Insanity as a Defence to Criminal Acts

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INSANITY AS A DEFENSE TO CRIMINAL ACTS.

A THESIS for the Degree of Bachelor of Laws.

by

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Law School,

Cornell University,

1891.
INSANITY AS A DEFENSE TO CRIMINAL ACTS.

Statutes were framed and principles of law were laid down regulating the legal relations of the insane long before physicians had acquired any accurate notions respecting their malady; and, as might be expected, error and injustice have been committed to an incalculable extent under the revered name of law. The actual state of our knowledge of insanity as well as of other diseases, so far from being what it once was, is now the accumulated result of observation aided and guided more or less by a deductive philosophy. The world owes a debt of gratitude to the celebrated Pinael, who with an ardor of philanthropy that no discouragement could quench, and a courage that no apprehension of danger could daunt, succeeded, at last, in removing the chains of the maniac and establishing his claims to all the liberties and comforts his condition left him capable of enjoying.

In all civilized communities, ancient or modern, some forms of insanity have been regarded as exempting from the punishment of crime, and under some circumstanc-
es at least, as vitiating the civil acts of those who were affected by it. The only difficulty or diversity of opinion consists in ascertaining who are really insane in the meaning of the law, which has been content with merely laying down some general principles and leaving their application to the discretion of judicial authorities. The frequency with which insanity is pleaded in defense of crime, the magnitude of the consequences to the parties concerned, and the perplexities in which the discussion it occasions involves the minds of the judges and jurors, are ample reasons why the law relative to insanity should be simple and easily understood, a result that can only be obtained by direct legislative enactments. It is time for a legislature to determine what, amid the mass of conflicting opinions on this subject, shall be the law of the land; and thus no longer to permit the lives and liberties of the people to be suspended on the dicta of men whose knowledge of insanity is exceedingly imperfect, and whose decisions have not even the merit of uniformity and consistency.

No state or legislative power in the country has given anywhere near a lucid and instructive statute on
the subject. It may be well, therefore, to see what has been the legislation of various enlightened nations in reference to this subject. The Bavarian criminal code contains this passage: "Minors and those laboring under general mania or hallucination, cannot be punished as criminals, nor, generally speaking, can others be punished who have committed a crime while deprived of the use of their mind." In the Saxon code we find the following: "Responsibility is annulled in persons who are deprived of the use of reason by mental disease."

In the study of the English Common Law decisions, we have too often seen the deplorable failure of such general terms to protect the miserable subjects of disease. In some of the later Codes an attempt has been made to avoid the objection to general terms by mentioning various mental diseases as illustrations of the meaning intended to be conveyed. In the proposed code of the Grand Duchy of Hesse, so says Mittermaier, we find the following: "By reason of their impaired responsibility, punishment cannot be inflicted upon those who commit penal acts in a state of sleep, of somnambulism, of general mania, general and partial hallucination, of imbecility or any other mental disorder,
which either takes away all consciousness respecting the act generally and its relation to the penal law, or in conjunction with some peculiar bodily condition, irresistibly impells him, completely unconscious, to violent acts."

In the code of the Grand Duchy of Baden, it is enacted as follows: "Responsibility is annulled in that condition in which either consciousness of the criminality of the offense or the free will of the offender is taken away. To the condition which annuls responsibility on the strength of the foregoing act belong chiefly: imbecility, hallucination, general mania, distraction and complete confusion of the senses or understanding."

Because of the difficulties incumbent upon the use of such terms, and to bring the wretched subjects of mental disorder under the protection of the law, without discrimination, the legislator has in some instances made the fact of the presence of disease of the mind sufficient reason to annul criminal responsibility. In Livingston's code it is provided, that no act done by a person in the state of insanity can be punished as an offense.

The Penal Code of Minnesota, Sections 19 & 21, pro-
vides that mental unsoundness shall be no excuse for crime, unless it is shown that the act was done while the defendant was laboring under such defect of reason as either not to know the nature and quality of the act, or that it was wrong, or that a morbid propensity to commit prohibited acts shall be no excuse for their commission unless defendant is shown to be incapable of knowing the wrongfulness of such acts, or an uncontrol- lable and insane impulse to commit crime, in one who is conscious of the nature and quality of the act.

The Revised Statutes of Arkansas provides that a lunatic, or insane person, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged.

The criminal code of Germany contains the following provision, which is said to have been the formulated result of very able discussion both by lawyers and physicians of that country. "There is no criminal liability when the actor at the time of the offense is in a state of unconsciousness, or morbid disturbance of the mind, through which the free determination of his will does not act."

The French code provides that there can be no
crime or offense if the accused was in a state of madness at the time of the act. For some time the French tribunals were inclined and in fact did interpret this law in such a manner as to follow the law of England, but now this construction has been abandoned and the modern view of the medical profession is now adopted and followed in that country.

It seems, after a careful examination of the statutes upon the subject and a review of the decisions on insanity, that a statute like the following would better promote the purposes of justice: A person cannot be punished for a crime committed while he is in a state of idiocy, imbecility, lunacy or insanity or in any other state of mind in which the person is involuntarily deprived of the consciousness of the true nature of his acts, or is in such a condition of mind caused by disease of the mind as not to be able to control his acts towards others.

