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XXV. SHALL INSANE CRIMINALS BE IMPRISONED OR PUT TO DEATH?

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DANNEMORA, N. Y.

SUCH assassinations as those of Czar Alexander II, President Garfield, President Carnot, and Mayor Harrison, and the many attempts at wholesale assassinations which have occurred within a score of years, together with numerous horrifying cases of homicide, all correlative with the evolution of the modern crank, have stirred the whole social fabric to a deep feeling of concern as to what disposal is to be made of this, so-called, crank-element, and, naturally enough, developed an exasperated public sentiment, sweeping in its conclusions, swift to condemn, and eager to execute.

Inasmuch as medical expert testimony has figured so largely in many of the trials of these culprits, it thus becomes a necessary and profitable question for us to consider as medical men.

I shall not attempt in a paper of this length to go minutely into the relations which criminal life and criminal acts bear to brain-conditions, but will limit myself to the consideration of medical expert testimony, particularly in cases of homicide where insanity is made the plea of the defence.

Assuming that this State, like all civilized countries of the earth, recognizes that law of common justice and right, the exemption from or mitigation of the penalty consequent upon the commission of crime by the mentally irresponsible, I shall base all my conclusions upon this assumption, and upon the belief that society at large does not voice the inhuman and brutal sentiment which we hear so often expressed, that the unfortunate creature

“Who by the hand of Nature marked,”

is thus made the helpless victim of his own physical environment, should be imprisoned or put out of existence with no reference whatsoever to his responsibility. There is something too revolting, too barbarous, in this sentiment of prostituting justice to so

repulsive an end, and is indefensible from any medical or moral standpoint.

I shall then assume that when an individual is found to be mentally irresponsible under the law he should not be treated as a responsible criminal; in other words, that such an irresponsible being should not be sent to either a prison proper or be subject to execution.

As to what is to be done with this class of criminals is not within the sphere of this paper, but could well form the subject of an ampler one. Incidentally I should say, however, that the conditions are suggestive of restrictions in immigration, and the establishing of institutions especially designed for the care of degenerate criminals, and the enactment of adequate laws permitting their apprehension and, if necessary, life-long detention in such institutions. In this way only will their menace to public safety be abated. Certainly there is little deterrent benefit to be derived or safety to be secured by the execution of the irresponsible crank, for numbers of his kind will aspire to fulfill his mission and share his "diabolical glory," if I may so express it, even at the risk of such a fate. This savors too much of the philosophy of "locking the barn-door after the horse is stolen." Apprehension, not execution, is what we want, and is best calculated to mitigate this evil.

From a considerable experience, and from different sources of information, I am led to believe that our present methods of apprehending and trying criminals are very much at fault, especially with reference to their mental condition. It is a fact that our prisons and penitentiaries have a large number of individuals confined therein who are mentally irresponsible, and who were undoubtedly so at the time of the commission of their crimes. In these institutions you will find all grades of the degenerate, from the imbecile up to the paranoiac, and whose crimes range from a larceny to homicide. My knowledge of those doing life-sentence for homicide has convinced me that many are of unsound mind and I have committed a number of them to the Asylum for Insane Criminals. When we come to the death penalty, even here, in more than one case, has it been my unpleasant experience to discover meningeal adhesions over atrophic and diseased brain-areas. I am making no plea for the responsible criminal, nor for the abolition of capital punishment. I am simply stating a series of facts, having their causation in conditions which I believe to

be largely due to the inability of the courts to decide upon the responsibility of the accused under the law, and through the failure of medical expert testimony, as at present introduced, to determine the mental status of criminals under indictment, and properly to differentiate and classify them. In cases where the defence does not make mental incapacity a plea, the matter is left wholly to the judge to decide, and he, either through inability to pass upon such a question, or indisposition to raise the question, too often leaves it to the prison authorities to decide as to a man's mental condition. If, on the other hand, a plea for the defence is made on the ground of insanity, then the whole of the cumbersome and unwieldy machinery of medical expert testimony is set in motion, and this nightmare of confusion is precipitated upon the court.

