CRIMINAL RESPONSIBILITY

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PREFACE

'In homicide, as in all other crimes, the definition consists of two parts,—the outward act, and the state of mind which accompanies it.' This dictum of one of our greatest jurists indicates clearly that all crime is, in part, a problem in psychology. The outward act which enters into the composition of crime is the subject of innumerable statutes and innumerable judicial decisions. Criminal acts have been classified and considered with the utmost minuteness and the most discriminating subtlety, as to their kinds, their effects, their degrees, their stages, their circumstances, and I know not what beside. The other ingredient in crime—the state of mind which accompanies the outward act—is much more obscure; and, though it has received much attention at the hands of very eminent men, it has not arrived at a stage of such settled determination as has the first ingredient. The reasons are manifest. Our knowledge of the constitution of mind has lagged far behind our knowledge of the constitution of acts. States of mind are not, as acts are, directly observable, but are matters of inference, often of very uncertain and speculative inference. The discovery of the state of mind that accompanies an act, no more than the discovery of the geological constitution of a stone, can be effected by the unaided common sense of the uninstructed. It demands a knowledge of the constituents of mind, and of the laws of operation of mind: and the inability of even an acute intellect, if uninformed, to deal with the subject successfully, is shown by the complete failure of Jeremy Bentham's elaborate analysis to command assent,—I might say, even attention.

Although, therefore, the subject of criminal responsibility has been considered and treated exhaustively, by Sir FitzJames Stephen, from the point of view of the professional lawyer who was in psychology an amateur, it seems that its treatment is not complete until it has been considered anew by a professional psychologist. Sir FitzJames Stephen was hampered by an insufficient knowledge of the working of the mind in health and disease. That he was so hampered he formally admits, and the admission is no disparagement to him. He made the best use of the knowledge of his time, and he obtained a singular degree of mastery over the knowledge of insanity that was then available. But in twenty years our knowledge has advanced; and I think the time is ripe to complement his work by another, written from the complementary point of view.

This is the task that I have essayed. My preparation for it has been a long study of the subject in its various aspects. The working of the normal mind has been the favourite study of my life, and my views with respect to it are embodied in my book *Psychology, Normal and Morbid.* With the peculiarities of the insane, I am familiar by daily acquaintance. Cases of crime in which the plea of insanity is raised I have collected, analysed, and reported in the *Journal of Mental Science,* with critical observations, for many years; and I have had enough experience, as a witness in such cases, to gain a general knowledge of the main classes of criminals that are tried in our courts. Under these circumstances, I trust I shall not be considered presumptuous in reopening a subject, which has been treated, with such full knowledge and ripe experience, by such a very learned Judge.

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CHAPTER I

RESPONSIBILITY

THE first requisite in dealing with such a term as Responsibility, a term which has been used in very different senses by writers who have dealt with it, is to state with precision the sense in which it is to be used in the discussion that follows; and to adhere to the same sense throughout the discussion. It must be admitted that jurists are much less open to criticism for laxity, in the definition and use of the terms of their art, than are medical men or psychologists; although even the greatest jurists are by no means free from blame in this respect, and, when using terms belonging to branches of knowledge other than law, are not much better than other people. When each of two parties in the discussion of a subject uses one of its fundamental terms in a sense different from that of the other party, nothing but confusion can result. The legal sense of the term responsibility is, I suppose, beyond doubt. Sir FitzJames Stephen says that 'judges when directing juries have to do exclusively with this question,—Is this person responsible, in the sense of being liable, by the law of England as it is, to be punished for the act which he has done?' And he goes on to say, 'Medical writers, for the most part, use the word "responsible" as if it had some definite meaning other than and apart from this. Dr. Maudsley does so, for instance, . . . but he never explains precisely what he means by responsibility. I suppose he

means justly responsible, liable to punishment by the law which ought to be in force, but if this is his meaning, he confounds "is" and "ought to be," which is the pitfall into which nearly every critic of the law who is not a lawyer is sure to fall.'

This pitfall I shall try to avoid, but I do not think its avoidance need compel me to confine myself exclusively to the legal sense of the term responsibility. Admitting that this sense of the term is strictly defined in the quoted words of Sir FitzJames Stephen, the admission at once places that sense outside the purview of the present inquiry. Responsibility then becomes a strictly legal question, and one with which no one but a lawyer is competent to deal. The sense which I attach, throughout the following discussion, to the term 'responsible' is 'Rightly liable to punishment,' and responsibility becomes the quality of being rightly liable to punishment. To clarify the concept, it is necessary to explain what is meant by 'rightly,' and what is meant by 'punishment.'

When I speak of a person or an act as being rightly liable to punishment, I exclude from consideration all reference to law. I discard 'is,' and consider 'ought to be' alone. This attitude is, it must be admitted, of considerable temerity. The law, the accumulated wisdom, the concentrated common sense, of many generations, sets up one standard of responsibility, and who am I, that I should set up another? The question would be crushing were it not that law is eminently modifiable; that it is continually being altered to bring it into accordance with the altering moods of the populace subject to its ministrations; and that in this matter I speak, not as an isolated individual, but as in some sort representing, or at any rate according with, the body of opinion, as to what is right and what is wrong, which is now prevalent

in my own country and generation. The law is modifiable; it is plastic; it undergoes alteration under the pressure of opinion; but it changes slowly. It is right that its changes should be slow, for it would be intolerable to live under a law that fluctuated widely and rapidly. But still, its changes are slow, and it is necessarily always somewhat, often a long way, behind the opinion of the age to which it ministers. The mere expression of opinion by any individual that the law is faulty, and should be altered in this or that direction, is entitled to very little consideration; but if reasons can be given for change, or for maintaining the law as it is, if the principles which underlie any law can be investigated, and the law shown to be in harmony or in discord with them; then I think the reasoning is entitled to consideration, apart from the person who may conduct the inquiry.

By *rightly* liable to punishment I mean, then, liable to punishment on grounds that appear fair and just to the ordinary man when they are explained to him—grounds that commend themselves as equitable and right, not to the faddist, the pedant, or the enthusiast, but to the common sense of the common man of this time and this country. If I fail to gauge his temperament with accuracy, so much the worse for my argument. Again we are confronted by a difficulty. Who is to be considered the ordinary man? How shall we recognize him? by what test is he to be known? You, my reader, are, I take it, by no means an ordinary or common man. Your taste and intelligence are proved to be far above the common, *ipso facto* by your perusal of these pages. But, failing an appeal to the actual judge, I must place you vicariously in his place, and in this I do my argument no wrong, though I place myself at a disadvantage. It is the ordinary man whose verdict must ultimately decide

the matter; but it is you that must first be convinced. I would not for the world have him know it; but the ordinary man will adopt that view that you tell him to adopt. If, then, I can convince your trained intelligence, and stand the test of your critical acumen, I have no fear that my arguments will be lost upon the man in the street; who will have the arguments put before him, not in the crude and imperfect form in which they are here embodied, but refined and enlightened by passing through your mind.

Next, what is here meant by punishment? The nature of punishment cannot be determined without previous determination of its aim; for it is manifest that not only the mode of punishment, which I do not propose to consider, but our concept of what punishment is, must vary according to the aim sought by means of punishment. This aim is usually stated to be threefold,—Retribution, Determent, and Reform. We punish, it is said, him who has done wrong, partly to satisfy the craving that exists in our minds that those who have done wrong shall suffer pain; partly to deter that and other wrong-doers from the doing of such wrongs; and partly so to influence the mind of the wrong-doer that he shall cease to desire to do wrong. Of these three ends, the first, in my opinion, preponderates immensely over the other two. These are but secondary effects of punishment; desirable, indeed, if they can be attained without interference with the first, and often, when punishments are discussed academically, and without reference to any particular instance of crime, declared to be primary. Bentham, indeed, regards determent of others, or example, as the most important end of punishment, and reformation as next in order. Retribution he calls 'a kind of collateral end,' and admits that, as far as it can be answered gratis, it is a beneficial one,

but says that no punishment ought to be allotted merely to this purpose, because the pleasure, that it produces in the mind of the injured person and the spectators, to witness the suffering of the criminal, can never be equivalent to that pain. For my own part, I am unable to estimate any equivalence between pleasure and pain, still less between the pleasure of one person or set of persons and the pain of another, a task which Bentham performs with such ease and certainty. If there be any such equivalence, I feel no certainty that the aggregate of multitudinous satisfactions, felt by millions of right thinking people at the execution of a very atrocious murderer, may not be 'equivalent' to the pain felt by that single murderer in contemplating his impending execution. It is unnecessary to strike the balance, however, for the state of affairs contemplated by Bentham,—a state in which pleasure is avowedly the primary aim of conduct,—is one which does not exist and never has existed.

The inquiry in which we are engaged is twofold. We are to determine what are in fact the aims intended by punishment, and what they ought to be. As to the first branch of the inquiry, it will be admitted, I think, that the reform of the criminal does not occupy the first place in any scheme of punishments now existing. No scheme of punishment is primarily adapted to that end. It is, so far as our punishments are concerned, an afterthought, and one of recent introduction. In an early stage of society, nay, until very lately, no opportunity was given to the prisoner to reform, for his career was cut short as soon as he had been convicted of any crime except one of the most trifling character. The only scheme of punishment, in which reform of the criminal occupies a prominent position, is that of Elmira; and it is felt by the spectator that it is a misnomer to apply the term

punishment to the treatment which is there meted to the criminal. As Sir Edward Fry has acutely pointed out, if the sole aim of punishment were reformation, then no attempt would be made to punish the criminal who shows himself to be incorrigible. He would be left unpunished after conviction.

The primary aim of punishment is then, either Retribution on the criminal or Determent of him and of others from committing like crimes. If Determent of others, or Example, is, as Bentham contends, the primary aim of punishment, then it seems that the severity of punishment should be proportional to the diffusion of the inclination to commit the crime; that is to say, the severest punishment should be visited upon those crimes which every one is under temptation to commit; while crimes which allure a single perpetrator only, and have no attraction for any one else, may go unpunished, so long as the perpetrator is prevented from repeating them. On this principle, Jack the Ripper, if he had been caught and convicted, would have been sentenced to detention merely. So, too, if Determent is the chief aim of punishment, the fact of punishment should be widely published, as is actually done when determent is important. Railway companies, which have a great interest in deterring passengers from defrauding them in easy ways, are accustomed to post up in their stations lists of convictions and punishments that have been awarded for such offences. But, in fact, a large number of crimes are tried, and the criminals sentenced, if not in secrecy, yet with all practicable diminution of publicity. No one but the officials in a certain government department, and the delvers in blue books, knows anything of the number of persons annually convicted and punished for unnatural offences. If determent were the sole aim of

punishment, either these convictions and punishments would be widely published, or, if it were thought, as it is thought, inexpedient to give publicity to them, no punishment would be inflicted; for a punishment which is concealed cannot be deterrent to any one but the punishee.

By a process of exclusion, then, we are driven to allow that Retribution is one of the main aims of punishment; and, if we follow out the same mode of reasoning, we must admit that it takes precedence, not only in time, but in importance, of both the others. We have seen that there are crimes which would not be punished at all, or would be punished with what we feel irresistibly would be inadequate severity, if Reformation or Determent were the only aims of punishment. There is no explanation for the feeling of injustice and inadequacy with which we regard such treatment of crime, except in the imperative desire that those who do wrong should be made to suffer. 'Here' says Sir Edward Fry 'we seem to be near a fundamental fact of human nature, a moral element incapable of further analysis (so far at least as my chemistry goes),—the fact that there is a fitness of suffering to sin, that the two things, injustice and pain, which are both contrary to our nature, ought to go together, and that in consequence we naturally desire to bring about an association of the two where it does not already exist. . . . Punishment, in short, is an effort of man to find a more exact relation between sin and suffering than the world affords us. . . . In a word, then, it seems to me that men have a sense of the fitness of suffering to sin, of a fitness both in the gross and in proportion; that so far as the world is arranged to realize in fact this fitness in thought, it is right; and that so far as it fails of such arrangement, it is wrong, except so far as it is a place of trial or probation; and consequently

that a duty is laid upon us to make this relationship of sin to suffering as real and as actual and as exact in proportion as it is possible to be made. This is the moral root of the whole doctrine of punishment.'

If we seek the origin of punishment in history, instead of in the moral nature of man, we are compelled to the same conclusion. In the history of mankind, the function of law is to supersede war. The glimpses that we have, into the earliest state of races of men that are now civilized, show a state in which war, war between individuals, or rather between families, was the general rule; and law, in its beginning, was striving to mitigate the ferocity of war by the gradual introduction of voluntary arbitration. Law, in so far as it existed—incipient law—had no power to interfere of right between the injured and the injurer; but the resulting blood-feud was so disastrous to both parties, that an alternative perforce suggested itself. Incipient law appealed from the vindictiveness of man to his cupidity. It suggested a payment in different kind. Instead of an eye for an eye and a tooth for a tooth, it suggested an ox for an eye and a sheep for a tooth. If the parties chose to accept this mode of settling their differences, the affair was at an end. But there was no compulsion on them to accept it. There was no authority to enforce compulsion. Long, long after authority was established, and compulsion was become possible, the injured retained the right to reject the demand for compensation and to demand the primitive mode of trial by battle; and this right was not formally abolished until a time within the memory of some now living. When civilization had progressed so far that courts of law were established, they still had no power to enforce their decrees. If the litigants had agreed to abide by the decision of the court, the king's

officer, who sat, not as a judge, but as the king's representative to receive the king's share of the fine, would enforce the doom if he could; but if a litigant had not agreed to abide by the decision of the court, all that the court could do was to pronounce him an outlaw. The earliest function of the courts was not to suppress the blood-feud, but gradually to supersede it, by providing an alternative which would be acceptable. It was necessary that it should be acceptable, because it could not be enforced. Mr. Maitland says of Ethelred's laws, that 'they were many, for he had to say the same thing over and over again, and we see on their face that they were ineffectual. He begs and prays men to keep the peace and desist from crime; he must beg and pray, for he cannot command and punish.' As the king became stronger, and as it became more and more manifestly to his interest that private war should cease and the peace be kept, his officer took more and more a leading part in the proceedings of the court. Little by little he grew from assessor to president of the court, ousting the local Thingman, who was not sorry to be relieved of a duty, which was burdensome from the time it occupied and the friction with neighbours that it created. More and more the law tended to compel the acceptance of wergild as an alternative to blood-feud, but if the wergild were beyond the means of the homicide, the law left him to be slain; and, as the court gained more and more authority and power, it took the function of slaying upon itself. Throughout the early history of criminal law, we recognize its weakness, and the necessity it is under to conciliate the goodwill of the injured, in order to gain from him the concession of being allowed to inflict punishment, instead of leaving it to be inflicted by him. To gain this concession, the law must make its punishment conformable

with the desire of the injured. It must do as he would have done if he had been left alone, or its interference will not be tolerated. Hence, in its origin, legal punishment is essentially vindictive. It is retributory; and it retains throughout its character as retribution. Whatever else it may afterwards become; punishment is, first and most, retribution. It is retaliation. It expresses the rooted desire of man that he who inflicts suffering should be made to suffer. It is the outlet in action for the pain we feel when we experience or witness unmerited disaster, and of the revolt that it arouses in us against the agent. Primitive people, the victims of storm, or flood, or other elemental disaster, punish their gods, or their saints, to whom the injury is attributed; or who at least might have interfered, and did not, to prevent it. Is it to be supposed that the punishment is to deter the gods from similar action in future, or to reform their characters? No, it is to retaliate upon them for the wrong they have done; and whenever punishment is inflicted, its primary object is to award suffering in retaliation for evil—to make pain the consequence of the infliction of pain. The utility of the practice is quickly recognized. Its deterrent effect is soon appreciated, and goes to corroborate and confirm the habit. But this effect is not the primary aim of punishment, which is shown, both by its history and by its current use, to be primarily and essentially retribution.

The definition of Responsibility now becomes clearer and more detailed. A person is held responsible when the enlightened public opinion of his age and country demands that he shall be made to suffer in return for pain that he has inflicted. Responsibility is, therefore, not a quality of the person who has inflicted the pain, but a demand on the part of others that he shall suffer.

The state of mind which prompts this demand we call the sentiment of Justice, and the problem before us is to examine our own minds, and to determine the circumstances under which we feel this sentiment and make this demand. The problem of Responsibility is a problem in Psychology. When I declare that *A* is responsible for the murder of *B*, the declaration is founded primarily upon a state of things existing, not in the mind of *A*, but in my own. What I mean by the statement is, that in my own mind there is a feeling of uneasiness which demands relief, and cannot be relieved except by the infliction of pain upon *A* ; and the problem of responsibility is, strictly speaking, the determination of the conditions under which I experience this feeling of uneasiness ; in other words, what is it that raises in you and me, and Tom, and Dick, and Harry, the desire that Bill should suffer pain ? Put yet otherwise, the problem is contained in the questions, ' Why do we punish ? and Whom do we punish ? to which should be added, How do we punish ? and the answers to these questions constitute the whole of the criminal law. But, as already stated, we are here concerned not with law as it is, but with law as it ought to be, and therefore, for us, the questions are, Why ought we to punish ? Whom ought we to punish ? and How ought we to punish ?

The first of these questions does not need much consideration. The corresponding legal problem, Why do we, in fact, punish ? has just been examined, and a definite answer to it has been given. Punishment is inflicted primarily and chiefly as retribution on him who has done wrong. Secondarily, and as a subordinate and useful end, it is inflicted *pour encourager les autres*,— to deter the criminal himself, and others of like kidney, from such acts as he is punished for. Tertiarily,

a sentiment of modern growth leads us to desire that, if practicable, the pain of punishment shall be of such a character and so inflicted, or shall be accompanied by such conditions, as to deprive the criminal of the desire to do wrong, and so produce what we call reformation.

When we shift our point of view from what is to what ought to be, what differences do we find in the aims of punishment? Bentham altogether discarded, or rather ignored, the retributory element in punishment, and regarded its function as solely 'to prevent mischief,' in which function he would include both what are here distinguished as the deterrent and the reformatory ends. Is this a true view? Ought we, as a matter of abstract justice, to forgo the retributive end of punishment, and determine it solely from an utilitarian standpoint? I do not think the question worth consideration. Supposing the answer should be in the affirmative—and, to find a conclusive answer, it would be necessary to enter into a thorough examination of the true meaning of 'ought'—but supposing this examination to be made, and to determine an affirmative answer, still, the proposal to abandon the retributive element in punishment is so remote from practicability, that I do not think the inquiry worth the trouble it would involve. For our purposes, which are practical, it is necessary to take human nature as it is, and as it is likely to be for the next few generations; and the history of our race shows no example of the sudden or rapid abandonment of a desire so deeply rooted, so enduring, and so universal, as the desire to inflict pain in retaliation for pain inflicted. From time to time in the history of the race there has arisen a lawgiver of such transcendent authority as to be elevated by the acclamation of untold

millions to the title and honour of divinity, and such prophets have inculcated, with the whole weight of their authority, the abandonment of the desire of personal retribution, that is to say, of the desire of each individual to retaliate upon those who injure him. But, after many centuries of inculcation, this precept has remained inefficacious. And I do not know that it has ever been inculcated that we should refrain from retaliating upon those who have injured others ; nor is there anything to show that, if such a precept were inculcated, it would be followed with any greater zeal. It may indeed be that, as the deterrent aim of punishment has been grafted on to the retributive aim, and has gradually attained to co-ordinate importance; so the reformatory aim, now a tender and barely united graft, may take hold and grow to an importance coordinate with the other two; but beyond this stage it would be visionary to extend our expectations ; and, for the practical purposes of daily life, we must continue to regard punishment as primarily retributive, secondarily deterrent, and tertiarily, and in much lower degree, reformatory.

The third division of the subject—the legal one, How do we punish? and the moral and legislative question, How ought we to punish? I do not propose to consider, the problem of penology being outside the scope of this volume. There remain, then, the questions, Whom do we punish? and Whom ought we to punish? The first of these two indicates the scope of the criminal law as it is, and with it I am not competent to deal. The second is the chief topic that I set myself to discuss.

CHAPTER II

VOLUNTARY ACTION

WHOM ought we to punish? Reduced to the terms arrived at in the preceding chapter, this question becomes, Under what circumstances do we experience that uneasiness which demands for its relief the infliction of pain? To this I answer, When we know of wrong-doing: when we witness or hear of wrong being done. To this general answer I think no exception can be taken, provided that we can formulate a satisfactory definition of wrong. I am aware that, in using this term, I am trenching on the province of the legal expert, and that, in using it in this sense, I am outraging his sense of fitness. In legal phraseology, the law of Wrongs is distinct from the law of Crimes, and deals with civil remedies alone; acts for which the law provides punishment being regarded, not as Wrongs, but as Crimes. My excuse is twofold. In the first place, there is no other term at my disposal equally expressive and equally comprehensive, unless I adopt some such term as 'delict,' with which I am unwilling to encumber the language. 'Crime' I discard, because it is already in use to characterize those acts that actually are punished under the existing law; and to use it to denote not what are, but what ought to be, punished, would inevitably introduce confusion. In the second place, the distinction made by our law, between Wrongs and Crimes, is a wholly artificial distinction, which corresponds with no vital or important distinction between the things so stigmatized. In the early stages of law—in the time of what I have called incipient law—

there were no Crimes, but Wrongs only; and, in the course of evolution of law, the punishment for certain Wrongs was taken out of the hands of the plaintiff, and inflicted by the administrators of the law. Such Wrongs then became Crimes. For reasons which cannot now be given, it happened that the process of translating Torts into Crimes ceased before it was complete; and the consequence is that we now have two bodies of law, separated by distinctions that are merely arbitrary and artificial, where one would have sufficed. The two classes of acts have unfortunately no common legal title, and therefore it is that I am constrained to use for the aggregate the title of Wrong in its colloquial sense, secure in the belief that, when thus explained, it will not be misunderstood, and satisfied in the knowledge that the technical term 'Tort' still remains to characterize those Wrongs which are not technically included in the class of Crimes.

Responsibility, then, attaches to acts that are wrong. To obtain a clear notion of what is meant by this expression, we must indicate clearly what is meant by an Act, and what is meant by Wrong.

Acts are of various kinds, and for various purposes may be divided in various ways. For our present purpose, the best division is into Reflex acts, Instinctive acts, Automatic acts, Habitual acts, and Voluntary acts. A useful division into Crude acts and Elaborate acts will come into view later on.

By a Reflex act is meant a bodily movement which occurs instantly and inevitably in response to a stimulus. The classical example is the winking of the eyelid when the eyeball is lightly touched, but there are very many acts of this character besides the ocular reflex. When the opening of the windpipe is irritated, the result is

coughing; when the back of the throat is tickled, or when certain stimuli are applied to the lining of the stomach, the result is to produce vomiting. When the body is falling forward, the stimulus of the circumstances causes the thrusting forth of the arms. When the body is falling backward, the arms are thrown up; and there are many acts similarly produced. The peculiarity of all reflex acts is that they follow instantly and inevitably on the stimulus, and that by no exertion of will can they be prevented or interfered with. Many of them, such as vomiting and sneezing, cannot be produced by any effort of will, but require of necessity their appropriate stimulus for their production. As they can be neither prevented nor controlled by the will, it would be manifestly unjust to hold the actor responsible for a reflex act.

Instinctive acts, when purely instinctive, resemble reflex acts in their inevitability, but they differ from reflex acts in their initiation; which is not by stimulus from without, but by accumulation within, of energy which demands outlet in this particular way. When a certain time of year arrives, and a certain condition of bodily processes comes about; the bird is impelled to collect with its fellows into a flock, and to migrate; or to scatter from the flock and build a nest; the spider is impelled to spin her web; the beaver to build its dam, and the bee its comb. The impulsion is so strong that nothing short of actual physical constraint is sufficient to prevent the act, and even if prevented by physical constraint, the animal still strives to carry out the instinctive purpose. The bird batters itself against the bars of its cage until it dies; the beaver builds in the corner of the room, with boots and hairbrushes, a caricature of a dam. Unlike reflex acts, instinctive acts are modifiable by volition, and into all instinctive

acts some reasoned modifications are introduced, even by those animals whose instincts are most stereotyped. As animals become more rational, their instinctive acts become more and more modifiable by volition under the guidance of reason; and, although man retains many instincts, the acts that he does in order to satisfy the cravings of instinct, have altogether lost the fixed character that they have in animals much lower in the scale. The instincts are become more numerous, less imperious, and in many instances conflicting, so that their satisfaction is very largely dependent on the will, by which the fulfilment of any one can be postponed or even entirely renounced. What are here called instincts are, in other parts of this volume, often called primitive desires.

Automatic and Habitual acts may be taken together. An habitual act is an act that has been performed so often that its performance is become easy; that in appropriate circumstances, in which it is customary, there is a desire to perform it, and a certain uneasiness if it is not performed. It requires, however, a definite exercise of will for its performance. Such an act is getting up at a customary time in the morning or going to bed at a customary time at night. An automatic act is one which has once been habitual only, but is now, by constant repetition, become so facile that it may be performed without the exercise of any attention at all. Such are the operations, often very complicated, of handicrafts; such as those of the pianist or the type-writer. Such are the acts of walking, of articulation, of writing, and so forth. When we are doing these acts, we are not thinking in the least about the acts themselves, and if we do think about them we interfere with their efficient performance. What we are thinking about, and willing, is not the act, but its consequences—not the

movement of the legs, but the getting over the ground; not the sound of the words or the shape of the letters, but the meaning of what we say or write. Thus it is evident that habitual acts are in the way to become automatic, if their repetition is sufficiently frequent; and automatic acts, continued through many generations, become at last reflex.

Our chief concern, however, is with Voluntary acts, and with respect to them we obtain some assistance from the labours of our predecessors. Bentham, indeed, offers no definition of an act, though he divides acts into many varieties by drawing distinctions, for the most part so irrelevant and useless, that he never refers to them again.

Sir FitzJames Stephen's treatment of the matter is far more satisfactory. His account is extremely acute, and shows a remarkable insight into mental processes. It is, however, in some respects defective, and in some erroneous, as will appear from the following examination.

'In order,' he says, 'to understand properly the meaning of compulsion and of insanity, it is necessary to have a distinct conception of what is meant by freedom and sanity; in other words, a distinct conception of normal voluntary action unaffected by disease.' In this, I think Sir FitzJames Stephen is unquestionably right, and approaches the matter from the only proper and practicable point of view. I have been insisting for many years that the morbid cannot be understood without a previous knowledge of the normal, but I do not know that I have gained many adherents.

'An action then is a motion or more commonly a group of related motions of different parts of the body. Actions may be either involuntary or voluntary, and an involuntary action may be further subdivided according

as it is or is not accompanied by consciousness. Instances of involuntary actions are to be found not only in such motions as the beating of the heart and the heaving of the chest, but in many conscious acts—coughing for instance, the motions which a man makes to save himself from falling, and an infinite number of others. Many acts are involuntary and unconscious, though, as far as others are concerned, they have all the effects of conscious acts, as, for instance, the struggles of a person in a fit of epilepsy. . . . For legal purposes it is enough to say that no involuntary action, whatever effects it may produce, amounts to a crime by the law of England. I do not know that it has ever been suggested that a person who in his sleep set fire to a house or caused the death of another would be guilty of arson or murder. . . . It has been thought worth while to say that if *A* by pushing *B* against *C* pushes *C* over a precipice *A* and not *B* is guilty of pushing *C* over the precipice.'

The case of a person, in sleep, causing the death of another, is not at all uncommon, and it is a little surprising that Mr. Justice Stephen did not adduce the instance of overlying, which causes the deaths of so many children every year. I have never heard that any woman was ever tried for so causing death.

'Such being the nature of an action, a voluntary action is a motion or group of motions accompanied or preceded by volition, and directed towards some object.'

Objection must be taken to the wording, to the scope and to the accuracy of this definition. The wording is not quite precise. By 'action' is really meant no more than 'act.' By physiologists and psychologists—and we are now in their territory—'movement' is used for change of position of a part of the body by means of the muscular action of the body itself. 'Motion' is a more

general term, and may mean change of place of an inanimate object; or alteration of position impressed upon the body, or on a part of it, by an external agent. If I move my arm, the motion is termed 'a movement.' If I move a stone from one place to another, the movement of the stone is called 'motion.' If a bystander moves my arm while I remain passive, or moves my paralysed arm for me, the movement of the arm is called 'motion.' The distinction between 'a motion' and 'a group of motions' may be omitted. It seems to me unimportant. A voluntary wink of the eyelid, or pursing of the lips, is as much the act of the man,—the movement of his whole being towards an end or aim,—as the transfer of his body from place to place by the movements of both his legs. Moreover, such a wink or pursing of the lips is, to a physiologist, not a single movement, but a group of movements.

The word 'object' in the definition is open to ambiguity. If I post a letter, the *object* towards which the movement is directed is the letter-box. The posting of the letter is the *aim* or *end* towards which the movement is directed, and one of these terms is, I think, to be preferred.

Modified by the substitution of these terms, which seem to me more accurate and precise, the definition would run thus:—A voluntary act is a movement accompanied or preceded by volition, and directed towards an aim or end.

So expressed, the definition seems to me defective in some respects and inaccurate in another. I think that the notion of a voluntary act is unduly restricted if it is held of necessity to include movement. If a lady is coming out of a door as I am going along a corridor, and I stop to allow her to pass; the arrest of my movement

is as much a voluntary act as is the movement by which I start to continue my journey. In customary phrase, the arrest of my movement would be called an *act* of ordinary courtesy, and in this case the custom would, I think, be correct. I take a piece of cabbage on my fork, and as I am conveying it to my mouth, I see a caterpillar on it, and arrest the movement. The arrest of the movement is a voluntary act, as much as the movement itself. My neighbour at the table asks me, 'What are you *doing* that for?' And the form of his question is correct. In arresting the movement I do something. In other words, I act.

Nor is this all. There may be voluntary action without any movement at all, either initiated or arrested. The mere wilful abstention from movement may be a voluntary act. When a person, in order to commit suicide, stands in front of an advancing train, he executes a voluntary act by merely standing and abstaining from movement. When a man refuses to obey the admonition of the police to move on, he is charged with wilful obstruction—with a voluntary act. A prisoner who persisted in remaining 'mute of malice' under the *peine forte et dure* exercised at least as much volition, determination, strength of will, effort, and control over his bodily movements, as he who pleaded Guilty. The refusal to plead was not, indeed, a movement, but it was the bodily expression of a volition directed towards an aim; and the law, in visiting it with a terrible punishment, directed to breaking down the determination of the prisoner, recognized and treated it as a voluntary act. If these be not voluntary acts, what are the abstentions to be called? Intentional omissions? Can the wilful steadfast waiting for the impact of the train be called, with any accuracy, a mere intentional omission to get out of its

way? It seems manifest that this expression is not strong enough to characterize the—deed I was about to say, and the fact that the word begs the question must be coupled with its evident appropriateness, and then supports my contention. Wilfully to refrain from acting is to act.

It may be objected that an act must be something which is perceptible to bystanders, and that a definition of a voluntary act which includes things not so perceptible is defective, and should not be accepted. It may be so, but this need not exclude from voluntary acts the arrests and suppressions of movement which I would include in them. A voluntary arrest of movement is surely as conspicuous and as perceptible as the movement itself. And, although the suppression of movement may not be equally conspicuous, yet, in practice, there can very rarely be any difficulty in deciding that a suppression has taken place. It cannot be denied that suppression of movement is as much a part, and as important a part, of conduct, as is movement itself; and surely, the criminal law has to do with conduct, not merely with movement. What is a more pronounced mode of conduct than eavesdropping? Is not eavesdropping an act? And the necessary condition of eavesdropping is not movement, but suppression of movement. When Cranmer held his hand in the flame, it was as manifest to the spectators that he was exerting himself towards an end, as when he first moved his hand towards the flame. The holding of his hand in the fire has always been looked upon and designated as an *act* of heroism; and this act was not movement, but suppression of movement. The absence of movement, when movement is expected, is as conspicuous and remarkable as the occurrence of movement, and equally attracts attention.

One more criticism I must make on Sir FitzJames Stephen's definition of voluntary action. The connection between the movement and the volition is not explicitly stated. Yet it is manifest that it should be. 'A movement accompanied or preceded by a volition and directed towards an aim or end,' would cover such an instance as the movement of breathing, when accompanied or preceded by a volition, say, to throw a stone. The definition should connect the volition with the movement.

When all the corrections that I have suggested have been made, the definition will run thus :—A voluntary act is movement, or arrest or suppression of movement, of the body, directed to an aim or end, and accompanied or preceded by the will to make that movement, or arrest or suppression of movement.

Mr. Justice Stephen follows his definition by a further clause :—'Every such action comprises the following elements—knowledge, motive, choice, volition, intention ; and thoughts feelings and motions adapted to execute the intention. These elements occur in the order in which I have enumerated them.' He then expands and explains this expression at considerable length. Even taken with this succeeding paragraph, this explanation is by no means clear. In several respects it is meagre, and in some, I think, erroneous. It immediately occurs to the reader, that, if every voluntary act comprises these elements, some mention of them ought to be made in the definition. They are all, it appears, comprised in the action, and all are essential to it, and yet, in the definition, but one is mentioned. In this supplementary list of the ingredients of voluntary action, Mr. Justice Stephen gives no predominant place to volition, nor does it appear that he means this term to cover the other

ingredients. To say merely that a voluntary act is an act accompanied or preceded by volition, has the appearance of a *circulus in definiendo.* If, indeed, volition is held to include all the other mental ingredients of the act, the definition is not open to this charge, but the appearance of volition among them seems to negative this supposition. So that we are driven to adopt one of two alternatives :—either the definition is merely verbal, or it is very incompletely expressed.

Of these alternatives I choose the latter. I think that Sir FitzJames Stephen intended his supplementary clause to be read into, and to form part of, his definition; but that he did not see his way to include all the elements of a voluntary act in the definition without rendering it unwieldy and cumbrous. Greater familiarity with psychological terminology would have enabled him to overcome the difficulty. What I think he would have said, and what I shall adopt as my own definition, is this :— A voluntary action is movement, or arrest or suppression of movement, consciously directed to an aim or end.

This definition will be found, I think, to include every act which can properly be called voluntary, and to exclude every act that cannot. It includes those acts of arrest and suppression of movement, which we have found to be excluded by Sir FitzJames Stephen's definition, and it excludes such movements as convulsion, which is not directed, and breathing, coughing and sneezing, which are directed, but not consciously. When coughing is consciously directed to an end, it becomes a voluntary act. We now have to analyse the term *consciously*, and we can best do so by analysing a concrete example of voluntary action.

I call to attract the attention of a passer-by. The call is an act. The co-ordinated action of the chest, throat

and mouth constitutes the movement. The aim is the attraction of Brown's attention. The call is made consciously, that is to say, in accordance with certain operations of my mind. What are these operations?

Let us begin at the end, and work backwards. The shout is instantly preceded by the *will* to shout. This active process in the mind, this 'internal crisis,' as Sir FitzJames Stephen well calls it, 'of which we are conscious, but which cannot be otherwise expressed,' is the final mental operation which issues in action. Of it no more need be said. It is felt to be an activity exerted by the whole self,—a direction of activity, and more than a direction, an exertion, an initiation, an outpouring of activity in a certain direction, and that is all we know about it. It is this exertion of the self, this internal crisis, which creates responsibility. Until it takes place, the act may be meditated, pictured or represented in the mind, resolved upon, yearned after, but yet remains unexecuted. As soon as the crisis takes place, the movement is executed; the act is done.

Immediately precedent to volition is *choice*. Two ways at least occur to me of attaining the end I have in view, —the attraction of Brown's attention. I may shout to him, or I may wave my arm and beckon. Which of these courses I shall choose is determined by my appreciation of the circumstances. If he has his back to me, it is no use beckoning to him. If he is looking my way, and there are others whose attention I do not wish to attract, I may profitably beckon. In choosing or deciding which to do, I am determined by my knowledge and appreciation of the circumstances, and by my remembrance of previous experiences. I choose, at length, that course which has been found most effectual in circumstances most similar. Immediately preceding choice, there is

therefore *comparison*, and before comparison can be effected there must be *perception* of present circumstances and *memory* of past circumstances. All these mental processes may occur very rapidly,—so rapidly that they appear fused into one, and my perception of Brown's presence may be almost instantly followed by my shout. But it is, I think, quite manifest that, however rapidly they are effected, all these mental operations necessarily precede the volition. Cases could easily be put in which each operation was separated from the next by hours or days. Now, comparison is an act of thinking, as is perception; and remembering is a distinct mental operation. They would probably be included by Sir Fitz James Stephen under the head of knowledge, which would then occur quite late in the conscious processes preceding the act, instead of at the commencement only, as would appear from his description.