It is a general rule, but not without exception, that insanity once being established, responsibility is taken away; and all nice distinctions concerning the degree, and the effect of this or that kind of mental derangement, and the exact measure of reason that has been left or taken away, are effectually precluded. An
insane person, though it may be argued, may actually be guilty of a criminal act, the crime not being in the range of his insanity, while by the letter of such a law he must be acquitted. To remedy this, add to the proposed statute the words: unless it can be proved that the act was not committed through the influence of disease.

It can be easily seen that when our statute makers came to frame statutes upon the subject of insanity, they did nothing more, with few exceptions, than to declare the common law itself. The common law had long held that a man who was insane could not be held responsible for his acts. As long ago as in the reign of Henry the Eighth, the year book published in the twenty-first year of his reign tells us that a man was arraigned for the murder of a child, and that upon the trial it was found that he was insane, and upon these facts it was determined that he should go free quod nota bone etc., but it goes no further than to say that he should not be found guilty; it does not give any information of the test by which the question of his insanity is to be determined, nor of the evidence required necessary to establish it.
The formulation of the common law into statutes did nothing more than to bring the subject before the notice of the people and to place it in a position that it might not be gainsaid.

This much for statutory law on the subject of insanity. No statute to my knowledge has defined the term insanity. They have done little more than to intimate some of the obvious divisions. In the Roman Law the insane, or dementes, are divided into two classes: those whose understanding is weak or dull, menti copti, and those who are restless and furious, furiosi. The French and Prussian codes make use of the terms demence, fureur and imbecilite, without attempting to define them.

The English Common Law originally recognized two kinds of insanity: idiocy and lunacy, the subjects of which were designated by the terms non compos mentes, which was used in a generic sense, and meant to embrace all who, from defect of the understanding, required the protection of the law. Occasionally a jurist will attempt to define and point out the persons afflicted with various kinds and degrees of insanity. Lord Coke says, "There are four kinds of men who may be said to be non compos mentes: - First, an idiot, who from his
nativity, by a perpetual infirmity is non compos; Second, anyone that by sickness, grief or accident wholly loseth his memory and understanding; Third, a lunatic, who has sometimes understanding and sometimes not, ale-
guando gaudet lucides intervallas, and therefore is called non compos mentis so long as he has not under-
standing; Fourth, he that by his own vicious act for a time depriveth himself of his memory and understand-
ing, as he that is drunken.”

Blackstone’s understanding of the term insane person is one whose mind is affected by general imbecil-
ity, or is subject to one or more specific delusions; and of the term lunatic, one who hath had understanding, but by disease, grief or other accident, hath lost the use of his memory and reason. An idiot is one who had no understanding from his nativity.

The first attempt to point out precisely those conditions of insanity in which the civil and criminal responsibilities are unequally affected was made by Lord Hale, 1 H. P. C. page 290. “There is a partial insanity,” says he, “and a total insanity. The former is either in respect to things quod hoc illud insanare. Some persons that have a competent use of reason in respect to some particular discourses, subjects or appli-
cations, or else it is partial in respect to degrees; and this is the condition of very many, especially melancholy persons, who for the most part display their defect in excessive fears and griefs and yet are not wholly destitute of the use of reason; and the partial insanity seems not to excuse them in the committing of any offense in matters capital, for doubtless most persons that are felons of themselves, and others, are under a degree of partial insanity when they commit those offenses. It is very difficult to define the visible line that divides perfect and partial insanity. But it must rest upon circumstances to be weighed and considered both by judge and jury, lest on the one hand there be a kind of inhumanity toward the defects of human nature, or on the other hand too great an indulgence given to great crimes." So strong was the celebrated jurist possessed that it is the strength and capacity of the mind that are affected by insanity, that he actually founded upon it a test for criminal responsibility. "Such a person," says he, "as laboring under melancholy distemper, hath yet ordinarily as great understanding as a child of fourteen years hath, is such a person as may be guilty of felony or treason."

By this rule Lord Hale makes the only difference
between total and partial insanity precisely that which is made by differences of age, as if there could not be two things more alike than the mind of a person laboring under melancholy distemper and that of a child fourteen years old.

The doctrine thus dogmatically laid down by Lord Hale has exerted no inconsiderable influence on the judicial opinions of his successors; and his high authority has often been invoked against the plea of insanity whenever it has been urged by the voice of philanthropy and true science. In consequence of the common indulgence in forcing an unwarrantable construction whenever a point is to be gained, his principles have been made to mean far more than ever by him designed. The fact teaches us the importance of clear and well defined terms in the expression of scientific truths, as well as of enlarged information relative to the subject to which they belong. In the time of this eminent jurist, insanity was a much less prevalent disease than it is now, and the popular opinions concerning it were derived from observations of the wretched inmates of the madhouse, whom chains and stripes, cold and filth, had reduced to the stupidity of an idiot, or exasperated to the fury of a demon.