I do not wish it to be understood that I am making a wholesale condemnation of medical expert testimony, nor that I second all of the severe animadversions made by judges and writers on medical jurisprudence, many of which are rash and altogether too sweeping in their condemnation. What I would condemn is the manner and method of the introduction of medical expert testimony, and the helplessness of the courts in protecting themselves against the admission of a sort of so-called medical expert testimony, based either upon ignorance and prejudice, or prompted by venality and the love of notoriety.

Ordroneaux, as early as 1874, said: "In fact, the calling of experts has now come to be regarded as the signal for the display of forensic pyrotechnics, beneath whose smoke and lurid glare, law, common sense, and unalloyed justice are swept away in a whirlwind of muddy metaphysics. It is needless to say, however, that all honest men look upon this as a judicial farce and a degradation of the ethics of jurisprudence."

All experts are not thus, and it is a well-known fact that there are many competent and sincerely just ones. Neither are we unmindful of the fact that there are, and always must be, serious difficulties in the way of conclusively fixing the mental status of an accused individual. A careful study, however, of the last century's criminal trials goes to show that gross injustice has been done in many cases; that ignorance and prejudice have often proved too much for intelligent facts; that in many of these trials the medical expert testimony has been an exhibition of contradictions and absurdities, which could only be accounted for on the grounds

above mentioned, or its servile submission to public clamor, which, carried to a logical and more radical sequence, simply means lynch-law. In certain subtle forms of insanity this seems to have been especially true. There seems also to have been an almost total want of recognition by the courts of certain mental defects, constituting a most hopeless and dangerous form of mental disease, to which I shall refer further on.

To illustrate better the above, I will call your attention to two cases which, on account of their recent date and wide-spread publication, are still fresh in your minds, and in which medical expert testimony failed to arrive at conclusions based upon facts.

CASE I. Patrick Joseph Eugene Prendergast, a newsboy, twenty-six years of age, who shot Mayor Harrison, of Chicago, in October, 1893, and for the history of whose case I am greatly indebted to Drs. Bannister and Brower, of Chicago, who wrote up his case thoroughly. The assassination took place just as the Mayor had successfully closed an important function of the Columbian Exposition, and so great was the shock that it was almost impossible, even for months afterward, to find a person who could dispassionately discuss the mental state of this murderer. So familiar are the details of this crime that it is unnecessary to speak of them here.

"The case was clearly one for medical expert testimony to decide upon, and the State's attorney originally called six physicians to investigate the mental condition of this man. Five of them had large experience in the treatment of the insane; the sixth was a surgeon of considerable local reputation, making no claim, however, to expert knowledge of insanity. The five physicians reached the conclusion that the man was insane. The surgeon reached the opposite. Nevertheless, the public was treated to another judicial murder.

"Prendergast's history well sustains the conclusion of the five physicians. He was born in Ireland, April 18, 1868. His paternal grandfather died insane; his mother had repeated attacks of hysterics; his father died of consumption. When four years old Prendergast received a severe injury to the head by falling from a bench, and was unconscious for a considerable length of time, vomiting almost constantly for four weeks afterward. He was a peculiar child; solitary in his habits; irritable; easily excited; had a poor memory; was dull and backward in school. At

puberty he became distrustful and antagonistic to his parents. At sixteen years of age he left his home on account of imaginary persecutions. At eighteen he had exaggerated opinions of his own ability; he became a fanatic on the single-tax notion; professing to be a Roman Catholic, he yet criticised the Pope's administration of the church; he wrote prayers which he claimed were efficacious against certain calamities; he claimed that his prayers and electioneering elected Mayor Harrison, and that, therefore, he should receive the office of corporation counsel, and that once appointed he simply needed the authority of this office to elevate speedily the tracks of the railroads, so as to put a stop to the slaughter of lives at the present railroad crossings in that city. When the position was filled by a skilful lawyer, he called repeatedly upon him, and demanded him to vacate the office to which he, Prendergast, was alone entitled. During the discussion of the silver bill in Congress he wrote numerous postal-cards to Congressmen, instructing them how to vote, and claimed that his prayers and not their votes passed the measure. In a very deliberate manner he shot the Mayor, and then proceeded as rapidly as possible to the police station and told the officers there that he had shot Mayor Harrison."

