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INSANITY

IN

RELATION TO LAW;

READ BEFORE THE ASSOCIATION OF OFFICERS OF ASYLUMS.
FOR THE INSANE OF THE UNITED STATES AND
CANADA, AT TORONTO, JUNE 8, 1871.

BY

HENRY LANDOR, M. D.

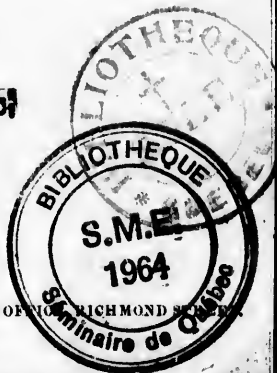
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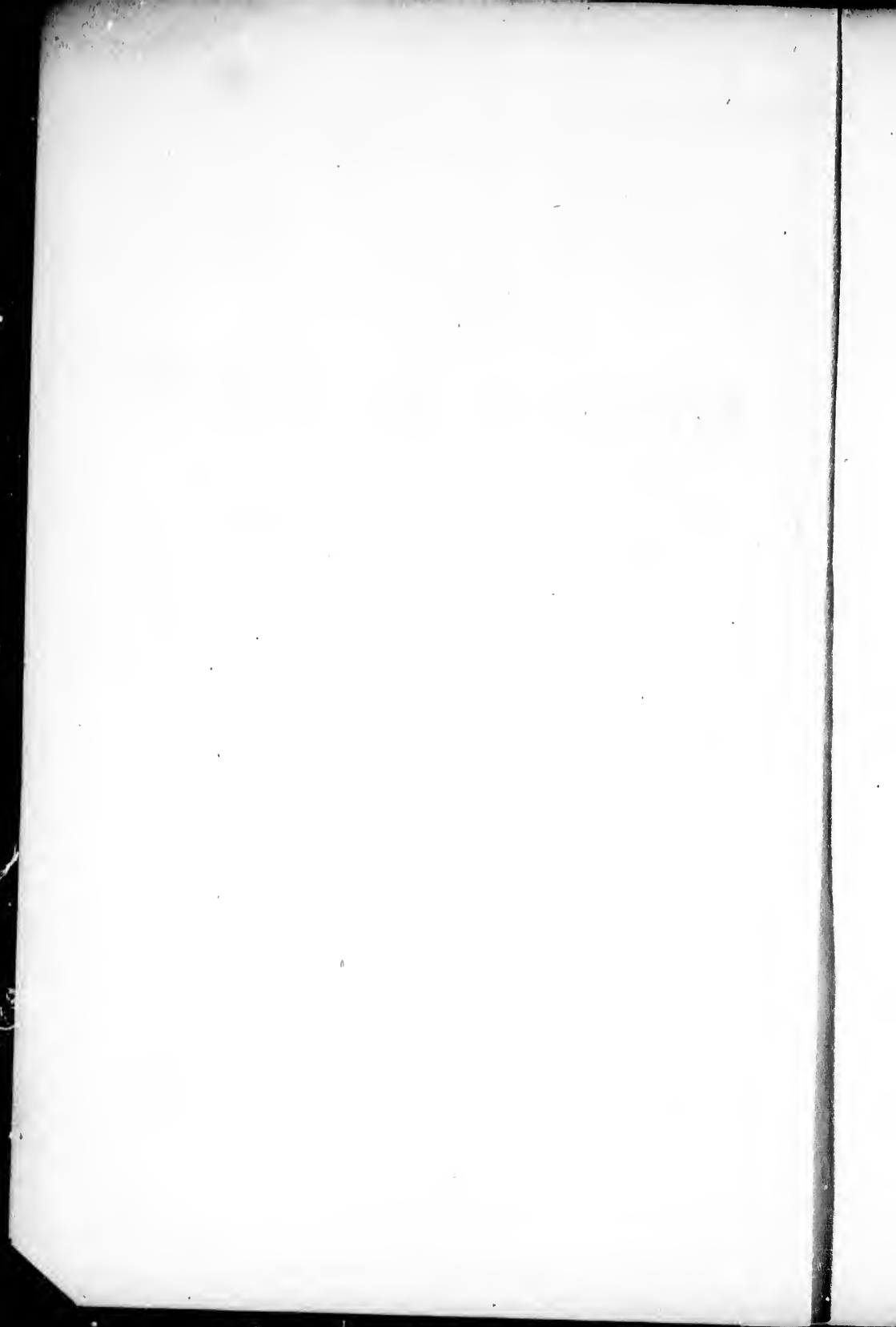
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INTRODUCTION.