In the preceding paragraph, I have distinguished choice from volition—the identification of the movement to be made from the initiation of the movement;—and, in fact, they are often separated by a considerable time. I may choose to-day to pay to-morrow a certain call. At the moment of choosing I exerted myself in an act of choice which is scarcely if at all distinguishable from volition. I willed that I would pay the call. But I did not then carry out the movement. I postponed it till to-morrow, and, during the intervening time, the result of that act of choosing remains in my mind as a determination. We are here introduced to a distinction between a mental act or process, and the enduring effect or result of the act, in a mental state, a distinction which is to be recognized in every region of mind, and which it is important to distinguish. The distinction is between the doing of a thing and the thing done; between the act of making

and the thing made; between the process and the result of the process. When I compare two memories, and decide that they are like or unlike, the comparison and the decision are acts of thought. The state of mind remaining—the knowledge or belief of the likeness or unlikeness—is a result of thinking—an enduring state which is the effect of the act. When I choose this course rather than that, the choice is an active process; the resulting determination is an enduring state. When I search about in my mind to recall the particulars of an event that happened last week, I am actively employing the faculty of recollection. When I have recalled the particulars that I want, and contemplate them, I am contemplating an enduring memory which results from the process of recollection. Each active process is a mode of activity of the self—of that wellspring of power which I feel within me. Each is an instance of that 'internal crisis' which Sir FitzJames Stephen so denominates. Each result is an enduring state, almost as different from the momentary action to which it is due, as the box is different from the sawing and nailing of the carpenter, or the seam from the sewing of the seamstress. To return to the case of choice, the process of choosing is a mental act which may occur singly, the execution of the course chosen being postponed to a future occasion of volition; or the choice of action and the will to act may be inextricably blended in a single mental operation.

In any case, the mental operation that immediately precedes the act is volition; and precedent to the volition, either immediately or mediately, is choice, which implies and involves remembrance, perception, and thinking or reasoning. When an interval of time elapses between the choosing and the volition, then the state of mind resulting from the act of choice remains and endures

until the volition takes place. This state of mind is often called determination. It may also correctly be called desire,—desire to do the act. The desire is satisfied and terminated by the accomplishment of the act. When there is no interval between the choosing and the volition, then choice, desire and volition are blended in a single compound mental operation.

Antecedent to the choice of the means by which Brown's attention is to be attracted, there must have existed in my mind an appreciation or *perception of the circumstances* in which I stand. If I did not know that Brown was present in the road, and did not estimate that he was within calling distance, I should never raise my voice to attract his attention. Here, again, knowledge enters more intimately, and more directly and immediately, into the conscious state preceding the act, than Sir FitzJames Stephen's account would imply.

Granting that circumstances exist, and are perceived, that are favourable for the execution of the act, still the act would never be done unless, in addition, there were in my mind a *desire* to attain the end contemplated by the act. This ingredient in the act, or in the voluntariness of the act, is not mentioned either by Bentham or by Stephen under this title, though it may be concealed under some other. It is manifestly an essential ingredient. If I had no desire to attract Brown's attention, the perception of his presence within call would never move me to call to him. I should let him go undisturbed about his business. Clearly, desire, or some feeling of the kind that we perhaps call by a different name, enters into the conscious state that goes to make up a voluntary act; and clearly too, it precedes in time the volition and the choice, but not necessarily the knowledge of the circumstances. It may be that I started from home with the aim of

seeking an interview with Brown; and in that case the desire to attract his attention will have preceded the perception of the particular circumstances which rendered the aim practicable at that moment. But it may be that I left home with no such preformed aim, and that it did not occur to me to attract Brown's attention until I actually saw him in the road; but still, even in the later case, there was, there must have been, latent or patent in my mind, a desire, which the attraction of Brown's attention went to gratify. It may happen that I see him, and recognize him, and watch him for a short distance, until, when he is nearly out of earshot, it suddenly strikes me that he is just the man to supply me with those fruit-trees that I was thinking of buying; and, on the spur of the moment, I am impelled by the sight of him to stop him and ask about prices. Here, it seems, the appreciation of the circumstances preceded the desire to attract Brown's attention. Nevertheless, precedent to the appreciation of the circumstances, there was in my mind a desire—to possess the fruit-trees—which was the efficient cause of the act. Put an extreme case, and suppose there was no such desire pre-existing on my mind before I saw him, but that the act arose entirely out of the circumstances momentarily existing. I see Brown suddenly in danger of being bitten by a dog, gored by a bull, run over by a cart—a danger of which he is ignorant,—and I shout to warn him and save him. Here the desire to save Brown from that particular danger undoubtedly arose at the moment, and in consequence of, and therefore subsequent to, my appreciation of the circumstances in which he was. But although this particular desire, directed to this particular end, arose momentarily, in consequence of my appreciation of the circumstances; yet no such

desire would have arisen, no such act would have been done, in spite of the fullest appreciation of the circumstances, if I had not already my mind so attuned that I regard the injury of others with horror, and desire to avert it if I can. Under precisely the same circumstances, no warning shout would have been uttered if I had the disposition of Nero, and regarded the injury and misfortune of others as a joke to be enjoyed. Clearly, therefore, in every case of voluntary action, desire to do that very act precedes the volition under whose impulse the act is done; and desire to attain the aim contemplated by the act precedes the choice of the means by which the aim is sought to be attained—that is, precedes the desire to do the act. So that, up to the present, we find the following mental ingredients essential to every voluntary act,—working backwards from the movement,—there are volition; desire to do the act (i. e. to shout); choice of means to attain the end (i. e. choice of shouting rather than beckoning to attract Brown's attention); desire for the end (i. e. for the attraction of Brown's attention). Throughout all these mental operations there is a running accompaniment of perception, memory and judgement, which render each in turn possible. Thus analysed and extended, the description of the mental process occupies considerable space; in operation they may occur with such rapidity that they are all fused together in a single mental act; but nevertheless they are separable on analysis. It is the nature of mental processes thus to become consolidated by use. The child learning to read print, or music, laboriously apprehends the value of each letter and each note by a separate mental operation; but, after much practice, it apprehends at a glance a whole word, a complete chord,—nay, a succession of words

or chords. Abundant practice has consolidated many operations into one. The desire for ends, the choice of means, the desire to act, and the volition which gives effect to the desire, constitute, with the appreciation of circumstances and the concurrent memories and judgements, a sequence, which, in one form or other, is continually being practised; and practice, in this case as in that, brings about the same consolidation.

So far we have traced the mental operations backward from the act; but it is quite manifest that we are still far from its mental origin. We have arrived at a desire to attract Brown's attention, but it is obvious that this is not the final aim of the actor. The attraction of Brown's attention is of no service to any one except for something to follow. It may be that the consequence sought was to warn him of danger, as supposed above; but some consequence was contemplated, or the act would never have been done. There was an ulterior purpose for the act. I had it in mind to buy of him, or sell to him, to ask him to dinner, to inquire after his child with the measles, to startle him merely, or to point out to him the balloon passing overhead; but some purpose I had in view, some desire I had to satisfy, by attracting his attention.

Let us suppose that the further aim I had in view was to propose that I should go home with him for a smoke and a chat. What was in my mind when I decided to attract his attention in order to make this proposition? I must have had a desire to smoke and chat with him; and I must have had such a knowledge and appreciation of all the circumstances as to make it probable to me that the course I proposed to take was practicable. If I had no desire, either aroused by the sight of Brown, or pre-existing before I saw him,

I should never have made the proposition, nor have done the act for the purpose of making the proposition. Here, then, our investigation has taken us another step backwards; but we are not yet at the end. We have still to ask, Why do I take measures to secure a smoke and a chat with my neighbour,—what is in my mind when I begin to follow out this purpose? It may be that I am at a loose end at home. I have been working in solitude all day, and the solitude has become irksome. The need of human society, of comradeship, has made itself felt; and, to satisfy this need, I go out to seek a companion, and come across Brown; and then the rest follows. In other words, the whole train of acts—my rising from my work, taking my hat and stick, going forth into the open, seeking Brown and shouting to attract his attention,—all followed from the driving power of my desire for human companionship and comradeship. This was the first mental condition of the series. Can we go behind this desire? Can we find this, as we have found each subsequent mental state, to be but a link connecting the subsequent mental state with an antecedent mental state? Is there any desire preceding the desire for companionship, and standing to it in a causal relation? There is not. We are now down upon the bed-rock, and can get no lower, for we have at last arrived at a primitive desire or instinct, which exists of itself, and is not the result of a previous act of choice. I can choose whether I shall satisfy the desire or not. I can choose whether I shall satisfy it by going to Brown or sending to Jones or writing to Robinson. But I cannot choose whether I shall or shall not feel the desire of companionship. At every subsequent stage I have a power of choice. Now I have none. The desire

of companionship with my kind is an inborn trait of character of which I cannot divest myself. It will assert itself. It will make itself felt. And, though I may struggle against and suppress its manifestation, though I may stick to my work in spite of it, still I cannot suppress the desire. Antecedent circumstances there are. The long privation from society has aroused the feeling of the need for society; but causal states of mind there are not. We are at the end of the chain, and are come to the staple.

But it may be that my aim in gaining a smoke and a chat with Brown was not my final aim. It may be that I have an inclination to his daughter, and that my proposal was made with an eye to passing an hour or two in her society. In such case my desire to go home and sit with him was prompted by the antecedent desire to court the lady, and was accompanied by an appreciation of the circumstances which rendered the accomplishment of my desire possible. Behind this desire to court this particular individual there lies the inborn, the primaeval desire of courtship, which I share in common with the rest of my race, and with all animal nature.

Can I go behind this, again? Can we penetrate a step further back? No and yes. There is not, when I set out with the purpose of courting Miss Brown, nor at any subsequent stage of the proceedings, any more primitive desire avowed by, or even known to, myself, of any ulterior purpose to be gained by the proceedings of courtship. Nevertheless, courtship has a definite aim, the satisfaction of a desire even more primitive, more fundamentally fixed in human nature, more deeply rooted, than that of courtship itself; and when this is reached, we are again at the end of the chain, and are come to the staple.

It matters not what act we select for our analysis, we find always the same sequence of mental events. If we follow them in their order backwards from the act, we find always that the last mental event is volition, behind that is the desire to do the act, and behind that again the choice of the act. Then comes desire for the proximate aim to which the act is directed; and, antecedent to that, is the choice of this proximate aim. There, in longer or shorter procession, is a series of alternate desires, and choices which determine the desires, until at last we find ourselves in presence of some one of a small number of primitive desires by which all the acts of men are prompted.—Desire of continuing the race, of conserving the self, of preserving the integrity of the community, of helping others in forwarding the same ends. To these few desires or instincts, and to modifications or derivatives of them, all the acts of men may be referred, through various numbers and kinds of stages. The whole chain of desires and choosings has a running accompaniment of processes of intelligence—perception, memory, judgement,—by which the successive steps of conduct are determined in such directions as appear, in the light of experience, most competent to satisfy the desires as they follow one another.

Such is the skeleton outline of the mental processes which enter into that conscious direction towards an aim or end which constitutes the voluntariness of an act. Certain additions must be now made to render the picture complete.

Choice has been described as the selection, among competing modes of attaining the satisfaction of a desire, of that mode which appeals to the judgement as the most efficacious, or the most direct or the most advantageous mode of satisfying the desire. Two or more

courses of conduct, by which it appears the desire may be attained, are represented in the mind; they compete with one another for the mastery, and at length one attains the preponderance, is chosen, and, to the exclusion of the others, remains depicted in the mind, accompanied by the desire to follow it out. This is one example of choice—the choice of means to attain ends. But choice is exerted not only about means, but about ends;—not only about proximate ends, but about ultimate ends. There may be a conflict in the mind, not only between the means by which it appears a desire may be satisfied, but between desires themselves;—not only between subsidiary desires, derived from one of the primitive fundamental desires that have been enumerated, but between these fundamental desires themselves. Walking in the public road, I find upon the ground a gold watch and chain, evidently dropped by some wayfarer, and straightway I am aware of a conflict of desires in my mind. I have long wanted a gold watch, and the instinct of acquisition, a derivative of the primitive desire of self-preservation, prompts me to say nothing about my find, and to keep the watch for myself. Against this desire struggles the feeling of sympathy, which impels me to relieve the distress of the unknown loser of the watch; and the sentiment of honesty, a derivative of the fundamental instinct to preserve the integrity of the community. The conflict proceeds until one or the other side is victorious, and I make a choice, or arrive at a determination, either to keep the watch for myself, or to take steps to restore it to its owner. Which of these courses I shall take depends upon the relative strength of the respective desires which are in conflict, and the degree to which they are respectively reinforced by other considerations—the desire to retain my self-respect, the prospect of discovery

and punishment, and so forth. The final choice is, in any case, an act of volition.

So far I have dealt with the mental states and processes which enter into a voluntary act, and have enumerated them, it appears, exhaustively, without making any mention of the two very important elements named, respectively, Intention and Motive. Designedly I have omitted them from the description, for thus, I think, can their nature be best ascertained.

Bentham does not define intention, unless it be considered a definition to call it 'a mental act.' He says the intention or will may regard (1) the act itself; or (2) its consequences. The act may be intentional without the consequences. You may touch a man without intending to hurt him. The consequences cannot be intentional without the act being intentional (at least in its first stage). The qualification in the parenthesis appears to be meaningless. He then makes a number of minute distinctions, which seem to me unnecessary and trifling, into direct and oblique, ultimate and mediate, exclusive and inexclusive, conjunctive, disjunctive and indiscriminate, preferential and non-preferential intention, and gives an example of each,—examples which do not divest his distinctions of their insignificant and idle character. In his chapter on consciousness is a good example of his confusion of thought and clumsiness of expression:—'Let us observe the connection there is between intentionality and consciousness.' By consciousness he means, it appears, knowledge. 'When the act itself is intentional, and with respect to the existence of all the circumstances *advised* [known to the actor] as also with respect to the materiality of those circumstances, in relation to a given consequence, and there is no mis-supposal with regard to any preventive circumstance, that consequence must also be intentional.'

This seems to mean that an actor intends the consequences that he knows will ensue on his intentional act.

Sir FitzJames Stephen is more explicit. 'Intention,' he says, 'is the result of deliberation upon motives, and is the object aimed at by the action caused or accompanied by the act of volition. Though this appears to me to be the proper and accurate meaning of the word it is frequently used and understood as being synonymous with motives. It is very common to say that a man's intentions were good when it is meant that his motives were good, and to argue that his intention was not what it really was, because the motive which led him to act as he did was the prevailing feeling in his mind at the time when he acted rather than the desire to produce the particular result which his conduct was intended to produce. This confusion of ideas not unfrequently leads to failures of justice. That it is a confusion may be shown by illustrations. *A* puts a loaded pistol to *B*'s temple, and shoots *B* through the head deliberately, and knowing that the pistol is loaded and that the wound must certainly be mortal. It is obvious that in every such case the intention of *A* must be to kill *B*. On the other hand, the act in itself throws no light whatever on *A*'s motives for killing *B*. They may have been infinitely various. They may have varied from day to day. They may have been mixed in all imaginable degrees. The motive may have been a desire for revenge, or a desire for plunder, or a wish on *A*'s part to defend himself against an attack by *B*, or a desire to kill an enemy in battle, or to put a man already mortally wounded out of his agony. In all these cases the intention is the same, but the motives are different, and in all the intention may remain unchanged from first to last while the motives may vary from moment to moment.

'This account of the nature of intention explains the common maxim . . . that a man must be held to intend the natural consequences of his act. . . . The only possible way of discovering a man's intention is by looking at what he actually did, and by considering what must have appeared to him at the time the natural consequence of his conduct.

'The maxim, however, is valuable as conveying a warning against two common fallacies, namely, the confusion between motive and intention, and the tendency to deny an immediate intention because of the existence, real or supposed, of some ulterior intention.'

Sir FitzJames Stephen does not treat of motive separately; but it is clear that he regards intention and motive as distinct and different things, and the distinction between them as of great importance. Subsequently he insists upon the necessity of intention as an ingredient in criminal acts; whereas it appears from the passages quoted that he regards motive as non-essential and neglectable.

Bentham is much more diffuse in his treatment of motive than in his treatment of intention. Intention he does not define. Motive, he does; and his definition is wrong. 'By a motive,' he says, 'in the most extreme sense in which the word is ever used with reference to a thinking being, is meant anything that can contribute to give birth to, or even to prevent, any kind of action.' By this definition the cords with which a prisoner is tied, the locks and bolts which keep him captive, would be motives to his inaction. He then divides speculative motives, which influence 'acts of the intellectual faculty' only, from motives which concern the will, and which he calls practical motives; and goes on—'By a motive, then, in this sense of the word, is to

be understood anything whatsoever, which, by influencing the will of a sensitive being, is supposed [by whom ?] to serve as a means of determining him to act, or voluntarily to forbear to act, upon any occasion.'

Most of his distinctions in this, as in other matters, are frivolous and useless, but one distinction of some importance he does make. Divested of unnecessary verbiage, it amounts to this :—The word 'motive' is used in two senses. Regarded as a mental state,—as a desire,—it is previous to the act; but in order to be governed by a motive, an actor must look beyond the act to its consequences, which also are termed the motive to the act. It is obvious, however, that the consequences of an act, consequences which are not yet, and may never be, in being, cannot afford a motive to the act in any proper sense of the word motive. The contemplation of the probability of these consequences, and the desire to bring them about, these may indeed be, and are, properly called motives, but to speak of the consequences themselves as motives is a loose inaccurate expression, allowable, perhaps, in colloquial discourse, in which it is frequent, but utterly out of place in writing of any pretence to accuracy.

Upon close consideration, it does not appear that there is any such sharp and manifest distinction between intention and motive as he, and other writers on the subject, draw between the two mental states. I cannot discover that intention and motive differ otherwise than in motive being a more distant intention, and intention a more proximate motive; that is to say, the desire to do the act, and to bring about the immediate and obvious consequences of the act, we call the intention. The desire to bring about more remote and less obvious consequences by means of the act, we call the motive.

A more definite distinction than this is practicable, and will come into view later, but at the present stage this appears to be the only discernible difference.

If we take Sir FitzJames Stephen's example, we shall find that this difference, between the immediate and the more remote consequences of the act, does, in fact, enter into the difference between intention and motive; and it will be difficult to discover any difference beyond those implied in the desires prompting the more proximate and more distant consequences. *A* puts a loaded pistol to *B*'s temple, and shoots *B* through the head deliberately, and knowing that the pistol is loaded and knowing [and desiring] that the wound will certainly be mortal. Here the act, the placing of the pistol to *B*'s head, and the pulling of the trigger, is certainly intentional. *A* willed the act; that is to say, he both desired and intended it. The killing of *B* is a further consequence of the act,—a consequence which must follow, as *A* knows, instantly, obviously and necessarily from the act. The killing of *B* was in *A*'s mind when the trigger was pulled. At the moment of acting *A* both contemplated and desired the death of *B*. These, it seems to me, are the elements, in the conscious state preceding the act, which render the act intentional. The preceding desire of *A*, for the end consequent on the death of *B*, had been in *A*'s mind before the time of acting; but, by the time the act took place, this desire had been superseded, thrust into the background, and put out of attention, out of direct contemplation, by the subsequently formed desire to kill *B*, which was then become dominant, and was solely, or almost solely, contemplated by *A*. It is this presence in the mind at the time of acting, of the aim contemplated in the act, which appears to me to differentiate intention from motive. The motive—the whole

series of desires, from the primitive instinct down to the desire to do the act—have all been present in the actor's mind at some time or other antecedent to the act. But, at the time the act is done, the earlier desires are neglected; they have fallen back from direct and vivid consciousness, and only the two or three latest in the series remain before consciousness, are attended to, and are active in the mind. To these is given the title of intention. Suppose that *A*'s object in killing *B* is to rifle his pockets immediately after the deed. We should suppose that a consequence, to follow so immediately upon the act, was present to the mind of the actor at the time of the act; and we should say that *A* killed *B* with intent to rob him—that *A*'s intention was robbery. But suppose that *A*'s object in killing *B* is to leave *C*, who favours *B*, free to entertain the attentions of *A*. We should suppose that, at the time the act is in progress, *A* contemplates the death of *B*; but that he has not, at that moment, simultaneously in his mind the idea of leaving *B*'s body on the ground and going off to pay his own unrivalled attentions to *C*. We suppose then, at that time, the consequences that *A* represents to himself do not extend farther than the death of *B*; and we regard this consequence only as the intention of *A*. The desire to get rid of *B*'s rivalry, which preceded this intention, we call the motive of jealousy; and we so call it because we suppose that, at the moment of the crime, it was swamped by the mere desire to kill *B*, and was not directly operative. If we did suppose that *A* would go straight off to *C* directly after the murder, and had this course in contemplation at the time of the act, we should say that *A* killed *B* with the intention of courting *C* unmolested.

Or take the case of the shouter; we should not usually

call the shout intentional, though no doubt it would not be wrong to do so. We rather call it a *voluntary* shout with *intent* to attract attention; the reason of the apportionment of the qualifications being, that what is in the mind of the shouter, at the moment of shouting, is not so much the act, as its immediate consequence. The act, being willed, is no longer regarded; the mind is done with it; its contemplation ceases, and is thrust aside to make way for the contemplation of its consequences; and whatever of these consequences are in the mind when the act is done, constitute the intention of the act. Whatever may be in the mind, either before or after the time of acting, is not intention, unless it is in the mind at the time of acting also. Before the act is done, I may rightly say that I intend to shout, for the desire so to act is what is then in my mind; but at the time of acting, my mind has travelled a stage farther, and has ceased to contemplate the act, which was, but is not now intentional. My intention at the time of acting is to attract Brown's attention. That is undeniable. But does the intention extend beyond this consequence? Do I not shout with the intention, not merely of attracting his attention, but of proposing to go home with him? No doubt I do; and the reason, that this further consequence is included in the intention, is that this also is in my mind when the act is done. And further, it is scarcely possible that I should contemplate offering to go home with Brown to sit by his fireside smoking and chatting, without at the same time contemplating this result—picturing or representing myself in those surroundings, engaged in that occupation. It may properly be said therefore, that I shouted with the intention of going home and sitting with him. But further consequences, it will be remembered, had been in my mind. The desire to go home and sit with

Brown was prompted by a previous and more enduring desire to see and talk to his daughter. Would it be more correct to say that I shouted to Brown with the intention of courting Miss Brown, or from the motive of courting her? The latter expression will probably be felt to be the more correct, but, in any case, it is clear that we are now in the borderland between intention and motive—that the desire may be called either intention or motive according to the state of the facts. It will be felt that it is straining the use and custom of language a little to say that I shouted to Brown with the intention of courting Miss Brown; but this feeling of strain or incongruity of expression will be diminished if I say, that I shouted to Brown with the intention of proposing to go home with him, in order to have an opportunity of courting Miss Brown. It is clear that the courtship was not the immediate intention, and cannot properly be brought into the intention unless introduced through the intermediate consequences of the act; and this is not only because the courtship was a more remote consequence of the act, but because it was not so prominently before the mind when the act was done. The capacity of the mind for holding ideas is limited. It cannot simultaneously contemplate many things. It can only bring one thing at a time into the full glare and illumination of consciousness. Neighbouring ideas,—associated ideas—if present at all, are remitted to a twilight, which becomes more obscure as the distance from the central focus of attention increases. For this reason it is, that the act itself is scarcely intentional at the moment of acting. The attention has left it behind, and gone on to contemplate the immediate consequence, which is now become the primary intention. And for this reason it is, also, that the more remote consequences fail to come within the intention. The

mind is incapable of contemplating simultaneously a long train of consequences. As far as its contemplation of consequences extends, at the time the act is done, so far extends the intention; but ulterior consequences, which are not at that moment before the mind, are regarded, not as intention, but as motive. In the case supposed, it is evidently more correct to look upon the desire of courting Miss Brown as the motive, rather than as the intention, of the act. But even this desire was not, as we have seen, the primary motive to the act. Behind it again was a desire still more fundamentally ingrained in the constitution of the mind;—the primary desire of reproduction; and this must be considered the ultimate motive of the act, even though it never was deliberately contemplated by the mind at all. Certainly, it did not enter into the intention.

When it is said that the law contemplates the intention of the act, and takes no account of the motive, what is meant is that the law considers those proximate consequences only of the act, which were before the mind of the actor when the act was done; and ignores those desires for more remote consequences of the act, desires which were in the mind of the actor at some time previous to the act, but were not directly contemplated by him at the time of acting.

When Sir FitzJames Stephen says that 'intention is the result of deliberation upon motives and is the object aimed at by the action caused or accompanied by the act of volition,' and repudiates the notion that 'intention' should be used and understood as synonymous with 'motive,' he seems to me to give a definition of intention which does not clearly discriminate it from motive. For, as we have seen, the objects aimed at by the act form a series which may be of considerable length; the desire

for the earlier ones being the intention; the desire for the later the motive. It is evident, from his strong expression of opinion, that the law regards as very important the difference between intention and motive, and it is therefore not labour ill spent to define them; to discover the true difference between them; and to find that this difference is not an absolute difference, and cannot always be distinguished with certainty.

A statement of Sir FitzJames Stephen's demands attention at this point. He says :—'It is very common to say that a man's intentions were good when it is meant that his motives were good, and to argue that his intention was not what it really was, because the motive which led him to act as he did was the prevailing feeling in his mind at the time when he acted rather than the desire to produce the particular result which his conduct was intended to produce. This confusion of ideas not unfrequently leads to failures of justice.' The first statement may pass without objection. Confusion between intention and motive is no doubt frequent enough, and is likely to be so, in the absence of any clear distinction between the two. The second statement demands serious consideration, for it is important to clear up a confusion of ideas which not unfrequently leads to failures of justice. It will be seen from Sir FitzJames Stephen's words, that he had some notion of the importance of 'the prevailing feeling in his [the actor's] mind at the time when he acted,' though he avers that this feeling may be the motive, while the intention was 'the desire to produce the particular result which his conduct was intended to produce.' My own opinion would be that the desire to produce this particular result, by which I think Stephen means the immediate or proximate result, is in all cases the prevailing feeling in

the mind of the actor at the time he acts; and that what Stephen calls the prevailing feeling, and designates the motive, was, if it was indeed the motive, not then the *prevailing* feeling in his mind, though it doubtless had previously been the prevailing feeling, and was the feeling to which the act was ultimately due.

Sir FitzJames Stephen illustrates his meaning by a very clear example, which has been already quoted. When '*A* puts a loaded pistol to *B*'s temple and shoots *B* through the head deliberately and knowing that the pistol is loaded and that the wound must certainly be mortal,' it is obvious, I should agree, that the intention of *A* must be to kill *B*. But I do not think the case is put quite as happily as it might be. The pistol might not be loaded, and yet *A*, in ignorance of its emptiness, might still intend to kill *B*. The words following 'deliberately' should, I think, be 'and desiring to kill *B*.' It is the desire, not the knowledge, which constitutes intention. I do not think it matters whether *A* knows for certain that the pistol is loaded and that the wound must be mortal; or whether he acts on a reasonable probability as to both events; or whether he acts on the chance that it may turn out as he desires. In any case, he still intends to kill *B*, and the intention resides in the desire, culminating in the act.

In order to fulfil the conditions of confusion described by Sir FitzJames Stephen, it would be necessary, as I understand the case, to contend that *A* did not really intend to kill *B*, because the prevailing feeling in *A*'s mind, at the time he pulled the trigger, was not the desire to kill *B*, but the desire to plunder *B*'s body after he was dead. It is difficult for the non-legal mind to believe that such a contention can have been made in such a case, but the example subsequently given by Sir

FitzJames Stephen places the occurrence beyond doubt. 'It will often be argued,' he says, 'that a prisoner ought to be acquitted of wounding a policeman with intent to do him grievous bodily harm, because his intention was not to hurt the policeman, but only to escape from his pursuit. This particular argument was so common that to inflict grievous bodily harm with intent to resist lawful apprehension is now a specific statutory offence; but, if the difference between motive and intention were properly understood, it would be seen that when a man stabs a police constable in order to escape, the wish to resist lawful apprehension is the motive, and stabbing the policeman the intention, and nothing can be more illogical than to argue that a man did not entertain a given intention because he had a motive for entertaining it.'

It does appear to the non-legal mind almost incredible that such an argument should have been so seriously entertained as to require an Act of Parliament to abolish it. Nevertheless, there is, in the order of psychological events, a certain amount of excuse for the contention. The chain, or series, of consequences of the act, which the culprit must be supposed to have contemplated, is as follows:—stabbing the policeman; so wounding him as to disable him from making the capture; escape of the culprit. Now, we have already seen that the act itself may escape, or almost escape, inclusion in the intention. The chief pre-occupation of the mind, in shooting a man through the head, is not the pulling of the trigger, but the consequent discharge of the weapon and death of the victim; and therefore, since the pulling of the trigger is not at that moment most prominently before the mind, we regard the death of the victim, rather than the pulling of the trigger, as the intention. Still, if the question be formally put, it cannot be denied that the pulling of

the trigger was intentional, though it would be more correctly denominated volitional, or willed. The reason, that the act itself is less intentional than its immediate consequence, is that the attention of the actor has, at the moment of acting, passed beyond the act itself, and gone forward to its consequence; nay, it is gone two steps forward, from the pulling of the trigger to the discharge of the pistol, and from the discharge of the pistol to the fall of the victim. The act and its immediate consequence have, in a sense, ceased to be intentional, in that the intention is gone beyond them to the next stage; but nevertheless, the actor may rightly be indicted for intentionally pulling the trigger and intentionally putting a bullet through the victim's head, since without doubt he had had the desire to accomplish both these ends, as a means to his further end, and had accomplished them. The confusion may have arisen from some such reasoning as this:—since the consequences of the act, *after* those intended at the moment of the crime, do not count as intentions, therefore the antecedent stages, *previous* to the accomplishment of the intention, ought not to count. As so stated, the argument is a manifest *non sequitur*. In the case cited, it may perhaps be contended that the intention of the criminal had gone forward from the stabbing to the disablement, and from the disablement to the escape, and that therefore, as the attention was no longer occupied about the disablement, this could not properly be included in the intention, and I think some such notion must have been inarticulately present in the minds of those who used the argument. But it seems obvious that such an argument cannot have been valid in any circumstances. In order to enable the prisoner to escape, the policeman must be disabled; and in order that the policeman may be disabled, the blow

must be delivered with some definite force in some definite direction. A mere random waving of the knife will not serve the purpose. But to deliver a blow of definite strength in a definite direction, it is necessary that the mind should be occupied about the blow at the very moment it is delivered; the desire to deliver the blow in these definite conditions must then be prominently before the mind, and therefore the wounding is undoubtedly intentional; and the disabling also is undoubtedly intentional; and the indictment for wounding with intent to disable ought to be completely valid, even though the prisoner had, in addition, an ulterior intention or motive of escaping. Whether the desire to escape should properly be called intention or motive must depend upon the stage of the action that is reached. Before the act, when several stages must intervene before the escape can be accomplished, it is properly called motive. After the disablement of the policeman, when the prisoner takes to his heels, it is become intention. At some intervening stage, it passes from the one denomination to the other; but this stage is certainly not yet in existence when the mind is occupied about the infliction of the wound.

The last case instanced by Sir FitzJames Stephen, that of Woodbourne and Coke, is disposed of by similar reasoning. They were indicted for wounding Crispe with intent to maim and disfigure him; and the defence was that the intention was not to maim and disfigure, but to murder. The judge told the jury, in other words, that it was impossible to murder by striking about the head and face with a billhook, without maiming and disfiguring; and that the means taken to compass the end must be as much intended as the end itself. According to the test that I am suggesting, the Lord Chief Justice was right. The victim was struck seven distinct blows. It is

impossible that such an action, occupying, as it must, an appreciable time, and accompanied, as it must have been, by design and selection as to the part struck and the aim and force of the blows,—it is impossible that such an action should proceed without occupying the attention predominantly during the time it lasted. The desire for the death of the victim may indeed have been in the mind of the assailant all the time ; and so formed part of his intention ; but what was most prominently before his mind during the assault was not the ensuing death of his victim, but how to get in the blows, how to circumvent or break down the defence so as to make the blows effectual,—where to aim and how to strike,—and each such blow was accompanied, in its inception and execution, by a mental picture of its probable effect, that is to say, of the maiming and disfigurement for which the assailants were indicted. As the blows and their effects were the things most prominently before the mind at the time of acting, they constitute, in my view, the intention of the act. In this case also, it seems to me that the definition of intention here suggested, and the distinction drawn between it and motive, completely vindicate themselves ; and if they had been applied to cases as they arose, there would have been no necessity for a special statute to declare that a prisoner, who inflicts grievous bodily harm upon a policeman in order to escape, intends to inflict grievous bodily harm. These psychological investigations, recondite and fantastic as they may appear, have, therefore, a practical importance of great moment, and the time and labour spent on them are by no means thrown away.

CHAPTER III

WRONG-DOING

THE next problem before us is to attach a definite meaning to the term Wrong. It has already been stated that the term is not here used in the technical legal sense in which it is equivalent with Tort; but to characterize those acts which appear, to the average conscience of our time and country, to demand punishment.

One essential quality of such acts is at once apparent. It appears that they must be harmful. They must do harm to some one other than the actor. A man who is isolated from his fellows,—a Robinson Crusoe or an Alexander Selkirk—must suffer much misery from the deprivation of all companionship; but he is relieved from this implication of social life:—he can scarcely do wrong. It would be wrong of him, indeed, to torture his dog, or to starve his parrot; but our sense of the wrongness of such acts arises from our inclusion of his dog and his parrot in our concept of his social circle. Savages and children, in whom this concept is more restricted, would see nothing wrong in such behaviour, which, indeed, is often emulated by them; and we ourselves should not be apt to call it wrong of Crusoe to break the leg of an alligator and leave it to die. If a man chooses to chop off his own fingers, we regard him as foolish, as mad, perhaps, but he does no wrong, unless by the mutilation he does harm to some one else. If, indeed, he thereby disables himself

from fulfilling duties that he owes to others—if he renders himself incapable of defending his country, or supporting those who are dependent on him,—then indeed he does wrong, because then he does harm to others; but so long as the ill-consequences of his act do not extend beyond his own individuality, so long there is no wrongness in his act. Doing of harm to others is essential to doing of wrong.

I do not think it necessary to propose a definition of 'harm.' Words whose meaning is vague, ill-defined, uncertain, or not agreed upon, must be defined in terms that are less uncertain; but this is a process that has natural limitations. In pursuing it, we must come at length to terms of primary simplicity which do not admit of explanation by terms still simpler, for want of such simpler terms. At this stage we must be content to rest, and this stage is reached when we come to such a term as 'harm,' whose meaning will not, I think, be in doubt to any careful user of the English language. It may be translated as 'hurt,' but without benefit, nay, with positive disadvantage, for 'hurt' has implications of bodily injury which might not be discarded, and would then unduly restrict the meaning of 'harm.' It may be regarded as equivalent to 'evil,' and with accuracy, but without advantage, for the one word is neither more nor less primitive or definite in its meaning than the other. Harm is not equivalent to pain, though the meanings are not far asunder; for harm may be inflicted without inflicting pain. A man may be shot from behind without warning and killed instantly. Death being instantaneous, he suffers no pain; but it would be a curious use of words to say that he is not harmed by being killed. Nor is 'injury' quite equivalent to 'harm.' It may plausibly be contended that the servant or agent who robs his

employer, the trustee who misappropriates the funds of his trust, with the intention, which he actually carries out, of replacing the money abstracted, inflicts no injury on the person whose funds he misappropriates. I should not myself agree that no injury was done in such a case, but it must be admitted that the thesis is arguable, and consequently that there is a doubt whether the meaning of injury is quite coextensive with that of harm; for I suppose no one would contend that harm was not done to the person whose money was taken. By 'harm,' then, we must be content to understand harm, and need pursue our inquiries no further.

Next, it appears that, although the quality of harmfulness is essential to the notion of wrong, yet the words are by no means equivalent, for harm may be done without wrong. If I stop suddenly in the street to avoid knocking down a child, and thereby cause the man behind me to run against me and ram his pipe into his throat, I do that man harm, but I do no wrong. Or if, being a surgeon, I inflict a wound on my patient in order to cure his malady, and the operation turns out disastrously, and mutilates or cripples him without any countervailing benefit, still, though I have done him harm, I have done him no wrong. Or if, being a trustee, I invest the trust money in Consols at 114, and subsequently, owing to an unforeseeable war, they fall to 86, I do harm to my *cestui que trust*, but I do him no wrong. It is easy to see that something beyond mere harmfulness is necessary to wrongness, and it appears, from the foregoing examples, that, in order that a harmful act may be wrongful also, the harm must be *intentional*. In the first case, the act itself was not intentional. I had, indeed, the intention to stop short in my tracks, but I had no intention of constituting a dangerous obstacle

to the man behind me, still less had I any intention of inflicting harm upon him. In the second and third cases, the acts, indeed, were intentional, but the harm inflicted was unintentional. I had no desire in my mind, when the act was done, that harm should ensue. Nor was the motive the infliction of harm. Neither at the time of the act, nor at any previous time with the act in contemplation, had I any desire to harm; and the absence of this desire, either as intention or motive, exonerates the harmful character of the act from any taint of wrong.