You will readily see by the picture of this man that there appears to be an unreasonable development of the lower jaw. Upon a closer examination, however, there is found an arrest of development of the bones of the face and upper jaw, extending from the upper border of the orbit down, producing concavity. This arrest of development carries the nose and face in from one-fourth to three fourths of an inch from its normal position. As a result of the arrest of development of the upper jaw certain irregularities of the teeth occur, as you will notice on Plate I. In the photograph you will further notice the typical degenerate ear of Morel. Other structures of the body, such as hair, skin, and lymphatic glands, were abnormal. These arrests of development occurred early in life, and were due to defects in the cell-structure of the brain governing the nutrition of these parts.

Plates II., III., and IV. show the outlines of the skull. Like the facial bones, they are very remarkable. You will notice that the antero-posterior and biparietal diameters are not very much of a departure from the normal type. The bitemporal diameter, on the contrary, is most unusually so. Such a remarkable arrest of development of the frontal region of the skull as the outlines of



Patrick Prendergast.



PLATE I. Prendergast

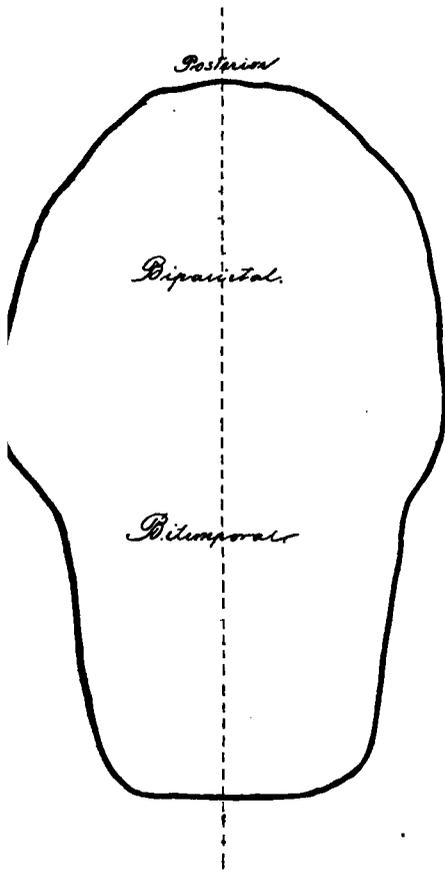


PLATE II. Prendergast.

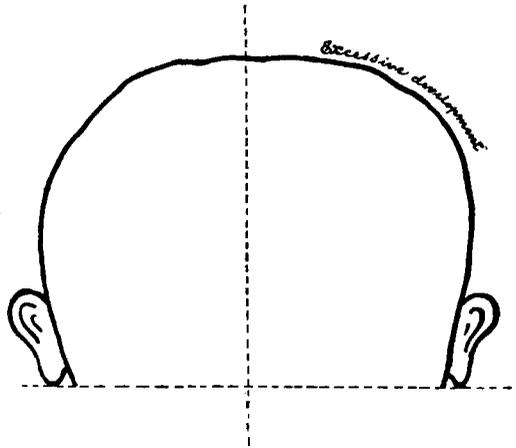


PLATE IV. Prendergast.