Attention has been recently drawn in the journals of Psychology of both continents, to the law in its relation to Insanity.

Last year I put into its present form the substance of a lecture delivered by me eight or nine years since, in the Mechanics' Institute, London, Ontario, addressed especially to lawyers. I did not succeed in interesting the lawyers, I suppose chiefly from my own deficiencies as a lecturer, or from insufficient power in handling the subject, or because lawyers are not to be interested in abstract matters. Since last year there have been articles in the American Journal of Insanity on the state of the law, and I am glad to see that the tenor of those articles is towards the views I advanced so many years ago.

I therefore reproduce the subject of my lecture in a different form, and I take advantage of those articles now, as in my lecture I availed myself of opinions, and statements, and arguments supporting my convictions wherever I could find them. And as at this distance of time I have forgotten where those statements were found, I must leave them without being able to acknowledge my obligation to any particular individual, nor do I claim any originality for statements known to all of us. This is not of much importance, as Psychological physicians are all acquainted with these things, and my object is not to tell a well known tale to them, but to induce them to impress, more effectually than I can, this most important subject on all Legislators and Judges and other influential authorities, who have the power and influence to alter a state of law disgraceful to common sense, and

baneful and injurious in the highest degree to those unfortunate people who come under its operation. If the three papers of April last, in the Journal of Insanity, had been published earlier, mine would probably have never been written.

There are no positions in which medical men are placed where they make so discreditable an exhibition as in trials where insanity is pleaded or attributed. This is chiefly the fault of the law, which is the same in the United States as in England and Canada, and which lays down the principle that a knowledge of right and wrong is the best test of soundness or unsoundness of mind. And the state of mind of the criminal or defendant at the time of the commission of the crime is left to the decision of twelve men of such ordinary intelligence as pertains to the average of common jurymen. And medical men are left to squabble over the puzzle whether the unfortunate subject knew right from wrong, a knowledge which, to judge from common observation, is as far from the powers of very many sane people as from the insane. No wonder, then, that when medical men are retained on both sides, and their opinions pitted against each other, and extracted from them by ingenious counsel, that they display deficiencies and absurdities that make the profession despicable in the eyes of intelligent men. It would be a marvel if this were not the result, especially when the medical men are not experts, but are often men who never had any knowledge of this branch of study; and very probably never gave the individual subject, or the peculiarities of the case they are witnesses for, any deep consideration before they make their appearance in court. As I believe this very discreditable exhibition in most vitally important matters is due to the deficiencies of the law, and not of science, I make these few remarks in the hope of influencing law-makers through the medical profession, not to give medical men information on matters familiar to them in a higher degree than to myself.

INSANITY IN RELATION TO LAW.

What Dr. Johnson said of any one who should attempt to define poetry, may be well applied to him who attempts the definition of insanity,—“that such attempts show the narrowness of the definer.” I think it is quite impracticable to propose any definition free from objections, which can comprise every form of mental disorder. Locke’s celebrated dictum that “Madmen do not appear to have lost the faculty of reasoning, but having joined together some ideas very strongly, they mistake them for truths, and err as men do who argue from wrong principles,” has a very partial application, comprising only those cases in which the patient is the subject of a delusion, illusion or hallucination, and acts as he would properly act were the delusion a reality. Locke’s great name, and the authority given to all that he wrote, gave rise a century since to the legal dictum, that to prove insanity in the eye of the law, delusion must be shown to exist. In law there are only two legal forms of insanity; idiocy or imbecility, and delusion leading to acts opposed to law. But as the legal test of imbecility and of delusion is the knowledge of right and wrong, these two forms become practically one. This maxim has guided all legal decisions, and given origin to endless acts of injustice, committed in the name of the law, and by authority of the judges. It has been the source of all the conflicting opinions and statements of medical men, when under examination on evidence before the Courts.—It has been at the bottom of all judgments and enactments, and is the foundation of recent attempts to amend the law, and it is