A wrong act is, therefore, one by which the actor intends to harm another.

This restriction of the connotation of the term widens, of course, and widens usefully, its denotation. If a wrong act is one by which the actor intends to harm another, the wrongness consists, not in the harm actually done, but in the harm intended. To this lawyers generally would assent. Many crimes are statutorily defined to consist in intention. To all crimes, except crimes of omission, intention is necessary. The intention may not be to commit the very crime done, but intention of some sort is essential to crime. So it is with wrongs, as here treated. If I am waiting behind a hedge to murder a passer-by, and pull the trigger with the intention of killing him, and my gun misses fire, and he goes on his way unwitting of his danger, my act in pulling the trigger is still wrong, though no harm is done, and is wrong solely because of my intention to do harm. We are therefore a step nearer the true notion of wrong. The intention to harm another is essential to its meaning.

But, while we have widened the denotation of the term in one direction, we shall find it necessary to narrow it in another. I may cherish the intention of harming

another, and may carry out my intention, and yet do no wrong. It may be I am a judge, and commit a culprit to prison, intending thereby to do him such harm as is necessarily involved in the restriction of his liberty and the harshness of his treatment; but I do no wrong. Or, it may be, I punish my child for lying or cruelty, and, in punishing, I intend to do him the harm of which the pain he suffers is an indication. For, though pain and harm are not synonymous, yet pain is always the signal, as far as it goes, that harm is being suffered. It may indeed, and in the case supposed, I hope it will, be compensated by greater benefits subsequently attained by means of it; but in itself, and at the time, pain is the danger-flag indicating that harm is being suffered. Or it may be that I am an executioner, and in pursuance of my occupation inflict pain or death upon a culprit, and so do him harm with full intention of so doing, and yet I do no wrong. In each of these cases, the intention is to harm, but the act is exempt from all trace of wrong. Why? What is the element in the act which renders it innocent? I think it is clear that the exonerating element is the motive. Motive is expressly excluded by Sir FitzJames Stephen from what he well calls 'the conditions of criminality,' and accordingly, he would in all likelihood deny that it could determine the difference between the rightness and wrongness of an act. But Sir FitzJames Stephen made, or rather presumed, between intention and motive an absolute distinction which does not appear to exist. As explained in the previous chapter, motive differs from intention only as one stage of the same process differs from another. We may put it thus:—My intention in driving westward down the Bayswater road is to get to Ealing, but my motive is to get to High Wycombe. When I am past

Ealing, the desire to reach Wycombe becomes my intention, while my proximate motive is now what my ultimate motive was all along,—to attain to Oxford. If this difference in stage, which is a difference in degree, be the only difference between intention and motive, and if motive becomes transformed into intention as conduct progresses from stage to stage, then there is nothing anomalous in holding that motive may, as it is universally admitted intention does, enter into our concept of the rightness and wrongness of acts.

The element or ingredient, of the intentionally harmful act, which extracts from it the taint of wrong, is, it seems to me, the absence of self-seeking,—the unselfish motive—the fact that the act is done, not to gratify the actor, but with some other purpose or motive. It is not denied that the actor may obtain gratification by the act, nor is it any bar to the rightness of the act that he did obtain some gratification by the doing; but the act is not wrong unless it was done on purpose to obtain gratification by its means—unless it was done primarily and directly to give pleasure to the actor, or to avert pain from him. When the judge delivers sentence, he does, I suppose, derive satisfaction from the thought that he is giving some truculent rascal his gruel; but the judge does not deliver sentence primarily and directly for his own satisfaction. If he is a right-minded man, he regrets the necessity of passing sentence. If he is a man of tender heart, he is pained at having to condemn a criminal to the awful contemplation of a speedy, certain and violent death. In any case, the act is done,—the harm is inflicted,—not for the judge's own gratification, but in pursuance of his duty. When sentence is passed with gloating satisfaction; with insult, and contumely, and ribald reviling of the wretched culprit; when, as with a Jeffreys or a Brax-

field, the judge plainly takes delight in the harm that he is doing, we regard him with horror; and when we shrewdly suspect that not only does he delight in the infliction of harm, but that he actually passes sentence to gratify his own vindictiveness and malice, or to make a display of his power, then instantly we regard his conduct as wrong; and we so regard it, I submit, because he now does the harm primarily for his own gratification.

Similarly, the harm inflicted in punishment, by a parent upon his child, is not regarded as wrong so long as it is not excessive. When it surpasses reasonable limits, we consider it wrong, and why? Because, as I aver, the parent has, or we think he has, abandoned the welfare of the child as a motive, and is acting for his own gratification,—to relieve and satisfy his own vindictive desire of hurting the child.

No doubt a hangman derives a certain satisfaction from turning off his victims in a workmanlike manner,—the satisfaction that we all derive from dexterity and from success, in whatever undertaking,—but, though we look askance upon his occupation, we do not regard him as a wrong-doer, so long as his primary motive is to earn his wages, to carry out the contract that he has made, or to perform a public duty. But the man who should hang another merely to gratify his own desires, merely to obtain gratification by so doing, merely to satisfy his love of power, or of inflicting pain, or to obtain his victim's clothes, or in any way to obtain satisfaction to himself, would do wrong.

The case of the hangman is peculiar. It seems at first sight as if the definition that is here given would be satisfied as completely by the bravo who assassinates a man for hire, as by the executioner who hangs a man

for hire. In each case the actor does harm to another for his own gratification, yet the one act we regard as wrong, the other as right. Does not this indicate a flaw in the reasoning? At first sight it seems to do so, but I think the discrepancy is apparent only. About the bravo there is no shadow of doubt. He certainly does wrong. Ought not, then, the executioner, who also does a similar act from a similar motive, to be reprobated? and if not, why not? The answer is twofold. In the first place, the executioner *is* reprobated. He is looked upon askance. He is regarded with disgust, if not with execration. And the reason is that for payment he kills men. It is true that the soldier does the same, and that we do not reprobate the soldier; but in his case, oddly enough, we never think about the pay, though it is sometimes upon a very magnificent scale; and though the soldier who is thus paid kills many men while the hangman kills but few. The reason that we do not reprobate the soldier is that the men that he kills are reckoned as much outside of and apart from our own social environment as the alligator whose leg was broken by Robinson Crusoe. We regard their lives no more than the lives of vermin; and all consideration of killing in war is quite outside the purview of our present subject. To go back to the hangman; he is reprobated, as I have said. We look upon his occupation as infamous. We should not care to eat with him, drink with him, or shake hands with him. We hesitate to declare formally and in words that his calling is wrong; but we certainly regard it as disreputable. Still, we do not visit him with the execration that we award to the ruffian who assassinates for hire: why not? Because, I opine, we do not regard the hangman as working solely for hire. We concur in the condemnation of the criminal; we consider him

righteously punished; we desire that he should suffer for his crime; and thus desiring, we do not only approve the man who carries our desire into effect, but we regard him as one of ourselves, as himself animated by the same motives, as acting on our behalf as well as on his own; as the representative of the community; in short, as acting from other and higher motives as well as from the mere prospect of pay. In as far as he acts for pay, we reprobate him and regard his action as wrong. In as far as he acts as the hand and the weapon of the community, in inflicting harm from motives other than those of self-gratification, in so far we regard his action as right; and as, in this respect, his conduct is not parallel to that of the bravo, but is based on a different motive, so he is exempt from the utter condemnation that we pass upon the latter.

That the reason suggested is the true reason for the different views that we take of the act of the hired bravo and the hired hangman respectively, will appear, I think, from the following consideration. Take the case of a victim unjustly condemned by the arbitrary act of a tyrant. Suppose that Dr. Hough had been condemned to death for being elected President of Magdalen; or that the seven bishops had been sentenced, as Prynne was, to have their ears cut off for publishing a libel. It is probable that the king would have experienced great difficulty in finding an executioner in either case. Let us suppose that Jack Ketch refused, for conscientious reasons, to exercise his office on the distinguished victims, and that at length he succumbed to a heavy bribe, and undertook the task. He would then be in the position of an executioner for payment harming a culprit, but in such a case we should have no hesitation in adjudging his conduct to be wrong. It would be as wrong as that

of the bravo who for hire cut a stranger's throat. And it would be wrong for the same reason; namely, that the motive actuating him to the deed was purely, solely and manifestly his own gratification. The public advantage had, and could have had, no place in his desires. His act was the harming of another to obtain gratification for himself. It satisfies the conditions here attached to wrongness, and, in the distinction drawn between his act and the act of the hangman under ordinary circumstances, we cannot but recognize that the one is wrong and the other right, because the one does satisfy those conditions and the other does not.

We are now arrived, therefore, at the following provisional definition of wrong:—Wrong is the pursuit of gratification for oneself by the intentional injury of others. Even yet, the definition is not quite complete, but it is worth while to pause at this stage and test the definition to see whether it is adequate as far as it goes. This we can do by putting cases in which the conditions are completely satisfied, and determining whether they are wrong; and then by abstracting one element, and then another, and observing whether the wrongness also is abstracted by this means, or whether it remains.

It has already been stated that the actual production of harm is not essential to the wrongness of an act. It is wrong to shoot with intent to murder, whether the victim is hit or missed. It is now to be added that the positive intention to harm is not essential. It is enough if I pursue my own gratification, reckless whether or not harm is caused to others by so doing. It is wrong to drive a motor car deliberately over a child; and equally it is wrong to drive at a furious pace through a village, reckless whether a child is driven over or not. It is wrong to send to school a child, peeling after scarlet

fever, with the intention of infecting its school-fellow: equally it is wrong to send it to school, reckless whether or not it infects its school-fellows. To this extent, the connotation of the term 'intention' must be widened.

It has been said that self-seeking—the desire to obtain gratification by means of the act—is essential to its wrongness, and I know no better example than one that I have given in another place. If I stick a knife into a man, the act is *prima facie* wrong, because it does him harm. If I do it primarily in order to obtain gratification for myself, as to satisfy my hatred, or to rob him of his watch, or to marry his widow, or to escape prosecution for defrauding him, or to see how a man looks when a knife is stuck into him, or for any other self-seeking reason; the act is certainly wrong. But if the wound is made in the course of a surgical operation undertaken for the patient's benefit, then the wrongness of the act is removed by the removal of the self-seeking motive. It matters not though I obtain gratification secondarily from the act, by witnessing the relief of pain, or even by the display of dexterity, and by obtaining credit for my skill and knowledge; as long as some other motive, and not my own gratification, was the preponderant desire in my mind, so long the act was right. But if my main, my chief, my preponderant desire, is not to benefit my patient, but to exhibit my own dexterity, or to obtain desirable practice, then I do wrong in operating, even though by my operation I chance to benefit my patient. When harm is done, it needs the addition of self-seeking to make it wrong. When the motive of self-seeking is removed, the wrong is removed with it. Restoration of the self-seeking again restores the wrong.

As with motive, so with intention. Intention to harm,

in the wide sense here given to the term intention, is necessary to the wrongness of a harmful act. It is scarcely necessary to labour the thesis, and it is the less necessary since intention is admitted by lawyers to be one of the 'conditions of criminality' in all crimes save crimes of negligence. Still, the meaning here attached to 'intention' may not be the meaning that lawyers attach to the term. I have already explained what I mean by intention in general, and the intention, which I regard as essential to the wrongness of an act, is the intention, not merely to do the act, but by the act to do harm. A boy who, in frosty weather, makes a slide on the pavement, does a harmful act for his own gratification, but his act is not wrong. It does not satisfy the conditions of wrongness, for he does it with no intention of doing harm. He is not sufficiently familiar with the circumstances, he is not sufficiently habituated to forecast the collateral results of his conduct, to realize that, by sliding on the pavement, he is jeopardizing the limbs of after-comers. But let the matter be explained to him; let him be made to realize the probable result of his act; and then, if he repeats it, he does wrong. I am told a laughable story to the disparagement of the subject of it; and, without mentioning names, I repeat it as a joke to a stranger. Unknown to me the stranger happens to be the employer of the man to whom the story refers, and is able to identify him from the circumstances it relates. I have done harm to that man for my own gratification, but I have done no wrong, for I had no intention of harming, even in the wide sense here given to intention, for it was most unlikely—I could not foresee—that my interlocutor, whom I meet in London, is the employer of the man, who lives in Manchester, nor that the latter could be identified by the former. The occur-

rence is of the nature of an accident, and accidental harming, that is to say, harming without intention to harm, is innocent, as long as the harmful result of the act could not have been foreseen. It will usually be true that the act is innocent if the harmful result was not in fact foreseen.

However examined, it is found that the definition of wrong holds good, and that it is the pursuit of gratification for oneself by intentionally harming other people. I have called this a provisional definition, for, though it is true in most circumstances, it is subject to two important exceptions, which limit its scope.

In the first place, the definition takes no account of *provocation*, which may divest of its wrongness an act that completely satisfies the definition as it stands. If one is endeavouring to injure me, I may inflict upon him such harm as will prevent him from effecting his purpose. The principle is well recognized in English law, and in the law of other civilized countries also. My retaliation must be limited, however, to the extent stated, or the act will become wrong. If he assaults me, I may retaliate by such violence as will prevent him from continuing to harm me, but when I have stunned him by my counter assault, I shall not be justified in beating out his brains into the bargain. Nor, if he attempts to rob me, shall I be justified in robbing him in retaliation. The principle is recognized with pedantic accuracy in our law of trespass. If one is trespassing on my land, I may warn him off. If he does not go, I may put him off; but, in putting him off my land, I may use just so much force as is necessary to effect my purpose and no more. He may jeer at me and defy me; he may struggle against me; but still I may not strike him. I may not even threaten him. All I may do is to remove him from my land with

the minimum of force that is requisite for the purpose. So long only as the harm that I inflict is necessary to prevent a threatened harm to myself, is my action justifiable; and, when the harm is so limited, it may be intentionally inflicted for the purpose of gaining gratification for myself without wrong-doing. But when the harm that I inflict is so limited, my action is not wrong. So strict is the application of the principle, that if the harm to myself is not merely impending, but has passed beyond this stage and become actual, the principle no longer applies. I may inflict harm in order to prevent harm being done to me; but I may not inflict harm in retaliation for harm that has actually been done. We may paraphrase the biblical maxim thus:—'Vengeance is mine, saith the law; I will repay.' The attempt to inflict injury is *provocation;* the magnitude of the provocation is measured by the magnitude of the injury that is sought to be inflicted. The attempt to inflict grievous harm justifies graver retaliation than the attempt to inflict trivial harm. I may kill without blame the man who is endeavouring to kill me; but I may not intentionally kill the man who is trying to pick my pocket. Nor may I kill the man who is endeavouring to kill me, if I can defeat his purpose by means of less extremity. Every excess of retaliation, over that which is necessary to prevent the harm which is threatened, is wrong; so that, in order that provocation may exonerate, it must be *sufficient* to justify the act.

Nor is provocation the only justification for inflicting injury upon others. There is another circumstance, unmentioned as far as I know, either by lawyers or moralists, which minimizes, and in cases abolishes altogether, the wrongness of intentionally harmful acts done for the gratification of the actor. This is the proportion that

exists between the harm done and the benefit gained by the harm. The greater this ratio, the greater is the turpitude of the act. As the ratio diminishes, the turpitude decreases, until, in limit, it vanishes altogether. For a clerk to steal the money of his employer is wrong; and the wrong is not removed by the urgency of the clerk's need, nor by his intention of making good his defalcation at some future time, nor by his intention of confessing his fault when or before he makes restitution. But suppose that the clerk is in such a position that he can certainly secure a fortune to which he is rightfully entitled, by posting a registered letter before a certain hour; and suppose he is so needy that he is without the twopence necessary for the registration. His employer is out, and cannot be appealed to, and the clerk takes two stamps from his employer's till to enable him to post and register his letter. I think there are few moralists so stern as to hold that his act is wrong. But if there be any, let them consider a case more extreme. A wealthy farmer has a twenty-acre field bearing a fine crop of turnips. A starving tramp takes a single turnip to allay the pangs of hunger. He commits a crime, no doubt, but does he do wrong? Again, I think the moralist who would answer in the affirmative would exhibit unusual severity. To take a costly opera cloak belonging to a stranger, and throw it on the fire, is, *prima facie*, wrong. But if a man takes his wife in a diaphanous dress to a music hall, and some smoker throws down a match which sets her garment in a blaze, does her husband wrong if he seizes the nearest opera cloak and wraps it round the burning woman? The question admits of but one answer. My child is drowning in a deep pool; and, to save his life, I cut a rope from a neighbouring scaffold. Is the act wrong? Few, I

think, would say so. In each case the actor intentionally harms his neighbour in pursuit of his own gratification. In each case the wrong done is little or nothing. Why is it that we regard the acts, which conform strictly to the definition of wrong, as divested of most or all of their wrongness? There can be but one answer. It is because of the magnitude of the benefit gained by the actor in proportion to the harm suffered by the victim. The greater this proportion, the less the wrong; and, when the ratio becomes very large, wrong altogether vanishes.

The truth of the proposition is corroborated by the truth of its complement. The less the ratio of benefit gained by the actor to harm suffered by the victim, the greater the turpitude of the act. This is the reason of the indignation that we feel towards those 'extreme self-lovers' who, as Bacon says, 'will set a house on fire an it were but to roast their eggs.' When an Eastern potentate murders the rest of his family in order to secure his succession to the throne, or his stability in it, the Western conscience is revolted at the act; but it would be moved to still deeper indignation if the act were done from jealousy of the superior stature of the victims, or even to obtain their possessions. And the reason, that greater turpitude would be ascribed to the murders in the latter cases than in the first, would be the smaller ratio of benefit derived by the actor to the harm inflicted on his victims. The unnecessary carnage of Toulouse, with its butcher's bill of eight thousand men, arouses a shudder after the lapse of nearly a century. The town was attacked to gain a great object; but what a load of obloquy would not Wellington have had to bear if he had known of Napoleon's abdication, and had attacked merely for his own personal aggrandizement? Language scarcely contains words

strong enough to stigmatize such infamy, and happily the situation is but imaginary. But even such a deed is exceeded in turpitude by the act of Napoleon, in ordering an assault to be made, which did and could lead to no useful result; merely for the purpose of showing his mistress what fighting was like. Thus, the more we diminish the ratio, which the advantage gained by doing harm bears to the amount of harm done, the more the turpitude of the harmful act is increased; and vice versa, the more this ratio is increased, the more the act is divested of wickedness, until, when the disparity becomes extreme, the deed is purged of its wrongness and becomes innocent, as in the examples that have already been given.

The fact that benefit and harm have no common measure, and cannot be compared with accuracy, does not in the least vitiate the proposition; any more than the absence of any common measure between offence and punishment relieves us from the obligation of apportioning the severity of punishment in ratio to the wickedness of the offence. In each case we cannot but recognize that there are degrees of less and more. If the benefit to the actor remains the same, we are irresistibly compelled to recognize more and more turpitude in his act, as it inflicts more and more harm upon his victim. Picking a pocket is wrong, but it is a less degree of wrong than robbery with violence; and robbery with violence is less heinous than murder for the sake of robbery. On the other hand, while it is abominable to murder a man in order to rob him of an immense sum in jewellery which he carries on his person; still more abominable is it to murder him for the sake of a five-pound note; and even this degree of wickedness is exceeded if he is murdered in order that

he may be robbed of sixpence. We can never make an exact estimate, but we always do in practice make a rough estimate, of the degree of turpitude that we attach to wrongful acts ; and, while this estimate depends in part upon the absolute magnitude of the harm done, it does also depend in no small degree upon the relative magnitude of the harm in comparison with the advantage gained.

While it is true that a very great disparity between the harm inflicted and the benefit gained, by an act which would otherwise be wrong, will extract the wrongness from that act; yet, in practice, this innoxiousness is attained in those cases only in which the harm inflicted is so slight as to be neglectable, and such cases are provided for by another legal principle, if such it may be termed,—*de minimis non curat lex.* Attention is drawn to them here for the sake of academic completeness, and to make good a defect that exists in every description of wrong-doing that is known to me. I think, however, that the exceptions need not be provided for in the completed definition of wrong-doing, which will now run as follows.

He does wrong who seeks gratification by an unprovoked act of intentional harm.

Every term in this definition has been considered, and has, I think, been defined with sufficient precision to prevent ambiguity, with the exception of 'gratification.' By gratification is meant both pleasure and relief from pain,—the satisfaction of both desire and aversion. It includes all forms of pleasure, from the grossest modes of sensual indulgence to the refined satisfaction of alms-giving; and all varieties of pain, from the agony of bodily dismemberment to the uneasiness of witnessing the distress of others. I need not point out again that

by 'seeking gratification' is meant that the satisfaction of his own desire or aversion was the predominant motive in the mind of the actor. Other subsidiary desires he may have had, which may have concurred with and reinforced his determination so to act, but the rightness or wrongness of the act must be judged by the motive that was 'uppermost in the mind' of the actor,—that was predominant—that was the determining reason for doing the act.

From all that has gone before it appears—as, indeed, is generally understood—that the rightness and wrongness of acts cannot be determined without diving into the mind of the actor, and discovering what were his intention and motive, what his knowledge and appreciation of the circumstances in which the act was done, what the reasons for his choice, what his judgement and memory, desires and aversions. The determination of responsibility, even if we understand responsibility in the strictest sense to mean liability, by the law of England as it is, to punishment, is not a purely legal problem. It is in large degree a psychological problem also.

CHAPTER IV

INSANITY

'Some general idea of the nature of the disease of insanity,' says Sir FitzJames Stephen, 'is absolutely essential to anything like an appreciation of the state of the law upon the subject. I have attempted to draw such a sketch. . . . My only apology for writing at all on the subject is that I cannot otherwise make my view of the law intelligible. I have read a variety of medical works on madness, but I have found the greatest difficulty in discovering in any of them the information of which I stood in need ; namely, a definite account of the course of the symptoms collectively constituting the disease. Most of the authors whose works I have read insist at a length which in the present day I should have supposed was unnecessary on the proposition that insanity is a disease, but hardly any of them describe it as a disease is described. They all, or almost all, describe a number of states of mind which do not appear to have any necessary or obvious connection with each other. These they classify in ways which are admitted to be more or less unsatisfactory. Total insanity, partial insanity, impulsive insanity, moral insanity, pyromania, kleptomania, and many other such expressions occur ; but in the absence of any general account of the whole subject, showing what is the common cause of which all these symptoms are effects, and how they respectively proceed from it, these expressions are like adjectives

connected with an unintelligible substantive. To say that a strong and causeless desire to set a house on fire is pyromania, and that a state of continuous passionate excitement, in which all the ordinary connection of ideas is broken up, and a man behaves as if he were drunk or transported with intense anger, is mania as opposed to melancholia, is to substitute words for thoughts. It is like telling a man that a whale and a monkey are both mammals, when you do not explain what mammal means.'

I have quoted this passage at length because it sets forth clearly the nature of the information that lawyers, in dealing with the subject, require at the hands of alienists; and the difficulty there was at that time in procuring the information. I fear that, if Sir Fitz-James Stephen could now begin his task anew, his difficulty would not be much diminished. He does piece together, from the works of several authoritative writers of his day, an account which represents with very remarkable accuracy the then existing state of knowledge. I fear that the knowledge of insanity is not even yet advanced to such a stage that Sir FitzJames Stephen's requirements can be fulfilled. We are not yet in a position to give such a general idea of the nature of the disease of insanity as he considered absolutely essential. We cannot give a general account of the whole subject, showing what is the common cause of which all the symptoms are effects, and how they respectively proceed from it. We are not prepared to say that all the symptoms have a common cause. In some respects, however, our knowledge has advanced beyond the stage it had reached when, more than twenty years ago, Sir FitzJames Stephen wrote his summary.

He begins his discussion by asking, 'What is the

meaning of the word mind? What is a sane and what an insane mind?' and throughout his treatment of the subject he implies that insanity is identical with unsoundness of mind, a view that is still the most widely prevalent, in spite of the protests that I have uttered against it during the last twenty years. It is true that in insanity there is always disorder of mind; and our investigations and explanations must be largely concerned with mind and its disorder; but it is, in my opinion, a very narrow and imperfect view to regard insanity and disorder of mind as convertible terms, or to suppose that they are coextensive. Insanity is much beside disorder of mind; and disorder of mind is not even the chief, nor the most conspicuous, nor the most important feature in insanity. Disorder of mind can never be directly observed, and if it were synonymous with insanity, we should not know of the existence of insanity, in others at least, for we could have no experience of it. The most conspicuous, the most important of the disorders which occur in insanity, is disorder, not of mind, but of conduct, by which the disorder of mind is expressed and made known. There are very many cases of insanity in which we need not, and do not, and cannot, except very indirectly, investigate the state of the mind at all; but ground our judgement, and our treatment of the malady, entirely upon the conduct that is observed; and in no case can we determine the condition of the mind exhaustively, or with complete accuracy.

In the following description of what I believe to be the nature of insanity, it must be understood that I am speaking for myself alone, for, although the views that I here put forward have been before the medical profession for many years, they have not been formally adopted by any other writer on the subject, though

there is a certain disposition to take some of them for granted, as if they were commonly accepted.

Insanity is a disease or disorder—I prefer the latter term—not of this or that organ, or tissue, or part of the body, as are the diseases which come under the purview of the general physician or surgeon, but of the whole individual who is the subject of the disorder. And it is so because the original seat of the disorder is in that central and supreme organ in which the whole individual and every part of him is summed up and represented. A man may lose his hand or his foot, his arm or his leg, and still remain the same man—the same personality. He may suffer disease of his heart or lung, of his liver or kidney, and yet his individuality—the characters which make him the man he is, not only different from other people, but recognizable as himself—remain unchanged. But when the highest regions—the governing functions—of his brain are disordered, the whole man is a changed being. If we knew him before, and now have experience of him, we are irresistibly compelled to realize that he is not the man he was. His personality is altered. We feel that we no longer know him as we did. It is useless to appeal to him in the same way. He is no longer moved by the same motives. His conduct cannot be predicted by the same rules. He has undergone a profound, a radical change of nature. He is different from his former self in much the same way as we, in our dreams, differ from our waking selves. We then find ourselves thinking, judging, feeling, acting, in ways foreign to those of our waking nature, invested with capabilities and disabilities which our waking selves know not; and the madman passes his time in a waking dream. The Macedonian woman understood this when she appealed from Philip drunk to Philip sober. The insanity

of drunkenness made him a different man, and from this new Philip she appealed to the Philip whose standards and methods she knew.

As far as we can judge, the central and essential disorder in insanity is a derangement in the mode of working of the supreme regions of the brain. In cases of gross insanity which have gone on to the death of the patient, recognizable destruction or damage of the microscopic elements of the brain is always to be found; and it is inferred that, in less advanced cases, such destruction or damage always exists in greater or less degree. The damage may be so slight as to be recoverable; or, if of more serious character, it may be so limited as to produce no recognizable effect, when the rest of the deranged structure is restored to the normal; but it is believed that insanity is always the expression of derangement in the mode of working of the supreme regions of the brain. This conclusion is an inference only. It is an inference of very high validity; but it is neither conclusively proved nor susceptible of proof; for it is obvious that there are abundant cases of temporary and mild insanity in which the state of the brain cannot be examined until, it may be, long after the insanity has passed away.

Into the nature of the connection between brain and mind it is not necessary to enter here. It is enough to say that the working of the one is believed to be inseparable from the working of the other. Whenever a mental process, such as thinking, judging, willing, desiring, feeling, remembering, takes place, it is believed that some corresponding process takes place in the brain; and whatever state results from the mental process, whether a thought, a judgement, a determination, a desire, a feeling or a memory, it is believed that a corresponding modification of the structural arrangement of the brain

endures. What the connection may be, between the brain process and the mind process, is unknown. It is not even determined whether the brain process precedes the mind process, and is the cause of it; or whether the mind process precedes the brain process, and is the cause of it; or whether the two processes go on simultaneously on separate planes without any other connection than invariable simultaneity. This is the central and fundamental problem of the universe, and in the day it is solved our eyes will be opened, and we shall be as gods, knowing good and evil. For the present we must be content with believing that there is a connection, without knowing what the connection is.

While this connection is believed to be inseparable in one direction, so that no mental process can occur without a corresponding brain process, it is quite certain that the converse is not true, but that very many brain processes occur without any corresponding mental accompaniment, and that, broadly and generally, consciousness accompanies processes that go on in those parts of the brain only that we denominate the highest; that is to say, those which are of most recent formation; which are most complex and elaborate in structure and function; which are intimately connected by nervous communications with every part of the body, and therefore receive motion from, and issue motion to, the entire organism; which most easily have their functions suspended, as in sleep, and in other modes of unconsciousness; and most easily have their functions disordered, as in dreaming, and in insanity.

These highest regions of the brain have a twofold function, which is disordered in both its parts when their action is disordered. (We do not call the mental accompaniment of brain action a 'function' of the brain. This

term is reserved for the material effects of brain action.) Whenever any part or organ of the body becomes functionally active, or performs its proper function—when the heart contracts, or the stomach digests, or the liver secretes bile or other material, or a muscle moves the limb to which it is attached—certain other and subsidiary processes take place in that part or organ. Its blood-supply is increased, it takes up from the blood materials into its substance; it discharges into the blood waste products of its action; it undergoes electrical and other changes which need not be specified. Not merely the function alone of the part or organ, but the whole of these subsidiary changes are regulated by the nervous system, and ultimately by those highest regions of the brain whose action we are considering; so that, when this action is disordered, not only is the proper and peculiar function of the highest brain regions disordered, but this secondary function also is disordered, sometimes grossly and evidently, so that the growth and nutrition of visible parts of the body are conspicuously altered, sometimes more occultly, so that the functions of the viscera only are impaired.

The peculiar and proper function above referred to, of the highest regions of the brain, is the determination and actuation of conduct, that is to say, of the relations of the individual as a whole to the world in which he lives. One complementary part of this function is to receive, from the world without, such impressions as, when elaborated in the recesses of the brain, allow of the mind having information of what is going on in the world without. The other complementary part of this function is to issue to the body, in conformity with the operations of the mind, currents of motion, in such volume and proportion, that there result bodily movements adapted

to the state of circumstances known through the medium of the senses.

From the foregoing very general account it appears, that what is primarily disordered in insanity is believed to be the working of the highest regions of the brain; that the primary function of these regions is to determine and actuate conduct; that a subsidiary function is to harmonize and govern in a general way the bodily function of nutrition, or repair and waste of the tissues; and that the operations of mind are associated with the working of these regions in such a way that, when the mind is disordered, the bodily functions also are deranged.

Of course, the disorder of the brain can never be directly witnessed. The brain is hidden from our view. Even when it is laid bare, either experimentally in the lower animals, or in the human subject by the operation of disease, by accident or by surgical measures, we can never witness those intimate molecular changes—those passages of motion from place to place—by which its function is exerted. The utmost that can be observed is a difference in the amount of blood suffused in the vessels of the part, and the effects of injury, in the shape of paralysis or other disability. When the patient is dead, and the brain is examined microscopically, we can, indeed, observe an extraordinary complexity and delicacy of structure, and we can often distinguish changes in this structure which we know, or reasonably infer, to be the results of disease. But here our observation ends. We cannot then see the disordered working of the structure, for the working ends with death; and, although we may justly infer, when we see a nerve-cell or nerve-fibre shrivelled, or swollen, or distorted, or disintegrated, that it must, during life, have

performed its function badly or not at all; yet, in the absence of all exact and specific knowledge of what that function is, we are unable to connect in any rational way the changes found after death with the symptoms observed during life. We may be sure that a cell that has burst and extruded its nucleus, and a fibre that is severed and broken into lengths, did not during life transmit motion in normal amounts or directions, and did not add thereto or subtract therefrom, and did not modify in normal ways the direction of such motion as reached them. But this very general reasoning does not enable us to understand why the patient during life should have been excited or stuporose in conduct, nor why he was elevated or depressed in mind. It gives us no inkling of the reason that he entertained delusions, still less of the character of the delusions. We are reduced to suppose that a patient, who has a delusion that he is persecuted by some unseen and incomprehensible agency, has a change of structure in a part of his brain; and that another patient, who has a delusion that the whole world is his own private property, has a change of a different character in that part of his brain; or a change of the same character in another part of his brain; or a change of different character in a different part of his brain. But this is all conjecture. Our knowledge does not enable us to associate any specific kind of change with any specific kind of delusion; nor can we even say that any particular change of structure is necessarily associated with delusion at all, nor, conversely, that delusion is necessarily associated with any particular structural change nor with any discernible structural change. And what is true of disorders of mind is equally true of disorders of conduct.

Thus, although the present state of our knowledge

admits of our giving 'a general account of the whole subject, showing what is the common cause of which all these symptoms are effects,' it does not admit of any account of 'how they respectively proceed from it,' and so far Sir FitzJames Stephen's demand must remain unsatisfied. I think, however, that it is possible to give a more complete and more accurate description of the symptoms of insanity than Sir FitzJames Stephen's sources of information enabled him to give. I should not have given such an account here, for it seems to me scarcely necessary for the determination of responsibility, were it not that Sir FitzJames Stephen, who was in a far better position to judge, was so impressed with the importance of such a description, that he was at the pains to abstract and elaborate one, from medical writings on the subject which must have been repellent to a man of his clearness of mind and accuracy of expression. It is very difficult for one, whose mind is saturated with a subject by a lifetime of study, to estimate the amount of knowledge of that subject that is necessary to render intelligible some outlying but connected problem. It is clear that Sir FitzJames Stephen felt strongly the necessity for knowledge of considerable detail, and consequently, I think it better to give a *résumé* of the subject, secure in the assurance that the reader, who does not find it necessary, is under no compulsion to read it.

From what has been said, it is evident that the symptoms of insanity are threefold. They comprise disorders of conduct, disorders of bodily function, and disorders of mind. Disorder of each class is present in every case of insanity, but each class of disorder is not equally prominent. In some, disorder of conduct is rampant and ebullient, while disorder of mind is not easy to identify, and disorder of bodily function may be

imperceptible. To this class belong, among others, cases of so-called moral insanity. In another large class of cases, disorder of bodily function is the most conspicuous feature, while disorder of conduct is but occasional, and disorder of mind must be sought for. To this class belong those imbeciles in whom a part of the brain was destroyed, in early life, with consequent paralysis and infantile undevelopment of one side of the body. Or the disorder of bodily function may be so great that life is endangered, while failure of conduct and mind are so profound that both are absent. In such cases, the essential nature of the malady, as an exaggerated degree of insanity, is overlooked. The loss of conduct and of mind are disregarded, or looked upon as accidents. The whole attention is concentrated upon the bodily condition, which is denominated 'Coma,' and is not looked upon as insanity at all. Or, lastly, the disorder of mind may be the leading feature in the case. Disorder of bodily function may be indiscernible. Disorder of conduct may be so slight and so seldom, especially when the patient is 'detained under care and treatment,' that he may be allowed at large upon parole, and may never betray, except to his intimates, any eccentricity of conduct; and yet his mind may be hopelessly disordered, so that, in certain regions, he is deeply and incurably deluded. When it is added that, in each of these three regions of disorder, the character of the disorder may be of the most diverse, and, in different cases, of the most opposite description, it will be seen that the symptoms of insanity are extraordinarily multiplex, and that a complete description of them would be very voluminous.

For practical alienists, the pathway through this tangle is provided by the fact that the symptoms of the three

several orders are not associated with each other at random, but, for the most part, in certain ascertained groups that are moderately constant. Thus, with excitement in the region of conduct is associated a certain lack of cohesion or orderly sequence in mental operations, and a certain peculiarity of pulse and blood pressure. With delusions of a certain degree of exaggeration, there are often associated certain defects in the movements of the pupils, as well as of articulation and gait. With very great and incessant excitement in conduct, goes a raised temperature. With depression of spirits, go sluggishness of the digestive tract, and, usually, diminution of conduct. With delusions of one specific class goes a tendency to homicidal, with those of another class a tendency to suicidal, violence; and many other associations of symptoms of the three orders with one another have been empirically observed to be constant or frequent; and in some few cases we have been able to connect such a group of associated symptoms with a specific structural alteration in the brain. That is to say, we have observed an invariable concomitance between the brain change and the symptoms. But we have not been able to connect the symptoms rationally either with each other or with the morbid change in the brain. That is to say, though we find the symptoms associated in many cases, we cannot account for the association; we cannot discover a reason for it. We believe the connecting link must be in the similarity of the morbid change in all the cases that present similar groups of symptoms, but we cannot say why a specific change in the brain should produce a specific group of symptoms, for, except in the case of bodily function, we cannot even conjecture what is the connection between a certain change in the brain structure and a certain

symptom. We have no inkling of the means by which a certain change in brain structure produces a certain change in conduct, nor of the relation between the destruction of certain cells and fibres and the occurrence of a certain class of delusion. And, though we can see, dimly and uncertainly, that damage to brain structure must produce disorder of bodily function, we have no guide to the way in which damage to a particular part of the highest regions of the brain produces a specific departure in a specific direction from the normal working of some distant part of the body.