Until quite recently the course of practice in the English criminal courts has been in strict conform-
ity to the principles laid down by Lord Hale: that partial insanity is no excuse for the commission of an illegal act. In the trial of Arnold, 16 How., St. Tr. page 763, decided in 1783, for shooting Onslow, Mr. Justice Tracy observed, "It is not every kind of frantic humor, or something unaccountable in a man's actions that points him out to be such a mad-man, as exempting him from punishment; it must be a man that is totally deprived of understanding and memory and does not know what he is doing, no more than an infant, a brute or a wild beast; such a person is never the object of punishment."

This is but the echo of Lord Hale's doctrine and the circumstances of the case show how faithfully these principles were applied, but with more vigor, perhaps, than the Lord would apply them had he been the presiding judge. In 1812 in the trial of Bellingham, Attorney Gibbs said, "A man may be deranged in mind - his intellect may be insufficient for enabling him to conduct the common affairs of life, such as disposing of his property, as judging of the claims which his respective relations have upon him, and if he be so, the administration of the county will take his affairs in hand and
appoint trustees: but at the same time such a man is not discharged for his criminal acts."

Lord Erskine had previously given the same doctrine the sanction of his authority in his celebrated speech in defense of Hartfield, 27 How., St. Tr., 1182, "I am bound," he says, "to admit there is a wide distinction between civil and criminal cases. If in the former a man appears upon the evidence to be non compos mentis, the law avoids his acts though it cannot be traced or connected with the morbid imagination which constitutes his disease, which may be extensively partial in the influence upon his conduct; but to deliver a man from responsibility from crimes, above all for crimes of great atrocity and wickedness, I am by no means prepared to apply this rule however well established, when property is not concerned."

That a person whom the law prevents from managing his own property by reason of his mental impairment should in respect to criminal acts be considered as possessing all the requirements of responsibility, and placed on the same footing as men of the strongest minds, is a proposition so strange and startling that few, uninfluenced by professional bias, can yield to it unhesitating assent or look upon it in any other...
light than as belonging to that class of doctrines which may be the perfection of reason to the initiated, but which appear to be the height of absurdity to everyone else.

The modern acceptation of the term *non compos mentes* is its use in a generic sense, including both idiocy and lunacy. They both had in the early English and American cases a more restricted meaning than they have at present, and were held to impart a total deprivation of sense, and not to include mere imbecility and weakness of mind. In modern cases they are held not only to include idiocy and lunacy as strictly defined by common law, but all cases of imbecility where the subject is incapable of conducting the ordinary affairs of life and liable to become the victim of his own weakness.

An illustration of the modern acceptance of the term insanity is brought out in the case of *Loefles vs. State*, 10 Ohio St., 598. Justice Swan said, "Insanity indeed exists in so many shapes and forms, has so many varied insignia and manifestations, that it is almost impossible for science to comprehend it or give it intelligible definitions. The learned and the unlearned differ about it; what is insanity to one is not to an-"
other. The classes, species and modifications are not well understood by any of us, learned or otherwise. It seems indeed as indefinite in extent as the mind itself."

But return to the subject, the American and English Encyclopedia says, "that idiocy consists in a deficiency of the mental faculties, either congenital or the result of arrested development during infancy; it is a sterility of the mind and not a perversion of the understanding. An idiot is a person without understanding and one who is legally presumed never to have had any, as where a person cannot count twenty or tell his name or age. An idiot is considered at law incapable of committing a crime: and where idiocy exists in reference to the particular act, the court will direct an acquittal." A person born deaf and dumb but not blind, is not considered an idiot, yet the want of hearing may exist in connection with responsibility for crime, and if such person is shown to be able to comprehend the nature of his acts he may be convicted, but such persons as are born deaf, dumb and blind are presumed to be idiots and not capable of committing crime; yet the presumption may be rebutted. But in the case of deaf mutes malice cannot be implied." So much for idiots etc.
Upon an examination of the early English cases on insanity, after the theory that a person had to be so insane, in order to be exempted from his criminal acts, that he did not have any more reason than a wild beast, an infant or an idiot, had partly exploded, it seems that the test for determining who was really insane within the meaning of the law, was based upon the theory that a person in order to be protected for his criminal acts, must be so affected by disease of the mind as not to know that the particular act he was committing was wrong. We first find the right and wrong test set forth and followed in the case of Edward Arnold, 18 How. St. Tr. 765, in which it was said: "If the defendant was under the visitation of God, and could not know what he did, though he committed the greatest offense, yet he could not be guilty of any offense against the law, but if he did know what he did and that it was wrong, he is not within the exemption of the law." The cases that followed this recognized it with few exceptions; the case of John Hartfield, 27 How. St. Tr. 1282, is a notable exception. In this case the defendant was arraigned for shooting at the king and was acquitted upon the grounds that he was under an insane delusion, that God had directed him to
shoot the king.

The question which presents itself upon an examination of the early cases is why should the courts at that early adopt the knowledge of right and wrong as the test for determining who are really responsible for their criminal acts. This legal test, as adopted by the courts, was based upon the prevailing medical theory of that age. The physicians had never heard of insanity in the form of an insane delusion or an irremovable impulse to do a certain act by which the person affected cannot control his will power, although he may know the act he is doing is wrong, but the courts having no other guide for a basis, accepted the medical theory of that early day, and with few exceptions have continued to follow it until the present day, and have many times refused to adopt the more modern theories of the physicians and some courts as to the true test of one's responsibility for criminal acts when affected with insanity, which true science and advanced civilization calls for.

