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John F. W. Meagher

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CRIME AND INSANITY:  
THE LEGAL AS OPPOSED TO THE MEDICAL  
VIEW, AND THE MOST COMMONLY  
ASSERTED PLEAS<sup>1</sup>

JOHN F. W. MEAGHER<sup>2</sup>

As most physicians rarely go into the legal aspects of the question of crime and insanity, I thought I would briefly present the following data, which I gathered recently while acting as chief alienist for the court in a celebrated case of homicide. I will not dwell long on the medical factors, as I have presented these elsewhere.

The law has held that "mental disease" is an indeterminate and vague term—including conditions varying from mild indisposition to delirious, confusional states. Medicine and law approach this question in different ways. For example, law considers that Guiteau and Czolgosz were justly and properly tried and executed, no matter what medical critics might say to the contrary. It is said that Locke's "Essay on Human Understanding" has had a great influence on the legal attitude.

As the law is primarily interested in the question of responsibility and not in insanity per se, I will have little to say of particular mental disease entities themselves. The form of insanity is a question of mental pathology and is not of particular interest to law; nor are the causes of insanity, the latter being in themselves irrelevant to the question of responsibility. Law is concerned in the consequences (conduct) resulting from insanity.

So the ultimate object of a legal investigation is to determine the question of responsibility or liability to punishment, especially as it relates to the time the individual committed the criminal act. In law, legal insanity is commensurate with legal irresponsibility. Thus we can see that there is a distinct boundary between the attitudes of law and medicine. (*Regina v. Leigh*, 4 F. and F. 915.) Medicine considers any and every abnormality; law, only the capacity of the mind to reason.

An inquiry as to insanity is a privilege of law, and not because of any absolute right of the person. (Wharton and Stillé, Vol. I, p. 209.)

<sup>1</sup>Read before the Brooklyn Pathological Society, November 9, 1922.

<sup>2</sup>Neurologist, St. Mary's Hospital; Consulting Neurologist, Kings Park State Hospital and Rockaway Beach Hospital, etc., Brooklyn, N. Y.

A commission may be appointed to determine whether the accused is able to make a rational defense by intelligently conferring with counsel, to decide whether insanity existed at the time of the act or not. (*People v. McElwaine*, 125 N. Y. 596.)

Sanity is presumed where no evidence to the contrary is furnished by those defending the accused. The legal presumption of insanity is the assumption that the accused had not the mental capacity to form a criminal purpose, and to deliberate and premeditate on an act, which malice, anger, hatred, revenge, or evil disposition might impel, or to know the nature and wrongfulness of the act. It also assumes an absence of insane delusion. Needless to say, insanity cannot be inferred intrinsically, from the nature of the act itself, but it must be proven extrinsically.

The law does not say that no degree of madness exempts; nor does it say that any degree of madness exempts. (*Mackin v. State*, 59 N. J. Law. 495.) Rather it takes a position between the two. Thus legal irresponsibility is limited; so that not every kind and degree of mental abnormality—permanent or temporary—renders the person irresponsible. (Am. and Eng. Encyl. of Law, Vol. 4, p. 693.) The Court of Appeals of New York has held that incipient insanity does not excuse under the New York Penal Code if the accused knew the legal quality of his act and that it was wrong. This includes paranoia. (*People v. Taylor*, 138 N. Y. 398, 52 N. Y. St. R. 919.) To excuse, the insanity must be the efficient cause of the criminal act. The mere fact of insanity does not in itself relieve from criminal responsibility. (*Bergo v. State*, 26 Neb. 639.)

As Judge Cox said (in the case of Guiteau, the murderer of President Garfield), the greatest difficulty lies in those borderland cases, where it is often difficult to say whether the person has passed the line of moral or legal accountability for his actions. (*Guiteau case*, 10 Fed. 161.) Even those in charge of the insane know that they are subject to discipline. And in criminal cases, the interests of society require that the penal law assert its control. (Wharton, *Crim. Law*, 10th Ed., par 1, et seq.)

It is regarded that as good and evil principles both reside in man, in choosing he must be guided by his good principles and withstand the evil ones. The tendency to evil is checked by the restraining power of the ego. Otherwise his conscience punishes him. These truths are the foundation of the doctrine of criminal responsibility. Society lays down certain external punishments for acts opposed to morality. Law recognizes in man a freedom of will if he has understanding. Thus

understanding is the fundamental test of responsibility. Insanity, in law, is chiefly shown by anomalous conduct.