When Sir FitzJames Stephen demands 'a definite account of the course of symptoms collectively constituting the disease' of insanity, he demands an impossibility. There is no such course of symptoms, or at least no course that can be described in terms less general than those I have already given. Not only are the symptoms of the three classes combined in variations almost as numerous as the individual cases, but the symptoms of any one class do not admit of a common description, since in one case they may be the very antithesis of what they are in another. In no common account, less general than that already given, can we combine a description of excitement with one of lethargy; a description of depression of spirits with one of exaltation; a description of heightened blood pressure and general torpor of function with one of lowered blood pressure and general fitness and bodily efficiency. The task is impracticable, not, in this case, from our ignorance and want of skill, but from the nature and diversity of the thing to be described.

It is obviously unnecessary and undesirable to insert here a complete treatise on insanity, nor would it be of any service even to mention by name the immense

number of forms, often distinguished by trivial differences, to which distinct names have been given. If I take the three departments of conduct, mind and function, and set down the chief departures from the normal which have been observed in each, such a very general account will probably serve the purpose of giving to the non-medical reader a sufficient notion of the essentials of insanity, to enable him to form a trustworthy judgement of the accuracy of the subsequent treatment of the relation of insanity to wrong-doing.

The disturbances of bodily function that are symptoms of insanity are of course much more limited than those which occur in insanity. Insane persons are not exempt from the diseases to which sane persons are liable, and when the insane are affected by these diseases, they display the same symptoms as the sane. The disturbances of bodily function that are here to be set down are those only which form a part of the insanity—which depend upon the same disturbance of the brain to which the other symptoms of insanity are due.

The most prominent of these is hemiplegia, or paralysis of one lateral half of the body. Although the malady is thus entitled, it does not affect equally all the parts of the half of the body that it affects, but, always most pronounced at the extremities, which perform the finest movements by the smallest muscles, it is very often limited to these parts, or to one of them; that is to say, to one side of the mouth or eye, one hand and one foot. The distribution, however, is strictly unilateral. This particular form of paralysis is due to severance of a band of nerve fibres which extends from the highest region of the brain to the parts in which the defect is evidenced. If, as is frequent, the band is severed low down, after it has left the upper part of the brain, the hemiplegia is not

associated with insanity. But if the band is severed so high up that the cortex of the brain also is damaged, then the sanity is impaired, and the hemiplegia becomes a symptom of the insanity. Cases are pretty frequent in which the brain is locally and severely injured at or near birth, in such a way that a part of the cortex never developes, and the face and limbs of one side are permanently paralysed. In such cases the intellect and the conduct are always defective. Such people form one class of congenital imbeciles. In old age, hemiplegia is not infrequent from rupture of a blood-vessel in the brain, and, in such cases, the injury is often diffused sufficiently to damage the higher regions, so that, after the attack, the sanity is impaired. When the paralysis is on the right side, the injury of the brain may extend to a portion which actuates the function of speech, so that the patient is deprived, partly or wholly, of this faculty. This deprivation may or may not be attended with insanity; and, as the patient sometimes is not completely deprived of speech, but expresses himself in words foreign to his meaning, it is often a matter of extreme difficulty to ascertain whether he is insane or no. Observation of the other parts of conduct must determine the question, and it is not until such a case has to be investigated that we realize how much and how erroneously we are in the habit of estimating sanity by speech alone. The matter is complicated by the facts that, in some cases, the patient is aware that he is using the wrong word, and tries to correct himself, while in others he gabbles gaily along, uttering unintelligible rubbish, and is much surprised that we do not understand him.

In one form of insanity, and in that form alone, there are peculiar defects in the action of the pupils, defects

which come on quite early in the disease, sometimes before the insanity itself, and enable us then to predict its onset. In any case, the existence of these defects renders certain the existence of insanity, which might otherwise be doubtful. In the same form of insanity occur irregularities in the articulation, gait, and handicraft, which are precisely similar to those which occur in drunkenness, itself a transient form of insanity.

The form of insanity alluded to in the foregoing paragraph—general paralysis of the insane—is further characterized by the occurrence, from time to time in its course, of nervous crises, which most often take the form of convulsion. There are other maladies in the course of which convulsions occur, and one in which the periodic attacks of convulsion are the main, it may be the only, symptom. This malady is called epilepsy. The convulsions of epilepsy do not differ materially from convulsions to which we can assign a probable cause, nor from those which occur in the course of recognized diseases. They are not usually called epileptic, however, unless they constitute the only, or the main, symptom of a disease which is not otherwise characterized, except by the occasional association of insanity with the epilepsy. When insanity is associated with epilepsy, the insanity is usually of a turbulent, aggressive type. The patients thus affected are prone to violence. The insanity may be, and often is, continuous in the intervals of the fits; but it is usually exaggerated about the time of the fit, and sometimes exists only about these times, the patient being intermittently sane in the intervals. When the insanity shows a definite association with the occurrence of the fit, the most usual form of the association is for the insanity to increase gradually in intensity for some hours or days before the fit, and to subside after the fit

has occurred. Sometimes the patient is better before the fit takes place and worse afterwards. A very peculiar consequence which often follows epileptic convulsions, especially those in which the convulsion is but slight, and which are called *petit mal*, is the occurrence of what is appropriately called 'post-epileptic automatism.' After the occurrence of a convulsion, which may be so slight that the patient does not even fall, and that, if not closely observed, it may be overlooked, the patient is found to be in a state in which he acts without any consciousness, apparently, of what he is doing, and certainly without any subsequent remembrance of what he has done. The acts done in this state are always what is termed 'automatic' in character; that is to say, they are acts that, from very long usage, can be performed with a minimum of deliberation, attention and volition. Such to the clerk is the act of writing, to the housemaid of scrubbing, to the seamstress of needlework, to the smith of hammering, to every one of undressing and of making water. The peculiarity of the acts of post-epileptic automatism is that they almost always differ from normal acts in one essential particular, that is, they are lacking in direction and intelligent purpose. They are usually mere caricatures of normal acts; and they are usually determined by the presence in the hand, or at the hand, of the actor, of some implement which he is accustomed to use, or of something approaching in character to such an implement. The clerk will take up a pencil, a pen-holder without a nib, a skewer—anything that resembles a pen—and will make movements as if writing with it; but the fact that it makes no mark on the paper, or that there is no paper there, does not disconcert him. He goes on with his movements. And if he has hold of a pencil, and there happens to be paper on the table, it is found that

his movements result, not in writing, but in unintelligible scrawls. Or a seamstress takes up a pair of scissors, adjusts them on her thumb and finger, and begins to use them; but she uses them, not to cut out intelligently stuff that she has to work upon, but to cut up the dress that she is wearing, in jagged irregular apertures. If no customary implement is at hand, the patient in this condition may go through the customary movements of using such an implement, but with empty fingers, as I have seen a crochet-worker proceed industriously with imaginary hook and thread. Or, if no other handicraft is habitual, the patients may, and such patients very often do, start to undress themselves, or to make water; and in such cases the caricature is evinced by the inappropriateness of the circumstances in which the act is done. They will begin to undress in the street, in theatre, or in church. They will make water in public, in the corner of a room, in a hat, or any receptacle that may be handy. A very frequent automatic act is the winding of a watch, and, when attempted in post-epileptic automatism, as it often is, it usually results in breaking the hands or damaging the works.

The acts enumerated above are, for the most part, merely grotesque; but the acts of post-epileptic automatism may easily be, and often are, of a quasi-criminal character. It is obvious that they may result in indecent exposure. I have very often seen a patient in this condition pick up small objects—sometimes valuable, sometimes trifling—and put them in his pocket. A woman thus affected had an attack of *petit mal* while she was cutting bread and butter for her children's tea. Finding the knife in her hand, she used the implement in her automatism, but she put it to a caricature of its normal use. She cut her own arm with it, and cut it so badly,

that she was many weeks in hospital, and never recovered the full use of the limb. It was remarked at the time, that it was a mere accident that she wounded her own arm, and that it might easily have happened that she cut her child's arm or throat instead. A year after the event, the alternative actually happened. Another woman, in similar circumstances, had an attack of the same nature; and actually did cut her child's arm, so that it bled to death before she recovered consciousness. She was tried for murder, and the greatest difficulty was found in obtaining her acquittal on the ground of insanity. (It was before the passing of the Act which rendered possible a verdict of guilty but insane.)

I have given evidence in several cases in which quasi-criminal acts have been committed by persons who were, as I believed, in a state of post-epileptic automatism at the time, and I have found my evidence received with great incredulity, and even scorn. There is no doubt whatever that the state is genuine as I have described it, and I have many times witnessed persons in this state do acts which would have been criminal if done with full knowledge and intention. Of late years, courts of justice have received with tolerance the suggestion of the possibility of post-epileptic automatism; but, unfortunately, it has been many times brought forward in inappropriate cases, in which it had no justification, and is therefore become discredited. Nevertheless there is such a state, and the tests of its existence are, not necessarily the known occurrence of a preceding fit, for this is often so slight that it may easily be overlooked, but, first, the *habitual* nature of the act, and second, its unintelligent character. It is always a caricature of some act that has been very frequent in the conduct of the actor. Moreover, in the same person, the automatic act is usually of

the same nature after each attack. I know one patient, who persistently twirled his moustache after every fit; another who always tried to wind up his watch.

There is another mode of connection of insanity with epilepsy, which is not universally admitted to exist, but which is extremely likely. There is strong evidence in its favour. This is what is called by French writers *epilepsie larvée.* It is the occurrence, at the periodic time at which a fit is to be expected in a person who has periodic fits, of an outbreak of excessive and brutal violence in place of, and, it appears, instead of, the fit. During an epileptic fit the patient is unconscious; and, after it, he has no memory whatever of the events of the fit. His mind is a blank from the moment the fit began until he wakes from the sleep which usually succeeds the attack of *haut mal.* When an outbreak of unprovoked and brutal violence takes the place of the fit, the patient has a similar break in the continuity of his consciousness. He knows nothing of what has happened from the moment before the attack until a variable time afterward. Now, it is extremely common for prisoners who have committed crimes to allege that they remember nothing of the circumstances; and a large proportion of the assaults of unprovoked and outrageous violence, which now and then appal the community, are committed by persons who have never been known to suffer from epilepsy before the commission of the crime. Although, therefore, there is great reason to believe that *epilepsie larvée* does account for some crimes of this nature, it is by no means established that all such crimes are necessarily the consequence of this disease.

Many cases of insanity, in which the insanity exists from birth, or from as early an age as insanity can be recognized,—cases of idiocy and imbecility—are accom-

panied by conspicuous bodily malformations. The head is often misshapen, testifying to a gross malformation of the brain within. The skull may be preternaturally small, or large; the face, tongue, palate or limbs may be characteristically modified in appearance; or the whole body may be structurally altered, as in cretinism. Cases, in which such bodily symptoms, or stigmata, are unmistakeable, do not often come into the courts, for the persons who exhibit them are rarely sufficiently sane to be at large, or to have opportunity of committing crimes; and in those in which the symptoms are but doubtful, they afford little assistance in enabling us to form a conclusion as to the existence of the insanity.

The other bodily symptoms of insanity are, for the same reason, not of much importance from the present point of view, since, when they are unmistakeable, the insanity also is very pronounced, decided, and even exaggerated, and we do not need the corroboration of bodily symptoms; while, if, as is usual, they are slight and inconspicuous, they are not a trustworthy guide. They consist mainly in alterations of the skin and its appendages—the hair and nails—and need not be further particularized here.

The second class of symptoms that characterize insanity—the disorders of conduct by which it is evinced—are, as has been said, by far the most important of its manifestations. They are exceedingly diverse, and may occur in any of the great divisions or realms of conduct. The older writers upon insanity, and some even of the present generation, divide insanity into two extreme divisions, which were called, respectively, mania and melancholia, and were regarded as complementary, and as constituting an exhaustive classification of the subject. I know of no definition of either mania or melancholia,

but if the descriptions attached to these titles are examined, it will be found that, whereas the former means a manifestation of disordered conduct, the latter implies a disorder of mind. Mania means excessive and ill-directed activity of body; melancholia means sadness, misery, depression of spirits, unjustified by circumstances. It is manifest at a glance that the two maladies are constituted on different bases; that they are nowise comparable; that they are not mutually exclusive; and do not comprehend all the objects to be classified. It is as if we should divide vehicles into those which run on wheels, and those which are drawn by horses; or houses into those which are built of brick and those which consist of two stories. There are wheeled vehicles drawn by horses, and there are sleighs drawn by reindeer; and there are brick-built houses of two stories, and stone-built houses of three. And so, too, there are melancholic people who are also maniacal; and there are insane people who are neither melancholy nor maniacal. I do not propose to enter here upon the difficult, and controversial, and somewhat irrelevant subject of the classification of insanity, but I think it important to clear away a misconception of the matter, sanctified by the usage of thousands of years.

Conduct is susceptible of classification into very natural divisions, according to the ends which it serves and the instincts by which it is prompted. Besides these particular divisions, by which conduct is divided according to the end to which it is directed, conduct may be distinguished throughout, and in each division, into various grades—grades of complexity, of precision, of accuracy of adaptation to the end in view, and especially of directness or indirectness with which it is adapted to attain the ultimate object sought to be realized. At the one

end of the scale are acts which we call 'crude'; which, by simple means, attain directly the satisfaction of a primitive instinct. Such an act is a blow in retort to a jeer. At the other end of the scale are acts, which we will call 'elaborate,' which seek indirectly, through the intermediation of a chain of events, the satisfaction of a series of desires ending in, or proceeding from, a primitive instinct. Such is the act of a speculator, in selling large quantities of stock in order that he may break the price, in order that he may buy back at a cheaper rate, in order that he may make a pecuniary profit, in order that he may improve his opportunities for subsequent operations, in order that he may accumulate enough to start his children well in the world and lay by a provision for his own decrepitude. The proportion of crude acts to elaborate acts varies much in different individuals, and is a measure of the grade of intelligence, upon which it depends. Crude acts are common to all. Every one eats and drinks, walks and rests, asks and answers. Every one is capable of acts of some degree of elaboration. Every one journeys with a purpose, speaks so as to convey more than the strict sense of the words, acts with a view to results more or less indirect and distant. But some are capable of acts of a low degree only of elaboration; others of acts of a very high degree of elaboration. In the lives of some, crude acts preponderate; in the lives of others, elaborate acts are the rule.

Conduct may be graded quantitatively also. A certain amount of activity is normal for each person at each time of life—much in youth, most in early maturity, and diminishing thereafter as age advances. When conduct is disordered, it is usually disordered quantitatively—it is excessive or defective in amount. When a man is pro-

strated by fever, his conduct is defective in amount; his activity is lessened in every respect. It is defective also in many cases of insanity—indeed it is, in one sense, defective in every case of insanity; but whereas, in fever and other bodily illnesses, conduct is defective simply, in insanity there is usually a combination of defect and excess, except in those cases in which the defect is so extreme, that conduct is virtually abolished, and the patient cannot properly be said to act at all. In insanity, defect is always most pronounced in the most elaborate forms of conduct. It is the elaborate acts that are affected first and most, that are lost earliest in the malady and are latest to be recovered. The crudest acts are those which are longest retained, and the crudest of all—the acts of eating and drinking, of avoiding simple physical dangers, of getting out of the way of moving bodies, of avoiding falling into pits or running against obstacles—these are retained until conduct is altogether abolished, and the patient is sunk in the depths of stupor. The degradation of conduct does not proceed quite as simply, however, as the foregoing description, taken alone, would imply. Usually there is an excess in some department combined with defect in another; and, when this is the case, it is always the cruder activities that are excessive, and the more elaborate that are in defect. For instance, the insane who have lost their most elaborate activities, and are incapable of pursuing their business, and managing their more complicated affairs, are almost always gluttonous, and very often display excess of sexual activity. The combination is often less simple and less grossly manifest than in the foregoing instance. In cases of early insanity, in which the degradation of conduct has not proceeded very far, it may be that the most elaborate activities only are lost, and that those

which remain, and which are exercised in excess, are still of a high degree of elaboration, although they are lower than those which are lost. It then happens that the patient exhibits a busy meddlesomeness, a restless, eager, wanton display of activity, in which we find it difficult to single out any individual act as indisputably insane, and yet, when we take the aggregate of his conduct, and regard it as a whole, we are driven to acknowledge its insane character. We find him rushing from place to place, writing interminable letters, sending innumerable telegrams, making unnecessary appointments, wearisomely voluble, regardless of the convenience and the feelings of others, eagerly and incessantly active on a high plane of activity, that is to say, with activity of a high degree of elaborateness; and, in the midst of so much that is positively excessive, we are apt to overlook the defect which also exists. In such cases, we are often told to recognize insanity in the unlikeness of the patient's present disposition to that of his past life; and the behest is well grounded, but it is insufficient—it does not tell us precisely what the difference is. The difference is not merely in the increase of activity—in the excess of conduct—for conduct is often increased in emergencies without any disorder. The difference lies in the combination of excess with defect. It lies, not only in the increase of activity upon a slightly lower level of elaborateness, but in the loss of the most elaborate of all the grades of conduct. The patient is not only over-busy in ways that are in great part useless, and in some part injurious, but he has lost the capacity of recognizing the useless and injurious nature of his activity, and of moderating and controlling it, and guiding it into more effective channels. Although the excess is the more conspicuous feature, and the one to which alone attention

is apt to be directed, yet the defect is really the more important, since not only is it probable that the excess is but the consequence of the loss of control, that should be exercised by the faculties that have been lost; but it is obvious that no exaggeration in the amount of conduct would be regarded as excessive if it were capably directed. We do not regard Napoleon as insane, even though he was eagerly and incessantly active for twenty-one hours out of the twenty-four, even though he wore out his amanuenses, secretaries and ministers by his consuming passion for work.

CHAPTER V

MIND

The third class of symptoms that are exhibited in insanity, and in many respects the least important, are the disorders of mind. For a long time insanity has been looked upon as a disorder of mind alone, and not merely of mind alone, but of one department or faculty alone of mind. In courts of law especially, insanity has been looked upon as implying the existence of delusion, and the terms delusion and insanity have been regarded as practically synonymous. This doctrine was emphatically stated by Sir J. Nicholl in the famous case of Dew *v.* Clark and Clark. It is true that the trial was not a criminal trial, and that the law is contained in compartments that have little connection with each other, the criterion of insanity in criminal cases being different from that applied in testamentary cases, and both being different from that applied in inquisitions in lunacy; but still, as a statement of the inclination of the law to regard insanity and delusion as identical, the judgement of Sir J. Nicholl in Dew *v.* Clark and Clark is very clear. He said: 'The true criterion, the true test, of the absence or presence of insanity I take to be the absence or presence of what, used in a certain sense of it, is comprisable in a single term, namely, delusion. Whenever the patient once conceives something extravagant to exist which has still no existence whatever but in his own heated imagination, and whenever at the same time, having once so conceived,

he is incapable of being, or at least of being permanently, reasoned out of that conception, such a patient is said to be under a delusion in a peculiar half-technical sense of the term, and the absence or presence of delusions so understood forms, in my judgement, the true and only test or criterion of absent or present insanity. In short, I look upon delusion, in this sense of it, and insanity, to be almost, if not altogether, convertible terms; so that a patient under a delusion, so understood, on any subject, in any degree, is for that reason essentially mad or insane on such subject or subjects in that degree.' It is quite true that this criterion of insanity is now abandoned by the courts, even in testamentary cases; but it was established and adhered to for a very long time, and ideas, which have for a long time been dominant, are very apt to influence the minds of men, especially in the law, long after they have been formally disavowed.

I speak under correction, but I believe I am right in stating that for many years it was settled law that a person who had committed a criminal act was responsible unless he was deprived by delusion of the knowledge of the nature and quality and wrongness of the act. Of late years the necessity of proving delusion has been abandoned; and delusion is regarded as but one among the evidences of insanity that may be proved. But it still remains law in criminal cases that the only faculty of mind, whose disorder is formally and certainly evidence of irresponsibility, is the faculty of knowing or judging. Sir FitzJames Stephen adds, as a doubtful factor in the determination of irresponsibility, the loss by the criminal of control over his conduct. I shall show hereafter that the meaning of this expression as used by him is not quite appropriate; but whatever its exact meaning, it appears to add volition, or willing, to those faculties of

mind whose disorder may render irresponsible a person otherwise criminal. So that it appears that the disorders of mind which may produce irresponsibility are limited, certainly to disorders of knowing and willing, and possibly to disorder of knowing alone.

I postpone for the present the discussion of the reasonableness and propriety or otherwise of this limitation, and draw attention now to its existence only; and I place this limitation in juxtaposition with the fact that mind, in its total constitution, includes more faculties than these two. The learned men who made the limitation may have done so advisedly, knowing of the existence and importance of the other mental faculties, and deliberately discarding them from use for the purpose in view; or they may not have been aware of the existence of the other faculties; or, knowing of them, they may not have realized their importance. In view of the state of the knowledge of psychology existing at the time the limitation was made, or grew up, the first of these alternatives is almost certainly not the true one; and it is justifiable, even on this ground alone, to reopen the subject and to ask whether, in the light of more extended knowledge of the operations of mind, a better criterion of irresponsibility cannot be found. I am not now proposing an alteration of the law, but I am endeavouring to show that if, hereafter, I suggest that the existing criterion is capable of improvement, I am not thereby offering any disrespect towards the wise and learned judges who have for generations expressed their concurrence in, and approval of, the criterion now existing.

The constitution of the human mind is best understood and remembered by recognizing that it is an incident in, and a means towards, the achievement by man of his

purposes. Whether we regard mankind from the point of view of the moralist, or of the religious votary, or of the strictly scientific biologist,—in either case we are compelled to allow that human existence is teleological. It is purposeful. Man is ever striving. He sets some aim before him. He seeks to accomplish some end. Corresponding with this attitude of man towards the world in which he lives, he has a fundamental attitude of mind which is called Desire. Desire is the motive power of all conduct. Inhering in human nature are certain deep-rooted desires, which may probably all be traced to their derivation in one primitive and fundamental craving, which lies at the root of all human, as of all animal, dispositions. From each of these, many subsidiary desires are derived; and, in all conduct, desire of some kind is the motive power. Conduct is the means by which we seek to satisfy desire. Conduct proceeds—acts are done—not in vacuity, but in a world of objects which are moving or are capable of motion, and conduct is composed, for the most part, of movements. All conduct is the production, the modification, or the prevention of movement. It consists in an interchange of movement between the individual and the world in which he exists, and must be regarded as composed of three constituents—reception of motion, rearrangement or redistribution of motion, and emission of motion, by the individual. To each of these aspects or stages, of the interchange of motion between the individual and the world around him, corresponds a characteristic mental state. When motion is received, we experience the mental state Sensation. When motion is emitted we have the mental experience of Volition. The intermediate stage, in which the motion received is so rearranged, redistributed and reinforced, that the resulting movement

is adapted to the state of affairs which gives rise to the Sensation, is accompanied by the mental process of Thinking. Each of these experiences—reception, redistribution and emission of motion—implies and necessitates some rearrangement of the particles of the body, and especially of the brain; and when the process is complete, the particles remain for a longer or shorter time in their new positions. This alteration of arrangement of the minute structure of the brain has its mental counterpart in Memory.

The result of experience, by which is meant the interchange of motion between the individual and his circumstances, is either the satisfaction or the baffling of desire. In the first case, we experience the mental affection that we term Pleasure; in the second, the mental affection that we term Pain.

This, then, is the complete constitution of mind. Its fundamental constituent is Desire, which impels the individual to act, in the circumstances in which he finds himself, for the satisfaction of Desire. Acting, he receives, redistributes and emits motion, correspondingly Feeling, Thinking and Willing. Each experience leaves a structural change in the constitution of his brain, which is the physical basis of Memory. Experience results either in advance towards the fulfilment of Desire, and is then Pleasurable, or in failure and bafflement in the attainment of this end, and is then Painful.

For instance, implanted deep in my nature is a desire to go unscathed through the world—to avoid, guard against, and prevent physical dangers. As I pass along the street, an object in the world without impresses upon me certain waves of motion, which impinge upon my eyes and ears in certain directions, and in certain combinations, such that I have certain Sensations of

sight and hearing. Instantly by operation of Thought I interpret these Sensations to signify the onrush of an angry dog; and forthwith select the act that seems most appropriate to satisfy my abiding desire of immunity from injury. Then, by an act of Volition, I give the animal a swipe with my stick, which carries out the purpose formed. As he shrinks howling away, I experience an affection of Pleasure at having achieved my desire, and prevented the threatened injury; and thereafter remains in my mind a Memory of the event.

These, then, are the primary divisions, faculties, or processes of mind, and of these only one certainly, namely thinking, or two possibly, namely thinking and willing, are allowed by law to be liable to such disorder as warrants the law in forgoing the penalty attached to criminal acts. Yet all the faculties of mind are liable to be disordered, some of them in several ways.

That Memory may be defective is sufficiently notorious; and there is much defect of memory which is well within the limits of health. We are all of us subject from time to time to lapses of memory, in which we fail to remember things that we feel we ought to remember, and yet we do not regard the lapse as a sign of disease. The memories of different persons differ very widely in tenacity and faithfulness, so that what would be a defect in one person would not be a defect in another. No one remembers all his experiences, nor is it desirable that we should do so. On the contrary, to forget is as natural and as healthy as to remember. It would be embarrassing to retain in the memory all the trivial incidents of a walk through the streets of London a year ago—the precise character of the vehicles met with, the order of their procession, the faces of the passers-by, the street cries and snatches of conversation,—all these are for ever lost,

and a good thing too. Which of us remembers what dish he had for breakfast a week ago? and which of us desires to remember it? Nevertheless, there is a defect of memory so great as to be manifestly morbid. If a man does not remember his name, his occupation, whether he is married or single; if he cannot recognize the house in which he has lived, the office in which he has worked, for years past; if he cannot find his way about in familiar places; if a woman does not remember the dress in which she was married, the number and names of her children, the home which she first called her own; it is clear that the defect has passed the limit of the normal. No clear line can be drawn between the defects of memory which are normal and those which are morbid; and, by common consent, those defects only are considered morbid, which are very great.

Defect is not the only disorder by which memory may be affected. Memory may be in excess. There are morbid states in which a previous experience is reconstituted with such faithfulness and vividness that it is virtually lived over again; so that, for instance, an old man surrounds himself with the scenes, the people, the incidents, of his boyhood or early manhood, and lives in an imaginary world, in which the living actors take, for him, the shapes of those who have long been dead or parted otherwise out of his life. In such a case, there is much beside disorder of memory; but still, excessive remembrance is the most conspicuous and important feature in the disorder.

Further, not only may that which has occurred be forgotten, but that which has never occurred at all may be quasi-remembered. That is to say, a scene or event may be imagined, and may be invested by imagination with a location in past time which is taken to be real,

and then the person will, in a sense, remember that which never happened. It is not very rare, for an insane person at any rate, to narrate, in all good faith, the details and particulars of an experience which never befell him. Supposing such a person to narrate such an experience on oath in a court of justice—and there is good reason to believe that this has happened—and to be convicted of perjury in consequence, would he be responsible? Ought he to be held responsible?

More common is that combination of defect and excess which is evinced by erroneous memories, in which events and circumstances which have actually occurred are remembered, in part faithfully, and in part the true and actual event is forgotten, and for it is substituted an imaginary part which did not enter, but might have entered, into the occasion. When two or more persons describe an event which they have witnessed in common, it is rare for the accounts to agree in every particular, although each witness recounts in good faith what he remembers.

Sensation proper, that is to say, the correspondence of a certain specific feeling of colour, or sound, or touch, or what not, with the action of a specific agent upon the surface of the body, is, indeed, often disordered; but, as the disorders are commonly due to some interference with the nerve current in its course between the surface of the body and the highest regions of the brain, and not to error in this highest region itself, such disorders are regarded as bodily maladies, and form no part of the disorder insanity.

What is very frequently disordered in connection with sensation, and does enter into the constitution of insanity, is, not the defect or distortion of sensation itself, but the way in which sensation is interpreted, which is a process,

not of sensation, but of thought, and is called Perception.

Perception, which is one of the simplest of the thinking processes, is the interpretation of sensation, and is effected by adding to the sensation a number of memories of the things that have been found by experience to be commonly associated with such sensations. For instance, when I perceive a visible object, say a sandy cat, the sensation the animal produces in my mind is limited to a patch of sandy colour, which has not even a definite outline or shape until I invest it with these qualities. The movements of my eyes and the distinctness of my vision enable me to judge approximately of the distance from me of the object I see; but this estimation of distance, like the estimation of outline and shape, is a matter of judgement. The distance is not conveyed in the sensation, but is added by me to the sensation received; and what is true of distance, shape, and outline, is true, of course, of size. All these and other qualities are estimated by me in the light of previous experience, and are added to the sensation, until it becomes invested with the qualities of a solid object of a certain size at a certain distance. Nor does the process of adding remembered qualities end here. The patch of colour does not move, but I invest the object with capability of moving. I remember that similar objects have moved, and judge that this also can move. I invest it with softness and warmth, with the possession of a tail, which I cannot see; with the power to scratch, and bite, and purr; and finally with the name 'cat,' which I am in the habit of attaching to similar objects. I remember that I have aforetime found all these qualities associated with similar appearances, and I project them into this appearance because it is so like those former ones; and I

predict to myself that, if I put the matter to the test, I should find them all attached to this appearance which I see. This is the process of perception. It is a process of remembering, provoked by a sensation; and the memories, added to the sensation, together compose a percept. Similarly, I hear a sound of certain quality, duration and variability, and at once jump to the conclusion that it is a human voice. I remember similar sounds previously heard, which I have known to be so produced, and remember, too, that they have always been employed to denote a visible, tangible object, invested with certain qualities, and I infer that they are now produced by a human throat with the purpose of denoting a similar object; in short, I perceive that some one within earshot has said the word 'cat.' By the quality and loudness, &c. of the sound, as compared with previous experiences of the same nature, I can infer the identity and distance of the speaker, and so 'perceive' that my friend Robinson is calling the word at a distance, or whispering it close by. Here, again, perception is the addition of remembered qualities to sensation.

Perception, thus understood, is liable to several disorders. When a sensation is aroused in my mind by an impression, I may fail to attach to it its appropriate cluster of memories, and so, while experiencing the sensation, I may fail to perceive the object to whose action it is due. Young children, from lack of experience, and deeply demented persons, from forgetfulness of experience, often thus fail to perceive; and for this reason we do not trust them to be alone. They may see a sheet of water in front of them, and for lack of the perception that this appearance betokens non-resistance and absence of support, may walk into it and be immersed. Or they may see a cart approaching, and for lack of the

perception that, if they do not get out of the way, the cart will impinge upon them, and its impact will be dangerous, they are run over.

Or the sensation may arouse the wrong group of memories, and I may attach to the object qualities which it does not possess. The patch of yellow that I see, and that I invest with the remaining qualities of a sandy cat, may in fact be the attribute of an Irish terrier, a yellow cushion, or a mat of dead leaves. The erroneous percept, thus arrived at, may be corrigible or incorrigible. On nearer examination in a better light, I may become aware of the mistake, discard the qualities erroneously attributed, and add those which are appropriate; and thus I correct the percept, and recognize the object for what it really is. Or, in spite of opportunity for rectifying the percept, I may persist, after examining the terrier or the cushion, in the belief that it is a sandy cat. Under these circumstances the thinking process is disordered, and I am said to be suffering from *illusion*. It happens, sometimes, that percepts are formed without the justification of a nucleus of sensation to give rise to them, or in connection with some sensation arising from impressions made, not from without, but from within the body—sensations of sight produced by motes in the eye, or of hearing from the rush of blood in the vessels of the head. In such cases, percepts of things seen or heard—of threatening persons, or of objurgatory voices, perhaps—are constructed without the provocation of sensations produced from without; and in such cases the perceiver is said to suffer *hallucination*. Illusion and hallucination are very frequent in insanity.

A more elaborate instance of the thinking process is what is ordinarily termed judgement. The process of perception is in fact a process of judging. When we experience a sensation of sight or hearing, we imme-

diately form a judgement as to the nature of the thing that gives rise to the sensation, and this instantaneous process of judging we call perceiving. The process is instantaneous because it is so familiar, because it is so habitual, and therefore is become so facile; but that it is a process of judging is shown by the unusual instances. When I see some object, the like of which I have never seen before, or even when I see a familiar object in some very unusual and unexpected situation, I do not at first perceive it for what it is, but have to go through a deliberate process of thought before I form my final judgement. I find on my writing-table a small silvery, squarish, wedge-shaped object; I touch it and find it is soft and moist; and I say, 'What on earth is this?' My question indicates that I but half perceive the thing. I perceive it as to some of its qualities, but I do not perceive enough of its qualities to enable me to recognize it and to classify it amongst the things that I am familiar with. Further investigation shows that the silvery surfaces are covered with scales, and the ends show the familiar section of a fish. It is a bit cut out of the middle of a sprat, no, of a smelt; and this discovery is made by a process of judgement: by comparing the appearance with the remembered appearances of other things, and assimilating it to that which it most resembles. In doing this I am apt to make a mistake. I am apt to assimilate it to something which it resembles less instead of to that which it resembles most. This conclusion is in such a case ordinarily termed a percept, and the process by which it is arrived at, perception. But the process may as correctly be termed reasoning, and the result a belief. If the belief arrived at corresponds with the fact, it is said to be true, if not, false or erroneous.

Whatever the subject-matter of the belief, it is nor-

mally arrived at by a process precisely similar to that described—by comparing thoughts with one another, and deciding that they are like or unlike,—and this is true whether we judge, or infer, or conclude,—for all these names are given to the same process—that this bit of stuff is a section of a fish, or that radium is a metal, or that stocks will rise or fall, or that John will marry Jane, or that Lord Burleigh was a sagacious statesman, or that the angles of a triangle are together equal to two right angles, or that Socialism is spreading among the workmen of Germany, or what not.

The defect that I have called imperception may exist, not only in the simpler process of thinking or judging that we term perceiving, but on the higher plane that we are now considering. In imperception there is inability to appreciate simple circumstances impressed upon the senses. The same defect may exist with regard to more complex circumstances, not immediately so impressed, and invariably does exist in all cases in which intelligence is impaired. It is natural, it is inevitable, that our attention should be attracted first and most by that which is most conspicuous; and the less conspicuous change in disease, even if more fundamental and important, is not recognized until later. It has already been said that insanity is a denudation; it is a paring away of faculty, beginning with the highest, which is the latest acquired, and allowing of disorderly action—often over-action—of that which remains. The delusion, which is the most conspicuous feature in intellectual insanity, is not the most fundamental nor the most important. What is the most fundamental and important feature is the defective reasoning power which allows the delusion to exist uncorrected and incorrigible. This defective reasoning shows itself in various ways as well as by delusion; and

in nothing is the defect more important than in the *lack of appreciation of circumstances* in which it is so often exhibited. In all cases in which delusion exists, this deficiency in the power of appreciating circumstances will be found; and in many of these cases the deficiency is more important than the delusion itself. If a man deludedly believes that he is a millionaire, the delusion, startling as it is, is less astonishing than the fact that he does not appreciate that he is a pauper, wearing pauper dress, eating pauper food, living in a pauper institution, surrounded by paupers on the same footing as himself, and subject to the orders of officials whose directions he does not contest. The defect is necessary to the positive disorder, and is probably antecedent to, and in some sort the cause of this disorder. If the defect were supplied; so that his appreciation of surrounding circumstances was regained, the delusion would *ipso facto* disappear. Or take the case of the man with deluded forebodings of disaster, who is so convinced that his children will suffer starvation that he feels it necessary to kill them. The positive disorder—the delusion, and the conviction that by killing his children he will save them from a worse fate—is the most conspicuous feature in his malady; but behind this, and necessary to its existence, is the defect: the failure to appreciate the circumstances, not merely that he is well-to-do, and his children in no danger of death from inanition, but that his remedy is worse than the disease; for, if he kills his children, their immediate death is certain; while if he refrains, and trusts to the chapter of accidents, they certainly survive for a time, and circumstances, even if they were as he deludedly supposes them to be, may alter, and permit of the children surviving to maturity. Or again, take the case of the paranoiac who shoots

at some distinguished person for the purpose of 'drawing attention to his case.' It is the conspicuous act which engages our attention, but the more fundamental malady is the inability to appreciate the futility of his act,—the impossibility of relieving himself from the persecution of invisible impalpable tormentors, by the assassination of some third party who was unconcerned in, and unconscious of, the persecution, or the existence, even, of the victim. This defect in the appreciation of circumstances is invariably present in every case of insanity in which the intelligence is affected, and when present, it seems to me that it must affect the capacity of knowing the nature and quality of the acts of the deluded actor, and of knowing whether they are wrong; but to this I shall return in a subsequent chapter.