the cause of all the difficulties that now impede the administration of justice. Until the law shall recognise a more comprehensive disorder than it includes under the head of delusion, and admit of a better test than a knowledge of right and wrong, no improvement can be effected. Any estimate of insanity ought to make the mind of the individual alleged to be insane, not that of the physician, the standard to determine his insanity. This is the text from which I preach. Therefore, the happiest definition yet propounded, though by no means perfect, is that of Dr. Combe, who says, "Insanity is a morbid action in one, "in several, or in the whole of the cerebral organs, and as its "necessary consequence functional derangement in one, in several, or in the whole of the mental faculties those organs sub- "serve." If the principle on which this definition is founded is the right one, and that it is essential to institute a thorough examination of the individual's past and present condition, before determining his state of mind, then the definition and proceedings of lawyers are in complete antagonism to this and to truth. There can be no antagonism between principles more complete. Medicine declares that insanity is a physical and corporeal disease. Law that it is not. Medicine says that imbecility and insanity are different conditions. Law that they are identical. Medicine asserts that a theoretical study of mental diseases and defects is necessary to a proper understanding of such diseases and defects. Law denies this, and says that insanity is a fact to be determined by any dozen of ordinary men in consultation on the case, selected at random from any class of the population. Medicine says that a man may be insane and irresponsible, and yet know right from wrong. Law says that a knowledge of right and wrong is the test both of soundness of mind and of responsibility to the law. Medicine says restrain and cure the insane and imbecile sufferer. The object of the action of the law is punishment, and if its severity is mitigated it is not by the law, but by the suspension of the law, by authority above the law. The law is thus entirely antagonistic to medicine on all those questions of mental science

which involve the freedom and well being of the imbecile and the insane, and which often determine whether they shall be put to an ignominious death or not, whether they shall be deprived of their property or suffered to retain it. This antagonism is therefore a most serious matter to the insane, their friends and families, not less serious to Judges and Legislators, and of the deepest interest to both medical and legal professions.— For with such opinions inculcated by the law, existing ignorances are more deeply rooted in the public mind, so that the difficulty in treating the insane by medical men, and in giving testimony in Courts is greatly increased: especially when great Judges remark (influenced no doubt by the degrading exhibition of opposing bitternesses of medical men in Courts), “that the introduction of medical opinions and theories on this subject has proceeded from the vicious principle of considering insanity a disease, whereas it is a fact to be ascertained by evidence, in like manner as any other fact, and no more is necessary than to try the question by proof of the habits, the demeanor, conversation and acts of the alleged lunatic.”

Now we decidedly adopt this principle denounced as vicious, and we cannot study insanity in any other way, and we point with pride to the vast amelioration in the treatment and condition of the insane produced solely by the persistent development of this great truth, that insanity is a disease, and not a subject of moral enquiry.

This a great lawyer calls an evil habit, and vicious, because of its results in having induced Judges to assume that they are bound to accept medical testimony in reference to insanity, and are thus forced to accept speculative views instead of their own moral conclusions as to whether a person whose civil rights and responsibilities are involved, is insane or not; whereby justice between man and man, or between man and society, is hindered. Therefore, he adds, it is absurd to suppose that medical science has special business with the detection of insanity in legal cases. Is it indispensable that medical men should be called

to discover whether a man is a lunatic? (These are the expressions of Lord Chelmsford.) There is some excuse for this contemptuous opinion of medical testimony in cases of insanity, afforded by the bearing of medical witnesses in many difficult and celebrated cases. There are many cases of insanity which no man could mistake for sanity. On the other hand, as we well know, there are obscure, and subtle, and insidious forms of disease, that try the acumen and patience of the best and wisest among the most experienced physicians.

There is an article in No. 71 of the *Journal of Mental Science* on the examination of insane in Courts of Justice. It appears by that article that the vicious principle of testing insanity by a knowledge of right and wrong, is even yet common in the Courts of England, France and America, and when an unfortunate lunatic escapes punishment it is never due to the law, but to the knowledge and energy of some physician who exerts himself to hinder injustice allowed by the law.

The remarkable statement of the surgeon to the General Prison of Scotland, and also of the Physician of the Rouen Prison, of the number of insane among prisoners, is only more evidence of the necessity of informing the legal profession on this most vital point. It appears that one in every nine prisoners is more or less insane, and one in one hundred and forty altogether irresponsible. When it is considered that the criminal population of London are a population by themselves, intermarrying and breeding amongst themselves, and propagating their tendency to crime, their vices and their diseases, we may almost conclude that law is helpless to amend, and that medical science must be appealed to, to accomplish the reformation of criminals.