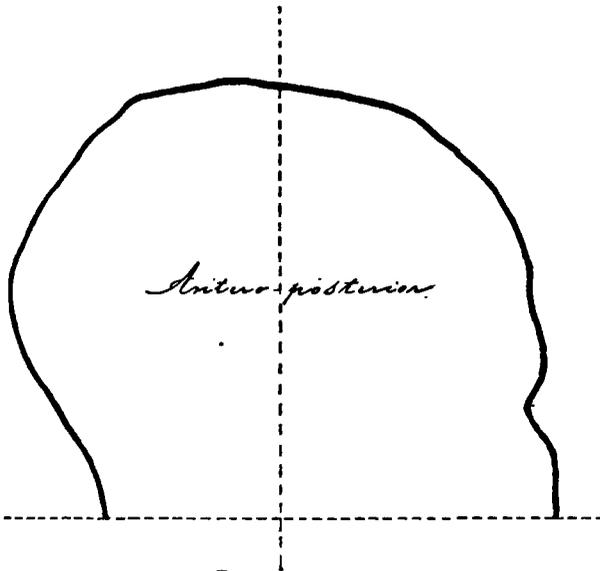


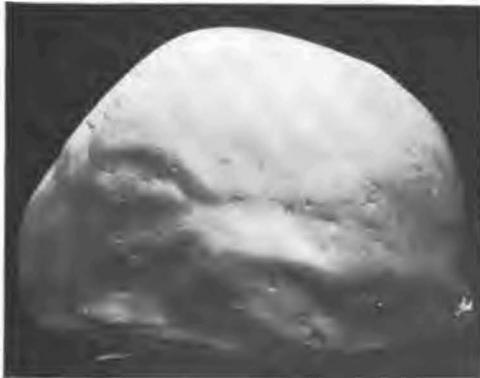
PLATE III. Prendergast.

Plates II. and III. show indicates that the higher intellectual faculties and consequent self-control are very deficient. These same plates also show the unusually large development of the lower mental faculties. Plate IV. shows a marked depression on the top of the head. I chiefly wish to call your attention to the small intellectual and controlling power of such a developed brain. These facts go clearly to show that this man was a creature of impulses and not of reason. In other words: *Impulse was the mastering element, the moving force of his nature, and he knew or could know no law of volition.* Prendergast evidently belonged to that class of degenerates called paranoiacs, fitting closely the descriptions of Drs. Gray, Régis, and Kirchoff, who attribute to them: *Self-exaltation; systematized progressive delusions; tendencies toward political homicides, apparently premeditated, well calculated, and consistent with their delusions.* Such persons need but an inspiration to develop delusional impulses which are executed with astonishing rapidity, decisiveness, and fiendish cunning.

This man labored under the delusion that it was a divinely imposed duty for him to slay the Mayor, and to see that track elevation might be effected and lives accordingly saved. This was emphasized by his eagerness to give himself up to the officers of the law, and the assertion that he would do the same thing over again, believing that "the God who had commissioned him would have him under His special care." It seems convincing enough to the average mind that this man was insane, and yet in spite of this, and the fact, as before stated, that five physicians out of six testified that he was insane, it proved to be insufficient to protect him from the injustice which public clamor visited upon him, and he was executed.

CASE II. Mrs. Lizzie Halliday, the Sullivan County triple-murderess. This woman's case and trial are of so recent date that it will be unnecessary to enter into details with reference to them. She was born in Ireland, under the name of McNally, and came to this country in 1867. She is now thirty-six years of age; five feet and two inches in height. Her girlhood was uneventful, unless that she was of a more than usually irritable temper and rather capricious. The cast,¹ as illustrated here and roughly made by

¹ This cast was made as follows: The hair having been evenly pasted down to the scalp, rubber tissue was carefully fitted over the hair and pressed firmly down. A diaphragm was then placed around the head at a level with the eyebrows in front and immediately below



Casts of head, Lizzie Halliday.

myself, together with Plates V., VI., and VII., give the outlines of Mrs. Halliday's skull. It is marked asymmetrical. Her head is high and somewhat tapering, as will be seen on Plates VI. and VII. I wish particularly to call your attention to Plate V., showing the circumference of the head. It is one of most unusual shape, inasmuch as the right side seems to have been forced backward and the left forward, thus making an irregular elliptic curve. The peculiar prominence in the left frontal region and the excessive prominence of the right occipital are very noticeable, and attracted my attention when I first examined her. There is a marked flattening in the right occipito-parietal region, and also an excessive development of the right side over that of the left, which is exactly opposite to the normal head. The excessive development over the paracentral lobe is also very noticeable. In the greater fulness of the right side there is a similarity between this head and that of Prendergast.