The result of a judgement, especially when it is not concerned with objects presented to the senses, and when it is elaborate in character, is termed a Belief; and, as already mentioned, Beliefs may be true or false, accurate or erroneous, according with fact or mistaken.

Mistaken beliefs are of two kinds—corrigible and incorrigible. When a mistake is made, it is usually because the thoughts compared in the process of judging were not clearly apprehended, or were themselves erroneous, and therefore were judged to be like when in reality they were unlike, or *vice versa*. This lack of clearness of apprehension may arise from inattention to the thoughts, or from their extreme complexity, or from other causes which need not be explained here. But if we can clarify the thoughts, and render them precise and accurate, a normal mind will correct the mistake of judgement. From hearing a voice, I conclude that Robinson is in the next room; and I am wrong, for the voice I hear is Brown's. But if I look into the next room and see that

it is Brown and not Robinson who is speaking, I correct the belief, and attribute the voice to Brown. If, however, in spite of this experience—of this opportunity of correcting my belief—I still maintain that the voice is Robinson's,—if, in short, my error is incorrigible when ample means of correcting it are furnished—then it ceases to be a mistake, and becomes a Delusion. So if I maintain that Brown is locked up in the cellar when he is not, the erroneous belief may be a mistake or may be a delusion. But if I go to the cellar and find it empty, and, having searched it and locked it, I still maintain that Brown is there, the belief is a delusion. Or if I believe a thing which is impossible, and needs no proof to demonstrate its falsity, such as that I have attended my own funeral, or that I can stand at Holyhead and shake hands with a man at Kingstown, or that my face is luminous and renders other light unnecessary, then again the belief is called a delusion.

Insanity is not estimated by disorder in the process of thought. It is estimated by the corrigibility of erroneous beliefs. If these are corrigible, they are sane mistakes. If, under circumstances appropriate for their correction, they remain incorrigible, they are illusions, hallucinations, or delusions, as the case may be.

This criterion of delusion has been examined at least once, with great care, in a legal judgement, and rejected. Sir J. P. Wilde, in Smith *v.* Tebbett, is reported to have said:—

'I search the decided cases in vain for a guide. What is to be the proof of disease? What is to be the test, if there be a test, of morbid action? The existence of mental "delusions," it would, perhaps, be answered. But this only postpones the question in place of answering it. For what is a mental delusion? How is it to be

defined so as to constitute a test, universally applicable, of mental disorder or disease? The word is not a very fortunate one. In common parlance, a man may be said to be under a "delusion" when he only labours under a mistake. The delusion intended is, of course, something very different. To say that a morbid or insane delusion is meant, is to beg the question; for the delusion to be sought is to be the test of insanity, and to say that an insane or morbid delusion is the test of insanity or disease does not advance the inquiry. "A belief of facts which no rational person would have believed," says Sir John Nicholl. No *rational* person. This, too, appears open to a like objection, for what are the limits of a rational man's belief? And to say that it exceeds them is only to say that it is irrational or insane. "The belief of things as realities which exist only in the imagination of the patient," says Lord Brougham in Waring *v.* Waring. But surely sane people often imagine things to exist which have no existence in reality, both in the physical and the moral world. What else gives rise to unfounded fears, unjust suspicions, baseless hopes, or romantic dreams?

'I turn to another definition. It is by Dr. Willis, a man of great eminence, and is quoted by Sir J. Nicholl in Dew *v.* Clark. "A pertinacious adherence to some delusive idea in opposition to plain evidence of its falsity." This seems to offer surer ground, but then the "evidence" of the falsity is to be "plain," and who shall say if it be so or not?' It appears to me somewhat inconsistent of the judge to raise this objection, since he himself shows, in a subsequent passage, how it is to be disposed of. 'How then,' he says, 'is the question of insanity to be approached by a legal tribunal? What tests are to be applied for disease? What limits assigned within

which extravagance of thought is to be pronounced compatible with mental health? The decided cases afford no light on these heads. I nowhere find any attempt to devise such test or assign such limits. Nor do I conceive that any tests, however elaborate, beyond the common and ordinary mode of judging in such matters would be competent to bear the strain of individual cases in the course of experience.'

The 'common and ordinary method' the judge defines as follows:—

'It is when the words or deeds of others, referred to our own standard, and that which by experience is found to be the common standard of the human race, appear to transgress those limits, that we suspect these common senses, emotions and faculties, which we know to exist, to be the subjects of disorder or disease.'

This standard appears to be open to the same objection that the judge himself raises to the mode of estimating a delusion. What is the 'common standard of the human race'? Is it any more fixed or certain than the judgement of a 'rational' person? or than the 'plainness of proof' which the judge has discarded? The difficulty in the one case is surely as great as in the other, but in neither does it appear as insuperable as it appeared to the judge. To either case, the same test would surely apply. If the case is submitted to the judgement of a jury, then the 'common standard' by which the words and deeds of the person in question are to be judged, is the standard of the jury that tries the case. So, too, the belief that no 'rational person' would entertain, is a belief that would not be entertained by the jury; and the 'plain evidence' is evidence which is plain to them. In the absence of a jury, the 'common standard,' the 'plain proof,' the 'belief that no rational person would entertain,'

must be referred to that fictitious person, the average or normal man, and I see no reason why his standard, which, in the last resort, must be the standard of a jury, should not be admitted in this case, as it already is in many others.

Though delusion is no longer the sole criterion of insanity, yet it is, in many cases of insanity, a very important factor; in many, the most important factor; and it is expedient, therefore, to distinguish and describe the chief classes of delusions from the point of view of their effect on responsibility. From this point of view, the kinds of delusions that it is important to describe are the following:—(1) Delusions of Exaltation, (2) Delusions of Depression, (3) Delusions of Persecution. There are other varieties of delusion, but, as they never appear to prompt to criminal acts, it is needless to refer to them here.

1. Delusions of Exaltation. Delusions of this class occur in several different varieties of insanity, and have a very different significance according to the variety in which they appear. They are usual in General Paralysis of the Insane, and then have a very exaggerated character. The hyperbolical exaggeration of the delusions of General Paralysis is scarcely credible. The patient owns millions and millions and millions; he can sell a twopenny-halfpenny ring and pay off the national debt with the proceeds. He owns the town; the country; the world; the universe; and so forth and so on. The importance of these delusions in this disease is that they influence conduct. Persons in the early stage of general paralysis, before the disease is recognized, often run into debt in consequence of giving orders for things far beyond their means; and not infrequently are proceeded against for theft and fraud, the direct result of their delusions, that the goods stolen or fraudulently conveyed

are the rightful property of the accused. In another variety of insanity, called Fixed Delusion, delusions of similar character, and sometimes quite as exaggerated, exist unchanged for years, without influencing conduct in the least. Every large asylum contains its proportion of Kings, Queens, Emperors and Gods, who go quietly about their menial duties, and never act in conformity with their delusions except, perhaps, in decorating their persons with tawdry ornaments to indicate their rank. Exalted delusions occur also in Acute insanity, especially in the cases due to alcohol, and then sometimes do, and sometimes do not, influence conduct.

2. Delusions of Depression always influence conduct, usually to a serious extent. We must distinguish in these cases between the feeling of misery, which may exist without any delusion as to its origin, the patient quite appreciating that it is uncalled for and unjustifiable; and the delusion which so often accompanies it, and which, if true, would go far to justify the feeling of misery. The feeling alone, without the delusion, may, and often does, prompt to suicide; and, when reinforced by delusion, the resulting state of mind is a fertile source of desperate acts. The delusion is always of a character consonant with the feeling of misery. It is always a delusion of misfortune, or unworthiness, or incompetence, often of all three. The unhappy patient believes that he is ruined, or criminal, or wicked, or powerless in various ways, and his conduct is accordingly. Under the influence of the belief that he is ruined, he seeks the shelter of the workhouse; he sells his business at a ruinous sacrifice; he sometimes puts an end to his life to prevent himself from becoming a burden to his family; he sometimes kills his children to save them from starvation. Under the influence of the belief that he is criminal, he

gives himself up to the police for a crime which exists in his imagination only. Or, if his delusion is of sin, he mutilates himself or kills himself to atone for his fancied wickedness. So convinced is he of his incompetence and uselessness, that he commits suicide to rid the world of a useless burden.

3. Delusions of Persecution differ widely from those of depression, to which at first sight they seem to have a kinship. The striking difference between the two is this :—that whereas the depressed person is convinced and satisfied that his misfortune is inevitable, and the contempt and despite in which he is held are deserved; the victim of delusions of persecution suffers from a rankling sense of injustice. He is as full of grievances as a herring of bones. While the one sinks in despair under his troubles, the other is constantly hatching schemes to obtain justice. He applies to the magistrate for protection. He changes his lodging secretly and furtively to escape his persecutors. He assaults the persons to whom he attributes the persecution. He writes perpetually to exalted persons, to the Sovereign of his own and other countries, to any one whose name happens to be prominently before the public—a celebrated actor or cricket player—to apply for redress. And, when redress is not obtained, he is very apt to attempt the murder of some conspicuous person in order 'to draw attention to his case.' Paranoiacs, as such persons are termed, are almost always potential homicides, and, as such, ought always to be detained under care.

This is an appropriate place to speak of 'Homicidal mania,' a term not unfrequently used in courts of law, but unknown in lunatic asylums. There is undoubtedly a belief prevalent among non-medical persons,—I have heard it expressed by barristers in discussions on the

subject,—that there is a definite variety of insanity known by this name, the leading proclivity of which is a consuming desire to take human life, a desire which dominates the conduct of the affected person, much in the same way, and to the same extent, as the dread, in agoraphobia and claustrophobia, hereafter described, dominates the conduct of the persons so affected. 'Homicidal maniacs' are supposed to be for ever on the watch for an opportunity of carrying out their lethal purpose,—to be possessed and urged by a craving to take human life. It is scarcely too much to say that no such malady is known to alienists. There is, indeed, a single case on record which might, perhaps, be brought under such a description; but, as a recognized and acknowledged variety of insanity of ordinary occurrence, the disorder does not exist. Among the insane, as among the sane, there are irascible persons, prone to take offence where none is intended, punctilious in exacting what they believe to be their rights, and apt to retaliate by violence upon what they regard an infringement of these rights; and, since self-control is commonly deficient in the insane, their acts of violence are less measured, and likely to have more serious effects, than those of the sane; but neither such people, nor the paranoiacs above described, who, more nearly than any other class of insane people, are entitled to the denomination of 'homicidal maniacs,' fulfil the concept that is usually attached to this term. The homicidal act of an insane person is usually an isolated act, done in a mood of intense exasperation, and not likely to be repeated. Were it otherwise, it is obvious that Broadmoor, in which so many lunatics who have perpetrated homicide find a permanent home, would be a pandemonium of perpetual uproar. It is nothing of the kind. There we

see scores of murderers, peacefully and tranquilly pursuing industrial avocations, and giving their custodians no apprehension of renewal of assault.

When conduct is prompted by delusion, we can recognize two classes of conduct so prompted. In the first, the conduct is the logical result of the delusion or other error of belief, and is such as a sane person might pursue, if the circumstances actually were as the deluded person believes they are. For instance, a wealthy man, under the delusion that he is ruined, files his petition in bankruptcy. A poor man, under the delusion that he is wealthy, orders goods far beyond his means; and under the delusion that they are then his own property, to do as he likes with, gives them away, or sells them at less than their value, or pawns them. A paranoiac, under the delusion that he is being racked and tortured, day and night, by means of electric influence cast upon him by a neighbour, assaults the neighbour; under the delusion that he is in imminent danger of his life from the machinations of the neighbour, complains to the magistrate or, perhaps, takes the law into his own hands, and shoots the neighbour. It is often assumed by lawyers, and seems to have been assumed by the judges in their famous answers to the House of Lords in 1843, that conduct which rests upon insane delusion is always of this logical quality. This is far from being the case. The conduct which is prompted by, or is the outcome of, delusion, is often of a character which does not logically flow from the delusion, for the deluded person is so affected in his judgement that he is unable to deduce logical consequences from it. Sometimes the conduct, while manifestly resting upon the delusion, is not its logical result; and sometimes it is difficult to trace any connection between the delusion which the

patient entertains and the insane conduct that he displays, though we cannot doubt that the two are in some way connected in his mind. For instance, a person, under the delusion that he is ruined, and that his children are in danger of starvation, kills them, as it were to save their lives. Under the delusion that he is being persecuted and tortured by A, by means of electricity and magnetism, he kills or assaults B, who has, as the persecuted person knows, nothing to do with the persecution. In such cases we can dimly conceive a connection, however illogical, between the delusion and the act; but in other cases we can conceive no connection at all between them. A man who deludedly believes that he is immensely wealthy, and whose mind is generally confused, but presents no other definite delusion, tears to rags the clothes that he is wearing, throws his bedclothes out of the window, and washes his face in the pan of the water-closet. That a man who believes that he is constantly being robbed, should carry about on his person as many of his belongings as he can stagger under, is intelligible; but that he should employ his spare time in scribbling names and dates upon the margin of books, on walls and furniture, is not intelligible. What connection is there between the delusion of being king and the act of cutting the throat?

It is quite exceptional for a person who suffers from delusions to reason logically from those delusions as a person might from a sane belief. The delusion is not an isolated disorder. It is merely the superficial indication of a deep-seated and widespread disorder. As a small island is but the summit of an immense mountain rising from the floor of the sea, the portion of the mountain in sight bearing but an insignificant ratio to the mass whose summit it is, so a delusion is merely the

conspicuous part of a mental disorder, extending, it may be, to the very foundations of the mind, but the greater portion of which is not apparent without careful sounding. Precisely how far this disorder extends, beyond the region of mind occupied by the delusion, it is never possible to say; but it is certain that the delusion itself is the least part of the disorder, and, for this reason, no deluded person ought ever to be regarded as fully responsible for any act that he may do. The connection between the act and the delusion may be wholly indiscernible, as the shallow between two neighbouring islands may be entirely hidden by the intervening sea. But nevertheless, if the sea stood a hundred fathoms lower, the two islands would be two mountain peaks connected by a stretch of low country; and, if the hidden springs of conduct were laid bare, the delusion and the act might be found to have a common basis.

CHAPTER VI

MIND (*continued*)

THE next faculty or division of mind that we have to examine is that of Will, or Volition, which also is subject to certain disorders. In discussing the mental operations involved in a voluntary act, we found that volition, or willing, is the final expression of the choice of the individual, after considering and balancing alternative modes of action. The process of comparing alternative modes of action is, strictly speaking, a process of thought; but it is so intimately bound up with volition that it is most appropriately considered in this connection. The process of comparison, and of weighing the merits and disadvantages of the several courses, is known as deliberation; and this process occupies time. In some cases the time occupied is inappreciable, and then it is said there is no hesitation; but, in many cases, the time is appreciable, and in some it is prolonged.

The time occupied in deliberation depends normally on several factors. It depends upon the importance of the choice. One would hesitate longer about going to Australia to inspect a tract of land with a view to purchase, than about going to the nearest town to inspect an easy chair for the same purpose. One would hesitate longer about buying a house, than about buying a box of matches. And it depends, too, upon the elaborateness of the several courses. One would hesitate longer over the

choice of route for a six months' tour, than over the choice of route for an afternoon stroll. And it depends, too, on the magnitude of the balance of advantage. If one course is clearly much more advantageous than another, we decide at once. If the advantages are nearly equally balanced, we hesitate.

Some persons have the capacity of deciding much more rapidly on a course of conduct than others. They are able to balance advantage and disadvantage speedily, or they are so prone to action that they determine to act without fully considering advantage and disadvantage. The former we call persons of rapid decision, the latter we call creatures of impulse. The terms 'impulse,' and especially 'irresistible impulse,' are frequently used in connection with criminal responsibility, and usually with no very accurate application. It will be useful to inquire into their true meaning.

There are but two classes of acts witnessed in the insane to which the term 'morbidly impulsive' should be applied. Of course, much depends upon the sense we attach to the word 'impulse.' If an impulsive act means an act undertaken to satisfy a desire, then all acts are impulsive, for all are undertaken for the satisfaction of one desire or another. The true meaning is, I think, limited as above described, and those acts only should be called impulsive, which are undertaken without full consideration of their advantages and disadvantages. This quality is necessary to an impulsive act, but something more is wanted to complete the notion. Impulse implies suddenness. An act long meditated, even if decided on with reckless disregard of its disadvantage, would scarcely be called impulsive. It is true, that an act long meditated usually means an act well considered, but it is not necessarily so. And by impulsive we mean suddenness,

not only of conception, but of execution. An impulsive act, then, is an act suddenly conceived and instantly carried out. Such an act is, *ipso facto*, done without consideration, without deliberation, without careful balancing of the advantage or disadvantage to follow upon it. Many impulsive acts are, nevertheless, highly advantageous. To shrink back and throw up the hand to ward off an impending blow is an impulsive act. To thrust out the arms when falling forward is an impulsive act. To snatch at the hat which is being blown off the head is impulsive; and all these are advantageous. These acts are crude, and the acts for which impulse is claimed as an excuse in a court of law are usually more elaborate. Now, we have seen that, other things being equal, an elaborate act is preceded by more hesitation than a crude act, and it is not conceivable that a very elaborate course of conduct, one composed of many stages, and prolonged over a considerable time, could be impulsive. The impulse would have to be renewed at each stage of the conduct. It would be an obvious and manifest misnomer to apply the term 'impulsive' to such a series of acts as going to a distant town to purchase poison under a false name, returning and administering the poison in repeated doses, in different articles of food, during several weeks, taking, the while, elaborate precautions against detection. I do not know that a plea of 'irresistible impulse' has ever been set up as an excuse for poisoning, but it has certainly been proposed as an excuse for conduct lasting a considerable time, interrupted by intervals in which conduct was addressed to other ends; accompanied by precautions; and manifestly following a preconceived plan. Such conduct may be insane, but to call it impulsive, whether irresistibly impulsive or no, is manifestly absurd.

An impulsive act must be a sudden act. It may be

sudden without being impulsive, as when a man fires the shot after watching for hours for a favourable opportunity. But it cannot be impulsive without being sudden, both in execution and in conception. Now, there are certain forms of insanity in which impulsive acts frequently occur. In acute insanity, it is very frequent for a patient, who has been quite tranquil for minutes or hours, or, it may be, days, to start up with electric suddenness and do some irrational act,—to strike out at a bystander; to throw a chair through the window, or into the fire; to drag the table cloth, with all the breakfast or dinner things, off the table, and so forth. It is to this class of acts that the term 'impulsive' ought in my opinion to be limited, and such acts seldom come under review in a court of law, never unless they have a fatal result. They are not committed except by persons known to be insane.

It is often alleged that people are apt to feel 'impulses,' sometimes absurdly called irresistible, to throw themselves off heights, or in front of advancing trains, or into other lethal positions. I do not think that such tendencies can be properly called impulses in the sense here defined. They are rather rapid than sudden. Those who have experienced them, and successfully resisted them, describe a conflict in their minds, resulting in the suppression of the tendency. It is clear, therefore, that there is deliberation and weighing of advantage before the act is decided on, and this element in the act removes it from the category of impulses properly so called. The number of cases of persons who have met their death by such means, and in whose cases accident and deliberate suicidal intent could be excluded, is so infinitesimally small, that there is no ground for supposing that such 'impulses' are irresistible. Undoubtedly they do occur, and undoubtedly they are resisted, and usually, if not

always, successfully resisted. No doubt many people act impulsively, in the sense of giving insufficient previous consideration to the advantage and disadvantage of the acts they do; but the plea of 'irresistible' impulse in excuse for crime, if by this be meant, as it should be meant, that the act was conceived and done suddenly, without any deliberation or balancing of advantage, and was the outcome of disease, is very rarely sustainable.

There is, however, an *impulsion* to act, which is quite different from *impulse* as above defined, and which may very properly, when established, be an excuse if the act be criminal. It is very rarely indeed that cases of this nature come before the courts, and this is rather surprising, for the cases are not very rare, and the impulsion or tendency is usually towards an act that is criminal. Of course, impulsion is not a very good word to contrast with impulse, and I use it provisionally only, since there is another term specially appropriated to the peculiar cases to which I refer. This term is 'obsession,' a word borrowed from mediaeval writers on diabolical influence, but used in a sense very different from theirs. 'Obsession' was used by them to characterize the besetment and assaults of the devil from without—a sense not very different from that in which we use the term 'temptation.' 'Possession' was the entrance of the devil into, and his capture of, the citadel of human volition, and his subsequent use of this position to enforce the performance of acts, foreign to the disposition, and against the inclination, of the actor. This is almost precisely the sense in which the term obsession is now used, the only difference being that the possessing influence is now looked upon, not as diabolical, but as pathological.

Obsessions are very various in character. The commonest, and the least noxious, are those of which

most people have experience, and affect that part of conduct which is carried on by speech. Who has not suffered from a phrase 'running in the head'—a proverb, a verse, or may be an air of music—which recurs again and again, and refuses to be banished. It comes into the mind unbidden; it repeats itself until it becomes a nuisance, and at length it gets itself uttered aloud, at a time, perhaps, when we are not thinking of it at all. Such trivial obsessions are familiar to most of us; and here and there a person experiences them in degree more persistent, in nature more objectionable, and in tendency to utterance more urgent. To such persons, words and phrases of blasphemy, of profanity, or, it may be, of obscenity, present themselves with startling vividness, and struggle into utterance even against the strongest efforts of their entertainers, and in most inappropriate circumstances—in church, in public meeting, or at a dinner party. Or the utterance may be in itself innocent and unobjectionable, but becomes distressing on account of its persistent and frequent recurrence. Such is the 'counting mania,' so called, which impels those who are affected by it to count anything they may happen to see —the vehicles they pass in the road, the windows in the houses, the perambulators, the trees by the roadside. Again, in other cases, the counting does not refer to external objects, but goes on spontaneously, and has to be performed before any act can be done. Before the subject of this malady can pick up a key, he must count up to ten, or twenty, or some other number. Before he can put the key in the lock, he must count the number again. So, before he can turn the key, before he can open the door, before he can set foot in the room, he must count up to ten or whatever the number is, and thus he goes on all day. Such acts are not criminal, but the impulsion, to which we

give the name of obsession, often is to criminal acts. A man may be seized with the desire, every time he sees his wife, to cut her throat. A woman may be impelled, every time she sees her children, to batter their heads in. Such obsessions are not rare, and that they are true obsessions is proved by the horror with which they are regarded by those who experience them, and by the measures that such persons take to be prevented from yielding to them. Persons so afflicted not seldom seek medical advice with regard to what they recognize to be a mental malady. Sometimes they apply to the police to be restrained. Not seldom they voluntarily seek the restraint of an asylum to be prevented from doing an act that they are impelled to do, but that they regard with horror unspeakable. It is obvious that acts, done under the influence of such obsessions, are not, in the true sense of the words, 'voluntary acts,' although it may seem that they are 'movements consciously directed to an aim or end.' If it were worth while, it could be shown that they do not satisfy the definition of 'consciously' given on a previous page. They are done with intention, no doubt, that is to say, in obedience to a desire to do the act; but they are done without motive; that is to say, there was no antecedent desire to be satisfied by the choice of this, rather than of another act. On the contrary, there is a direct conflict between motive and intention,—between desire for the welfare of wife or children, and desire to do an act harmful to her or them. Without, however, now penetrating into these subtleties, it is quite manifest that such acts, done in conformity with an obsession, but in spite of an underlying desire to the contrary, are not normal acts, and that for them the actor should not be held fully responsible, perhaps not responsible at all.

It is to the category of obsession, rather than to that

of impulse, that those propensities should be relegated, to which allusion has already been made, in which people experience the tendency to throw themselves off heights or in front of trains.

Examination of the disorders of the will has brought us into contact with anomalies of desire, so closely are the two regions of mind connected; and it has come into view that, while disorders of thinking and of belief are easy to recognize, to identify and to describe, disorders of will are more difficult to discriminate; and this difficulty will become accentuated, we shall find, when we treat of the disorders of desire. The reason of this increasing difficulty is to be found in the increasing degree of identification, of the division or faculty of mind, with the very self of the individual. Sensations are so little thus identified, that they are not considered, by any but persons of some rudimentary knowledge of psychology, to belong to the self, or even to the mind, at all; and even psychologists leave the examination of sensations, and of their anomalies, largely to the physiologist; thereby tacitly acquiescing in the current notion that sensations are widely separated from the self, or subjective side of mind. Persons, whose studies have not included psychology, assume, as a matter of course, that the blue of the sky, the green of the trees, the sound of the wind, are in the sky, the trees, the air respectively, and not in their own minds. They might not be so sure that the smell of the rose is in the flower, or the taste of food in the viand, and they would probably admit without hesitation that the prick of a pin was not in the pin; but, even in the last case, they would aver that the pain of a pinch of the foot was in the foot, and fail to recognize that a pain, as well as every other sensation, is but an affection of the mind of the person who experiences the sensation.

Thoughts are more closely identified with the mind of the thinker than are sensations with the mind of the person by whom they are felt. No one, however uneducated, now regards a belief, still less a chain of reasoning, as aught but an attitude or an operation in the mind of a thinker; but still we are in the habit, I do not say wrongly, of regarding the thought as in some degree separate from the individuality of the person by whom it is entertained. A man may change his beliefs, as he may change his sensations, without himself undergoing alteration. His belief is changed, but he is the same man, now that he adheres to the new belief, as he was when he scouted it and clung to the old one. So, too, his thinking may be disordered, and his beliefs erroneous, without our ascribing these errors to any morbid change in him. Even if his beliefs are incorrigible, if they are downright delusions, unmistakeably insane, we discriminate between the insane delusion and the person who suffers from it. We regard him as a sufferer, as himself, no doubt, in some degree disordered, but still the delusion is not identified with the deluded person. There is a clear distinction between them. We say he has a delusion in his mind, much as we say he has a sovereign in his pocket, and regard possessor and possession as distinct from one another.

But when we come to deal with will, we find this distinction becoming evanescent. The tune, or verse, or proverb, which is 'running in the head' we do indeed regard as quite distinct from the person in whose head it runs, but when, in the phrase that I have used, they 'get themselves uttered,' we find it hard to refrain from saying 'he utters them'; and, if we do refrain, it is because we regard the utterance as taking place somehow without the will of the utterer. Still, it is not easy

to make this assumption. We find it repugnant to admit that a man's bodily organs can execute acts without the concurrence, without the active exertion, of his will. This repugnance can be diminished or removed, however, upon consideration of allied events. We know that, in convulsion, a man's limbs move without any concurrence of his will—without either exertion or permission of the volition; but convulsion is not action; it is movement undirected, and is therefore not in point. In St. Vitus's dance, the movements appear to be more purposive in character. The sufferer makes a voluntary movement, indeed, but the movement is interfered with, vitiated, and, it may be, nullified in its purpose, by the interpolated jerkings and writhings which are involuntary. He wills, say, to bring his fork to his mouth, but, in its passage thither, it is so swayed and fidgeted about, that the food is scattered over his person, over the table and floor, and the fork finally arrives, not at his mouth, but at his neck, or the middle of his cheek. Here the movement of his limb is in part his movement, and in part movement of his body which is no more his than if his limb was grasped by overpowering strength and moved in spite of him. In such a case, the part of the movement which is his may be discriminated without much difficulty from the part which is not his. That which is his is intentional. He had, at the time of making the movement, the desire of carrying his fork to his mouth. That which is not his, is unintentional. He had no desire to throw his food about, or to stick his fork into his cheek. So far the affair is pretty clear.

But the case of obsession is different. When a man, under the influence of obsession, throws himself over a cliff, or cuts the throat of his child, he may not have

desired—*ex hypothesi* he did not desire—to kill himself or his child,—but he did intend to do the act. He had an unconquerable desire to do the act, but he had no desire for its natural and inevitable consequence. If we recur to the train of conscious states that precede a voluntary act, we remember that, going backwards from the act, they are volition; intention, or desire to do the act; choice; immediate motive, or desire for the immediate consequence of the act; and, in succession, more and more distant motives, that is, desire for more and more distant consequences of the act; until at last we reach some primitive desire or instinct, which is the *fons et origo* in which the act originates. We have seen that, in the mildest cases of obsession, the defect or disorder is in the last step, immediately preceding the act. When the phrase that has been persistently obtruding itself upon my memory—that has been, as we say, running in my head—is at last uttered aloud, we may admit that it is so uttered by the operation of volition; but I can truly say that I had no intention of uttering the phrase. It slipped out. When the act was done, I had no desire to do it. The defect or disorder was in a stage close up to the act itself, it was not far removed from the mental operation of thought, which, as we have seen, is easily discriminable from the thinking self; and, conformably, this disorder, which is far removed from the fundamental instincts that are identified with self, and approximates nearly to mental states which we discriminate from self, is regarded as in some degree discriminable from self. My tongue and my mouth utter the words, it is true, but I decline to admit that 'I' uttered them, for I had no intention of uttering them. 'I' had more part in the act than had the choreic patient in sticking the fork into his neck; but 'I' had less part

in it than if I had deliberately intended to say the words.

In the man who is obsessed to count, or to jump off a cliff, or to strike his wife, the defect or disorder is carried a stage farther back. When the words were uttered, I may have willed, but I did not intend, to utter them. But the obsessed person does intend the act. The cleft is now, not between volition and intention, but between intention and motive. He desires, with well-nigh irresistible urgency, to do the act; but he does not desire, nay he recoils with disgust or with horror, from the consequences of the act. The division being a stage nearer to primitive instinct, and a stage farther from thought, the act is more intimately identified with the self of the actor—is so intimately identified that we have great difficulty in discriminating the two in our thoughts. We find it difficult to admit, or even to understand, that a man can voluntarily and intentionally do an act which he abhors and loathes; and we find it impossible to do so without making a cleavage of his 'self,' which has always hitherto seemed indivisible. We have to take the desire for the act—the intention—out of the self, with which it has always been identified, and regard it in the same light as we regard a belief, as something separate from the innermost self. Only by so doing can we mitigate his responsibility for the act. And yet, when we know that he has urgently, but vainly, sought to be restrained from the act; when we know that he has implored the police to lock him up; that he has signed away his liberty and entered an asylum in order to be deprived of opportunity for the act; it is impossible to regard him as equally punishable with the man who does the same act for greed, or lust, or vengeance. And it is impossible because, in the obsessed man, there are

no such *motives*. Because between intention and motive there is a great gulf fixed, and, though he intended the act, he did not desire its consequences.

The case of obsession is obscure enough and difficult enough, but it is exceeded in obscurity and difficulty when the cleavage that has been spoken of is carried yet farther away from the act itself, and nearer to those primitive springs of action which reside in the very self. Yet there is good reason to believe that such a cleavage there is, and that disorder may exist still nearer to the intimate nucleus of self-hood than we have yet found it.

A concrete instance will best show what is meant. There are persons, otherwise sane and healthy in mind and conduct, who are beset by irrational, absurd and insurmountable aversions. This one has a horror of being in, and especially of passing over, an open space. So long as he can be in a small room, with the door and window shut, he is comfortable and placid. But in a large room, especially if it is bare of furniture, he is in discomfort; in the street, he is in distress; and pass over a wide open space, like Trafalgar Square, he cannot. He is smitten with horror at the thought. His legs shake under him, and he clings to the railings at the side as if the open space were a raging sea, or a seething volcano, and to enter upon it were instant death. Agoraphobia, as it is called, or fear of open spaces, is a well characterized, well recognized, malady, the genuineness of which is out of all doubt. There is a malady of contrary description, called claustrophobia, in which the dread is not of open, but of closed, spaces. Persons affected with it have an insurmountable dread of being in a closed space. If in a room, they must have the window or the door open. They are not completely easy except in the open air. I have been aroused from sleep

in the middle of the night by such a person, with a demand that the front door should be unlocked and thrown open. The thought of being compulsorily confined in the house was torture to him. Persons so affected are quite aware of the irrational and absurd character of their malady. They know quite well that the circumstances which so fill them with terror are devoid of danger, but this knowledge has no effect upon their aversion from those circumstances, nor does it diminish the urgency of the desire to avoid them.

If we now turn to the mental operations which precede and govern voluntary acts, we shall find that the stage, at which the disorder above described occurs, is antecedent to the stage at which occurs the disorder in the obsessions previously dealt with. It is farther removed from the act, and is shifted along the scale towards the activities which are more closely identified with the self of the actor. In obsession, the cleavage was between intention and immediate motive. Intention was morbid, but all antecedent to intention was normal. In agoraphobia and claustrophobia, not only is intention morbid, but immediate motive also is morbid. Ultimate motive—the desire of self-preservation—is normal; but between this normal desire and the desire of means to carry it out, the cleavage occurs. The patient desires, and his desire is normal, to preserve his life. But this desire gives rise to the secondary desire to avoid crossing an open space, or to rebel against a closed door or window, as the case may be, desires which are morbid inasmuch as, even when fulfilled, they in no wise conduce toward the satisfaction of the more fundamental desire, of preserving life, from which they are derived.

The result on the spectator of this retrocession of the locus of the morbid change is worthy of note. The more

the disorder recedes from the act itself and verges towards the acting subject, the more it recedes from the *sui* and invades the *se*, the more difficult it becomes for the spectator to realize the impotence of the *se* to get rid of the desire, or at least to control its manifestations. That a man should fail to see, whose optic nerve is divided, we can understand well enough. That a man should entertain the delusion that his child is dead, and fail to rectify it when the living child is produced and shown to him, asseverating that the child is an impostor and not his own, we cannot understand, but we can realize, and be convinced of its actuality. That he should be unable to put on his boots before he has counted up to twenty for each boot is more difficult to appreciate. We think that surely, by an effort of will, he could discard the desire to interpolate the counting; and, if we are told that it is the will itself which is disordered, the explanation leaves us still puzzled and uncertain. When we find him clinging to the railings, and longing, but not daring, to cross the street, well though he knows there is no sort of danger in doing so, we are altogether metagrabolised. The thing is so unaccountable and anomalous that we feel it to be incredible. And yet it exists. If we witness the occurrence, we feel inclined to take the hesitating impotens by the shoulders and shake him, telling him not to be so foolish. We are driven to believe that he could overcome the feeling if he tried. On the other hand, the sufferings that such people undergo are so manifestly real and poignant, that it is quite impossible to maintain an attitude of incredulity in the face of them.

It would seem that no further retrocession of the seat of the disorder is possible, and that any further retrocession, if possible, would so invade and implicate the self, that the acting individual must be held responsible for any

wrong done in consequence of such disorder. But the matter is by no means clear. In the foregoing instances, the primitive and fundamental desire—the desire of self-preservation—is not itself invaded. It exists in full force, perhaps in exaggerated force. It is, at any rate, not weakened, and the disorder exhibited is in the subsidiary desires, through which the original aim of self-preservation is to be attained. But there are cases in which the disorder appears to be not in the secondary or subsidiary desires, but in the primary, fundamental and original desire, which enters so largely into the composition of the self. There is scarcely any desire which is stronger, under normal circumstances, than the desire of the mother for the welfare of her new-born infant. Her whole being is absorbed for the time in nourishing, cherishing, protecting and caring for the helpless bantling, that, but for her lavish attention, must perish in its impotence. Yet there are cases in which this primitive instinct seems to be reversed, and the place of love and self-sacrifice taken by a fury of destructiveness directed against the hapless child. It is a commonplace of alienism that the danger of insanity in childbed is, that the mother will murder her child. Yet for such a murder the mother is never held responsible.

There are circumstances, however, in the case of the infanticidal mother, which distinguish it widely from cases of claustrophobia and the like. The woman in the insanity of childbed is insane, not merely in her perverted desire to destroy her child, but in many other ways as well. She is incapable of appreciating her position and her surroundings. She, perhaps, does not recognize even her husband. Her conduct is degraded and erroneous in many ways. She raves incoherently; she struggles to rush out in the street in her night clothes; she tears,

and breaks and smashes; she refuses food; and she is so manifestly insane, that no one would question her irresponsibility. The morbid craving to destroy her child is not an isolated manifestation, but is a part of a very widespread and deep-seated disorder, which is so great, and so manifest, and is exhibited in so many ways, that the infanticidal propensity sinks into a subordinate symptom.