From the tenor of the reply of Mons. Brierre de Boismont to the Committee of the English Association, it seems that the legal profession in France have no conviction that insanity is a disease of structure, and not a mere moral evil.

In the discussion at the meetings of the English Association on the paper of Dr. Richardson on "Mental Strain," there seems too great a stress laid on the moral phenomena, and too little on the cerebral complications. Drs. Bucknell and Tuke still classify the forms of insanity according to their moral manifestations. But I look forward to the time when the pathological conditions shall afford us a classification founded on structural alterations, and I hope the time is fast approaching, when every insane manifestation will be recognized as the symptom of some alteration of cerebral structure or function, produced by some other bodily disorder.

That insanity is a disease of the brain is a doctrine of high antiquity; it is contained in the oldest Greek Classics on Medicine and Philosophy. It is true that in ancient times epileptic and hysterically delirious girls were believed to be inspired, and were used as the discoverers of the unknown, much as clairvoyants of the present day. They were submitted for cure to professional exorcists, who, for a consideration, undertook to dispossess the demon by mysterious processes, as spiritualists cure disease in this age. But this was not the medical view then more than now. Hippocrates, in his essay on the "Sacred Diseases," controverts and ridicules these popular superstitions, and these strange and awful doings of the sick, in the estimation of the ignorant, are shown to be due to the disordered functions of the brain. This was the current view amongst the educated professional men and intelligent laymen. Since that period this idea has never been lost, so that it may be truly said that educated members of society have regarded insanity as a corporeal disease for at least 2300 years. The somatic or corporeal doctrine that cerebral disorder is associated with every manifestation or form of mental disorder or defect, gains ground in every generation. Now it necessarily follows that if this doctrine is true, of the inseparable association of cerebral and mental activity in morbid conditions, it is equally true in the healthy states of the mind. Hence it is laid down in recent

works, that no change whatever in the consciousness, whether it be ordinary sensation, perception, or idealization, or volition, takes place without coincident and necessarily coincident changes in the cerebrum. Modern metaphysicians do not withhold their consent to this doctrine. Now it would be gratifying to find in the speeches and decisions of great lawyers any traces of a dispassionate inquiry into the truth of this ancient and established doctrine, and into the number and validity of the facts upon which it is founded. But no such traces can be found, so that we are inevitably driven to the conclusion that they are either ignorant of it, or have condemned it, or else have legislated without such a dispassionate inquiry as is alike due to the people and profession.

Our regret is all the greater since nothing is so open to proofs by any man of ordinary intelligence who will discard all speculative preconceived opinions, and examine as a pure question of facts. It is open to every man to ascertain what changes occur in his own mental activity, under the influence of certain bodily conditions, or of agents modifying those conditions. For example, when engaging in abstruse calculations, such as the calculation of Asylum statistics by algebraic formulæ presented to the Association a year ago, demanding exercise of clear intellect, let him drink a few glasses of whiskey, or smoke a little opiated tobacco, and he will soon find himself incapacitated for completing his calculations. Or let him breathe a few whiffs of nitrous oxyde and his reason will be gone, and he will be ridiculously insane; or take chloroform until unconsciousness is complete. Or if he watches these things in others, he will have the testimony of his own senses to the facts. Beyond this no testimony is needed, except that afforded by the study of diseased conditions. Physiologists justly look upon man as an animal, high above his fellows, but still an animal, differing not so much in kind as in degree.— Hence they experiment on their own nature in the animal world below, and find everywhere proofs of the physical doctrine of

mental manifestations, and diseases, and defects, which makes it difficult to resist the conviction of its truth. Cats, dogs, foxes, rogue elephants, and nearly all other animals, are subject to insanity, which no Theologian, however wedded to his systems, would call in them a moral disease; and no physiologist can point out any difference between them and man, as regards the nature of the disease, or its seat.