The right is when you act according to law; the wrong is when you break the law. So distinguishing right from wrong means having the knowledge that a wrong act is punishable by law. Or again, responsibility means being rightly liable to punishment. So the faculty of knowing and judging (to a less degree, willing) is the important legal test of irresponsibility.

#### LEGAL PROOF OF INSANITY

In criminal cases, the burden of proof lies on the defense. However, it has also been held that the prosecution must prove the capacity to commit the act. (*Brotherton v. People*, 75 N. Y. 159; *O'Connell v. People*, 87 N. Y. 377.) In these cases, the rules against speculative testimony are somewhat relaxed. (*People v. Wood*, 126 N. Y. 249.) It might be stated here that state courts are not bound by the views of the Supreme Court of the United States on the question of the measure of proof of insanity. (*People v. Alexander*, 117 Cal. 81, 48 Pac. 1014.)

The accused can take the stand in his own behalf, but cannot give opinion evidence, e. g., that he was insane at the time of the act. He can only state objective facts to the court. And the defendant's own testimony that he did not know that his act was wrong or criminal is not sufficient to establish insanity. (*Perry v. State*, 87 Ala. 30.) Or to say that his mind became a blank prior to the killing, when he recalls the facts of the act, does not show that he was not capable of forming an intent to murder. (*People v. Osmond*, 138 N. Y. 80, 33 N. E. 739.) The statement of the accused that he knows nothing of the crime cannot always be accepted as true.

Minute recollection of the details of the crime long after its occurrence is strong evidence of sanity at the time of the act. (*Pienovis* case, 3 N. Y. City Hall Rec. 123.)

It has been held that the acts and conduct of the accused are better criteria to go by than any medical theory, or the opinion of witnesses. (*State v. Thomas*, Houst. Crim. Rep., Del. 511.) Tests applied must include the exact time of the commission of the offense. Concealment of the act and an endeavor to escape tend to show a knowledge of the nature of the offense, and the ability to discriminate between right and wrong. (*U. S. v. Shults*, 6 McLean 121, Fed. Case No. 16, 286.) Likewise the conduct of the family of a person com-

mitting a crime may be considered on the question of his sanity. (Wharton and Stillé, Med. Jurisp.)

Even though there is a history of insanity in the accused prior to the homicide, still the burden is on him to prove his insanity at the time of the murder. And hereditary insanity will not relieve, unless the accused himself shows insanity. (*Guiteau's case*, 10 Fed. 161.) The mere fact that a cause existed which could produce insanity is not sufficient to establish criminal irresponsibility.

#### RESPONSIBILITY; KNOWLEDGE OF RIGHT AND WRONG

Responsibility is shown where the individual willingly and intentionally, and to gratify a wish of his own, commits a criminal act, knowing and appreciating the circumstances under which the act was done. Responsibility depends upon power and intellect, not upon feeling. The culprit is punished, not just because he knew good from evil, but because he voluntarily did the evil, having the power to choose the good. (Bulknill and Tukés, *Psychological Medicine*, p. 269.) A medical witness may argue that feeling precedes the act, and that after feeling comes desire and choice. Law makes the accused responsible for the choice and not for the feeling. Or, stated in another way, a man cannot be punished for a morbid desire, but he can be for giving way to it.

Conversely, to prove irresponsibility, it must be shown that the accused was laboring under such a defect of reason from mental disease 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 that he was doing wrong. (*Flanagan v. People*, 52 N. Y. 467.) This is the legal essence of the whole matter. The two tests are in the alternative; but the ability to distinguish right from wrong must be wholly destroyed. (*Commonwealth v. Barner*, 199 Pa. St. 335.) If the accused knew that the act was wrong, it has been ruled that mere insane belief that it was justifiable is no excuse. (*Commonwealth v. Wireback*, 190 Pa. St. 138.) This opinion would depend on the type of the delusion. In Pennsylvania, the test lies in the word "power"—the power to tell right from wrong, and the power to adhere to the right, and to avoid the wrong.

Justice McLean of the U. S. Supreme Court said that the ability to discriminate between right and wrong can best be ascertained by the acts of the individual himself (as showing a sense of guilt, attempts to escape punishment, etc.) and not by any medical theory. A slight departure from a well-balanced mind cannot be recognized as insanity in the administration of criminal law, even though it might be declared

insanity in medical science. (*Taylor v. Commonwealth*, 109 Pa. 262.)