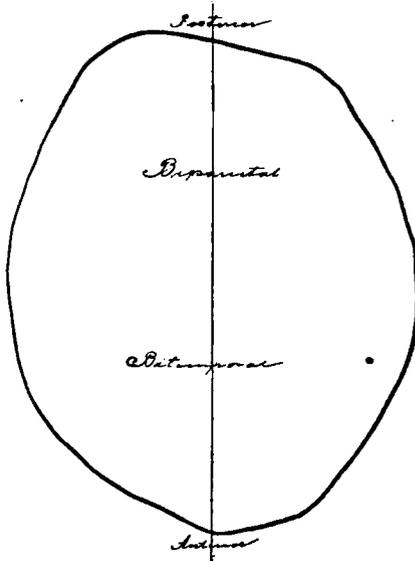


PLATE V. Lizzie Halliday.

Régis says that in chronic insanities, contrary to the usual rule, the right hemisphere of the brain very often weighs more than the

the base of the cranium posteriorly, and a mould taken. Subsequent expert palpation substantiated its correctness.

left. My observations in the examination of several thousand criminals have led me to believe that, as a rule, when in the inherent criminal the right side of the cranium, that is, the right hemisphere of the brain, is in an excessive development over the left, especially where there is a marked fulness over the paracentral lobe, the possessor's impulses lead toward homicide. I have repeatedly been able to place my hand upon this part of the head of criminals and designate their crimes to be either assault or homicide, without any previous knowledge of their history or themselves. Both Plates IV. and VII. show this excessive development, which in Lizzie Halliday (Plate VII.) is more marked.

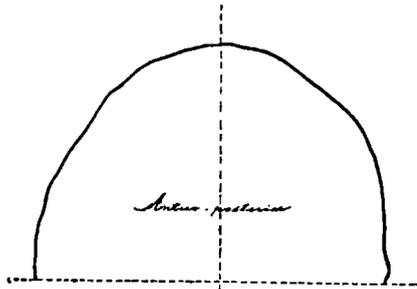


PLATE VI. Lizzie Halliday.

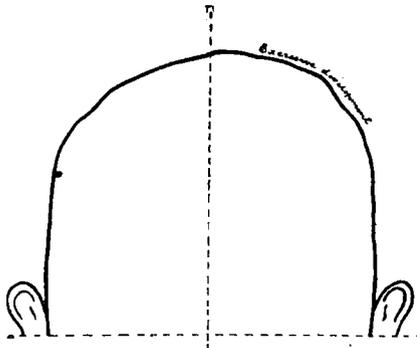


PLATE VII. Lizzie Halliday.

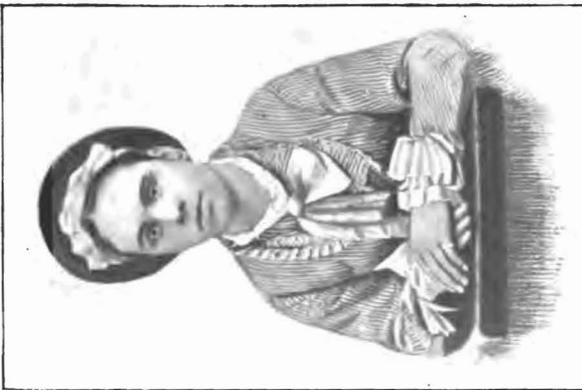
A look at these photographs of her, which were taken when she was under confinement in Clinton Prison, shows: Nose coarse and unproportionately large; bridge flat and upturned; malars and superciliary arches prominent; mouth large; lips medium thickness; teeth fairly regular, etc. Space will not permit me to enter



Lizzie Halliday.