Jesse, Muudsley, and many other observers of the habits of animals, state, "they possess those combinations of mental endowments and acquirements known in and by man as wisdom, sagacity, intelligence, intellects, sense, thought, judgment, prudence, discrimination, shrewdness, knowledge, learning, shame and pride, illustrations whereof are to be found in the dog, horse, elephant, ant and bee, and numerous other animals.—"There is no mental attribute, not even language, if by language is meant uttered sounds which convey ideas to others of their kind, peculiarly or characteristically human. There is, therefore, no essential mental distinction between man and animals."—W. Lauder Lindsay, M. D.

Here is a mere metaphysical argument tending to the same end. Every man has within his own consciousness the strongest proof of the doctrine, for since every change in that consciousness corresponds to vital changes, without which it cannot occur, these conscious changes are conclusive proof of the vital changes, and indeed the only proof of existence itself.—Hence the Cartesian proposition, "Cogito ergo sum," But as no man is ever conscious till he lives, and as life precedes thought, we can reverse the proposition, and say with greater truth, "Sum ergo cogito." Both conclusions rest alike on the testimony of consciousness—which is itself nothing more than our experience of the vital changes appropriate to consciousness. When a man is writhing we infer that he suffers pain; when he tells us he is perplexed, as in these metaphysical arguments he may well be, we have no doubt of the truth of his statement.

In either case we infer that those vital changes, whatever they may be, are occurring in his brain, which coincide with the feeling of pain or perplexity.

[It is meant as a reproach, when it is stated that views like these are materialistic, and that the man holding them is an atheist. This is, however, a confusion of ideas, for I consider that any man may hold the opinion that mental and moral phenomena, that what are termed will, and consciousness, and mind, and all our thoughts, are, as Huxley states, the expression of molecular changes in that matter of life which is the source of our other vital phenomena. That life is the property of protoplasm, and that protoplasm owes its properties to the nature and disposition of its molecules. Therefore, all properties of organized beings are due to the physical properties of protoplasm. We may not be able to explain all the processes by which the motions, the groupings, and electrical discharges (if such there be) of these molecules, pass into their corresponding states of thought and feeling, or how these physical processes are connected with the fact of consciousness, but neither can we explain, so as to follow all the processes, how physical conditions are renewed in the material animal, for instance, how worn out material is replaced by new. We content ourselves by stating that the useless is absorbed, and the new deposited, and we know this to be a fact that cannot be disputed. It is therefore no reproach to our knowledge, not yet complete, that we cannot explain all the processes of the connection between mind and matter. In both these cases they are the result of the fiat of the Great Creator, and a man is not an atheist because he believes that the phenomena of mind are due to the laws God has impressed on matter.

It seems to me that he is so termed because he selects one of the two most probable views of the mode by which the Creator rules His works. As some philosopher has said,—God may be considered as ruling Creation by an interposing or by a

predisposing volition. The first is the method held by those who consider their views are so correct that they are entitled to anathematise those who prefer to hold the other. As if it were more dignified to consider the Deity interposing in every petty transaction throughout Creation, (as it were, picking up straws here and laying them down there,) rather than to view Him as predisposing and leaving to the operation of grand and unerring laws, the whole course of Creation and its creatures, their developments, and their actions, and their thoughts, from the period of the initiation of all things to their final consummation.

Under this view it is right to consider that matter and intellect have co-ordinately developed during the ages that have passed, and are still in the process of development. Moreover, this view by no means interferes with any view of future life, or spiritual association with matter, that any may please to entertain; nor does it prevent any responsibility for good or evil actions. It rather throws on those who look on mind or soul (for in speaking of these they couple them invariably) as an interloping spiritual function attached to man, but not of him, the onus of proving how it can be that man alone is favored with the offer of future life, and responsibility for the use of his morals or his intellect, when many other animals to whom this favor of soul and futurity is denied, possess thought, memory, regret, love, hatred, revenge and forgiveness, can steal or abstain, do ill or well, and can communicate their ideas and wishes to their fellows and to man, differ, in short, not in kind but only in degree from man. It is for those who maintain the different nature of mental manifestations in man and animals to account for these things, and it is not sufficient to attribute to man a spiritual possession, of which we have no evidence, and which is not necessary for future life so long as the resurrection of the body remains a truthful and essential article of Christian belief. Without it, it is in the power of the Creator to add future life to him, if He is so disposed, and I believe it will be so.