Some courts have held that the test of criminal responsibility is the mental ability to discriminate between abstract right and wrong. (*Walker v. People*, 88 N. Y. 86; affirming N. Y. Crim. Rep. 7; *Moett v. People*, 85 N. Y. 373.) But usually the capacity is regarded as concrete instead of as abstract, i. e., the wrongfulness of the particular act. There must be an absence of knowledge either morally or legally in order to relieve from criminal responsibility. (*Willis v. People*, 32 N. Y. 715; affirming 5 Park Crim. Rep. 621.)

#### INTENT

Non-existence of a motive has been held as immaterial. The law only regards the proximate consequences of the act—the intention. It is important to determine whether the accused had the capacity to entertain a criminal intent, and whether he did entertain it. A lack of foresight, for example, implies lack of intention, and where intention is part of the crime, such an act is not criminal. First degree murder, of course, requires a specific intent to kill. Evidence of insanity can be allowed to show the absence of premeditation; a lesser degree of murder has been found in such cases.

#### DOUBT

The evidence must be fairly preponderating, and to the reasonable satisfaction of the jury. (*State v. Brooks*, Mont. 57 Pac. R. 1038.) A probability of insanity meets the requirements of a preponderance. Any doubt must be a reasonable one. In New York it has been held to be insufficient to establish a reasonable doubt of insanity, where the defendant testified that his mind was a blank just before the murder, and others also testified that he was nervous and excitable. (*People v. Osmond*, 138 N. Y. 80.) So in proving insanity beyond a reasonable doubt, the doubt must not be a mere imaginary sophism or caption. (*People v. Barberi*, 12 N. Y. Crim. Rep. 22; *People v. Coleman*, 1 N. Y. Crim. Rep. 1.)

It has been ruled that where two inferences may be drawn from an item of proof, one of sanity and the other of insanity, the presumption requires the inference of sanity to be chosen. (*Appeal of Sturdevant*, 71 Conn. 392; 42 Atl. R. 70.)

As to the *continuance or permanency of insanity*, this must be determined from the evidence as to the character of the insanity. The presumption of a continuance of insanity cannot always be held where temporary insanity is asserted as a defense. Whether progressive or

permanent is a question of fact for the jury. Lapse of time alone does not presume absolute recovery, and a patient should not be discharged from a hospital merely because of a lucid interval. (*People ex rel. Norton v. N. Y. Hospital*, 3 Abb. N. C. 229.)

Where insanity appears at the time of the trial, but was not present at the time of the act, the court may delay judgment or execution. For insanity developing after the act does not prevent a subsequent trial after recovery.

Inasmuch as in this article we are reviewing the subject of crime and insanity from the legal viewpoint, there would be no practical benefit in going into each mental disease entity separately. For, as we stated before, law is interested primarily in the question as to whether there is irresponsibility or not, and not in the form of insanity, if any be present.

So, disregarding the various symptom-complexes known to medicine, I will briefly review the most common legal pleas where insanity or irresponsibility is the issue. These chiefly relate to—

- I. Delusional insanity.
- II. Impulsive insanity, irresistible impulse, and obsession.
- III. Hysteria.
- IV. Mania, transitory mania (melancholia).
- V. Moral insanity, character anomalies.
- VI. Defective will power.

#### DELUSIONAL INSANITY

Though in medicine delusions are not an essential element to indicate unsoundness of mind, in law they are important. So likewise is their absence. The delusion exists because of defective reasoning power or critique.

Medically, a delusion is a false belief or conception, due to mental disease, which is not based on facts, but is in conflict with evidence; and which cannot be corrected by reason. One adds "due to mental disease," to eliminate faulty beliefs due to unsound education, etc. Unlike the delusion, which is usually believed with dogmatic certainty by the individual, the obsessive idea is the object of anxious doubt. The so-called delusional concepts must not be mere notions or impressions, nor only odd ideas which develop as the result of a depraved moral state.

Delusions, in law, must be mental—not merely moral; and not just hastily formed opinions. (52 N. Y. St. R. 914.) In New York and most states the delusion must deprive the person of the knowledge

of the nature and quality and wrongfulness of the act. And a delusion is not a defense if it solely claims mistreatment.