The question of whether the courts of England were to recognize any other form of insanity than that which was accepted by them and founded upon theories of the physicians, advanced a hundred years before, came up in
the McNaughten case, 10 C. & F. 200. Upon the trial eight experts gave their opinions going to show that the defendant had committed the act in question under the influence of a morbid delusion, which deprived him of the power of self control. Their testimony in substance was that the knowledge of right and wrong was not the test to determine his responsibility.

The medical testimony was so strong that the court stopped the trial, substantially directing the jury to acquit defendant, but Chief Justice Tindal instructed the jury that the knowledge was the test, following the old rule. This decision was referred to the House of Lords, by which it was subsequently sustained. The principles established by this decision have remained the law of England until the present day and have been adopted in many of the states.

The propositions are the following in substance:

1st:— The jury ought to be told in every case that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crime, until the contrary be proven to their satisfaction.

2nd:— To establish a defense on the ground of insanity, it must be clearly proven that at the time
of committing the offense the party accused was labor-
ing under such a defect of reason caused by disease of
the mind as not to know the nature and quality of the
act he was doing or that it was wrong.

3rd:— If the accused labor under a partial delu-
sion only, and is not in other respects insane, he
must be considered in the same situation as to respons-
ibility as if the facts in respect to which the delusion
exists were real.

The courts of New York State adopted the rule as
laid down by the McNaughten case in the trial of Free-
man vs. People, 4 Denio 9, in which it is said: “That
if the prisoner knew the act was wrong at the time he
committed it, he is responsible.” The rule as laid
down by this case has been followed and is the law of
this state to-day.

In the case of Flanagan vs. State, 52 N. Y. page 467, this rule was assailed, and an attempt made to
have the court recognize the fact that the knowledge
test was not always the true one. The court said: “The
law recognizes no form of insanity, it is declared, in
which the capacity of distinguishing right from wrong,
without the power of choosing between them.” “The vague-
ness and uncertainty of this inquiry are deemed to render the doctrine dangerous and inexpedient." When the Penal Code of New York State was enacted in 1882, the definition of insanity and the test of criminal responsibility when insanity is pleaded, was not changed and is in harmony with the definition as established by the McNaughten case.

The question of what was the true test of criminal liability when insanity was pleaded came up in the case of Loefles vs. State, 10 Ohio St. The court said, "Insanity, in its general legal sense, is the inability or incapacity to distinguish right from wrong as applied to particular cases of crimes; when the ability to distinguish right from wrong is overcome or destroyed or the knowledge of such distinction is buried in oblivion, such a fact would make a perpetrator irresponsible."

In the United States the test of right and wrong has generally been followed. In the case of U. S. vs. McGlue, 1 Curtis, U. S. Ct., Chief Justice Curtis instructed the jury "that the question for them to decide was whether the prisoner understood the nature of the act, and knew he was doing wrong, and if he did, he
would deserve punishment.

In the state of Kansas in the case of State vs. Moury, 15 Pac. 483, the court directed the jury as follows: "If the defendant was laboring under such a defect of reason from disease of the mind, as not to know the nature or quality of the act he was doing, then the law does not hold him responsible for his acts; on the other hand, if he was capable of understanding what he was doing and had the power to know his act was wrong, the law will hold him criminally responsible for it. If this power of discrimination exists, he will not be exempted from punishment because he is a person of weak intellect or one whose mind or moral perceptions are blunted, or because his mind may be depressed or distracted from brooding over distractions or disappointment, or because he may be wrought up to the most intense mental excitement from sentiments of jealousy, anger or revenge. The law recognizes no form of insanity, although the mental faculties may be destroyed or deranged, so long as the person committing the crime knew what he was doing and that the act was wrong."

It will be easily seen upon an examination of the cases which follow the right and wrong rule as the true
one, that they are all based upon principles as established in the McNaughten case, following old rules and precedents, and also on the theory that to recognize any other test would introduce a rule dangerous in its effect, which would defeat the protection which the law affords to the people against the acts of criminals, and would allow many to escape punishment who in fact deserved it, but all courts as well as medical authorities have not clung to the right and wrong test as the true one, and they have adopted a more perfect and justice seeking rule. It is almost needless to add, that in the courts which only recognize the right and wrong test, one affected by an insane delusion or irresistible impulse caused by disease of the mind, is in the same situation in regard to criminal responsibility as if he was one who had the strongest mind unaffected by disease.

In the state of Indiana in the case of Flack vs. State, 23 N. E. 273, it was held "that a person may have sufficient mental capacity to know right from wrong, and to be able to comprehend the nature and consequences of his acts, and not be criminally responsible for his acts; for if the will power is so impaired
that he cannot resist an irresistible impulse to commit crime, he is not of sound mind."