The following argument is used against the cerebral origin of mind: "That it is absurd to suppose that, as every atom in the human frame is being constantly changed, each molecule leaves the mental impression it receives, as a legacy to the succeeding molecule." But why is it absurd? Is it more so, that each molecule which replaces the departing molecule of a scar inflicted by a chisel in childhood, perpetuates the impression of that scar, instead of replacing it by a sound molecule of new substance corresponding to the neighboring flesh? If the one molecule perpetuates its impression, why not the other? Does not this perpetuation correspond with other known facts? Why are hereditary habits and diseases dormant for years, if it be not that successive molecules retain their impressions from conception to the maturity of the disease or habit? Can hereditary insanity be explained by the spiritual theory of mind? That, on rational theory the produce of diseased brain must be diseased mind, seems clear enough. But how diseased brain can give rise to diseased spirit or soul is past comprehension. Yet on the accessory spiritual theory it must.

Even the moral sense is the result of education and hereditary transmission, and its monitions are altogether dependent on its training. Australian savages have a moral sense in many points the direct reverse of ours. They believe it right to take life for life, and their sense of rectitude is outraged if they do not. When I lived in Western Australia for some years, and acted as a magistrate, the native who was the original and rightful proprietor of my farm, lost one of his wives from disease. He came to me and told me he was going to a distant tribe to spear a woman, to satisfy his sense of duty to his wife. I told him that if he did I would send him to prison for life. He remained about the farm for some months, but got exceedingly thin, and complained that he could not rest or eat, that his wife's spirit was haunting him because he had not taken a life for hers. I was inexorable, and assured him that nothing should save him if he did. After a time he disappeared, and I saw no

more of him for more than a year. He returned in high condition, and his other wife said that he had taken the life of a woman belonging to a distant tribe. No legal evidence could be had. Here is a perverted moral sense, as strong a sense of right in the savage in its operation, and more influential than the sense of right in civilized man. What are morals and conscience but the results of education through many generations, trained by exercise to sensitiveness, and possessing, from constant use a prompt, and facile, and decisive operation, becoming inoperative when not exercised, hardened as theologians tell us. But how a God-like and spiritual monitor, placed within man to guide and warn him, can be hardened, or why it should become most useless when most needed, is one of those puzzles we owe to theologians, who for so many centuries have exercised such pernicious control over human thought.

These reasons seem to me, with many others, sufficient to entitle us to differ in thought from those who do not entertain them, and yet not to be far from the same result. It seems to me that men may fairly entertain these views of the connection of matter with morals and intellect, and yet be as devoutly alive to the laws of the Great Creator, as full of wonder, and worship, and reverence, and hope, as those who unthinkingly stigmatise them as atheists, or revile them in slang theological terms (in this age of the world best consigned to oblivion) as unbelievers in God. These are my opinions, and I repudiate with indignation the imputation of atheism, or irreligion, or no christianity, as a reproach resulting from the ignorance of those who use it, and undeserved by one to whom this mode of the contemplation of God's laws opens an ever widening view of His greatness, and power, and goodness.

Have those who entertain these opinions given any evidence of being worse Christians than those who malign them? Have they ceased to produce the living fruits of love, and charity, and zeal for truth? Was it for correct speculative opinions, or for

pure, and moral, and benevolent actions that Christ separated the good from the bad in His picture of the Judgment? Did he condemn those to pass from his presence (not having ever known them) who had wrong views of Baptism, or original sin, or because they did not visit the suffering in prisons and nurse the sick, or clothe the naked, or feed the hungry?

“If it be true Christianity to dive with passionate charity “into the darkest recesses of misery and vice, to irrigate every “quarter of the earth with the fertilizing stream of an almost “boundless benevolence, and to include all the sections of “humanity in the circle of an intense and efficacious sympathy: “if it be true Christianity to destroy or weaken the barriers “which have separated class from class, and nation from nation: “if it be true Christianity to cultivate a love of truth for its “own sake, a spirit of candor and tolerance, then never since “the Apostles has Christianity been so vigorous as at present, “nor practised more earnestly than by those called rationalists, “and the decline of dogmatic systems and of clerical influence “has been the cause of its advance.” And their destruction will be the era of its perfection.]