It has been held that the act and the delusion must be connected; or that the delusion must prevent seeing the wrongfulness of the act. And it has also been held that the delusion must be such that if it were a true concept, then under such circumstances the act would be justifiable.

#### IMPULSIVE INSANITY; IRRESISTIBLE IMPULSE; OBSESSIONS

These pleas, so frequently advanced by criminals to excuse, are so similar we will consider them together. These terms are rather confused in the legal literature. The psychologist, Sully, describes impulse thus: "Those innate promptings of activity in which there is no clear representation of a pleasure, and consequently no distinct desire." Or impulse may be defined as an impelling force, or a sudden or transient mental feeling. Deliberation implies comparing and weighing. Where a decision is made without deliberation it is called impulsive. However, conduct which is very elaborate can hardly be called impulsive.

Irresistible means offering no resistance, or powerless. An irresistible impulse, legally, has been described as one where there is an unseen pressure which perceives the results, but which cannot resist its execution. This is not convertible with a passionate propensity. Reason operates through love or fear. The will follows the strongest motive; and, of course, superior motives must be enforced. Griesinger doubts whether impulses are irresistible even among the insane; at least he states this cannot be answered with certainty. For even recovered maniacs have testified that they could often restrain certain wild desires. And in partial corroboration of this, one might say, how rarely we hear of a homicide being committed among the thousands and tens of thousands of the inmates of our state or private insane hospitals.

So, ruling out automatic states, an act is not so much a question of weak will as it is of violent excitation of the emotions. (Wharton and Stille's *Med. Juris.*, Vol. I, p. 197.) But neither melancholia nor irresistible, uncontrollable passion, is an excuse in itself. (*People v. Montgomery*, 13 *abb. Pr. N. S.* 207, N. Y.)

Physicians nowadays do not recognize any such disease entity as Impulsive Insanity; and, without a doubt, many of the opinions of the courts on Impulsive Insanity, so-called, really refer to other forms of insanity. And all genuine insane impulses do not come under obses-

sions. In fact, the paradigm from which the latter term comes—Obsessional Neurosis—is not regarded as insanity by the best medical authorities. (Ernest Jones, "Papers on Psychoanalysis," p. 528.) If this view is accepted, it would not be valuable (alone) to show legal irresponsibility. As a matter of fact, real obsessional cases being ethically and not criminally inclined, rarely conflict with the law.

Real insane impulses may arise from delusions or hallucinations. They may occur in Manic Depressive Insanity, Epilepsy, and other morbid states; and in these cases they are a legitimate defense, and are to be judged according to the generally accepted rulings as to criminal responsibility. It must be remembered that normal minds also have impulses. But, in any case, where irresistible impulse is pleaded, examine for insane delusions and other evidences of undoubted insanity.

The complaint of irresistible impulse of a criminal trend is heard relatively infrequently in hospital practice, or in physicians' consultation offices. But it is a very common plea in criminal trials. Courts have ruled that it is not for the best interests of the community to hold such people as irresponsible. (Witthaus and Beeker, Vol. III, p. 245.) It might be noted here that "irresistible impulse" is to the accused's lawyer what "a constitutional psychopathic state" may be for certain experts—i. e., something to seize when nothing more tangible is evident.

Inasmuch as every crime is committed under an impulse more or less irresistible, such a doctrine universally applied would be dangerous for society. For the object of the law is to control such impulses. (*Regina v. Barton*, 3 Cox Cr. Ca. 275.) Three powerful restraints to irresistible impulse are conscience, religion, and law. And Baron Bramwell said the third restraint mentioned cannot be lightly withdrawn. (*Regina v. Haynes* 1 F. and F. 666.) And as Baron Rolfe in the English poisoning case of *Regina v. Allunt* said, "Every crime was committed under (such) an influence, and the object of the law was to compel people to control these influences." Baron Parke said that if the excuse of irresistible impulse, going hand in hand with full possession of reasoning powers, were allowed as a defense, then it might be urged in justification in nearly every case. A New York judge remarked that irresistible impulse, where the individual knew his legal and moral duty, had no place in law. (*Flanagan v. People*, 52 N. Y. 467, 11 Am. Rep. 731.) The same thing is expressed in numerous court opinions. (*People v. Carpenter*, 102 N. Y. 238; *U. S. v. Holmes*, 1 Cliff. 98, Fed. No. 15382.)