It is also held in the same case, if the lack of will power is the result of disease of the mind there is no criminal responsibility, but if the will power is simply overcome by ungoverned passions, there is criminal responsibility, citing Goodwin vs. State, 96 Ind. and Cenway vs. State, 118 Ind. This is undoubtedly the law of Indiana, and it shows how the courts of that state refused to follow the early rule as laid down by the courts of that state, which at first recognized the right and wrong rule as the true guide.

The capacity to distinguish between right and wrong has been discarded as the true test in all cases in the state of Iowa, and it has been held that if a person committed a homicide knowing it was wrong, but did so under the influence of an uncontrollable and irresistible impulse, arising not from natural passion but from an insane condition of the mind, he is not criminally responsible. In the case of State vs. Telter, 23 Iowa 68, Judge Dillion said, "If by the observation and concurrent testimony of medical men who make the study of insanity a specialty, it should be
definitely established to be true that there is an unsound condition of the mind, that is a diseased condition of the mind in which, though a person knows that a given act is wrong, he is yet by an insane impulse, that is an impulse proceeding from disease of the mind, irresistibly driven to commit it, the law must modify its ancient doctrine and recognize the truth and give to this condition, when it is satisfactorily shown to exist, its exculpation.

A very late and instructive case on the subject of insanity is the case of *State vs. Reidell*, 14 *Alt. Rep.* 532, a case decided in Delaware, in which Judge Comegys said, "It seems at first view very unreasonable to suppose that one who is capable of knowing right from wrong should be entirely able to decide between them if he choose to do so, but it is a well known fact that such capacity of knowledge may be perfect enough in an individual and yet he may be unable, from destruction or impairment of that function of the brain which is connected with the will, to avoid doing what he knows to be wrong."

It was formerly held that the old rule was the test in Pennsylvania, but it was overruled in the case of *Coyle vs. Com.*, 100 *Pa.*, in which it is said, "that
there may be an unseen ligament pressing on the mind drawing it to consequences which it sees but cannot avoid, and placing it under the coercion which its result is seen, but the mind is incapable of resistance."

The question of what was to be accepted as the true test of insanity came up in the case of Parsons vs. State, 2 So. Rep. Ala. The Judge laid down the following rules: "The capacity to distinguish between right and wrong, whether abstractedly or as applied to the particular act, as a legal test of insanity and responsibility for crime is repudiated by the modern legal and medical authorities, who lay down the following rules and which the court now adopts: (1) Where there is no such capacity to distinguish between right and wrong as applied to the particular act, there is no legal responsibility. (2) Where there is such capacity, a defendant is nevertheless not legally responsible if by reason of the duress of mental disease he has so far lost the power to choose between them as not to avoid doing the act in question, so his free agency was at the time destroyed, and at the time the alleged crime was so connected with such mental disease in relation of cause and effect as to have been the product
or offspring of it solely." "The same rule applies to delusional insanity and necessarily conflicts with the old rule laid down by the Judges in the McNaughten case, and the existence or non-existence of the disease of insanity, such as may fall within the above rules, is a question for the jury, enlightened by the testimony of experts."

A very notable instance showing how the physicians regard the old rule as a test for determining criminal responsibility when insanity is pleaded as a defense, is found in the following resolution passed at the British Association of Medical Officers of Asylums and Hospitals for the Insane, held July 14, 1887, where there was 64 medical officers: "Resolved, that so much of the legal test of mental condition of an alleged criminal lunatic as renders him a responsible agent because he knows the difference between right and wrong, is inconsistent with the fact well known to every member of this meeting, the power to distinguish between right and wrong exists in those who are often associated with dangerous and uncontrollable delusions."

A somewhat peculiar doctrine exists in New Hampshire: all tests of insanity as matters of law are rejected, and neither delusions, hallucinations, nor
knowledge of right and wrong affords any inflexible test of criminal responsibility, but all symptoms of disease and its effects upon the faculties are submitted to the jury, and the testimony of non-expert witness is excluded.

In the case of State vs. Pike, 49 N.E. 399, Judge Doe said, "It was for a long time supposed that men however insane, if they knew the act was wrong could refrain from doing it, but whether that supposition was correct or not is a question for the jury. The knowledge test in all its forms and the delusion test are medical theories introduced in the immature stages of science in the dim light of early times, and subsequently upon more extensive observations and more critical examination, repudiated by the medical profession."

"When the authorities of the common law began to deal with insanity, they adopted the prevailing medical theories, and the distinction between the duty of the court to decide questions of fact did not exist, and was not appreciated and observed then as it now is in this state."
Moral Insanity.

Under the decisions of the states, moral insanity, as distinguished from mental derangement, is no excuse for crime, nor exemption from punishment, therefore under the decisions of California, People vs. Harrington, 14 Pac. 849. "It was held not error to state in a charge as a defense of insanity that the law rejects the doctrine of what is called moral insanity which begins on the eve of the criminal act and ends when the act is committed."

Insanity resulting from Intoxication.