Now these and many others are the proof of the accuracy of the medical doctrine of the somatic nature of mental diseases and defects. But a late Lord Chancellor of England (Lord Chelmsford), great lawyer as he is, observed that if there were any process by which the skull of a lunatic could be cut into, and the changes here asserted to take place could be observed, there might be something in the medical notion of insanity, but medical notions had not attained that pitch of development, and medical men imagined external things to be the indices of things unseen. They therefore made issues hardly less important than life and death, depend on mere uncertainty. Now, nothing can be more inconclusive than this argument.—The fact is that a dyspepsia is determined by the same kind of evidence and reasoning as insanity. All morbid changes in the

body considered as ultimate phenomena are unseen, so that if we ascertain the structure of the minutest fibril and lay it bare in the living man in all its details, we must still accept external things as the indices of things unseen. The subtle forces acting in the brain are only determined ultimately as they influence the consciousness in ourselves, or as they cause those changes in the body or its movements which are the indices of changes in the consciousness of others. We might as well look for the electric fluid which carries the expression of our thoughts along the wire. No other evidence is possible, even in the most ordinary cases of this kind. If the police find a man uproarious, reeling about and smelling of whiskey, they conclude he has been drinking; and if policemen reason at all, they will conclude that the drink went down his mouth, into his stomach, and from his stomach into his lungs and brain, where it is doing its poisonous work, and making him temporarily insane. Thus the police will conclude that external things, that is the drunkenness, are the indices of things unseen, that is the whiskey.—The Chancellor added that he was about to attempt to legislate so as to discover where the abuses and causes of error lay, which made such cases as Windham's generally odious, and the examination by mad doctors little better than a farce.

Windham's case is well known. He was a young man who succeeded to a large property, which he dissipated in all kinds of vice in a few years, and his next relative tried to have him made a ward in Chancery, and put on an allowance for life, in order to save the remnant of the property. The usual hard swearing concerning his sanity took place in court, and one doctor was pitted against another, until more than the usual amount of disagreement was elicited, and far more than the usual amount of disgrace and contempt fell upon the profession. And all this because the man was tried on a false issue. It ought to have been no question whether the acts of the man were consistent or not with perfect sanity, as judged by his know-

ledge of right or wrong, or by his power to do certain sums in arithmetic, or whether he knew the amount of his income, and the power of his property to bear his extravagances. Instead of limiting the inquiry to the time during which he had been vicious and dissipated, the inquiry ought to have extended into a comparison of his mind with itself during his past life. But this was deliberately rejected by the Judge, who would not allow the evidence of the witness who deposed that he had known Windham since he was four years old, and that he was congenitally deficient; the Judge said it was not sufficient in law to prove idiocy or imbecility, he must be proved to be mentally unsound when he committed certain actions, or he must be acquitted. Clearly in such a case the point to be proved should be the incapacity, not whether he was unsound in the legal sense as to delusion, etc., but whether he was congenitally or subsequently deficient, so as to incapacitate him for self-guidance. The point on which he was tried was both false and foolish, false as a matter of science, and foolish as a matter of common sense. What could happen but what did happen? the mad doctors were stigmatized, and the whole inquiry was wrong, and a grievous injury to the individual, and to his relatives, and all because the law makes no difference between mental diseases and mental defects.

There is the case of Tyler, in the January No. of the Journal of Insanity, which is another case in point, and fortifies my position. Here also the evil arose from trying the case on an erroneous principle. The old man was brought before a jury to determine the unsoundness of his mind, but neither the medical experts nor the judge defined what they meant by the term.—It is to be inferred, by the direction to the jury, that the usual legal dictum was considered unsoundness. The witnesses had this definition in their mind, though Dr. Gray wisely and truly says, that “every individual should be judged from his own stand-point,” in other words the very doctrine I am advo-

eating. It is most likely that the result in this case would have been the same, but the unseemly exhibition of antagonistic experts would have been avoided, if the jury had been directed to determine whether Tyler was competent to take care of his own property, not whether he was unsound in mind. It cannot be held that every one who has a crotchet in his head is incompetent to manage his affairs, though it might be maintained that he was not altogether sound in mind. Still less can it be held that a man like Tyler, who has incomprehensible notions about the Book of Revelations must be deprived of the control of his property; for if that is to be the test of soundness, more than half the clergy of this and every other Protestant country are unfit to manage their glebes, and are as mad as King Lear. The comments of the writer of the article are in the main true, and they help to demonstrate the necessity of altering the law, so that judges may put the right issues before juries, if juries are competent to try such cases.