Many states have adopted the North Carolina rule, that irresistible

impulse is no excuse for crime if the person can distinguish right from wrong. (*People v. Mills*, 98 N. Y. 176.)

According to the New York Penal Code, a morbid impulse to commit a criminal act, where the person knows the act is wrong, is no defense. (*People v. Taylor*, 138 N. Y. 398; *People v. Waltz*, 50 How. Pr. 214; *Flanagan v. People*, 52 N. Y. 467; *People v. Casey*, 31 Hum. 158; *Willis v. People*, 32 N. Y. 715.)

Judge Andrews of the Court of Appeals said that courts of law are against the idea of "some mysterious pressure" to commit criminal acts. (Court of Appeals, N. Y., Vol. 52, p. 469.) In the *Walworth* case, Judge Davis said that if the accused knew the legal and moral character of the act, the allegation that he had no control of his will—being controlled by irresistible impulse to commit acts the consequences of which he anticipates but cannot avoid—is no defense. (*People v. Walworth*, N. Y. Crim. Rep., Vol. 4, p. 353; *People v. Coleman*, 1 N. Y. Cr. R. 1; *Willis v. People* 32 N. Y. 715.) And Judge Brannon said, "I admit the existence of irresistible impulse, but not as consistent with an adequate realization of the wrong of the act."

But where the man was legally sane, but medically insane (as where he knew the act was wrong, but could not restrain himself) a lesser degree of murder has been found. (*State v. Kolb*, 7 Ohio, N. P. 547; case of *William Hooper Young*, Crim. Br. N. Y. Supr. Ct., Feb., 1903.) And, as I stated previously, the law also holds that every form of insanity does not mean legal irresponsibility. (*People v. Silverman*, 181 N. Y. 235.)

The courts of New York, California, Michigan, and about fifteen other states have explicitly rejected irresistible impulse as a defense. Only a few states, eleven, I think, permit the plea of irresistible impulse as a defense for the commission of a moral wrong or a legal crime. And even in those states the rule is that it must go with an inability to distinguish, as well as to choose, between right and wrong. So such a defense could not be sustained even in these states if the defendant knew the difference between right and wrong and knew that his act was morally a crime, even though impelled to its commission by overmastering anger, revenge, or other inordinate passion. It has been ruled that it must exist to the extent of subjugating the intellect, controlling the will, and rendering it impossible to do otherwise than yield. (*Goodwin v. State*, 96 Ind. 550.) And an act is punishable, though committed by one under an irresistible impulse, where the mental faculties were otherwise in a sound, normal condition. (*Boswell v. State*, 63 Ala. 307; 35 Am. Rep. 20.) So we see that even its advocates say that this plea should be used with caution.

The question whether the accused had a genuine insane impulse, and whether he was able to resist it, are questions of fact for the jury to decide. (*Parsons v. State*, 81 Ala. 577; *People v. Egnor*, 175 N. Y. 419.)

And it must be admitted that even in those states where they are not recognized by the decisions and statutes, yet the pleas of "morbid impulse" and "loss of will power" often dominate a jury's verdict. Even though the judge may charge against "impulsive insanity," the jury has shown its attitude by bringing in a verdict of guilty of a lesser degree of murder. (*People v. Wakworth*, 4 N. Y. Crim. Rep. 335.)

The legal aspects of irresistible impulse are discussed by Prof. W. H. Parry in an exhaustive article (63 Albany Law Journal, 429, 459); and also by Justice Brannon, who went into the question very fully. (*State v. Harrison*, 36 W. Va. 729.)

#### OBSESSIONS; OBSESSIONAL (OR COMPULSION) NEUROSIS

Inasmuch as the term obsession is frequently confounded with the legal plea of "Impulsive Insanity," I thought it would be advisable to briefly discuss the medico-legal conceptions of obsessions and the Obsessional or Compulsive Neurosis. It will not be my purpose here to enter into any analytical speculations as to the unconscious motivations of obsessions, as this would have no legal interest or value.

Obsessions are imperative morbid ideas which have a tendency to control conduct against the will, and are usually associated with a state of anxiety. We all know, however, that reactions to genuine obsessions can usually be held in check.

The difference between an imperative idea and a fixed idea might be stated here. An imperative idea is one which comes to the individual against his will, and which idea he recognizes as abnormal, and not in keeping with his usual ideas, and of which he tries to rid himself. Whereas a fixed idea harmonizes with the patient's other ideas, so that he does not regard it as either foreign or abnormal.