Although drunkenness is no palliation or excuse for crime, yet mental unsoundness brought about by intoxication may excuse when the mind is destroyed by long continuance of the habit of drunkenness, and when a person is insane at the time of committing the crime, he is not punishable although such insanity be remotely caused by undue indulgence in spirituous liquors, or from what in a moral sense is a criminal neglect of du-
ty, for if the reason be affected or destroyed by a fixed disease, although brought about by the defendant's own vices, the law holds him not responsible, but temporary insanity resulting from intoxication does not in most states destroy responsibility or constitute a defense to crime, but when the question is whether a murder is of first or second degree, the fact of the drunkenness may be shown to prove the mental condition of the accused to determine whether or not the killing resulted from a deliberate and premeditated purpose, see Colbath vs. State 7.

A fixed frenzy or insanity or delirium tremens destroys all legal responsibility, and although induced by voluntary intoxication, is a good defense, providing the mental condition can stand the tests applied to other forms of insanity; see Roberts vs. People, 10 Mich. 401. It is also well settled by the law since the time of Lord Hale, that if a person be made drunk by fraud or stratagem of another or by the unskillfulness of a physician, he is not responsible for his acts committed while under the influence of the drugs or liquors thus taken; see Roberts vs. State, 10 Mich.
General Statement of the Law, of what Insanity will constitute a defense to Criminal Acts.

The law does not require, as to the condition of criminal responsibility, the possession of one's faculties in full vigor, unimpaired by disease or infirmity. The mind may be weakened by disease or impaired, and yet the accused be criminally responsible. He can only discharge himself from responsibility, in most states, by proving that his intellect was so disordered that he did not know the nature and quality of the act he was committing, and that it was an act that he ought not to do. Mere irresistible impulse to commit murder by reason of mental derangement at the time of the act is not a defense, in most states, as long as the accused knew the act he was committing was wrong and punishable by the law. Moral insanity is considered no excuse for crime. The law rejects the doctrine of emotional insanity, and though it is not so definite on the subject of insane delusion, it is almost a settled principle in a majority of the states, at least for the present, that a delusion caused by disease or otherwise is no defense for a criminal act.

This seems to be the law, as derived from the
decisions reviewed, as near as my vocabulary will express it, but for a closer analysis of the subject and for the purpose of determining what is the law in each state upon the subject, it seems to me, after an examination of the state and the United States courts, that three rules may be formulated, and that all the states have followed some one of these rules for the determination of criminal responsibility when insanity is pleaded. The rules are as follows:

First:— The right and wrong test may be said to exist in the following states: New York, Ohio, Michigan, New Jersey, Kentucky, Minnesota, Colorado, California, Oregon, Georgia, South Carolina, North Carolina, Tennessee, Texas, Nebraska and all the other states not given under either of the two following rules.

Second:— To the test of knowledge of right and wrong is added an element of the power of the accused to control his acts and apply his sense of the moral nature of his acts. The states which follow this rule are the following: Pennsylvania, Alabama, Delaware, Maryland, Iowa, Illinois, Massachusetts and West Virginia.

Third:— The question of the defendant's responsibility is left in broad general terms to the jury;
this rule is followed in New Hampshire.

The question of which one of these rules shall be followed, when our statute makers come to frame a universal law on the subject, seems to be whether an old rule of legal responsibility shall be adhered to, based on the theories of physicians promulgated a hundred years ago, which refused to recognize any insanity which would exempt from punishment, except the single test of mental capacity to distinguish right from wrong, or whether the statute makers, when they come to frame a statute, will recognize as a possible fact, if capable of proof by clear and satisfactory testimony, the doctrine now alleged by those of the medical profession who have made insanity a special subject of investigation, that the old test is wrong and that there is no single test by which the existence of the disease to that degree which exempts from punishment, can in every case be detected. The inquiry must not be unduly obstructed by the doctrine of stare decisis, for the life of the law and scientific discourses and the requirements of an ever advancing civilization call for a change of the knowledge test as the only and true test.

There is inherent in a change of the knowledge test the vital principle of judicial evolution, which
presents itself by a constant struggle for approxima-
tion to the highest wisdom.

Under the present state of our law, as adopted by the states which follow the rule laid down in the McNaughten case, we are confronted with the practical difficulty which itself demonstrates the defects of the rule. The courts in effect charge the juries, as matters of law, that no such mental disease exists as that often testified to by physicians, superintendents of insane hospitals and other experts; that there cannot be as a matter of scientific fact any defect of the mind which destroys the person of self control or his liberty of action, providing only he retains a mental consciousness of right and wrong. The experts are immediately put under oath and tell the juries just the contrary as matters of evidence, asserting that no one of ordinary intelligence can spend an hour in the wards of an insane asylum without discovering such cases, and in fact that the whole management of such institutions presupposes a knowledge of right and wrong on the part of their inmates. The practical result in most cases
is that the judges charge one way and the jury follow an alleged higher law of humanity and find in harmony with the evidence, but we hope for a better state of affairs soon upon all these points, in which the law, from its universality, lacks humanity, and in no department of our law, to my knowledge, does the law work so great injustice in most states as it does in that of insanity as a defense to criminal acts.

Evidence.