There are other cases in which the disorder of a primitive desire, or of a desire but little removed from the primary class, exists alone, and, as in the case of agoraphobia and claustrophobia, is accompanied by no discernible intellectual disorder. Such disorders are closely in character allied to agoraphobia and claustrophobia, but they invade desire of a different class, and the acts to which they instigate are criminal.

The most frequent instances of such disorder that come before the courts are those in which the desire implicated is that of reproduction. This is probably the most primitive of all desires, and the one out of which all others are derived. We find, at any rate, that the function of reproduction is present in organisms so primitive that they cannot be said to exhibit any other manifestation of conduct. In the human race, many other desires are present, and though all of these are probably ultimately derived from the desire of reproduction, some of them, such as the desire of preservation of the individual, that of preservation of the community, the desire of accumulation, and others, rise at times to an importance and an urgency equal or superior to that of reproduction. It is important to remember that the reproductive desire is the most fundamental of all, because the action of disease is essentially and always an action of denudation. It removes first that which was last acquired, and leaves till last that which was original. Hence, in the denudation

of insanity, desires which we regard as ethically superior, and which have been lately acquired, are first removed, and leave room and scope for the display of manifestations of more fundamental desires. This is the reason why sexual proclivities, excessive in degree, or irregular in character, are among the most frequent of the manifestations of insanity.

As the desire of self-preservation is sometimes manifested in intentional acts which do not, in fact or in appearance, subserve the end desired, as in claustrophobia and agoraphobia; so the desire of reproduction is sometimes manifested in intentional acts which do not, either in fact or appearance, subserve the end to which the desire is directed. The natural and normal desire of the male to court, and toy with, and finally to have connection with, the opposite sex, is altered, so that the desires are toward the same sex. Many volumes of very disgusting and unnecessary particulars have been written and published upon this theme, under the pretext of its importance; though it is not easy to see that its importance transcends that of other morbid desires which have been left without any special literature, and it is a fact that the volumes referred to have had a very large sale among an outcast class, for which they appear, indeed, to be eminently fitted. I do not propose to emulate the writers in their mode of treating the subject, but there are certain aspects of it which ought not to be disregarded.

In the first place, there is a certain number of persons in whom this perverted form of desire appears at the time of life at which the normal sexual desire asserts itself, and in whom it retains its perverted character throughout life. If the community sees fit to punish the acts by which such perverted desires are gratified, I see no reason

why persons of this class should not be held responsible. There is no reason to suppose that the perverted desire is any more urgent than the natural desire; and the natural desire, when gratified in ways unsanctioned by the community, is punished. The female fornicator is punished, not by the law, it is true, but by the community, and is held responsible. Adulterers of both sexes are legally punished, not indeed as criminals, but none the less punished, in such a way as to enforce responsibility for adultery. The existence of large classes of lifelong celibates, who unquestionably observe their vows of chastity, proves that the natural desire is susceptible, if not of total suppression, at least of complete control. And therefore, if the perverted desire is no more urgent than the natural desire—and I know of no contention that it is—it seems that the sexual pervert should be considered as fully responsible, for the act in which he gratifies his desire, as the ordinary fornicator or adulterer.

Sexual perverts of the second class stand upon a different footing. They are old men, who have lived a normal and reputable life up to a time when, with the advance of age, their sexual desire has died away and disappeared. They have families of grown-up children, and often of grand-children. After a considerable interval of sexual neutrality, they experience a revival of sexual desire, often intense in degree. The candle flares up in its socket, and they are startled to find themselves moved with all, and more than all, the sexual proclivity of their early manhood. Nor is this all. Morbid as such a rekindling of extinct desire manifestly is, its morbidity is increased and emphasized by the new direction that the desire takes. Not now directed to the capable and attractive of the opposite sex, it seeks gratification with little girls not yet arrived at puberty, or with persons of

the male sex. Desire, arising under such circumstances, and taking such novel and unnatural direction, is surely the outcome of disease. It is morbid in a double sense, and, in such cases, the responsibility of the agent is not so readily determinable as in cases of the previous class.

As the disorder has the same locus in the sequence of mental events as that in agoraphobia and claustrophobia, that is to say, it occurs at the same stage in the processes that precede the voluntary act, it seems not unreasonable that the same rules should apply to both; and we shall be able to consider the matter with less of disturbing prejudice if we first consider it with regard to these desires, which lead to harmless and unpunishable acts.

I do not think any one would maintain that a man should be reprobated for entertaining a morbid desire. He can no more be blamed for experiencing a feeling of terror at crossing an open space than for having a feeling of hunger when his belly is empty. Moralists may award blame to the man who cherishes, and nurses, and feeds a desire for vengeance, but law and punishment do not begin to be operative until an act is done.

If we now refer, and reconsider the train of events which culminate in a voluntary act, we shall see that, while the desire occurs early in the series, the processes for which we hold the actor responsible are at the other end, and occur late. The early processes are, as we have seen, identified more and more with the self of the actor, the earlier they occur in the series; and the disorder of the earliest is so identified with the self, as to appear incontrollable by the will, because it is antecedent in point of time to the act of volition. Volition is the act—the outpouring of energy by the self—which gives effect to choice. Choice determines the mode by which desire shall be satisfied. Desire, therefore, antecedes choice, and,

a fortiori, antecedes volition. On this showing there can be no responsibility for desire, since will is in no way concerned with the formation of desire, but only with the means for giving effect to it. But this is not a complete statement. Will is concerned with choice, which is, in fact, one of the manifestations of will; and choice determines, *inter alia*, which of two opposing desires shall prevail. While, therefore, we cannot rightly hold a man responsible for experiencing a morbid desire, it by no means follows that he is not to be held responsible for giving way to it, and for acting in such a way as to satisfy it. On the contrary, it is found that morbid desires, of even such extreme urgency as occur in obsession, can be resisted, at least temporarily; and can be, and often are, obviated by a precipitous retreat from opportunity.

In the natural constitution of all the higher animals, and especially of man, normal desires frequently prompt in opposing directions. Even in very weak and timid animals, the desire of protecting the offspring often conflicts with, and overpowers, that of self-preservation. In social animals, the desire for the welfare of the community, which in man we call patriotism, frequently comes into conflict with, and overpowers, the desire of self-preservation, so that the individual sacrifices his life for his tribe or his country. Selfishness and sympathy are for ever at war, prompting in opposite directions; and sometimes the one prevails, sometimes the other. When an antisocial or antipathetic desire, which is not regarded as morbid—such as sexual jealousy, or desire of accumulating property regardless of the welfare of others—is so intense as to overpower the social and sympathetic desires, and to find expression in acts of violence or theft, such acts are regarded as rightly punishable, and are dealt with by the criminal law; and when morbid desires prompt to

acts that are similarly forbidden, it seems, *prima facie*, that the same rule should apply. It is arguable, however, that normal desire and morbid desire are not quite on the same footing, although both prompt to criminal acts, in spite of the opposition of the restraining desires that we term, collectively, moral. The normal criminal outrages the law, not because the desire, which he satisfies by the criminal act, is stronger in him than in the law-abiding citizen, but because the restraint of morality is weaker. The victim of claustrophobia or agoraphobia acts in conformity with his desire, not because the disinclination to do absurd things, and to incur ridicule, is weaker in him than in other people, but because the desire to do such acts is stronger. So it may be that the act of the sexual pervert or the kleptomaniac is due, not to the weakening of moral restraint, but to the overpowering strength of the prompting desire. It may be that this is so, but we do not know that it is so; and, if it were determined affirmatively, I am not sure that it would influence our view of the responsibility of the actor, though perhaps it ought to do so.

Our investigation into the psychology of desire has not, thus far, thrown much light upon the responsibility that ought to attach to an act done on the prompting of a morbid desire. It seems determinable that no responsibility attaches to morbid desire itself, and that, if there be responsibility, it arises at some stage, of choice, intention, or act, subsequent to the desire. If there is no disorder of will or of intelligence, then I think responsibility attaches as soon as desire obtains the sanction of will.

The next stage towards voluntary action, that follows upon desire, is choice; and I think that, though in law responsibility does not attach until an act is done, yet, in morals, responsibility is incurred as soon as the subject

determines, generally, that in some way he will find gratification for a desire which he knows to be morbid. Certainly, when a further stage is reached, and he has formed the intention of doing a particular act in order to satisfy the desire, responsibility is incurred, if the act is generally punishable. I think it is clear that responsibility is limited to volition, and that no act is rightly punishable which is not willed; and if this is true generally, it may fairly be considered true *secundum majus et minus*, and the more thoroughly the will enters into and is concerned in the act, the more completely is the actor responsible. This seems to me the principle on which is founded the practice, universally observed, by which responsibility is attached in increasing degree with increase of premeditation, and is diminished according to the impulsiveness of the act. The greater the premeditation, the more elaborate the act; and the more elaborate the act, not only the longer the time over which the mental operations are spread, and therefore the more opportunity allowed for the intervention or participation of the will, but the more numerous the occasions upon which the will is, and must be, exercised in successive operations of choice.

When, in obedience to a feeling of terror at the anticipation of crossing an open space, a man clutches at the railings at the side of a square, we may wonder, we may despise, we may be impatient, but we scarcely blame. If touching the railings were forbidden by law, I do not think a jury would convict, if they thoroughly understood the actor's frame of mind, and that the clutching was a sudden unpremeditated act. But if a man, under the fear of being in a confined space, gets out of bed in the small hours of the morning, puts on his dressing-gown, opens his door, comes down-stairs, knocks at my door, rouses

me from sleep, and demands that the front door shall be opened, the conditions are different. We feel that a much higher degree of responsibility attaches to this series of deliberate acts than attached to the impulsive act of clutching at the railings; and, if we seek to analyse the reason on which this attachment of greater responsibility rests, we find it in the more numerous occasions for the more deliberate exercise of will. The clutching at the railings was a mere reflex act, in which will was scarcely at all concerned. It is comparable with the throwing out of the hands when we are falling forward. If the experiment is tried, it will be found almost, or quite, impossible to refrain from thrusting out the arms when we are falling forwards, even if the fall is into a soft feather-bed, or into water. But, in the more elaborate series of acts by which the victim of claustrophobia seeks relief from his misery, the intervention of will is required at every stage. He must first of all determine to have the door open; then he must determine on the several steps by which his object is to be attained. He must intend each subsidiary act as he carries it out. At each stage there is opportunity to master and guide his impulses; to weigh and consider; to exercise control; and at each stage the exercise of will is necessary to carry him on to the next. This is why we attach more responsibility to the premeditated, and especially to the elaborate act, than to the impulsive act. It is because the will is more engaged in the one than in the other; and, in proportion as the will is engaged, in that proportion is responsibility attached.

While, on the one hand, it seems just that, where intelligence is unimpaired, responsibility should attach as soon as we can prove the intervention of will; there is, on the other hand, something repugnant to our sense of justice in

attaching full responsibility to an act which is in some degree the result of disease. Agoraphobia and claustrophobia are desires so clearly morbid, that, if a man, under the influence of the first, were to neglect some duty, for the fulfilment of which it was necessary to cross an open space; or, under the influence of the second, were to break a window; we could not refuse to admit that there was some excuse for his conduct. We could not judge him by so rigid a standard as we should apply to the man in whose mental constitution these morbid fears had no place; we should not condemn him so deeply as if he had neglected the duty from laziness, or broken the window in order to annoy. And, if this is so, it seems that the same rule should apply to the elderly sexual pervert, the morbid character of whose desire is placed out of doubt, not merely by its character, but by its intensity at the time of life at which it arises. In his case, also, we shall be guided largely by the degree of premeditation and elaboration evinced by the act; but, even when the act is both premeditated and elaborate, we should not, in my opinion, attach to the act the full responsibility that attaches to the acts of persons of normal mind.

In a trial in which I had an opportunity of placing this view before the court, the judge asked me whether I should regard as insane all the old men who were brought before him in the North of England on charges of indecency. The question seemed scarcely fair, and scarcely relevant. For while I was called, it is true, to uphold the plea of insanity, I had not stated any opinion that the prisoner was insane. I had said that he was a man of morbid mind. If I had been asked whether I could have certified him as insane, I should have had a difficulty in answering in the affirmative. My evidence was directed to show, not the insanity of the prisoner,

but the limitation of his responsibility; and in this it appeared to be successful, for a light sentence was imposed.

To summarize the conclusions to which the foregoing discussion leads.

Responsibility attaches to acts that are wrong, and to no others. A wrong act is a voluntary act in which the actor seeks gratification by inflicting unprovoked harm upon others. Responsibility is the more undoubted, the more closely, the more deliberately, the more frequently, the will is concerned in the act.

CHAPTER VII

CONDITIONS OF RESPONSIBILITY

THEREFORE, to incur responsibility by a harmful act, the actor must *will* the act; *intend* the harm; *desire* primarily his own gratification. Furthermore the act must be *unprovoked*, and the actor must *know* and appreciate the circumstances in which the act is done.

1. The act must be willed, or it incurs no responsibility. *A* slips and falls, and in falling hurts *B*. *A*, in an epileptic convulsion, kicks *B*. *A*, suffering from St. Vitus's dance, spills scalding water over *B* by a choreic movement. *A*, in post-epileptic automatism, pockets money belonging to *B*. *A*, suffering from *epilepsie larvée*, assaults *B*. In each case *A* does harm to *B*, but in each case *A* is irresponsible, for the act was unwilled. Note, that it is want of will, not want of knowledge, that renders *A* irresponsible. In the first and third cases, *A* knows the nature and quality of his act; but is nevertheless irresponsible.

2. The harm must be intended, or, even though willed, it incurs no responsibility. *A*, to attract *B*'s attention, grasps *B*'s arm, not knowing that *B* has been recently vaccinated. *A*, knowing a gun is unloaded, points it at *B* in fun, and pulls the trigger. The gun is loaded, and *A* shoots *B*. *A*, an idiot, having possession of a knife, and knowing it will cut, exercises its powers on the arm of *B*; willing the act, but not intending to hurt *B*. *A*, obsessed by the presentation in his mind of

defamatory words, addresses *B* as 'you thief,' not intending any aspersion on *B*. In each case *A* is irresponsible, for, though the act was willed, the harm was unintended. In each case the actor knows the nature and quality of the act, but in none does he anticipate or intend the harmful consequences.

2 *a*. *A* runs a knife into *B*, (1) in the course of a surgical operation; (2) under an obsession, at which *A* is horrified, and which he tries to resist, to kill *B*. In the first case, *A* is irresponsible, for though he wills the act, and intends the harm (which cutting the body must of necessity inflict), he does it not primarily for his own gratification. Is this true in the second case also? It is true to a certain extent only. *A* runs the knife into *B*, under the obsession that he must kill *B*, and intending to kill him. An intention is, as we have seen, a desire, and, undoubtedly, an act done in pursuance of an obsession, is accompanied by a strange unaccountable gratification and satisfaction, even though the desire thus satisfied is in direct antagonism to the deeper desire which lies behind and conflicts with the intention. The person injured by the obsessed injurer is often a person beloved and cherished by the latter, and the injurious act is done against, and in spite of, the cravings of affection. We cannot say that the act is not done for the immediate gratification of the actor, and yet it is done against the grain, and in the face of remorse that, it is known, will be terrible and inevitable, remorse that is even felt at the moment of acting. It cannot therefore be said precisely that the act is done, or is not done, primarily for the gratification of the actor; or, rather, it is done both with and against inclination; it is done in accordance with a superficial desire and in antagonism to a deeper desire. If these expressions appear contradictory, they

faithfully represent the facts, which also appear contradictory. At any rate, the act is not done with that full concurrence of the whole personality of the actor, which alone fulfils completely the description that has been given of a voluntary act; and therefore the full responsibility does not attach to it that attaches to acts that do fulfil this description. The reality, and the morbidity, of the mental state that we call obsession, are attested by the efforts, so often made by those who suffer from it, to be controlled and to be cured. That they frequently do resist the impulsion is certain; that there are cases in which the control is ineffectual is probable. Whether, in such cases, the control of the act was within the power of the actor, or whether the obsession was of such overmastering potency as to be beyond his power of control, we cannot determine; but we are driven to admit that, when the existence of obsession is proved, it does materially diminish, though it may not completely remove, responsibility for the act. It is a very significant fact that, although cases of obsession to kill are by no means infrequent, they scarcely ever appear in criminal courts; and their infrequency therein appears to indicate that, in the great majority of cases, the act is controllable.

3. The actor must not merely will the act and intend its immediate consequences, but he must *desire* primarily to obtain his own gratification by means of the act. In other words, his motive must be self-gratification, or he is not responsible. The case of the surgeon, who necessarily injures his patient with the motive of doing the patient good, has already been instanced, and is a sufficient example of the cases in which some motive other than self-gratification can certainly be attributed to the act. When we can certainly identify such other motive we place responsibility aside. There are cases in which we

are in doubt as to whether or no the act was done with a self-regarding motive, and in such cases we are in doubt about the responsibility also. I am occasionally consulted about young people—usually schoolboys and schoolgirls—who habitually steal things, and at once give the stolen goods away. The only test of responsibility in such cases is the motive of the act. If the presents are made to pay off debts, or to acquire popularity, or to gain admiration, or to acquire a reputation for generosity, or for wealth, we attach responsibility to the acts. But if the things stolen are given away, as they sometimes are, to strangers or tramps, and if we cannot find a motive of causing pain or injury to the person robbed, we conclude that, for an injurious act which displays no motive of self-gratification, no responsibility is incurred. I once gave evidence in a case in which a man was charged with injury to property. He was found in the kitchen of an uninhabited house, breaking up the kitchen range with one of the fire-bars. It could not be ascertained that he bore any grudge against the owner of the house, nor against any one connected with it; nor did it appear that he had the motive of collecting the pieces to sell for old iron; nor could any intelligible motive for the act be discovered. On this ground alone I considered the prisoner irresponsible. There was other evidence that he was of unsound mind, but though this evidence was corroborative, it did not appear to me essential. The absence of a self-regarding motive appeared to me sufficient to establish the irresponsibility. Without being altogether absent, motive may be so insufficient as to raise a presumption of irresponsibility. A lad broke into the bedroom of his sister, and killed her by shooting her through the head, alleging, as the reason, that she had neglected to pass him the newspaper at breakfast

the day before. A man had an altercation with his brother, and on the following day murdered his sister's child. To the police he gave, as a reason for the murder, that he had had a row with his brother the night before. On hearing of such cases, we feel inclined to say that the acts are not the acts of sane persons. They seem to bear the stamp of insanity. Yet the criminals evidently had their wits about them, and it was difficult to find any sign of disorder of mind in them except the insufficiency of motive for such acts. In neither case did examination of the prisoner elicit evidence of certifiable insanity. Yet the insufficiency of the motive, judged by the ordinary standard of humanity, appears to argue diminution of responsibility on the part of the actors. 'Absence of motive' is frequently alleged as evidence of the insane character of an act, especially of an act of murder. When the murdered man is an entire stranger to the murderer, and there is no reason to suppose the murderer mistook his victim for some one known to the murderer, then, I think, absence of motive goes far to establish irresponsibility. But when the murderer and the victim are intimate, when they are members of the same family, and especially when they are husband and wife, then I think that, while absence of discoverable motive is evidence of irresponsibility, it is far from being proof. Outsiders can never be certain what terms exist between persons who are very intimately related. Not even the servants in a house may know that deadly enmity separates the master and mistress, who yet appear to be on terms of conventional goodwill; and many crimes, which appear to be committed without motive, or without adequate motive, would be found to be prompted by very ordinary self-regarding motive if we knew the whole of the relations between the criminal and the

victim. Still, the difficulty of being certain of the absence of motive does not detract from the truth that, when self-regarding motive can be excluded, the exclusion establishes the irresponsibility of the actor. For how many generations has not the act of Virginius, in killing his daughter, been applauded by the moral sense of mankind? And why? Solely because of the absence of self-regarding motive in the actor. He murdered his daughter, not to gratify himself, but to save her from a fate worse than death. There is good reason to believe that his act has been emulated by officers of our own army, whose womenfolk were on the point of falling into the hands of savage foes. Again, when a very wealthy man pilfers articles of small value and of no use to him, we rightly regard him as irresponsible, and we do so on the ground that he had no intelligible self-regarding motive for his act. If such a man were to be tried for the stealing, if it were found that he had accumulated heaps of useless trifles, he would undoubtedly be found irresponsible, and the verdict would be 'guilty but insane'; but in my opinion the excuse of insanity would be superfluous and almost irrelevant. If we succeed in proving absence of self-regarding motive, it is of no importance whatever whether the motive is sane or insane. Supposing an officer, during the Indian Mutiny, or in some of our many wars with savages, were to shoot his wife, with her consent, in order to prevent her from falling into the hands of enemies who, as they both were assured, would visit her with a fate worse than death, he would not be deemed punishable if the facts were established. And if a man, in a fit of insanity, kills his children to save them from some imaginary fate worse than death, he is still unpunishable, not because he is insane, but because he acted from a motive to which no

punishment attaches. Beyond the motives which establish the irresponsibility of an injurer, because they are not self-seeking; and beyond the motives which are indiscoverable, and prompt to crimes that we term, probably erroneously, motiveless; there is another class of motive, in which the desire is discernible and identifiable, and in which, moreover, it is a self-seeking desire—a desire for self-gratification,—but yet full responsibility should not attach to it, because the desire itself is morbid. It is an indication of disease. That desire is liable to morbid variation, just as is intelligence or memory, is a medical fact, which I must ask my legal readers to accept upon the assurance of those who are familiar with the manifestations of insanity. But, as has already been pointed out, desire is so closely identified with the self, is so much a part of the self, that it is not easy to discriminate between them, and to say that the self should not be punished for acts which are the outcome of its own constitution. Yet I think a plausible case may be made out for the discrimination between acts done by a normal self, and acts done by a self which is become to some extent morbid. On a previous page I have given as an example the sexual and quasi-sexual proceedings of elderly men who, towards the close of a long and reputable life, have experienced a revival of sexual desire which evinces in three ways its morbid character. It is morbid in occurring in unusual intensity at a time of life when it should normally be obsolescent; it is morbid in its direction toward the same sex, or toward children; and it is morbid in the change of direction from the normal to these new objects. Granting that such men are not in the legal sense insane, granting that they are unimpaired in intellect, and that there is no evidence of impairment of will; still, the evidence

of disorder of mind is so strong, the condition of the man is so plainly a departure from health, a condition of disease, that, when it is realized that his acts are based upon a foundation of disease, we must feel reluctant to regard such an offender as responsible, in the same sense and to the same extent that a man with healthy and unimpaired mind is responsible. It is to cases in which desire is become morbid that the term 'moral insanity,' if used at all, should be restricted.

4. The harm must be done without adequate provocation, or it does not incur responsibility. What is meant by adequate provocation has already been explained. Provocation is adequate if the harm inflicted by an act is no more than is necessary to prevent harm threatened to the actor. As to the threat of harm, and as to the degree of injury necessary to counteract the threat, and prevent the harm intended, the retaliator must be the judge, subject always to the review of his judgement by a criminal court. He must make his estimate, according to the circumstances, as they appear to him, of the magnitude and imminence of the harm that is threatened, and of the impracticability of averting it by peaceful means; and thereupon he must make his estimate of the amount of harm which is the least that is sufficient to repel and prevent the harm that is threatened. If he errs in either estimate, he does so at his peril. If his estimate is too low, he fails to ward off an injury worse than he anticipated. If his estimate is too high, he is liable to criminal proceedings. But if he makes an honest mistake, the Court will, or ought to, view his mistake with leniency. Here, for the first time in our review of the conditions of responsibility, are we brought face to face with the element of judgement, of reason, of 'knowing,' which alone is formally recognized by the Courts as

determining the problem. Hitherto we have dealt with will, with intention, with desire; it is not until the fourth condition of responsibility is reached that we come in contact with the factor of knowledge.

The actor is irresponsible for the harm that he does to another if the provocation was adequate in the sense here defined. He must estimate for himself the danger threatened, and the measure of retaliation necessary to prevent it; and the law should not, and I think commonly does not, hold him accountable for an error of judgement in these matters. If, in my judgement, I am in imminent danger of my life from the assault of *B*, I may strike, wound, maim, or even kill *B* in self-defence; and my justification holds good, whether my estimation of the danger was true, or whether it was a sane mistake, or whether it was an insane delusion. A burglar or a footpad threatens my life; and, to save my life, I kill him. The killing is not wrong. A friend, by way of practical joke, makes up as a burglar or footpad, threatens my life in his pleasantry, and, believing that his threat is earnest, and that no measure short of killing him will save my life, I kill him. The killing is not wrong. I am under the delusion that a certain man is persecuting me, and intends to kill me at the first opportunity. I meet him in a country lane, and, in the belief that he intends to kill me there and then, and that by no milder measure can I save my life, I kill him. Still the killing is not wrong.

5. The actor must know and appreciate the circumstances in which the act is done, or he is not responsible for the act. In what has just been said, it has been assumed that the intellect of the deluded person is vitiated in respect that he entertains the delusion, but that there his malady ends. It is assumed that in other

respects his intellect is logical and unclouded, and that he reasons, upon the basis of his delusion, as accurately as he would if the thing that he deludedly believes were in fact true. In short, that he reasons sanely from insane premisses, as a normal person would reason from premisses that were merely mistaken; so that we shall be justified in dealing with him as a normal person who sanely entertained the same belief upon sufficient grounds. This, however, is very far from being the case.

It is quite true that many insane persons are, intellectually, extremely acute, and can reason logically and cogently, and, if their original intellectual equipment was good, can engage in disputation, and obtain dialectical triumphs over sane persons of less brilliant capacity. But with respect to their delusions they are not able to reason with ordinary validity. If they were, the delusions would disappear. A delusion is an incorrigible false belief:—a false belief which no evidence, however plain, no authority, however paramount, can overcome. In anything connected with the delusion the reasoning is vitiated, the judgement is unsound; and this vitiation and unsoundness spread beyond the delusion and the things connected with it, to an extent which we can never ascertain or define. The intellect of a person affected with delusion is like a plot of ground into which a brick of mushroom spawn has been inserted. We can never tell how far nor in what direction the mycelium has spread, nor in what quarter it will next evince its presence by a fungous growth.

When, therefore, I say that, to render a person responsible for his act, he must know and appreciate the circumstances in which it is done, I do not mean only that he must be free from delusion with respect to these circumstances, and must have sufficient sense to know

what he is doing. I mean, further, that his mind must be free from confusion with respect to the act and the circumstances in which it is done. This may or may not be equivalent to knowing the nature and quality of the act, a technical legal phrase of whose meaning I am uncertain, and Mr. Justice Stephen also was uncertain.

Taking the case of provocation, herein last considered, we have seen that it depends entirely upon the judgement of the person provoked. There may not be, in fact, any harm whatever threatened or impending over him, but if he, *bona fide*, and on sufficient grounds, forms the belief that he is threatened with harm, then he is justified in such measure of retaliation as may prevent the harm intended. This is purely and entirely a matter of judgement; and if the power of judgement is vitiated or impaired, the mistaken retaliator is entitled to relief from the consequences of his mistake. I have put the case that he deludedly believes he is in imminent peril of being killed, and, under the guidance of this belief, he kills the person by whom he deludedly believes he is about to be killed. In such a case, there can be no question of the immunity of the homicide from responsibility. But a case so clear as this does not often happen. What does often happen is that, under the influence of a delusion, and of the foggy confusion of mind that accompanies and surrounds delusion, the amount of provocation is exaggerated; the degree of retaliation that the provocation, even if it existed, would justify, is exaggerated; and the scope and incidence of the retaliation are expanded beyond all bounds of reason. The person who deludedly believes that he is persecuted, is so befogged in mind by the illogicality that surrounds his delusion, by the impossibility of

thinking and judging sanely with regard to any circumstances that seem to him to bear upon, or be involved in, his delusion, that he is unable to recognize the illogicality of retaliating upon *A* for an injury which is threatened by *B*. When a wayfarer in the street was struck by the whip of a bus-driver, he retaliated by striking with his stick the conductor. The retaliation was ludicrously illogical; but it was precisely the kind of retaliation that would not appear at all illogical to a person with delusions of persecution. I do not say that such a person would imitate the act under such circumstances, but I do say that he would do acts similarly illogical without being able to appreciate in the least the illogical character of the act. To a person so affected it appears the most natural and logical thing in the world that, if he cannot identify, or cannot gain access to, the person who is persecuting him, he should assault some one—any one—whose prominent position assures that the assault will 'draw attention to the case.' Moreover, a judgement so clouded and so confused is unable to recognize the excess of retaliation that is involved in killing a person for operations which produce torment and torture in the person operated upon, but are not dangerous to life. It is not enough to treat the deluded person on the same basis as if his delusions were sane mistakes of fact, and he could reason validly from his false premisses. He can not. Even in matters in which his premisses are correct, his reasoning, if such it can be called, is all abroad, inconsequent, and loses itself at last in unintelligible confusion. We can dimly appreciate some glimmer of reason in the act of a man who, believing himself persecuted by *A*, kills *B* to draw attention to the case; and we can see some reason in the persecuted victim killing his persecutor for inflicting torture on the

homicide; but by what operation of reason are we to explain the torrent of foul abuse that *A*, a deluded person, pours upon *B*, a total stranger, whom *A* does not pretend to associate with the persecution from which he thinks he suffers? Such confusion of thought attaches, not only to delusions of persecution, but to all delusions. The woman who kills her children to save them from a possible, but improbable, death by starvation, is similarly confused. In all such cases, it is difficult, in some it is impossible, to say that the criminal did not know, in one sense of knowing, the nature and quality of his act, and that it was wrong; but all depends upon the meaning that we attach to the word 'know.' If we mean that the criminal knew that she was doing that which would cause the death of her children, and that to cause their death was both contrary to the law and reprobated by the moral sense of the community; then she did 'know.' But if we mean that she was capable of appreciating the circumstances, and reasoning validly as to the rectitude and expediency of her act, of judging what course of conduct was best for securing the welfare of her children, which she so desired; then she did not 'know.' In a case in which a man, whose mind was affected, had given a large sum of money to a very unworthy object, I was asked whether he knew what he was doing when he gave the money, and the answer to this question was evidently expected by counsel to be decisive. The donor was a man of good education, but of impaired intelligence. My answer was that undoubtedly he knew that he was executing a document by which he alienated the money from his own possession and gave it to another person; but he was not capable of appreciating the bearings of his act, of weighing his own welfare and the claims of others upon him against

the claims of the donee, of recognizing the gravity of the inferences that would be drawn from his act, and the loss of reputation that he would incur ; and in this sense he did not 'know' what he was doing. He knew, in a sense, the nature and quality of his act ; but he did not know and appreciate the circumstances in which he was acting.

CHAPTER VIII

THE ANSWERS OF THE JUDGES

The famous answers of the judges to the questions set them by the House of Lords, in 1843, turn entirely upon the meaning that is to be attached to the word 'Know.' The questions are as follows :—

Question I.—'What is the law respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons, as, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?'

It is very important to notice, though, as far as I know, attention has never before been called to the fact, that this question—and the same is true of the other three—is by no means a general question, such as, 'What is the law respecting alleged crimes committed by persons who are alleged to be insane, or with respect to whom the plea of insanity is raised?' but an extremely restricted question. It refers to those persons only *who are afflicted with insane delusion in respect of one or more particular subjects or persons.* It makes no reference whatever to persons who are afflicted with what may be termed general delusions—with insane delusions in respect of the whole scheme of the universe, as far as it affects

themselves;—nor does it make any reference to insane persons who are not afflicted with definite identifiable delusion, or are not afflicted with delusion at all. The omission may, perhaps, be due to that identification of insanity with delusion which has been shown on a previous page (102) to have been held by the Courts in the middle of the last century; but, whatever the cause or reason of it, the extremely definite and restricted scope of the question is unmistakeable. And it was understood by the judges to be so restricted, for they begin their answer by 'Assuming that your Lordships' inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane.' It is quite certainly manifest therefore, that, in giving their answer, the judges intended the answer to apply, not to the insane generally, but to a definitely restricted class of the insane; and that they knew they were excluding, and intended to exclude, from the scope of their answers, a further class of the insane beyond those who 'labour under such partial delusions only, and are not in other respects insane.'

Some notice of this restriction of the scope of the questions and answers is taken by Mr. Justice Stephen, who says: 'The questions are so general in their terms, and the answers follow the words of the questions so closely, that they leave untouched every state of facts which, though included under the general words of the question, can nevertheless be distinguished from them by circumstances which the House of Lords did not take into account in framing the questions.' This appears to me to intend much the same criticism as I am now making, though, in view of Sir FitzJames Stephen's statement that the questions are 'so general in their terms,' while my contention is that they are precisely the

reverse of general, I cannot be sure that we mean the same thing.

It is, I think, very remarkable that the law which, as stated in the judges' answers, is narrowly, and strictly, and in the most formal manner possible, limited to one class only of the insane, should have been applied ever since to every case in which the plea of insanity is raised, whether the case falls within or without the narrow limits of the class referred to by the judges. Sir FitzJames Stephen evidently thought that, in so extending the scope of the answers to cover cases which they were never intended to cover, and which were formally excluded from the application of the answers by those who made them, judges in subsequent cases have bound themselves within unnecessarily narrow limits, and might have directed juries, and still may direct juries, in other terms than those of the answers, in trying a case that did not come within the scope of the answers. This course has sometimes been followed, but the much more usual course is for the judge to adhere strictly to the terms of the answers, and then to stretch the plain meaning of the language of those answers, until the ordinary non-legal user of the English language is aghast at the distortions and deformations and tortures to which the unfortunate words are subjected, and wonders whether it is worth while to have a language which can apparently be taken to mean anything the user pleases. With this preface, I give hereunder the answer to the question already quoted.

Answer I.—'*Assuming that your Lordships' inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane,* we are of opinion that, notwithstanding the accused did the act complained of with a view, under the influence of insane

delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law, by which expression we understand your Lordships to mean the law of the land.'

Question IV.—'If a person under an insane delusion as to existing facts commits an offence in consequence thereof, is he thereby excused?'

Again I draw attention to the closely restricted scope of the inquiry. It applies to those insane persons only who suffer from delusion as to existing facts, and who commit an offence *in consequence of this delusion.* It pointedly and rigidly excludes persons who suffer from insane delusions, and commit offences which are consequences of their insanity, though the act cannot be directly traced to the influence of a delusion. It excludes with equal rigour insane persons who are not deluded, and yet commit offences in consequence of their insanity. Contracted and restricted as the question is, the terms of the answer are still more limited.

Answer IV.—'The answer must of course depend on the nature of the delusion; but, *making the same assumption as we did before, namely, that he labours under such partial delusion only, and is not in other respects insane,* we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusions exist were real. For example, if under the influence of his delusion he supposes another man to be in the act of attempting to take away his life, and kills that man, as he supposes in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character

and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment.'

I do not see how the judges, or any one else, could give any other answer to the question, in the limited sense in which they understood it. If an act is prompted by delusion, and if the deluded actor is not in any other respect insane, then the only logical course to take is the course taken by the judges. The act must be estimated as if the delusion were an honest and sane mistake. 'The assumption upon which these answers proceed,' says Sir FitzJames Stephen, 'is that the supposed offender's disease consists exclusively in the fact that he is under a mistaken belief that something exists which, if it did exist, might or might not justify his conduct, but that he has the same power of controlling his conduct and regulating his feelings,' and, it should have been added, of appreciating and reasoning about the facts which he mistakenly believes in, 'as a sane man.' This appears to me an accurate description.

'The difficulty which these questions and answers suggest and leave untouched is this: How would it be if the medical witnesses were to say (as Dr. Griesinger says, and as the witnesses in McNaghten's case said in substance) that a delusion of the kind suggested never, or hardly ever, stands alone, but is in all cases the result of a disease of the brain, which interferes more or less with every function of the mind, which falsifies all the emotions, alters in an unaccountable way the natural weight of motives of conduct, weakens the will,' &c., &c. 'Upon these questions the answer throws no light at all, because it assumes the man to be insane in respect to his delusion only, and to be otherwise sane; in a word, the prisoner is treated as a sane person under a mistake of fact for which he is not to blame.' Sir FitzJames

Stephen's commentary appears to me exhaustive. This undoubtedly is the effect of the answer, if the language is to be construed in the ordinary meaning of the words. But the learned judge seems scarcely to appreciate the impossibility, of arriving at any other answer, that was imposed upon the judges by their reading of the question. The position of the judges may be paralleled thus: Supposing the question of the House of Lords had been:—What is the law with respect to the taking of a horse out of a stable without the consent of the owner and without claim of right?