A very important feature about an obsessive act is that it is defensive, and not aggressive. An obsession, unlike a hallucination, does not fundamentally involve the senses; and, unlike a delusion, it is accompanied with anxiety, doubt, and resistance, and there is no marked concomitant disorder of consciousness or of judgment. Whereas a delusion is readily expressed, often dogmatically, and is usually believed and reacted to as being true.

The real obsession arises in consciousness spontaneously and the compulsion is recognized by the individual as morbid. It is accom-

panied by annoyance, resistance, and distress. It is quite persistent. If the compulsion is yielded to, it is done only under protest. The yielding relieves the accompanying tense feelings, but does not terminate them. This cycle may be repeated indefinitely.

In these cases the repressed emotion is gotten rid of through another indifferent, substituted idea, unlike the conversion mechanism seen in Hysteria. And also, unlike Hysteria, individuals suffering from an Obsessional Neurosis do not develop an amnesia (forgetfulness), but rather they say that the idea is not important. It is well recognized that the next most efficient thing to denying the existence of anything is to deny its importance, or to disparage its value.

So an act due to an obsession differs from a normal act and from a criminal act.

An obsessive act differs from a normal act in that it is against the individual's inclination; nor does he consciously desire the consequences of the act. In fact, the object of an insane (pathological) homicidal impulse is often one near and dear to the individual—maybe his own child. Such individuals usually seek protection against their morbid impulses, of which they are in great fear. And these people, though encountered not infrequently in private practice, are rarely seen in the criminal courts, they being not only intelligent, but also very ethical individuals.

An obsessive act differs entirely from a criminal act. In genuine obsession there is no deliberation, no intention, nor passion (anger, jealousy or revenge) acting consciously. Instead there is recognition that the impulse is morbid, and with this there co-exists an aversion and resistance against giving way to it. It might also be noted that most of the acts are usually harmless, trivial, or even ridiculous. But in the criminal act the motive is evident, the occasion is propitious, and the opportunity is sought; i. e., the act is premeditated.

Genuine obsessive impulses are founded in mental conflict, the causes for which the individual does not know; whereas criminal impulses are usually consciously well motivated. The true obsessional person rebels against complying with his slavish instincts; which is quite unlike the criminal, who acts for selfish reasons, and who is not inhibited or even influenced by any ethical reasons. So we might say that the act in true obsession is subjective, i. e., due to a state within the individual; while the criminal act is objective, i. e., the result of things outside the patient. One must note carefully whether the element of conscious hatred is present, which it is in criminal impulses, but is absent in obsessional neurotics. One must remember that in Obses-

sional Neurosis, where the inter-mixture of love and hate causes compulsion and doubt, that love is the conscious element, hate being chiefly confined to the unconscious. Needless to say, law cannot administer justice on any consideration of the unconscious mental life. For to this sphere only few physicians have given much attention. And what is more, the unconscious of all people—sane and insane—are similar; it is in their conscious mental lives that they show their differences. So it is evident why genuine obsession can hardly be logically asserted as an excuse for a criminal act.

In Obsessional Neurosis the compulsion is the essential factor. It may take the form of ceremonials, scruples, fears, obsessional doubts or compulsive acts. Though of more medical than legal interest, I might state here that Obsessional Neurosis is classified under the neuroses (or so-called functional nervous diseases), and not under the psychoses (insanities). I might also add that, though I frequently have to commit mental patients to hospitals for the insane, I have never in my twenty years' practice committed a case of Obsessional Neurosis, for we do not usually regard them as being dangerous, nor requiring treatment in a hospital for the insane.

#### HYSTERIA

Hysteria is sometimes confounded in the literature with Obsessional Neurosis. Alone, of course, it is not a legal excuse for crime, though we know that these patients are prone to receive morbid impressions. The term is wrongly used by some writers as being synonymous with neurotic, and both terms are erroneously employed for all sorts of eccentricities.

According to Moebius and other writers, a large part of mankind at times suffers from hysterical manifestations. So if this plea were readily allowed to be sustained, any neurotic individual who openly committed a crime, say through fear of failure (social, financial, sexual, personal, etc.) could claim excuse on the grounds of irresponsibility. The upholding of such a contention would be a disastrous one for society.