As the conclusions of the jury relative to the existence of insanity must necessarily be founded on the testimony offered by the parties, it is the subject of the utmost importance by whom this testimony shall be given, and the amount of evidence which will justify an acquittal. If the decisions of this point were purely matters of facts, the only duty of the jury would be to see that they were sufficient for the purpose and proceed upon authentic sources; but on the contrary, it is a matter of inferences to be drawn from a certain data, and this is a duty for which our juries, as at present constituted, are unfit. "That a body of
men taken from the common walks of life should be re-
quired to decide whether or not certain opinions and
facts in evidence prove derangement of mind, or, in
other words, to decide a professional question of a
very delicate nature and involving some of the high-
est interests of men, is an idea so preposterous that
one finds it difficult at first sight to believe that
it was ever seriously entertained." But such is the
law as imposed upon us by custom, and we must make the
best of it. We must know the rules of evidence to be
anywhere near perfect.

Burden of Proof.

The question of the sufficiency of the proof of
insanity which must be adduced, and as to the effect
it must produce upon the jury in order to justify a
verdict of acquittal, is no nearer settled than the
question of what insanity will excuse for crime. The
courts seem to all agree on this proposition: That
the state must prove all the facts necessary to con-
stitute the crime, among which is the fact that the
defendant was of sane mind when he committed the crime,
but here is where the law steps in and helps the state
by the legal presumption that every man is sane until the contrary is shown by either side, and if there is no evidence given to prove insanity, the legal presumption is sufficient to carry a conviction, but upon the question of how much evidence is required to remove this legal presumption is where the diversity of opinion exists, and this difference of opinion illustrates how great minds differ, when, having the same premises from which to reason, they arrive at contrary conclusions.

The adjudications upon this question may be properly brought under some one of the following rules, as deduced from the decisions of the courts of the United States.

1st. It has been held that insanity is a simple question of fact to be proven like any other fact, and any evidence which reasonably satisfies the jury that the accused was insane at the time of committing the act, should be deemed sufficient for an acquittal.

In the case of State vs. Reidell, 14 Alt. 595, the judge said, "The law holds every man against whom there is proof of the commission of a crime to have been of sane mind when he did it. This presumption, however, may be overcome by proof providing it be sat-
isfactory to the jury.

In the case of Gunter vs. State (Alabama) 3 So. 300 it was held, "that insanity must be established by a preponderance of evidence and that a reasonable doubt does not authorize an acquittal; and this applies both to the fact of insanity and the connection between it and the crime.

This rule is followed in the following states: Alabama, Delaware, Texas, Pennsylvania, Ohio, Iowa, Arkansas and Kansas.

2nd. It has been held that where a person is accused of the commission of a crime and pleads that he was insane at the time of the commission of the crime, evidence of sufficient weight to raise in the minds of the jury a reasonable doubt of defendant's sanity at the time the act was committed entitled him to an acquittal. This rule was early laid down in the case of McCann vs. People, 16 N. Y., in which Judge Brown said, "That while the law presumed every man to be sane, but that when the prisoner introduced proof to show his insanity, the burden of proof devolved upon the people to prove his sanity, like any other matter of fact, beyond a reasonable doubt, and the prisoner is entitled to the benefit of any doubt resting upon the question of his sanity, sanity is a necessary
condition to constitute the crime, and when the presumption of sanity has been removed by evidence showing insanity, the prosecution must prove the sanity beyond a reasonable doubt in order to secure a conviction.” This decision was not followed by the subsequent court of New York State, and there was much confusion in the decisions for many years, until at last the courts have settled the law in this state as follows: Every man is presumed sane. If any evidence is given by either party tending to show the prisoner insane at the time of the committing of the offense alleged, then the burden of proof is upon the prosecution and there remains until the end of the trial, and in order to secure a conviction, the prosecutor must prove the sanity of the defendant at the time of the alleged offense beyond a reasonable doubt, and if the jury have a reasonable doubt of the sanity of the prisoner at the time of the committing of the act, they must give him the benefit of it and acquit, and it may be further added: that if the jury are fairly and plainly instructed that a reasonable doubt in their minds upon the question of insanity entitles the prisoner to an acquittal, and that is all that is necessary to embody in the charge, and any nice distinctions as to the burden of proof and affirmative of issue are un-
necessary and immaterial; see
People vs. Walker, 88 N. Y. 81.
O'Connor vs. People, 87 N. Y. 377.

In the case of Chase vs. People, 40 Illinois 352, the judge said that "If insanity is relied upon, and any evidence is given to establish that unfortunate condition of the mind, and a reasonable well founded doubt is thereby created of the sanity of the accused, every principle of justice and humanity demand the accused shall have the benefit of it. We do not desire to be understood as holding the prosecution to the proof of sanity in any case, but we do hold, where evidence of insanity has been introduced by the accused and a reasonable doubt of his sanity is thereby created, the accused cannot be convicted of the crime charged."

This rule has been adopted in the following states: Tennessee, New York, New Hampshire, Nevada, Mississippi, Indiana and Illinois.

3rd. It has been held that insomuch as the presumption of innocence attends the defendant on trial and the presumption of sanity likewise attends the case of the state, the same amount of evidence is requisite to remove one presumption as the other. And since the
state must establish the guilt of the defendant beyond a reasonable doubt, so the defendant, when he pleads insanity for his defense, must establish it beyond a reasonable doubt.