If this question had been put to the same judges as were questioned in 1843 about insanity, they might have replied:—'The answer must depend upon the way in which the horse is taken out of the stable, but making the assumption that he is pulled backward by the tail, and is not removed in any other manner, we think the law is so and so.' If such an answer had been given by the judges, it would surely have declared the law with respect to the circumstances they assumed, but to no others. It would surely not have applied to the case of taking a horse by leading him out with a halter or a bridle. The judges assume that a limitation is implied in the question, and they give their answer subject to this limitation. If there be any error, as Sir FitzJames Stephen appears to think there is, the error is surely in applying this answer to a class of cases which was formally and expressly excluded from the scope of the answer by the terms in which it was given.

So far, supposing the judges to have understood the questions rightly, I do not see how any reasonable person can make any objection to their answers. The answers seem to me the only answers possible in the circumstances.

The second and third questions are slightly less restricted in scope.

Question II.—'What are the proper questions to be submitted to the jury when a person afflicted with insane delusions respecting one or more particular subjects or persons, is charged with the commission of a crime (murder for instance), and insanity is set up as a defence?'

Question III.—'In what terms ought the question to be left to the jury as to the prisoner's state of mind when the act was committed?'

It will be seen that question III appears to be governed by question II, and that the prisoner spoken of in the third question appears to be the person described in the second, and may not be the person described in the first. Questions II and III 'go further,' as Sir Fitz-James Stephen says, than questions I and IV. The terms are more general, and may include different offenders. Question I asks as to crimes committed by persons afflicted with insane delusion, while question II credits the person about whom it inquires with more than one delusion. Both I and II, however, are strictly confined to persons whose delusions are limited to 'one or more particular subjects or persons,' and exclude from the consideration of the judges all insane persons other than those described.

It is to be particularly noticed that, in answering questions I and IV, the judges explicitly state that they assume that their 'Lordships' inquiries' are confined to those persons who *labour under such partial delusions only, and are not in other respects insane.* The words that I have italicized are not in the questions. They are inserted by the judges into their answers to questions I and IV, and it is most probable that they intended these words to be read into the answers to questions II

and III also. It is, however, certain that the judges did not appreciate the enormous difference, between the scope of the question and the scope of the answer, that was made by the insertion of the words I have italicized. The practical effect of the insertion of these words is to nullify completely the effect of the answers, by restricting their application to a class of offenders that does not exist, and never has existed. There is not, and there never has been, a person who labours under partial delusion only, and is not in other respects insane. It is an odd thing, but it does not appear to have occurred, either to the judges themselves; or to Sir FitzJames Stephen, their commentator; or to the successive judges who have interpreted and applied the law laid down in these answers; or to the numerous counsel who have defended insane prisoners, and desired to escape from the strict terms of the answers; or to the medical commentators who have objected to the answers *in toto*;— it does not appear that any person in any of these classes, in the space of sixty years, has drawn attention to the fact that the judges do not answer the questions they were asked, but substitute a widely different set of questions of their own. They are asked what the law is 'respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons.' They answer about the alleged crimes of persons who labour under 'partial delusions only, and are not in other respects insane.' There is nothing in the questions about partial delusions. There is nothing in the first question about delusions. The question is restricted to persons who are afflicted with a single delusion only, and that delusion restricted so that it is in respect of one or more particular subjects or persons. The answer says nothing about the class

of persons defined in the question. It deals with persons who suffer from more than one delusion, and these delusions are not delusions 'in respect of one or more particular subjects or persons,' but 'partial delusions.' It is true that the judges use the term *such* partial delusions, as if they were referring to the same delusions as are described in the question; but I should very much like to hear the comments that their Lordships would have made, if a witness in their courts had answered in this way an interrogatory put to him in their presence. It may be, and it probably was, that the judges, in altering the description of the delusion and in adding the proviso that the offenders were not in other respects insane, did not intend to alter the meaning of the questions, but thought that they were putting the questions in more precise terms, and expressing the meaning intended by the Peers with greater accuracy than the Peers themselves were able to express it. I think, however, I am right in stating that a person who executes a legal document is bound by the terms of the document, and cannot plead that, when he said one thing, he intended to say something very different. I believe that the law expressed in a statute, is interpreted strictly in the legal meaning of the terms of the statute, and that, if the legislators intended to enact something different from what they did in fact enact, effect is given, not to what they intended to enact, but to what they did enact. The judges who gave these answers were no doubt familiar with these rules, and would have been the last to complain if their statement of the law was interpreted to mean what it expresses rather than what we may conjecture it was intended to express. What it does express is out of doubt. It applies to persons who labour under partial delusions only, and are not in other

respects insane. By a partial delusion I should myself understand—if I permitted myself to use such a term—a delusion which was not completely confirmed, but about the truth of which the deluded person entertained a doubt. But, admitting that by partial delusion their Lordships meant a delusion in respect of one or more particular subjects or persons, then the addition of the words 'and are not in other respects insane,' nullifies the effect of the previous words, and of the whole of the answer, since it excludes from the scope of the answer all insane persons of every kind.

The criticism here made is not a cavilling or trivial criticism, but goes, as Sir FitzJames Stephen's elaborate analysis proves, to the very root of the matter, and vitiates the answers at their very foundation. It is upon the assumption that the offender can be deluded without being in other respects insane, that madness is regarded by the judges 'solely as a case of innocent ignorance or mistake,' and is not regarded,—as 'a disease which may affect the emotions and the will,' and, I should add, the ability to understand and appreciate circumstances, and to judge of matters bearing upon the delusion, 'in such a manner that the sufferer ought not to be punished for the acts which it causes him to do.' This is the gist of the matter. This is the pith and marrow of the objection which medical men have from time to time taken to the law as expressed by the judges.

Whether the judges intended that the limitation of their answers, to persons who suffer from partial delusions only and are not in other respects insane, should apply to the answers to questions II and III, as well as to those to questions I and IV, is not clear; but the questions II and III are put with respect to the same class of persons as questions I and IV; that is, to persons

afflicted with insane delusion respecting one or more particular subjects or persons; and, though the answer contains the words 'in all cases,' it must surely be construed with respect to the question to which it is an answer. Surely the judges must not be presumed to have answered a question they were never asked. 'All cases' must surely mean 'all such cases,' i.e. all cases of persons afflicted with delusion respecting one or more particular subjects or persons, or, in their own terms, all cases of persons who suffer from partial delusions only, and are not in other respects insane. It seems to me beyond all question that the answer (the answers to Questions II and III are combined in one), can extend to no cases but those comprised in the question; and it is astonishing, to a person who is not a lawyer, that this answer should have been applied, ever since it was given, not only to 'persons afflicted with insane delusion respecting one or more particular subjects or persons,' but to all insane persons of every description, whether afflicted with delusion or no, and whether the delusions, if any existed, were or were not restricted to one or more particular subjects or persons. This seems to me such a very obvious criticism, that I cannot think it has been overlooked by the many acute minds that have studied the subject during the last sixty years; and it seems almost certain that the objection would have been raised, in some of the many trials which have taken place during that period, of persons who were insane without being deluded, or whose delusions were of too general a character to come within the meaning of the questions and answers. I can only suppose that there must be some presumption of law, or some technical legal reading of the words of the questions and answers, which causes them to carry some other meaning, when used in courts

of law, than the plain construction of the language admits of. Nevertheless, it is unquestionably true that Sir FitzJames Stephen, in his elaborate and acute examination of the questions and answers, never does allude to the point at all, and, while he assumes that the answer applies to those persons only who suffer from delusion, and takes into full consideration the probability that a person afflicted with insane delusion will be in other respects insane, yet he never explicitly recognizes that there is a large class of insane persons who are excluded by the terms of the questions from the scope of the answer, either because of the general character of their delusion or because they entertain no delusion at all.

The following are the terms of the Answer to Questions II and III.

Answer II and III.—'As these two questions appear to us to be more conveniently answered together, we submit our opinion to be that the jurors ought to be told, in all cases, that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, (*sic*) that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury, on these occasions, has generally been, whether the accused, at the time of doing the act, knew the difference between right and wrong; which mode, though rarely, if ever, leading to any mistake with the jury, is not, we conceive, so accurate when put generally and in the abstract, as when put with

reference to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused solely and exclusively with reference to the law of the land, it might tend to confound the jury by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction; whereas the law is administered on the principle that every one must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one that he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question to the jury whether the accused had a sufficient degree of reason to know he was doing an act that was wrong; and this course, we think, is correct, accompanied with such observations and corrections as the circumstances of each particular case may require.'

It seems clear that, if this answer is read without any reference to the questions to which it is an answer, it might be taken to apply to all cases of insanity of whatever kind, and not to be limited to those in which the insane person is afflicted with insane delusion respecting one or more particular subjects or persons. The judges say that 'the jury ought to be told in all cases' and that 'to establish a defence on the ground of insanity' certain conditions are necessary, and the judges do not repeat in this answer the assumption they make in the others, that the offender suffers from partial delusions only and is not in other respects insane. But is it therefore to be assumed that the answer is to be construed without any reference whatever to the questions by which it was elicited, and to which it purports to be

an answer? Are we to take it, without the clearest expression of intention, that, when the judges were asked about a strictly limited and defined and specified class of cases, they cast away, in this answer, while retaining them in their other answers, every limitation, every definition and specification, and desired their answer to be applied to all cases of insanity of whatever kind? To make such a supposition seems a poor compliment to the intelligence and legal acumen of the judges; yet this is the supposition that has been made and acted on in every case, in which the plea of insanity has been raised, since this memorable answer was given. Sir FitzJames Stephen, in estimating the effect of the answer, discusses not only cases in which delusion exists, but mentions also 'the existence of insane depression or excitement of spirits apart from specific delusions,' but he mentions such states incidentally only, and, from the context, it does not appear certain whether he does or does not regard such cases as coming within the scope of this answer.

Taking it, as, in view of the universal practice of the courts, we must now take it, that this answer applies to all cases of insanity whatever, and is not now restricted, however rigidly it was meant to be restricted, to the class defined in the question; it will be seen that the whole force and meaning of the answer turns upon the word 'know.' To establish a defence on the ground of insanity, the accused must be so insane as not to *know* the nature and quality of the act he was doing, or if he knew this, as not to *know* he was doing wrong.

Sir FitzJames Stephen considers that the answers can hardly have been meant to be exhaustive, for if they were so meant, they certainly imply that the effect of insanity (if any) upon the emotion and the will is not to be taken into account, in deciding whether an act done by an insane

man did or did not amount to an offence, and that this implication is so surprising, and would, if strictly enforced, have such monstrous consequences, that something more than an implied assertion of it seems necessary before it is admitted to be part of the law of England. My own view, as already stated, is that the answers were not meant to be exhaustive, for in making them, the judges paid some regard to the questions that had been put, and these questions asked for the law, not as to insanity generally, but as to a restricted class of insane persons.

The important thing is, however, that, whatever the judges meant, in practice their answer has been understood to apply to all cases of insanity, whether the delusions present were, in their own phrase, 'partial' or total, and whether delusions were present or not. And, by this answer, the responsibility or irresponsibility of the offender is made to depend entirely upon his knowledge of the nature, quality and wrongness of his act. I have already shown that this is not the result at which I have arrived by a study of the factors that go to make up a voluntary act. My view is that, in order that he may be responsible, the actor must will the act, intend the harm, and desire primarily his own gratification; that the act must be done on inadequate provocation, and, in addition to all this, he must know and appreciate the circumstances in which the act is done. If any of these factors be wanting, responsibility is impaired or abolished.

Taking the instances I have given, it seems impossible to bring under the formula of 'knowing,' the case of the child with St. Vitus's dance, who scalds a person without willing to do so. The moment before the act was committed, the child did not know that her rebellious limbs would jerk in such a way as to upset the water, but, to

clear her of responsibility, she must not know this 'at the time of committing the act.' And at this time she unquestionably does know. She sees and feels her limbs moving, and knows what she is doing, but she has no power to control her limbs. She knows, but she cannot help. Yet no one would for a moment suggest that the child is responsible for the accident, if the involuntary nature of the movement were known; though many children have been punished, for their clumsiness and awkwardness, before it was recognized that they were suffering from this malady. Two things have to be kept in remembrance, however, with respect to such cases. In the first place, the persons, who do clumsy and awkward things for which they are irresponsible by reason of suffering from St. Vitus's dance, are not insane, and therefore stand outside the purview of the answers of the judges. Sir FitzJames Stephen makes the commentary, if the words 'in all cases' mean 'in all cases of insanity,' though I do not see why we are entitled to add one qualification rather than another to these words. In the second place, I know no other instance of an unwilled act in which the actor knows what he is doing. For this reason I do not attach importance to Sir FitzJames Stephen's tentative qualification of the words by reference to the emotions and the will. As is well known, this very learned judge proposed that the law actually is as follows :—

'No act is a crime if the person who does it is at the time when it is done prevented [either by defective mental power or] by any disease affecting his mind

'(*a*) From knowing the nature and quality of his act, or

'(*b*) From knowing that the act is wrong [or

'(*c*) From controlling his own conduct, unless the

absence of the power of control has been produced by his own default].

'But an act may be a crime although the mind of the person who does it is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act.

'The parts enclosed in brackets are doubtful.'

Throughout his examination of the answers of the judges, Sir FitzJames Stephen insists upon the lack of any reference, in these answers, to loss of control over the will; and he regards the absence of any reference to disorder of this faculty as a vital defect in the scheme. It does not appear so to me, because in practice, we do not meet with insane people in whom defect or disorder of will exists as an isolated defect or disorder, apart from defect or disorder of intelligence; and, this being so, the lack of knowledge is as efficient a test, and a test much more convenient, more easily applicable, and more reliable, than the lack of will. A person who steals in post-epileptic automatism, steals without the will to steal, it is true; but he steals without the knowledge also that he is stealing. His condition is, as far as we know, one of total, or almost total, unconsciousness. His acts are the acts of an automaton—of a mindless mechanism—and, as we can rest our plea of irresponsibility either on lack of will or lack of knowledge, we may take the more convenient and the easier to establish, and this is unquestionably the latter. The same is true of the homicide who, in *epilepsie larvée*, kills an unoffending bystander. His will is in abeyance, it is true, but so is his knowledge, and no injustice is done in requiring evidence of want of knowledge rather than evidence of want of will. The only other insane disorder of will that is known to be

associated with criminal acts is the disorder of obsession; and in this case it is very doubtful whether there really is disorder of will. Disorder of desire there unquestionably is, but the competence of the will to overcome the morbid desire, and to refuse to act in conformity with the desire, is shown in the very numerous cases in which the sufferers seek advice, and submit to discipline and restraint; and in which, moreover, they experience the desire, in circumstances favourable to its satisfaction, and yet refuse to satisfy it. The only case in which Sir FitzJames Stephen's formula would really be required, the only case in which lack of control of the will is accompanied by full knowledge of the circumstances, is in hypnotism. Some of the phenomena of hypnotism are undoubtedly genuine, but the whole subject is so tainted with fraud and imposture, that it is extremely difficult to distinguish where the genuine ends and the imposture begins. The plea of hypnotic compulsion has been advanced in several cases on the Continent, but it has never, as far as I know, been established in this country, and there has been no case, to my knowledge, in which it could plausibly be said that such a plea ought to have been established. If and when it is proved that a crime has been committed by an innocent subject of hypnotic influence, our formula of irresponsibility will have to be revised; but, until that event actually happens, I think the possibility of its occurrence need not be taken into account.

With the exception, then, of acts done under the influence of morbid desire, and of the acts of the moral imbecile, considered later, I think that the test of knowledge is efficient and satisfactory in all cases of criminal acts for which irresponsibility ought to be established, provided only the term 'knowledge' is rightly interpreted

and understood. And, when people yield to morbid desires, and perpetrate criminal acts in pursuance of such desires, I am by no means prepared to say that such persons should be held wholly irresponsible for their criminal acts. Experience shows that such acts can be, and are, controlled, in very many cases, and that, even when such morbid persons give way to their desires under some circumstances, they are often capable of controlling them in other circumstances. Doubtless there are persons, deeply and irretrievably insane, who are incapable of controlling their desires in any circumstances, but such persons are so very insane, that the test of want of knowledge of what they were doing would be held to be satisfied—illogically and wrongly so held if the term 'know' is interpreted in its narrow sense, but in such cases it never is so interpreted, but a wide latitude is always taken and given.

What, then, is the sense in which the term 'know' should be understood? What is meant when it is said that the offender is 'labouring under such a defect of reason' (the phraseology is singularly inappropriate) 'as not to *know* the nature and quality of the act he was doing, or if he did *know* it (!), that he did not *know* he was doing what was wrong'?

What meaning is in fact attached to the word in law it is impossible to say, for scarcely any two judges interpret it alike; and, indeed, the same judge does not always bind himself by his own previous utterances, but enlarges or restricts the term according to the opinion he has formed of the merits of the case he is trying. In these circumstances it would be unwise, and in any circumstances it would be unwarrantable, for a non-legal person to say in what sense the term is used in courts of law; but, as previously avowed, my purpose is, not to state what the

law is, but, having examined its foundations, to give an opinion as to what it ought to be; and it is in pursuance of this object that I venture to put forward the following considerations.

Sir FitzJames Stephen shows, conclusively, it appears to me, that if the word 'know' is construed in a certain limited sense, which is perhaps its most obvious sense, Hadfield, the subject of a celebrated trial, an offender who was so unquestionably and deeply insane that his punishment would have revolted the consciences of men, even at a time when public executions were weekly spectacles, and human life was held of much less account than it is at the present time, would have been convicted. 'In this case, Hadfield clearly knew the nature of his act, namely, that he was firing a loaded horse-pistol at George III. He also knew the quality of the act, namely, that it was what the law calls high treason. He also knew that it was wrong (in the sense of being forbidden by law), for the very object for which he did it was that he might be put to death that so the world might be saved; and his reluctance to commit suicide shows that he had some moral sentiments. It would seem, therefore, that, if the answer given by the judges is not only true as far as it goes, but is also complete, so that no question can properly be left to the jury as to the effects of madness upon responsibility other than those which it states, Hadfield ought to have been convicted.' Sir FitzJames Stephen considers that this unsatisfactory result is due to the exclusion from the judges' answers of all reference to the effect of insanity upon the emotions and the will. I have already said that in this I do not agree with him. There is no evidence that Hadfield's will was weakened or perverted. There does not appear to have been in his mind any conflict of motives, nor was

there any action of his body and limbs without the full concurrence and co-operation of his active personality or self. Nor does it appear that his emotions were in any way impaired. The avowed motive of his act shows that it was prompted by an exalted and enlarged benevolence. He intended to sacrifice himself for the salvation of the whole human race. While admitting that, if the words of the judges' answers are construed in a narrow and limited sense, Hadfield must have been convicted, (he was not), yet I cannot see that he would have had any better chance if the law had allowed to insane offenders the benefit of distorted emotions or impaired will. Nor does Sir FitzJames Stephen attempt to show that the inclusion of these factors in the answers of the judges would have affected the result of Hadfield's trial. Having said 'the proposition that the effect of disease upon the emotions and the will can never under any circumstances affect the criminality of the acts of persons so afflicted is so surprising, and would, if strictly enforced, have such monstrous consequences, that something more than an implied assertion of it seems necessary before it is admitted to be part of the law of England';—having said this, and shown that, on a narrow interpretation of the judges' answers, Hadfield ought to have been convicted; Sir FitzJames Stephen does not show how that conviction could have been avoided by any reference by the law to the emotions or the will. It is true that, on a subsequent page, he argues in support of his contention that 'power of self-control' as well as knowledge of right and wrong, is essential to responsibility; but, as I shall presently show, his explanation of the meaning of 'loss of self-control' shows, beyond question, that by it he meant defect, not of emotion, nor of will, but purely and solely of reasoning power; and defect of reasoning power

results in deficiency of knowledge, and may be covered completely by the term 'not knowing.'

Sir FitzJames Stephen bases his argument on the question :—'What effect, then, can the existence of an insane delusion have upon a man's conduct except the effect of misleading him as to the matter to which it relates? The answer is,' he says, 'that the existence of a delusion may have an effect in both or either of two ways.'

'(1) It may be evidence of disease affecting the mind otherwise than by merely causing a specific mistake.

'(2) It may be evidence of a state of mind which prevented the person affected by it from knowing that his act was wrong, if that expression is construed in one of the senses which may be given to it.'

It is to be noticed that the learned writer confines his discussion formally to those cases of insanity in which the insanity is evidenced by delusion. Why he should have so restricted the discussion is not clear. It does not appear that he did so in order to confine the discussion to the class of cases alone referred to in the questions set by the Peers to the judges, for he does not limit his observations to persons afflicted with insane delusion in respect of one or more particular subjects or persons; and it appears, in the course of his argument, that he was well aware of the existence of 'insane depression or excitement of spirits apart from specific delusions.' But, whatever his reason, or whatever his practice, I do not see that I am bound to ignore all cases of insanity except those in which there is delusion in respect of one or more particular subjects or persons; or in which there are specific delusions; or in which there are delusions of any kind.

Under his first heading :—that delusion may be

evidence of disease affecting the mind otherwise than by merely causing a specific mistake,—Sir FitzJames Stephen has, by his own researches into the nature of insanity, arrived at a conclusion remarkably near what I believe to be the true one. A delusion, he says, which, considered as a mistake, has no importance at all, may, as a matter of evidence, be of the highest importance, because, though trifling in itself, it may indicate profound disturbance of every faculty of mind. The facts that a man stammers and that the pupils of his eyes are of different sizes, are in themselves no excuse for crime, but they may be symptoms of general paralysis of the insane, which is one of the most fatal forms of the disease. Why should not the existence of a delusion be as significant as the existence of a stammer?

With this statement I should heartily concur, and I would make to it this addition:—not only may delusion be evidence of deep-seated and pervading disorder of mind; not only is it possible that an act which has, to the sane onlooker, no apparent connection with an existing delusion, be in fact the outcome of the delusion; but, in all cases in which delusion exists, there is invariably associated with the delusion a disorder and confusion of the process of thinking, which prevents the deluded person from forming sane judgements about matters that are connected in his mind with the delusion. This area of disorder and confusion is of different extent in different cases; it is always difficult to be sure how far it extends; and it by no means follows that a subject which does not appear to a sane onlooker to be connected in any way with a delusion, will not appear to the deluded person to be so connected. (See pp. 124–5.)

Sir FitzJames Stephen says: 'It undoubtedly is, and I think it is equally clear that it ought to be, the law,

that the mere existence of an insane delusion which does not in fact influence particular parts of the conduct of the person affected by it, has no effect upon their legal character.' With this doctrine I am glad to express my concurrence; and I think it may properly be extended not only to insane delusion, but to insanity of any kind. It is already the law that an insane person may make a will or a contract, and that the will or contract is valid, and will be upheld by the Courts, if the person making it was not, in fact, influenced by his insanity to make it otherwise than he would have made it if sane. I cannot see why the same principle should not be applied to criminal acts. The doctrine, upheld by so many medical men, that no insane person should under any circumstances be punished, appears to me both unjust and impracticable; and I say this, well knowing that I shall in the future be charged, as in the past I always have been charged, when saying it, with advocating the view that insanity should under no circumstances be an excuse for crime. It is, I know by experience, futile to attempt to explain to certain minds the difference between the two statements. The persons, who are unable to discriminate between these two doctrines, are the same persons as deny that punishment is inflicted on insane persons in asylums; and, when confronted with the undeniable fact that punishments are so inflicted, explain that punishments are not punishments when they are not called punishments. At the same time, I wish to say that, seeing how difficult it is to fix the limits of illogicality and confusion of thought which invade the mind of an insane person, I think that no such person should be punished with the same severity that would be visited upon a sane person for the same offence.

Sir FitzJames Stephen's second proposition is that

delusion may be evidence, and 'even the existence of insane depression or excitement of spirits apart from specific delusions may be evidence, that the person affected was labouring under such a defect of reason from disease of the mind that he did not know that what he was doing was wrong, unless these words are to be construed in a manner so literal that I can hardly think it was intended by those who used them.' In this statement, it is evident that the writer was hampered by the division of insanity, by medical writers, into mania and melancholia, a division which ought to have been discarded long ago, as it is not in accordance with fact. If he had had a more accurate account of insanity to rely on, I think his statement would have been more as follows:—'The character of the insanity, and the existing disorder of the faculty of reasoning, may themselves, without the existence of delusion, be evidence that the person was labouring under such a defect of reason, from disease of the mind, that he did not know that he was doing what was wrong.' This should be associated with another dictum of this excellent writer, that 'knowledge has its degrees like everything else and implies something more real and more closely connected with conduct than the half-knowledge retained in dreams,' or, he might have added, in many cases of insanity. It is a truth on which I have insisted in season and out of season for many years, that a man may know that his act is wrong without knowing how wrong it is. Sir FitzJames Stephen instances the case of the idiot who cut off the head of a man whom he found asleep, remarking that it would be great fun to see him look for it when he woke; and adds, 'nothing is more probable than that the idiot would know that people in authority would not approve of this, that it was wrong in the sense in which it is wrong in

a child not to learn its lesson, and he obviously knew that it was a mischievous trick.' This is of course an extreme case; and, to drive conviction home, an extreme case is necessary; but there are multitudes of cases in which persons who are not idiots, but yet are of weak mind, and persons who are insane, but whose delusions are not of an exonerating character, commit offences which they know to be in some sense wrong, without realizing how wrong they are. I have repeatedly given the instance of the paranoiac who, under the influence of a delusion of persecution, assaults some person who may or may not be identified, by the insane assaulter, with his persecutor. There is no doubt that such an offender knows, in a certain limited sense of the word knowing, that his act is wrong; but he does not completely know how wrong it is. He is tortured and racked by horrible shocks and sensations, of the reality of which there can be no doubt whatever, in different parts of his body. He is convinced, with unalterable conviction, that they are inflicted upon him by some enemy or enemies whom he does not clearly identify; and his suspicions take a wide sweep, and include, perhaps, all actors; or all cabmen; or all men wearing blue or red; or all strangers; or what not. Exasperated beyond measure, he assaults some one, it may be an imagined persecutor, it may be a person whom even his disordered mind does not associate with the persecution; but he commits an assault. Are we to apply to a man in such mental confusion the strict canons of evidence, and say—'Unless you can show that you believed your life to be in imminent danger from your victim's machinations, and that no way of saving your life was open to you except by killing your victim, you must be held fully responsible for the crime you have committed'? Such a test, in such a case, would be

preposterous. In everything connected with his delusion, the man is incapable of reasoning logically. His mind is in a maze of confusion. As well might we convict of high treason the general paralytic who claims the Crown of England. He knows that the world considers wrong the act that he does. He knows that it is against the law. But he does not know and appreciate the circumstances in which he acts. He does not know that he ought to wait until he is sure of the identity of his persecutor, and of the inefficiency of all lesser means of prevention, before committing the assault. These considerations, which would naturally and inevitably present themselves to a sane man, do not occur to him. He is not only influenced by facts which are not facts except to him, but he fails to recognize facts which are facts to every one but himself. He does not know, in the full sense of knowing, the nature and quality and wrongness of his act.

But I doubt whether it could be truly said of such a man that his mental disease prevented him from controlling his conduct, or produced a loss or defect of self-control, except in so far as self-control is deficient in an exasperated man. Sir FitzJames Stephen explains in the following words what he means by self-control:—'The man who controls himself refers to distant motives and general principles of conduct, and directs his conduct accordingly. The man who does not control himself is guided by motives which immediately press upon his attention. If this is so, the power of self-control must mean a power to attend to distant motives and general principles of conduct, and to connect them rationally with the particular act under consideration, and a disease of the brain which so weakens the sufferer's powers as to prevent him from attending or referring to such con-

siderations or from connecting the general theory with the particular fact, deprives him of the power of self-control.

'Can it be said that a person so situated knows that his act is wrong? I think not, for how does any one know that any act is wrong except by comparing it with general rules of conduct which forbid it, and if he is unable to appreciate such rules or to apply them to the particular case, how is he to know that what he proposes to do is wrong?'

In thus treating of self-control, I cannot but think that Sir FitzJames Stephen was misled by his desire to bring all cases under the formula of the judges, and has transferred what is really a moral problem to the domain of the intellect, with consequences of which he would have been the last to approve if he had realized them. I do not think the power of self-control can rightly be said to consist in the power to 'attend' to distant motives, and to 'connect them rationally' with the particular act under consideration, or in the power 'to connect general theory with particular fact.' A man may attend to the ill consequences of getting drunk; he may 'connect rationally' his forecast of hot coppers in the morning with the 'particular act' of getting drunk over night; he may be quite able so well to 'connect general theory with particular fact' that he can advise his young companion not to drink, and warn him of the consequences of taking a single glass; but in spite of all this knowledge, of all this reasoning power, he may get as drunk as a fiddler, from want of self-control. No. By self-control I mean the power of forgoing immediate pleasure for the sake of greater advantage in the future. This is not a power of the intellect. It has nothing to do with intellectual ability. It is often possessed

in large measure by the dull, and is often wanting in the brilliant. It is a moral, not an intellectual, quality. It is a matter of will, not of reasoning. The possession of it constitutes its possessor, not a clever, but a prudent man; the lack of it involves, not stupidity, but vice. Though it does not of itself constitute virtue, yet it is an essential ingredient in virtue; but it is altogether outside the realm of intellect.

Self-control is sometimes regarded as the contradictory of impulsiveness. Contraries I think they are, but not contradictories. An impulsive person is usually deficient in self-control; but a person may be very deficient in the power of self-control as I have defined it, without being impulsive. He may look before and after, and foresee accurately the evil consequences of his self-indulgence, and yet may deliberately determine to live, as he will put it, 'a short life and a merry one' rather than one that is more prolonged, with a postponement of enjoyment.

Such being, in my view, the nature of self-control, can it be said ever to be 'prevented by any disease affecting the mind'? I should hesitate to answer the question put in these terms. But I should say without hesitation that there is a degree of vice so extreme that of itself it constitutes insanity—moral insanity, which may be combined with intellectual insanity, or may exist without recognizable intellectual defect. In both cases the victim indulges in immediate pleasure at the cost of future advantage, but in the former he does not realize the cost, and indulges in ignorance of the consequences; while in the latter he acts with his eyes open, well knowing that he must suffer with an intensity out of proportion to the magnitude of his present pleasure.

For prudence and vice, self-control and self-indulgence,

are manifestly matters of proportion. It is not necessarily prudent to forgo present pleasure, or to incur present pain, for the sake of future benefit. It is so when only the present worth of the future benefit is greater than immediate pleasure. If a man has to choose between receiving £100 down and receiving £200 at the end of fifteen years, he would be foolish to postpone his benefit; for the present worth, of the reversion of £200 in fifteen years' time, is less than £100. In estimating the wisdom of forgoing an immediate pleasure, in any given case, for the sake of future gratification, three things have to be considered. First, the proportionate *magnitude* of the future benefit in proportion to the immediate gratification; second, the *certainty or uncertainty* of attaining the fruits of self-denial; and third, the *proximity or remoteness in time* of the prospective future benefit. A man would be lacking in self-control, if he were to grasp at £100 down in exchange for the reversion of £200 at the end of a year. The magnitude of the benefit that he renounces is so much greater than that of the advantage that he gains, that he is clearly lacking in self-control if he makes the bargain. But he would be unwise to refuse £100 down for the reversion of £101 in a year's time. The magnitude of the difference, between the immediate advantage and the prospective advantage, is not enough to make the renunciation worth while. The man who steals in security, with little prospect that the theft will ever be discovered, or, if discovered, will be brought home to him, is not imprudent. Whatever we may think of his morality, we cannot impugn his wisdom; and we are the less able to do so, the greater the benefit he obtains by his theft. But the man who steals under the eye of the policeman; the clerk who embezzles without a chance that his dishonesty will remain undiscovered;

are imprudent in the extreme. Safe securities yield but small interest. The certainty of the advantage gained compensates for its want of magnitude. So, too, the proximity or remoteness, of the ultimate consequence of the act, is an important factor in estimating its prudence. It is most easily estimated in money. To take £100 down for the reversion of £105 that will fall in to-morrow is imprudent. To accept the same sum for the same in reversion that will not fall in for three years is wise. The trustee who misappropriates his trust fund a few days before the termination of the trust, knowing that then he will have to render an account, and his defalcation will be discovered, is imprudent. But if his trust has still twenty or thirty years to run, and there is little prospect of discovery until it is run out, he is dishonest, but he is much less imprudent. In estimating the prudence or vice of a course of conduct, it is always necessary to consider these three factors, of magnitude, certainty, and imminence of the future result, in comparison with present benefit.

It is manifest that these factors may be so graduated that there is a continuous series of acts, from those that are indisputably proper, through those that are rigidly prudent, down to those that are extremely vicious; and vice may be so extreme as of itself to constitute insanity.

The man who takes £100 down for the reversion of a hundred guineas at the end of ten years, does what is manifestly proper. If the reversion has but twelve months to run, and especially if the security is doubtful, he is rigidly prudent. If the reversion falls in at the end of a week, he is vicious, and, if he takes £100 down rather than wait a quarter of an hour for the odd five pounds, he is vicious to the point of insanity, unless there is some very urgent and instant need for the money.

So it is with other vices. When pushed to extreme, vice becomes evidence of insanity. The man who refuses to work to-day, with the knowledge that his refusal will put him on short commons next week, is viciously idle. The man who wets his bed, rather than take the trouble to get out and make water, is insanely idle. The woman who goes upon the streets, knowing that for a short life of self-indulgence she will have to pay in loss of respect, disease, and ostracism, is viciously immoral. The woman who makes an indecent assault on every man she sees, whatever the time, scene, or occasion, and however many the witnesses, is insanely immoral. The man who, in a few years, muddles away his fortune in horse-racing, gambling, loose women, and dress, is viciously immoral. The man who, in one day, buys plate and jewelry to the amount of his yearly income; carriages and horses to an equal cost; furniture to the same expense; and at the same time gives orders for the enlargement of his house, and the purchase of an estate for which he has no means to pay; is insanely extravagant. In each case we can make a continuous series, between conduct that is highly moral, prudent, and praiseworthy, through conduct which is vicious in increasing degree, until we arrive at length at conduct which is insane by reason of the extremity of viciousness—by reason of the magnitude, certainty, and imminence of the future disadvantage incurred, in comparison with the immediate advantage gained.

A vicious act may be an act of wrong-doing. It may be an act by which unprovoked harm is inflicted on a person for the gratification of the actor; and it may be so extremely vicious as to be insane by reason of its extremity of vice. Bentham pointed out that no sane man would steal, even though all punishment for stealing were abolished, if the thief knew for certain that, as soon

as the article had been stolen, it would be taken out of his hands and restored to the owner. In such a case, the certainty and the imminence of the disadvantage incurred, reduce the advantage of the act to nothing. Dr. Gray, lately physician to the Ameer of Afghanistan, relates the case of a man who, after having had first his right hand, and subsequently his left hand, struck off as punishment for theft, seized with his stumps, and made off with, an earthenware pot of trifling value, and of no use whatever to him. The crime was witnessed, and the criminal at once arrested and taken before the Ameer, who sentenced him, as he must have expected, to be hanged; and hanged he accordingly was. The gravity of the difference between the advantage gained, and the disadvantage incurred, by the crime, was here at a maximum. The utmost benefit that the man could hope to achieve was the possession of an earthenware pot of trifling value. To attain this advantage, he ran a risk, a risk so great that it amounted almost to certainty, of being hanged next morning. The magnitude of the difference between the advantage of possessing an earthenware pot, and the disadvantage of being hanged; the great probability, amounting almost to certainty, that the penalty would be inflicted; and the imminence of its infliction, taken together, leave no explanation of the act except that it was insane—that it was insane by reason of the extremity of its vice.

It is under such circumstances, and I think under such circumstances only, that we can properly speak of a person being unable to control his own conduct. Sir FitzJames Stephen says that the expression 'I could not help it' means that the thing which could not be helped was done voluntarily, but under compulsion, as a man chooses the least of two evils; and further that

'there is only a superficial resemblance between madness and compulsion, for compulsion consists in the action of some external motive, at once powerful and terrible, on a man able to judge of consequences and to control his conduct, whereas madness operates from within, and in much more subtle ways.' It will appear that, in the case above cited, the peculiarity was that compulsion was wholly ineffectual. The man had 'external motives at once powerful and terrible' for *abstaining* from stealing. He had already had both his hands cut off for previous offences of the same kind; and he knew quite well, not only that he would almost certainly be hanged if detected, but that he would almost certainly be detected. He took no precautions against detection, but acted in the presence of witnesses. This is the mark by which such cases, to which the term 'moral imbecility' may properly be applied, are to be recognized. Persons, who take elaborate precautions to conceal their crimes and escape punishment, have no claim to the title of morally imbecile. This title applies strictly to those persons only who recognize the punishability of their acts, and who cannot be deterred by any punishment, however severe, however certain, however imminent, from the commission of offences. If the motive of punishment is reformation, it is *ex hypothesi* absurd to punish such persons. For obvious reasons we, in this country, do not see cases so pronounced as the case related by Dr. Gray; but cases in which no punishment that it appears justifiable to inflict, however severe, however speedy, and however certain, has any deterrent effect on conduct, are not very infrequent. They occur mainly in children and young people, and the following is another instance. A cadet at Sandhurst stole the clothes and boots of a comrade. He was amply supplied by his father, and had no need

of the things stolen. He stole without concealment. He was seen coming out of his comrade's room with the things under his arm, and he actually wore them in the presence of their owner. He was expelled, and on his return home he cleared his father's dressing-table of its ivory brushes and silver furniture, and sold them to a passer-by for five shillings. The father was a very strict disciplinarian, and the son stood in awe and terror of him; nevertheless the son made no concealment of his act.