There is an article on "the value of Expert Testimony," well worthy of attentive perusal, in No. 1, Vol. 28, of the *Journal of Insanity*. The writer says that the issue to be tried in the case he is commenting on, ought to be this:—"Whether a man who for thirty years had shown all those traits of character which belong to imbecility, and shown no other, was competent to take personal charge of a large estate." In this case justice was defeated through the incompetence of the jury, the combativeness of experts, and the deficiency of law.

The tenacity with which lawyers hold to their opinions and practice, in the face of facts, is very remarkable. Daily experience shows abundantly that a man or woman may be imbecile morally, from cerebral disorder and disease, and yet have great intellectual or even high logical powers. There are many who, being thus diseased mentally, drink to drunkenness, are lascivious, lie, steal, are obscene, homicidal and malicious, in spite

of a knowledge of right and wrong, and even with reasoning powers little or at all affected, and whatever the law may decide the inexorable logic of facts will hold its own. It is in vain to say that if you treat every persistent drunkard and imbecile knave as irresponsible, you must convert prisons and jails into asylums. It is in vain to express fear that if these doctrines are admitted social foundations will be shaken. Has it yet been tried whether asylums would not be more effectual for cure and reformation than prisons? How many institutions are there in the world like the House of Correction in Detroit, and how many able Christian philanthropists capable of conducting such institutions like Captain Brockway? When these are found, and in operation, and unsuccessful, it will be time enough to lament over the conversion of goals into asylums. In spite of such views, truth is truth, and I take leave to say that until this matter is inquired into by all legislators, and made available to reformation or restraint rather than punishment, the present inefficient routine will be followed with the criminal population, which is alike contrary to common sense and to Christianity. The question is one in which common sense and medical science are in perfect accord. It may be laid down as a first principle, that the capacity of an individual to be influenced by the motives which influence the average of mankind in health and soundness, is the measure of his responsibility to society and of society to him. He may be a mere child in moral development, as well as in judgment (no doubt both defects of cerebral structure), and when this is proved, the plea of irresponsibility to society is admitted, and society becomes responsible to him and for him, and keeps him out of harm's way. In like manner the cases of emotional, impulsive and vicious imbeciles should be treated, the incapability of self-control being the practical question to be tried, and not the amount of knowledge. In the insane the like principle ought to guide, and it is to be solved jointly by common sense and medical experience. If found incapable he has appointed guardians or curators, as was done by the old Roman law, until he

is restored "ad sano mores." The same principle applies to criminal as to vicious imbeciles, which constitute the chief part of the incorrigible of the population. They are held in law to be entitled to uncontrolled freedom, when not convicted of offences against the law, and thus they become mischievous to society. Practically under the influence of the system of control, detention and cure woul' be still the fate of the criminal, but mercy and cure, not terror and repression, would be the aim and the result of its operation.

To accomplish this, there must be alteration of the law, so as to permit other issues to be tried than delusion or hallucination, or knowledge of right and wrong.

The appointment of a competent physician for states or districts, to assist the Judges in all cases of disordered mind, would be desirable. All the scandalous scenes of opposing doctors would be avoided by the appointment of a competent man to help the Judge to decide these cases. The principle that a man is insane or not, as compared with his past state, not according to the fancies of twelve ignorant jurymen, would then have its due weight. The standard, as I have said, is the comparison of the mind with itself at different periods of life. The law as it now stands violates well known physiological principles, and should be amended, not in the spirit of Lord Chelmsford, by setting those principles at defiance, but in obedience to them, if it seeks to merit a reputation for truth and equity. Law has been said to be the embodiment in a code, of truth and justice. The sooner it merits this definition the better for its fame, for its condition now is intolerably disgraceful to the present state of knowledge. It ought not to be endured that the Courts of Law and the Schools of Medicine should be at issue on the fundamental question, whether insanity be a disease or not. As medicine is on this point far in advance of law, and to it is due the rescue of the insane from that state of

degradation to which only a few years since they were subjected, its principles cannot be reversed by bending them to the retrograde action of the law, for that would be a stoppage of all progress. The profession must stand firmly on the only ground it can occupy,—That law must yield to medicine, and bring its rules into agreement with the state of modern science.