#### MANIA; TRANSITORY MANIA

Where maniacal excitement is an evidence of Manic Depressive Insanity, or where it is an episodic experience occurring during the course of one of the other forms of genuine insanity, the other signs and symptoms will be present; and there is often a history of repeated attacks. One must not confound a crime due to emotional stress with

an act resulting from a diseased mental process. The criminal act shows full intention, choice, and malice, and is deliberate; and the emotional tension is relieved by the act. But the act of the real manic patient is spontaneous, and the excitement keeps on even after the act—maybe for days and weeks. The genuine victim of mania or melancholia rarely appears in the criminal courts, as his condition is so evident, he is promptly placed under treatment.

The term "Impulsive Insanity" is unscientific, and should never be used where Mania is inferred. All authorities agree that "Mania" and "Transitory Mania" are much overused terms in medical jurisprudence. It has been ruled in law that for Mania to excuse, the accused must be unconscious of the wrongfulness of his act. So the legal plea of "Transitory Mania" (and its medical analogue, a hypomanic state) usually meets with little favorable consideration on the part of the courts. (*People v. Osmond*, 138 N. Y. 80; *People v. Casey*, 2 N. Y. Crim. Rep. 187.)

It is not unknown in medico-legal literature for a jury to accept a plea of "Transitory Mania" where the evidence did not warrant it. This has been sort of a subterfuge verdict in a certain class of cases, e. g., where the jury, reflecting public opinion, felt that the victim deserved his fate. Needless to say, however, medical science cannot assume any such attitude.

#### MORAL INSANITY; ECCENTRICITIES OF CHARACTER

There is no one disease where there exists only a deficiency in the moral sphere. We do see it secondarily in Mental Defectives (feeble-mindedness), Senile Dementia, etc. But in these conditions we get the other corroborative signs of the primary disease. In this article we are not discussing Mental Defectives, who are not included in the insane category, and who, unlike the insane, were never normal. However, we might add that even with them, if they commit crimes, law is interested only in their responsibility or irresponsibility, and not especially in the clinical features of their mental defects.

Mere moral obliquity or perversion of the affections will not protect an accused person. A defective moral tone is shown not by one act alone, but by the whole life history of the individual. If, because of habitual vice, conscience no longer controls the individual, this is no defense. The same legal criteria are applied in judging these cases as in all cases. (*People v. Carpenter*, 102 N. Y. 250; *Willis v. People*, 32 N. Y. 717.)

Bad temper and an excitable disposition, and eccentricities of character, where the accused knew that his act was unlawful and morally wrong, is not an excuse for crime. (*Sindram v. People*, 1 N. Y. Crim. Rep. 448, affirming 88 N. Y. 196; *Willis v. People*, 32 N. Y. 717, affirming 5 Park Cr. 621.) It was held in Illinois that it was insufficient to prove insanity merely to show that the accused was queer, nervous and excitable, and felt that he was going crazy. (Witt-*haus and Becker*, "Medical Jurisprudence," Vol. III, p. 563.)

#### LOSS OF WILL POWER

The criminal offends the law not because desire is stronger, but because the restraining influence of morality is weaker. An impulsive and less elaborate act indicates a lessened degree of responsibility.

Desire is the basis of will; and desire depends on a state of feeling, indicating a want or a need. It is the dynamic force behind the motive, which precedes the act. For the good of society, self-control must be exercised. Self-control is the power to forego immediate pleasure for greater benefits and is more a question of will than of reasoning. Usually where there is a weak will, there is a weak intellect and poor power of connected thought, a weak moral tone, and indolence, with reactions to slight or inefficient motives. It is almost unnecessary to add that choice implies deliberation and judgment. Alabama adds to the requirement to distinguish between right and wrong, the test to choose between right and wrong. While Indiana permits the plea to be advanced that the accused suffered from weakness of will and was too weak to resist the impulse, Justice Davis in the New York General Term was very emphatic in denying the importance of this in criminal cases. And the Court of Appeals confirmed the conviction in the case in which he so ruled. (88 N. Y. 81.)

#### SIMULATION

It is contrary to the ideas of modern Psychiatry to claim that a person should be sane just before and after a crime, and insane just at the time of its commission. And law feels that a counterfeit of insanity is often resorted to when other means of escaping punishment for a crime are absent. (*People v. Larrabee*, 115 Cal. 158.) It is also claimed in medical jurisprudence that a plea of insanity may be advanced with the hope of deceiving a lay jury.