There were only two states which ever adopted this rule by judicial decisions; they were New Jersey and Delaware, but Delaware has since refused to follow it and now follows the first rule as given in this article. It seems that by statute Oregon has also adopted this rule, and it is provided in the statute that when insanity is pleaded, that the defendant must prove his insanity beyond a reasonable doubt in order to secure an acquittal.

It will easily be seen upon an examination of the cases on insanity, and especially those upon the question of the burden of proof, that there is continually appearing before us the term reasonable doubt, and perhaps it would not be out of place to give the meaning of the term as it seems to be used in the decisions of the courts. The term reasonable doubt does not mean every vague or conjectural doubt; but a substantial doubt arising from the evidence or lack of evidence inconsistent with the theory of the defendant's guilt. The judge should accurately explain the term to
the jury in each case, and a charge: "that the jury should be convinced as jurors when they would be convinced as men, and doubt as jurors when they should doubt as men," has been held to be correct charge in criminal cases where insanity was pleaded as a defense.

In the case of Spies vs. People, 112 Illinois, the court defined a reasonable doubt to be such a doubt as, if it were interposed in the graver transactions of life, it would cause a reasonable man to hesitate and pause. If it is such a doubt it is sufficient to authorize a verdict of not guilty. If after a consideration of all the evidence you can say you have an abiding conviction of the truth of the charge, you are satisfied by a reasonable doubt. The rule of what is a reasonable doubt, as thus formulated, has been approved by the courts of the United States.

Under the head of Evidence - What is Admissible.

All expert testimony is admissible and competent because it is by such testimony that the existence of the disease of insanity can be established, but the value of such testimony ought to depend mainly upon the
experience, fidelity and impartiality of the witness who
gives it, its design being to aid the judgment of the
triers of the case in regard to the effect and influence of certain facts which lie out of the observation, knowledge and experience of persons in general, but no jury ought to give more weight to expert opinions in deciding the case than, on the whole testimony, they think such opinions fairly merit. It is the duty of the court to decide who are really experts within the meaning of the law before their evidence is given, so as to be entitled to the weight of expert testimony. When the evidence is conflicting, both as to the facts and the opinions of medical experts, as to the prisoner's mania, a physician cannot be asked his opinion of the actual case shown by the evidence, since that would tend to usurp the function of the jury; see State vs. Gunter, 3 So. 600. When the question of whether the defendant has recovered from an attack of insanity and had been confined in an insane asylum, the superintendent of the asylum may be allowed to testify for either side. In some states the court requires that the experts state the facts upon which they base their opinions, or are given a hypothetical case and their opinions required, but this rule is not followed in all the
states, and in the case of State vs. Pritchett, 11 S. E. 367, a physician who had known the defendant well for a long time and had frequent conversations with him, was allowed to give his opinions as an expert, as to the sanity, though his opinion was not based on the evidence adduced on the trial, or on a hypothetical case.

Not only is expert testimony allowed, but in most states non-experts are allowed to testify, but they are never allowed to give their opinions based upon a hypothetical case, and as a general rule they are required to state the facts upon which they base their opinions, to the jury, thus giving the jury the chance to judge of the correctness of their conclusions, but in some states it has been held that non-experts, who have had the opportunity to observe the facts, and did in fact observe them, may state their opinion of the defendant's sanity without giving any facts upon which their opinion is based.

Here stands the law of insanity so far as given in this production as it is, and there is plenty more of it: in fact our digests bristle with cases on the subject. It is a very prevalent defense to criminal
acts because of its prevalence as a disease. Don't understand me to say that the fact of insanity being entered as a plea is very conclusive evidence of its existence, but it is certainly evident that the demands of the age call for a more competent method of investigating into the vagaries of this malady.

Generally speaking life is as sweet to one man as to another. A man who takes the life of a fellow man has either a dark malevolent disposition, or some certain disease of the mind over which he has no control. The former all nature cries out against. He is a man to be shunned, a man to be exterminated. The insane man asks in words more pitying than mouth can utter, that he should not be punished for deeds done but entirely foreign to his volition, as they are to the volition of the human race. Why men, because of weakness of mind, should be exempt from civil responsibility, and liable for acts over which they have no control, is a problem too deep for human reason.

Metaphysics, in its present condition, is utterly incompetent to furnish a satisfactory explanation of the phenomena of insanity, and a more deplorable waste of ingenuity can hardly be imagined than is witnessed in the modern attempt to reconcile the facts
of the one with the other.

As a suggestion in conclusion, let me say, that the popular mind is entirely unfitted for a careful and impartial investigation of the plea of insanity, and that the mental condition of the accused should be examined into by men, who have become fitted for such duties by a peculiar course of study and experience. The court is not the man, because his training and all his experience has laid down one rule for him: "Few to the line." He knows but one word - precedent. The jury of ordinary men, as now chosen, is incompetent because of feelings of vengeance excited by the bloody deeds of the accused. Let us have for the protection of the accused insane the universal adoption of the statute proposed in this article, with the addition of medical experts as a court for this branch of our jurisprudence.

Clarence Gray Parker.