope he finds it as instructive as I do myself.

With regard to Mr. O'Sullivan, I must alopogise for not having referred to Brown's case. I did mean to mention two Australian cases (which resulted in death sentences, although I know they did not result in executions) which I should have thought would clearly be covered by our diminished responsibility, although, again, I respectfully agree with Mr. Justice Barry that the whole thing is meaningless. One is the Brown case, where the Privy Council did say, in terms, that it was a case for diminished responsibility, had they had such a thing in the advanced State of South Australia. There you have Brown and he, for no apparent reason, gets a job on a station, and then he tragically shoots his employer. He is interviewed by a policeman who had obviously learned his Baron Bramwell, "Would you have done it if I had been at your elbow?"

What Mr. O'Sullivan is really asking me, and I might say it is a damnably unfair thing to ask me at this time of night, is what I thought of the High Court of Australia's approach to

the M'Naghten Rules, which is Mr. Justice Stephen's approach, that is, "can you say that a man really knows that such and such an act is wrong when he is under the stress of the most extraordinary emotions?" On that I agree with Stephen and with the High Court of Australia.

CHAIRMAN (MR. G. H. LUSH, Q.C.): We have had an unusually silent meeting of this Society tonight, a circumstance that may be due to the fact that there is a larger than usual proportion of lawyers present, and in this Society, it is the lawyer who tends to be silent when he knows there is someone about who knows more of the subject than he does. It is not only in this Society, but the same phenomenon can be observed in Courts in which Judges say little.

On your behalf I add whatever it may be necessary to add to what has already been said in thanks to Dr. Cross for his address tonight.