The pleas of "irresistible impulse" and "emotional insanity" are often founded on nothing but marked emotional outbursts, without the presentation of any evidence of genuine insanity. If all such asser-

tions were accepted, any rich homicidal criminal could by such means raise a reasonable doubt and escape punishment for his act. And, as I stated previously, sane people also have sudden impulses, but they hold them in check. As a matter of fact, the usual plea of "irresistible impulse" is in no way related to genuine obsessions or to imperative conceptions, as seen in certain neuroses. But it is frequently used as a shield to infer legal irresponsibility.

#### LAW AND THE EXPERT WITNESS

Opinions may be based on both a personal examination of the accused and on the evidence heard. (Re *Shelling*, 11 Ohio, S. and C. P. Dec. 81.) An expert can give an opinion as to sanity, but not as to responsibility, which is a question of law.

Observations of a prisoner by an expert are not regarded as confessions. An expert may testify as to the prisoner's conduct, even though the prisoner was not warned. (*Burt v. State*, Tex. Cr. App., 40 S. W. Rep. 1000.)

The testimony of a medical witness who has examined the accused cannot be objected to, on the ground that the accused was thereby compelled to furnish evidence against himself. (*People v. Kemmler*, 119 N. Y. 580, 24 N. T. 9; *People v. Truck*, 170 N. Y. 203, 63 N. E. 281.) This applies to expert witnesses for the prosecution. Nor can the fact that the accused was in jail, unwarned, be entered as an objection to the admission of testimony. (*People v. Youngs*, 151 N. Y. 210, 45 N. E. 400.)

Numerous reasons are given by different writers as to why alienists disagree so radically in the same case. Undoubtedly a difference in their individual attitude toward law's standard in criminal cases has much to do with their conflicting testimony. In criminal cases the expert's appearance in court is to be viewed more as a courtesy of the law than as a prerogative. Some experts disregard entirely the standard that law lays down in these cases, which is that insanity is equivalent to, or identical with, irresponsibility.

Law is not interested in mental diseases as clinical problems. She does not specially concern herself with the various forms of insanity, such as *Dementia Præcox*, *Senile Dementia*, etc. Rather, she specifies what mental tests are to be applied to prove irresponsibility, i. e., legal insanity. The fact of irresponsibility is for the jury to decide. An expert may search diligently for incipient signs of insanity. If he finds any, he may then try to show by induction or deduction that the accused is suffering from such a mental disorder that would excuse

him for his crime. And yet, legally, his opinion might be quite unwarranted. It is hardly necessary to say that it is only in the borderline cases that controversy arises. For law and medicine agree on the straightforward cases of insanity.

It ill behooves an expert to scoff at law's criteria to show irresponsibility. For in the first place, those who have framed and those who are now administering our laws have some claim to intelligence. And in the second place, law could justly ridicule the opinions of some experts, who on occasion do not hesitate to say that a few eccentric traits, such as sullenness, irritability, etc., means "insanity"; or of other experts, who, arguing from the general to the particular, find an individual insane because he shows a few flaws in his makeup. There is a difference between being perfect and being sane, even though sane means sound. The average man is not a perfect man. For if perfection (mental and physical) were the only standard, how many normal people could qualify? But, of course, all of mankind cannot be placed in only one of two categories—sane or insane. These are extreme states; there are all sorts of gradations between the two.

The contrasting attitudes of two alienists in a criminal action where the question of insanity was the issue might be compared to the following situation. The question is asked, "Is this house habitable?" Two real estate experts examine the house carefully. One swears it is habitable. The other expert, having ideas of his own, disregards the ordinary meaning of habitable and insists that habitable also means absolute perfection, more or less. Finding some minor defects, he then feels justified in swearing the building is not habitable. One expert must be wrong if the other is right.

So, again, I would reiterate that an expert's attitude—more than any other single element—may be the chief factor back of his opinion. And the present disagreement of alienists in the courts will keep up until they are individually asked whether they are keeping in mind the legal criteria when giving their answers, or whether they are guided only by their own attitudes and personal ideas. Needless to say, the alienist whose function it is to aid the court should never take a partisan attitude in any case.

I wish to gratefully acknowledge my indebtedness to the various authors and writers in this field whose works I have consulted and quoted, more especially Wharton and Stillé, Hamilton and Godkin, and Witthaus and Becker for their splendid treatises on Medical Jurisprudence, and also the writings of Fenning and Mercier.