It will be seen that there is a clear distinction between moral insanity, which has been treated of on p. 145, and moral imbecility thus defined. In neither is there necessarily or usually any intellectual defect. Moral insanity is a perversion of feeling and conduct, leading to vicious or criminal acts, in those who have previously lived upright and reputable lives. The criminal acts are themselves often of morbid character, but are pursued furtively and with precautions against detection. Moral imbecility is an original defect of character displayed from an early age, and consists in inability to be deterred by punishment, however severe, certain and prompt, from wrongful acts. The wrongful acts are often done openly and without concealment. It should be said that moral as well as intellectual imbecility exhibits degrees; and that we may recognize its existence in persons who may, perhaps, be deterred by a punishment so severe as to be out of all proportion to the offence, but not by the punishment which would ordinarily be awarded. Usually, however, it seems, as in the case of the Afghan, as if no severity of punishment would influence conduct.

Of course, the existence of moral imbecility, as here described, is a fact to be proved in evidence like any other fact in the case; but when and if it is proved,

I think it would be foolish and wrong to punish the offender. But it would be obviously right to place him in detention. I have been consulted about many children and young people to whom the description applies, who have been brought to me in order that when what appeared to be inevitable happened, and they fell into the hands of the police, I should be available to testify as to their previous mental condition. Yet in no case have I been called upon to give this evidence; and I therefore suppose that they grow out of this condition, and amend their ways as they grow older.

If, then, the answers of the judges are intended to apply to all cases of insanity whatever, and are not restricted to cases of persons afflicted with insane delusion in respect of one or more particular subjects or persons, then I think their scope is not wide enough to include all the cases that ought to be exonerated on the ground of insanity. I do not think it is possible, without a violent and unjustifiable dislocation of language, to regard the defect that I have described, under the title of moral imbecility, as a defect of knowledge; or to say that, in any justifiable sense of the word 'know,' such persons do not know that they are doing what is wrong. I do not think, and here I disagee with Sir FitzJames Stephen, that defect of the power of self-control can rightly be considered an intellectual defect, or by any artifice be brought under defect of knowledge. Yet I think it would be manifestly wrong to hold such moral imbeciles fully responsible. The Ameer of Afghanistan did, it is true, hang the man who stole the pot under such peculiar circumstances, but, if a similar case should come before a police magistrate, the delinquent would certainly be remanded for examination by the prison surgeon. That official would recognize that the offender

was a morbid person, and would probably say that he committed the crime under an 'irresistible impulse.' As already explained, I do not think this expression appropriate. An 'irresistible craving' would be more to the purpose. Sir FitzJames Stephen suggests, as a test of the irresistibility of a craving, whether it is 'so violent that the offender would not be prevented from doing the act by knowing that the greatest punishment permitted by the law for the offence would be instantly inflicted, the theory being that it is useless to threaten a person on whom by the supposition your threats will have no influence.' It will be seen that the cases that I have classed as moral imbeciles almost satisfy this test, and perhaps satisfy it altogether. We do not know whether they would be deterred by knowing that the punishment would be instantly inflicted; but we do know that they are not deterred by a very strong likelihood that the punishment will be speedily inflicted.

Finally, the following seem to me the principles that should govern the treatment of insane offenders :—

1. Some persons are so deeply and completely insane or idiotic that we are not warranted in punishing them for any offence they may commit.

2. The majority of insane persons are sane in a considerable proportion of their conduct; and when, in this part of their conduct, they commit offences, they are rightly punishable. It is a question for the jury whether the insanity did or did not influence the conduct.

3. Since the limits, between the sane and the insane areas of conduct of insane persons, are ill-defined, no insane person should be punished with the same severity that would be awarded to a sane person for the same offence.

4. The foregoing propositions apply to persons who

are insane in the ordinary sense, that is to say, who, whether deluded or no, exhibit intellectual defect or disorder. All such persons will be as completely or partially exonerated from punishment as justice requires, if the test is satisfied that they did not know the nature and quality of the act, and that it was wrong; *provided* that this knowledge includes knowledge and appreciation of the circumstances in which the act was done; and *provided*, also, it is held in mind that knowledge is a matter of degree, and that a person may know his act is wrong, without knowing how wrong it is.

5. The test of ignorance will not suffice in cases of moral insanity and moral imbecility as hereinbefore defined. It can scarcely be contended that morally insane persons should be completely exonerated from punishment for offences done to satisfy morbid desire. It does not, however, appear just to punish them with full severity. Although they are not exonerable under the test of insanity at present in force, yet, when the facts are brought before the judge, the punishment is usually in practice mitigated. It seems desirable that the state of moral insanity should be recognized as a morbid state, and the practice made universal in such cases.

6. The test of ignorance will not suffice to exonerate moral imbeciles from the penal consequences of their offences. Yet it is repugnant to the sense of justice to punish persons who, it is clear, are morbidly constituted, and on whom punishment has no deterrent effect. It seems desirable that the state of moral imbecility should be recognized as a morbid state, and that, when proved to exist, the subject of it should not be convicted as an ordinary criminal, but should be relegated to special treatment, directed to the removal of his disability.

CHAPTER IX

PROCEDURE AND PRACTICE

Such being the law as it is, and such being the law as I think it ought to be, it is still worth while to inquire what is the practical effect of the existing law, and how far its application ensures justice, or falls short of ensuring justice, in the cases to which it is applied. There is a notion prevalent in the minds of medical men that the law bears hardly on the insane criminal; that he does not get a fair chance; that he is judged by a rigid formula, which ensures his conviction whether he is sane or insane; or at least renders his conviction a matter of accident, and of the caprice of the judge before whom he is tried; and that some radical alteration, it may be in the law, it may be in procedure, or it may be in both, is necessary to ensure that justice shall be done. It is admitted, quite as freely and as sincerely by lawyers as by medical men, that the results of criminal trials should be in harmony with the prevailing sentiment of the populace, and should not outrage the public conscience either by undue severity or undue lenity. My own experience in the courts leads me to believe that judges are most painstaking, and most solicitous to give the prisoner before them the fullest benefit of every consideration that can be urged in palliation of his offence, and in mitigation of his punishment. It is true that they do not regard every unsoundness of mind in a criminal, whatever its nature or degree, as sufficient ground for exonerating that criminal from

all punishment for whatever crime he chooses to commit, and in this I think the judges are unquestionably right. Perhaps, when it is thus baldly and nakedly stated, few responsible alienists would be found to support this proposition, but there are many who express themselves in such a way that they are understood to support it. The reaction, initiated by Pinel, against the cruelties and atrocities of the old madhouses, has gone so far, that it is now become a sort of religion that insane persons, while under control, shall never under any circumstances be avowedly punished. It is true that they are punished, by various small deprivations, for the venial offences which alone they have the opportunity to commit; but the actual word 'punishment' is taboo, and as long as it is not used, the persons who inflict the punishments deny, in all sincerity, that punishment is inflicted. So strong is still the power of the word, and so apt are we to self-deception. The superstition that insane persons, while under control, should never be punished, is easily extended to insane persons not under control, and from them to persons whose insanity is doubtful, until its scope is widened to such an unwarrantable degree, that judges may well be pardoned for expressions of impatience when it is urged before them in individual cases.

The treatment that the insane criminal receives at the hands of the law is not to be estimated by the procedure in court alone. It must be followed from the moment of his arrest until he is serving his sentence in prison.

In 1884, the then Attorney-General, Sir Henry James, now Lord James of Hereford, stated, in the House of Commons, that he had lately received a communication from the Home Office to the effect that, in some recent cases, great inconvenience, if not injustice, had resulted from no responsible person being in charge of cases when

the life of the accused was at stake. 'I was also informed that the Home Office had found great difficulty in dealing with cases of alleged insanity, in consequence of the facts not being brought before the jury, and being only suggested after the trial. It seemed to me, therefore, advisable to take steps to ensure that all evidence bearing on the case, whether tending to prove the guilt or innocence of the prisoner, should be placed before the jury; and with that object I have requested that whenever an accused person is brought before justices on a capital charge, the magistrate's clerk shall communicate with the Solicitor of the Treasury, and that that officer shall take charge of the prosecution, unless he finds that some competent private person or local body has the conduct of it; but in the absence of such proper conduct, it will be the duty of the Treasury Solicitor, acting as Director of Public Prosecutions, to see that the evidence in every case be fully brought before the jury. I have also requested that, in those cases where insanity in the accused is alleged, full inquiry shall be made, and, in the absence of his, or his friends', ability to produce witnesses, the Treasury Solicitor shall secure their attendance.'

It will be seen that these instructions are extremely favourable to the prisoner. In every capital case—and the great majority of cases, in which insanity in the accused is alleged, are capital cases—the prosecution is conducted by the Director of Public Prosecutions under these instructions. If insanity in the accused is alleged, he is examined by experts appointed by the Treasury for that purpose, the superintendent of the nearest large asylum being usually one of them, and full opportunity is given for examination by experts on the part of the defence. If the accused is too poor to procure evidence,

of his own, or for other reason unable, or unwilling, to do so, and if the experts of the prosecution are of opinion that he is of unsound mind, they are put into the box, and, after a formal opening by the prosecution, are left to be cross-examined by the defence, for the purpose of bringing out their opinion that the prisoner is insane. It happens, not very unfrequently, that evidence is given on the part of the Crown that a prisoner is insane, when the prisoner himself protests in the strongest terms against the evidence, and demands to be dealt with as a sane person.

Insanity in a prisoner, if manifest and unquestionable, puts a stop to all criminal proceedings against him, at whatever stage of the proceedings the insanity is observed. If after arrest, and before being charged, he is not charged. If after being charged, and before committal, he is not committed. If after he is committed for trial, and before arraignment, he is not arraigned. If after arraignment, he appears to be insane, he is not tried for the offence with which he is charged, until the issue is tried by a jury whether he is fit to plead. If the jury find him unfit to plead, the proceedings come to an end. If, however, he is found fit to plead, he is put upon his trial, and may yet be found insane, if the evidence to that effect satisfies the jury.

Upon trial, if the plea of insanity is raised, the Treasury experts are called by the prosecution, and testify to their observation of the prisoner. If the facts are undisputed, they may repeat in court statements made by the prisoner incriminating himself; but if the fact, that he committed the offence with which he is charged, is disputed, it seems that they ought not to repeat in court any incriminating statement made by the prisoner; and they should certainly so conduct their examination of

the prisoner as to avoid eliciting a confession. If the prisoner spontaneously confesses his crime, I suppose they would be justified in repeating the confession.

The Examination.

In examining a prisoner, a medical witness should provide himself with writing materials, and take down the prisoner's statements in the prisoner's own words, and in his presence, at the time the words are uttered. Not only is this the only way of insuring the accuracy of the report, but also it gives the examiner the right, which otherwise he would not have, of consulting his notes in court. The things contained in this record should be facts, not inferences from facts; and the only things that can be recorded as facts are how the prisoner appears, what he says, and what he does. Inequality of pupils and stammering articulation, or equal pupils and fluent articulation, are facts that can be observed. A statement made, or a statement omitted, are facts of observation. An act, or an omission to act, are facts of observation. But a delusion cannot be observed. Defect of memory cannot be observed. Morbid desire, confusion of thought, lack of knowledge, infirmity of will, distortion of affection, disorder of emotion, are all hidden from observation. They may be inferred, with more or less of likelihood, from what the prisoner says or does, but observed they cannot be.

I should have thought it unnecessary to warn a medical examiner against questioning a prisoner as to whether or not he had committed the offence with which he is charged, or as to the circumstances of the crime, were it not that I have known this to be done, and have heard very caustic comments from the bench upon the practice. But if a prisoner himself volunteers a state-

ment about his crime, he may be asked questions arising out of his statement, and put in order to elucidate it, but he may not be interrogated to elicit further admission.

A very usual subterfuge of offenders is to declare that they remember nothing about the crime or the circumstances of it; and inexperienced medical examiners, who go to the case prejudiced, perhaps, in favour of the plea of insanity, are apt to receive such a declaration, and to repeat it in court, as if it were an ascertained fact, not merely that the prisoner said he remembered nothing, but that he actually did remember nothing, about the crime. A medical man, who examines a prisoner on behalf of that prisoner's defence, should remember that his duty to the prisoner does not destroy his obligation to justice. His examination is to be made, not for the purpose of saving the prisoner, by hook or by crook, from the consequences of his crime; but to ascertain facts, and to found upon these facts a fair and impartial judgement whether the prisoner, at the time of the act, satisfied the conditions of responsibility. If a prisoner alleges forgetfulness of his crime, the medical examiner is bound to test the accuracy of the statement, and this he may do by discovering how far the lapse of memory extends. The only conditions in which acts are done unconsciously—and unless done unconsciously they are remembered—are in *epilepsie larvée*, in epileptic automatism, and in certain cases of acute insanity. In *epilepsie larvée* the act is one of unreasoning and excessive fury, and is usually unprovoked, though I am not prepared to say that some provocation might not determine the direction of the act against a particular person. In epileptic automatism the act is an *habitual* act, and is more or less of a *caricature* of this habitual act, as has already been explained. Acts done in epileptic automatism are often

very elaborate, but they are never inconsistent with the description above given. In both maladies, the mind is a complete blank as to everything that happened during the attack. Consciousness is lost suddenly and completely, and, after a variable interval, returns suddenly, or at least rapidly: and there is no remembrance whatever of anything done in the attack. The period of unconsciousness, and the blank in the memory, begin and end abruptly, and are complete. When a prisoner admits a dim and confused recollection; when he admits a partial recollection; when he remembers any incident that occurred between two incidents that are both forgotten, his statements should be regarded with the utmost suspicion. The fact, if it existed, that the prisoner had previously had fits, would be most important, though the absence of such a history would, of course, not be conclusive against the existence of epilepsy.

After an attack of very acute insanity, especially when the recovery is sudden, or very rapid, the patient retains no remembrance, or but a very dim and confused remembrance, of what occurred during the attack; and while the attack is in progress, his conduct is so wild, his attention is so saltatory, and so impossible to fix, his appreciation of his circumstances so manifestly and greatly defective, that it is probable that his whole consciousness is defective, and that we are dealing with a being whose acts are scarcely prompted by motive, and attended with very little knowledge. If a person in such a condition were to commit a crime—and they have to be rigidly controlled to prevent them from committing foolish, reckless and criminal acts—he might retain, upon recovery, no recollection of the crime. Most commonly he does retain a very confused and hazy remembrance of what has occurred, but in some cases he appears to

remember nothing. Such cases present little difficulty. The state of mania, while it lasts, is so manifest and unmistakeable that of itself it establishes irresponsibility.

In a trial that recently took place at Dorchester, a medical witness testified that the prisoner 'did not apprehend in any way what she was doing; in fact she was in an epileptic state. It was subconscious altogether. He did not believe she knew what she was doing at the time. His reason for that opinion was that the whole history of the trial pointed to it—her attitude, her manner, demeanour, the way in which the crime was committed.' The prisoner about whom this evidence was given had thrown her child into the water. She had first undressed it, and its clothes were found in her box. On her way home from drowning her child she had told two people that the child was dead! She had never had a fit. It is preposterous to suppose that her attitude, manner and demeanour at the trial could have given any indication whether she was or was not in a state of epileptic automatism some weeks before; and the fact, that she told people that the child was dead, is inconsistent with the supposition that she was unconscious when she killed it.

Another doctor in the same case said that the prisoner 'seemed to have no control over her speech or actions.' No control! and yet she walked home, and told two people on the way that her child was dead! To say that she had *no* control over her actions would be too strong a statement to make of a person with St. Vitus's dance. Such persons can almost always move a limb, however jerkily and irregularly, with some approximation to the direction in which they desire to move it. The only states, in which it is true that a person has no control over his speech or actions, are those of universal convulsions and of coma.

Giving Evidence.

The instances reported above are examples of what should be avoided in giving evidence. The witnesses evidently went into the box full of sympathy for the prisoner, and determined that she ought not to be hanged, but they had not taken the trouble to think out the reasons that influenced them, and that might influence the Court. They allowed their strong prejudice to dictate preposterous statements which did more harm than good to the cause in which they were interested. Great latitude is almost always given to medical witnesses testifying to the mental state of the prisoner in a capital case; and this latitude should be used with discretion. It should not be abused by volunteering opinions that the facts do not warrant. The examination in chief of the medical witness is usually perfunctory. He is put into the box, and some very general question is put to him, which allows him to give his own account in his own way. This account he should prepare carefully beforehand. He should spare no pains in making sure of his facts; he should distinguish clearly between facts and inferences; and he should be extremely careful not to let his opinion outrun his facts—not to give any opinion which the facts do not warrant. He may testify, if the facts warrant the opinion, that the prisoner is insane, and that he was insane at the time of the crime; but he must be careful not to give his opinion that the prisoner is irresponsible, or that he did not know the nature and quality of his act, or that he did not know the act was wrong, unless these questions are specifically put. The witness should give his evidence in as simple language as he can use, avoiding technical expressions, and remembering that he is addressing a jury of non-medical men,

who are nevertheless men of sense and intelligence; and who are apt to resent airs of superiority and infallibility. Moreover, if he uses technical terms, he may be asked to explain them, and this is a demand that is not always easy to satisfy upon the spur of the moment, and in the face of a crowded court. I have heard a witness testify that the prisoner was a 'moral degenerate,' and I wondered to myself what sort of figure the witness would have cut if he had been asked to define a moral degenerate, and to point out the distinction between a moral degenerate and a scoundrel.

It is in cross-examination that the witness will most need his self-possession, and he will come well through this ordeal if his evidence in chief has been given with care, and if he bears in mind the single injunction:—Never fence with a question. You are entitled to have the question put clearly. You are under no obligation to answer 'yes' or 'no' to a question which does not admit of such an answer without conveying a false notion of your meaning. You are entitled to qualify your answer as much as you please in order to make it convey your meaning accurately. But you are not entitled to qualify your answer because, unqualified, it might tell against the side by which you are called. You are sworn to tell the whole truth, and the whole truth you must tell when you are asked, whatever the consequences may be to the prisoner, or to the prosecution. But you must sedulously avoid answering questions that you are not asked. Confine yourself to satisfying the strict terms of the question. Do not amplify your answers. Do not give illustrative instances. They are apt to give the impression that you wish to air your knowledge. Be terse and brief. Remember that the Court is a Court of justice for the trial of a prisoner, not a stage for you to strut upon.

Avoid partizanship; and avoid the appearance of partizanship. Remember Talleyrand's maxim:—*Surtout point de zèle!* Nothing discredits a witness more than an appearance of eagerness for the success of one side, and of reluctance to make admissions that appear to be damaging to that side. The conduct of the case is the business of counsel, not of the witness.

Results of Criminal Trials.

There has always been a large body of opinion in the medical profession that the state of the law with respect to criminal responsibility in this country is very unsatisfactory; and from time to time medical writers have expressed opinions, not always in moderate or courteous terms, very adverse to the methods by which trials are conducted in which the plea of insanity is raised, and calling High Heaven to witness to the blood-guiltiness of those who permit such a state of things to continue. From these expressions I desire to dissociate myself. In 1896 a Committee, of which I was Secretary, of the Medico-Psychological Association, spent some months in the investigation of these trials, and reported as follows. The report met with very great opposition from members of the Association, but, after the matter had been explained, it was finally adopted unanimously, with an addition, merely, that it did not commit the Association to approval of the terms of the law as usually stated.

The Report of the Criminal Responsibility Committee of the Medico-Psychological Association, 1894–6.

'The Committee have felt from the outset that to them has been entrusted a task of great delicacy and responsibility. The subject committed to their consideration is

not only intrinsically of great difficulty, but is one as to which much feeling has been aroused, and strong language has been used both by legal and medical authorities. A heavy responsibility rested, therefore, upon the Committee to avoid raising prejudice, to guard against injuring the medical profession, either by advancing statements that could be controverted, or by countenancing the view that medical men are less solicitous than any of their fellow-citizens for the protection of the community from criminal and hurtful acts, whether committed by sane or insane persons.

'In considering whether good grounds exist for formulating a demand for an alteration in the law, your Committee feel that the Association should walk very warily, and make very sure of every step of ground traversed, especially as the law which it is proposed to alter, though it has been subjected to much criticism, has yet for many years given general satisfaction to very high legal authorities.

'The task allotted to the Committee appeared to be twofold—first, to show what disadvantages, if any, result from the present state of the law; and, second, to suggest such an alteration in the law as should obviate these disadvantages.

'To the first portion of their task the Committee have devoted much labour. Guided by the principles above stated, they set themselves to inquire:—First: Whether to insane offenders justice is done? Second: If it be not, whether this failure of justice is due to the state of the law? The next step would be to show that improvement could be made by an alteration in the law.

'With respect to the first inquiry, whether to insane offenders justice is done, the following statistics have a direct bearing.

'In the return relating to the Prosecution of Offences Acts, ordered to be printed by the House of Commons, on the 7th of April, 1893, the Director of Public Prosecutions reports, at page 16, that the number of charges of murder brought to his notice in the three years, 1890, 1891, and 1892, was 209, which were disposed of as follows:—Verdicts of wilful murder returned, and sentences of death passed, 55; found to be insane, 51; verdicts of not guilty, 40; found guilty of manslaughter or of some crime less than murder, 63; total, 209.

'It will be seen that the number of prisoners found insane was very nearly equal to the number found guilty of the capital offence; and these very striking figures are a positive and unanswerable refutation of the notion that the plea of insanity is habitually over-ridden, and has but little chance of success.

'The Committee proceeded to investigate the actual facts of the trials in a large number of these cases, a work of great labour and difficulty, as the facts had to be unearthed from reports in local provincial newspapers. This investigation showed beyond question that, in the actual trial of prisoners, the judges generally have not hesitated so to interpret the law as to bring within its exonerating scope cases in which its narrow literal interpretation would have had a different result.

'The result, of the inquiries that have been described above, was that the Committee felt the ground for a demand for an alteration in the law was dissolving beneath their feet. They found that, as a matter of fact, there did not exist any such amount or degree of injustice to insane offenders as would warrant an application for an alteration in the law. They felt that it was hopeless to expect that any fruitful result could follow an agitation for a revision of the law, unless that agitation were

founded upon the fact that the law does, in actual practice, lead to the improper conviction, as ordinary criminals, of insane offenders. And this fact they failed to establish.

'Still, however, your Committee felt that, although unable to discover a positive failure of justice towards insane offenders, it yet ought not to separate without having thoroughly investigated the state, not only of the law, but of the procedure under the law, with a view to pointing out defects, and making suggestions for improvement. The result of their inquiries in this matter is embodied in the following propositions :—

'The first step in criminal procedure is to bring the accused before the magistrates. In every case, in which an accused person is brought before a magistrate on a capital charge, the Director of Public Prosecutions is instructed to take charge of the prosecution ; and, in every such case, in which the existence of insanity is alleged *or suspected*, it is the duty of the same official to cause full inquiry to be made ; to secure the attendance of witnesses; and to take steps to ensure that the whole of the evidence is fully brought before the jury.

'Your Committee regards this recent improvement in procedure as a very important safeguard against the improper conviction and punishment of insane offenders.

'The next step in criminal procedure is to bring the accused before a judge and jury, and, if insanity in the prisoner is alleged or suspected, then the first question that arises is whether he is in a fit condition to be called upon to plead to the indictment and to take his trial.

'In trying this issue, it appears that the judge is not embarrassed by any rigid formula, but is left free to direct the jury in such terms as he may consider suitable for the purpose of giving effect to the general principles of law applicable to the case.

'Your Committee would consider it very inadvisable to impose any restrictive condition upon the discretion of the judge.

'When a person, indicted for a criminal offence, is declared to be in a fit mental condition to be called upon to plead to the indictment, the trial proceeds, and the issue to be determined, with respect to the sanity of the prisoner, is, under the provisions of the Trial of Lunatics Act, whether such person was, at the time of the commission of the offence of which he is found guilty, "insane, so as not to be responsible according to law for his actions."

'It will be remembered that, at this trial, it is the duty of the public prosecutor to secure the attendance of the necessary witnesses, and *to take steps to ensure that the whole of the evidence is fully brought before the jury*.

'It is generally held that the leading authority, by which the judge is guided in directing the jury upon this issue, is contained in the answers returned by the Bench of Judges in the year 1843 to certain questions put to them by the House of Lords. It is upon these answers that the controversy as to the propriety and justice of the law has arisen and continued. Into this controversy it is not the province nor the intention of this Committee to enter, but the following observations must be made.

'1. Judges of the highest eminence have greatly doubted the constitutional propriety of putting abstract questions of that kind to the judges, and of getting such answers from them.

'2. In the words of one eminent judge: "The terms of those answers are not incapable of being so interpreted as to do terrible injustice." And in those of another eminent judge: "The law with respect to the responsibility of criminal lunatics seemed to him in a very unsatisfac-

tory state, and in saying this he had not spoken only his own views upon the matter, because more than one of the judges had expressed the desire that the subject should be reviewed."

'3. On the other hand, the late Mr. Justice Stephen held the opinion that those answers are capable of being "construed in a way which would dispose satisfactorily of all cases whatever."

'4. As already set forth, it appears that, as a matter of fact, the terms of those answers at the present day are either so construed or so avoided as to dispose satisfactorily of the cases which come before the courts.

'As to the desirability of attempting to supersede the law which is contained in these answers, the Committee have already given a definite opinion. That opinion may now be reinforced by the consideration that the whole of the controversy that has raged around this question, and the whole of the dissatisfaction that has for so long been expressed with the law, have arisen from the putting and answering of abstract questions upon matters not actually *sub judice*.

'Your Committee are constrained to concur in the objections that have been alleged against this course, and cannot but think that the framing and answering of new abstract questions, if it could be brought about, would be but the beginning of a new controversy and of new heart-burnings.

'In corroboration of this view, your Committee beg to point out that the judges have, on their part, shown themselves fully alive to the objections alleged against the existing law, but that they have not been, nor is it likely that they ever would be, agreed upon the changes that, if any, are desirable:—That, in fact, some of the ablest and most eminent judges have taken diametrically

opposite views of the effect upon the law that would be produced by a given change in its wording.

'It is very important to remember that, in the year 1874, a well and carefully considered attempt was made, by great legal authorities, to restate and codify the law with respect to the effect of madness in cases of homicide; but that, after taking the evidence of witnesses of the highest eminence, the attempt was reported against by a Select Committee of the House of Commons. The framing of a satisfactory formula, capable of universal application, would appear well-nigh impracticable.

'Supposing the prisoner to be convicted at his trial, and that the plea of insanity has not been successful, there is, as has been said, no reason to suppose that this non-success is due either to any undue severity of the judge; or to any narrowness or undue strictness in his interpretation of the law, or in his application of the rules of procedure. It is due, in all the cases that have been investigated, to weakness of the evidence of insanity; and, when the natural reluctance of juries to convict of the capital offence is considered, it can scarcely be regarded as a matter of regret that they conform to the obligations of their oaths, and convict a prisoner upon the evidence before them.

'Even after conviction and sentence, the matter is not irrevocable. It may be that the defence has not been conducted with sufficient skill to exhibit the unquestionable insanity of the prisoner. It may be, and much more commonly is, that there has been a conflict of medical evidence—that the case is one of uncertainty, in which legitimate difference of opinion may exist, and does exist, in the minds of skilled observers, as to whether the accused ought or ought not to be considered responsible

for his act. In all such cases a very careful investigation is made after the trial, and it is in such cases as these that the Home Secretary and the judge have given the prisoner the benefit of the doubt; and these are the cases in which the sentence has been commuted and the verdict overridden[1].

'Lastly, when the convict is committed to prison, and is working out his sentence, he is still subject to medical supervision, and a watch is kept upon him for the supervention of the symptoms of mental disorder. The recent Departmental Committee on Prisons has, among other recommendations, made the following:—"The candidates for medical appointments in prisons should be required to show that they have given special attention to lunacy, and that the medical staff in Holloway and other prisons similarly circumstanced should be strengthened."

'Also—"That weak-minded prisoners should be, as far as possible, concentrated in special prisons, and should be under medical supervision; and that it should be considered whether it is right to treat such persons as ordinary criminals."

'It appears, therefore, that, from the time of his first appearance before the magistrates to the time of his acquittal, or the completion of his sentence, the mental condition of a person who is accused of crime, and especially of capital crime, is the subject of solicitude to the Executive.

'So far from finding, as has been alleged, that difficulties are placed in the way of proving the insanity of an offender; that judges are prejudiced against the plea of insanity, and conduct trials in such a manner

[1] The number of cases in which condemned prisoners have been subsequently reprieved on the ground of insanity during the thirty years to 1894 was thirty-one.

as to nullify that plea; that the law is such as to bear hardly upon the insane offender, even when the judge is willing to bring him within its exonerating provisions; that medical experts are silenced by the rules of evidence, and prevented from stating their real opinions of the prisoner; so far from discovering this state of affairs to exist, your Committee have to report that, from the beginning to the end of the proceedings, care is taken that justice should be done, and that the interests of the prisoner should not suffer through the poverty, stupidity, or ignorance of himself or of his relatives.

'Under the state of circumstances disclosed by their investigations, your Committee are unable to make any recommendations for the amendment of the law[1].'

The fault that is found by medical men, with the results of criminal trials in which the plea of insanity is raised, is expressed anew in a leader in the *British Medical Journal* quite lately. It is that, after trial in court, the question of the prisoner's responsibility is again tried in camera, and the verdict of the jury may be set aside by the verdict of medical experts, whose opinion ought to have settled the question, either in court, or before it went into court. 'The question is,' says the *British Medical Journal*, 'why this inquiry is not made before the trial, and how the farce of convicting a man only that he shall be reprieved shall be avoided.' And 'that the present system is not satisfactory would appear from the large number of reprieves after the sentence has been pronounced.' The 'large number' is in fact about 6 per cent. That is the number of those who are reprieved on the ground of insanity. In addition to these, there is

[1] This paragraph was altered, in the sense already mentioned, in the adoption of the report.

a further 4 per cent., of prisoners condemned for murder, whose sentences are commuted to penal servitude in order that they may be carefully watched, to determine whether they were insane or no. Altogether, about 10 per cent. of condemned murderers are reprieved because there is a doubt as to their sanity. The complaint, that these prisoners were not examined before trial, is without foundation. They were so examined. The evidence of their insanity failed to convince the jury; and failed, not because of any fault in the procedure under which the evidence was adduced, or the prisoner examined, but because the evidence was not sufficiently cogent to convince the jury. Either there was a conflict of evidence, or the evidence was too weak to convince. But why need there be a conflict of evidence? say the advocates of change. Why leave the question of responsibility to the jury? Why not let it be determined by medical assessors, as questions of seamanship are determined by nautical assessors? The answer is that, so long as men's minds are differently constituted, and so long as their experiences are diverse, so long will they take different views of the same evidence, and form different opinions on the same facts. It has happened over and over again that, while no convincing evidence could be adduced in court that a prisoner was insane, yet a lingering doubt as to the propriety of the conviction remained in the mind of the judge. It has happened occasionally that, after conviction, new evidence has come to light tending to prove the insanity of the prisoner. In such cases the prisoner is reprieved and sent to Broadmoor; or his sentence is commuted to penal servitude, in order that further observation may determine whether he is sane or no. It is usually assumed, by the opponents of the present procedure, that the insanity of a prisoner is a matter easily and

certainly determinable, and admitting of no doubt. Such is very far from being the case. Every alienist of experience must have seen cases in which it took days of careful observation to determine whether or no a person was insane; and, when this question is determined, the difficulty is not at an end. There remains the further question, Is he so insane as not to be responsible for his act? This is a question on which differences of opinion may and must exist. The grades by which sanity merges into insanity are of infinite minuteness, and no more difficult problem can be entertained by the mind than that of determining, in some cases of crime, whether and how far a prisoner should be punished for the act that he has done. It is not a matter of fact. It is not a matter which can be certainly determined if only we have all the data before us, such as is the question whether the man did or did not do the offence with which he is charged. This may be uncertain upon the evidence; but outside the evidence it is certain that he either did or did not do it, and this fact depends on no peculiarity in the mind of the observer. It is in the true sense a fact—a thing done. But whether the prisoner ought or ought not to be punished for his crime is not a fact. It is a matter of opinion, which will be variously determined by different observers who are all in possession of precisely the same facts. Conflict of evidence can never be eliminated, therefore, as long as medical witnesses conduct their examinations separately, and separately give their evidence.

But need they be thus separated? Why should they not consult together, and agree upon the evidence that they shall give? The change is now being discussed by the British Medical Association, and there is much that can be said in its favour, much that can be said against it.

In its favour it is to be said that, as all the medical examiners would be in the possession of the same facts, one source of difference would be eliminated. Discussion among them would tend to reconcile differences. It would ensure that a factor, which had been overlooked by one, would be brought to his attention by another. It would place the experience of each at the disposal of all. But it is not to be forgotten that it would have certain drawbacks. Wherever men get together, the strong will, the dominant personality, will assert itself; and the stronger will is not always associated with the keener intellect. The rough average man, with great force of character and limited intelligence, will be very apt to impose his view upon a more delicately minded colleague of less overbearing disposition. And authority will be apt to carry a weight more than proportionate to its value. Already it has its due share of importance allotted to it in the witness-box. If it also influences the opinion of other witnesses, it will have a double share. It is not to be forgotten that, in another matter, the legislature has expressed the utmost solicitude that an alleged lunatic shall have the benefit of opinions completely unbiassed by communication between those who give them. The examination of an alleged lunatic with a view to certification must be made 'separately from any other practitioner'; and so sedulously careful is the legislature to guard against one practitioner influencing another by his opinion, that the provision is inserted in the statute that the two certificates must be on separate sheets of paper. What is sauce for the 'alleged lunatic' should, it seems, be sauce for the alleged criminal lunatic, unless the object of the examination in the one case is different from the object in the other. Is it less important that the examination of the alleged criminal lunatic should be completely

unbiassed and independent than the examination of the alleged non-criminal lunatic? It does not seem that there is sufficient difference between the two cases to warrant a difference in procedure. Rather, it appears that, either the examination of the alleged criminal lunatic should take place 'separately from any other practitioner', or the examination of the alleged non-criminal lunatic should be a consultative examination. If the two cases are not on all fours, in what respect are they different? It seems that the consideration in the mind of any one who advocates the difference of practice in the two cases must be somewhat as follows:—Consultation of medical men over a case of alleged insanity contributes to the finding that the subject of the consultation is insane. Separate examination militates against this finding. Therefore, where it is desirable that the subject shall be found insane, as in criminal cases, let there be consultation; but where it is desirable that the subject shall not be found insane, as in non-criminal cases, let there be a separate examination. I do not say that these practices are what I should myself advocate for these reasons; I merely point out that some such reasoning as this must, it appears, be in the minds of those who advocate the different modes of procedure in the respective cases.

In a recent case tried in Boston, U. S. A., the prosecution and the defence combined to make an arrangement by which three experts were conjointly to examine and report upon the prisoner with reference to her responsibility. 'Thus,' says Dr. Stedman, one of the committee of three, 'the question was practically submitted to a commission at law, which allowed the examiners free interchange of opinions and impartial sifting of all obtainable evidence on both sides. In fact it resolved itself into a medical consultation on the diagnosis of a case of alleged disease.' The

committee reported that the prisoner 'was insane and irresponsible at the time of the homicides with which she is charged, and is so now.' This report was sent both to the attorney-general, who prosecuted, and to the defence ; but I do not know whether it was produced or sworn to in court. The prisoner was found not guilty by reason of insanity.

This seems an eminently satisfactory way of determining this difficult question. The case is not withdrawn from the consideration of a court of justice, but is tried in the ordinary way, the only difference from ordinary procedure being that the jury have not to estimate the relative value of conflicting opinions, but are guided to a direct conclusion by a unanimous medical report. There is reason to expect that some of our judges would disallow the statement that the prisoner was irresponsible, that being the very question that the jury have to determine ; and I am afraid it must not be taken for granted that the report of three experts would always be a unanimous report. If the three were to disagree, the guidance given to the jury would not be much better than it is now. The consultation of the experts, however, could scarcely fail to approximate their opinions, even if they eventually differed; and I think the practice is well worthy of a trial.

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THE END

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