Margaret McNally.



into a description of this woman's history and symptoms from girlhood until the time of her arrest, although it is exceedingly interesting. It is, however, elaborately described by Dr. G. Alder Blumer in a paper read before the Kings County Medical Society on September 18, 1894, and I am indebted greatly to him for many valuable suggestions and quotations in the preparation of this paper. I will, therefore, content myself by stating that careful and painstaking research previous to the time of the commission of the triple murder, for which she was tried and sentenced, has shown that she had always been erratic and peculiar beyond comprehension; that she had married six times, in every instance moved by some unexplainable caprice; and that she had been in two asylums in this State. There is also evidence going to show that this woman for the whole period from the time of the commission of the triple murder until her trial gave unmistakable symptoms of insanity.

She was received at Clinton Prison on June 29, 1894, and on that date came under my professional care, remaining in my charge until July 23d, same year. A careful record of observations was made daily during that time by myself and attendants.

Chiefly among the physical symptoms noted were: Rapid pulse, averaging over 100; extreme emaciation; refusal of food, necessitating forced feeding; diabetic symptoms (quantitative analysis of her urine on July 13th showing 4.5 per cent. of glucose); excessive menstrual flow, at which times she was much more violent and difficult to control; a complete anæsthesia even of the most sensitive areas of the skin, eyeballs, and nose; this analgesic condition was so complete that flies crawling over her face were never brushed away, and tests made with the knife-point or the application of the lighted fuse failed to produce the slightest reflex, or the cessation for an instant of her incoherent jargon; drooling of large quantities of glairy mucus from the nose and mouth; her walk was shuffling, irregular, and uncertain, and she could not maintain her equilibrium with eyes closed.

The mental symptoms noted were: Illusions and hallucinations of sight and sound; she was violent and noisy; her habits were extremely filthy; she exhibited obsessions or irresistible propensities, such as the ejaculation of vile language without provocation, agonizing fears of crossing a river when taken to and from her cell, constant repetition of the number thirteen, etc.

The following extract from Dr. Blumer's paper illustrates vividly

the above: "The patient was crouching in a corner of her cell with her face turned to the wall, muttering and hallooing incoherently. When brought into the corridor she offered resistance, crying: 'Don't let me go by the river.' Her ears and nostrils were stuffed with bits of dress material. When forcibly seated in a chair she began to pick at her clothing, to spit, to stamp on the floor, and, when not restrained, pounded her thighs violently with her fists. She paid no attention to her examiners, and could not be induced to answer questions. The following were some of her incoherent mutterings taken down at the time: 'Manure.' 'Nicodemus.' 'Pitchforks.' 'Don't you stay here.' 'No! I don't want you.' 'Yes! you did.' 'You took my baby.' 'Thirteen and fourteen o'clock.' 'Snow and bullfrogs.' 'Take the little dress out of the drawer and bring my little Isabella.' 'Take them snakes away.' 'Nineteen cords charcoal.' 'Don't throw that over me.' 'I can't eat that saw-dust.' 'You have got smallpox in your heels.' 'She broke a spine of my ribs.' 'You have got that bear sewed up in me,'" etc.

These symptoms, taken in connection with the configuration of her head, unmistakably place her with that class of degenerates described by the French alienists as *the phrenastheniacs*, or, in other words, *a creature of irresistible impulses, febleness of will, yet possessed of a degree of consciousness and reasoning power, and whose dominant morbid tendencies are to private murder.*

Mrs. Halliday was such a being. With intelligence and reason sufficient to plan and execute, but without power to choose, without moral feeling, unknown to remorse, she needed only an exciting cause, such as some disturbance of the reproductive organs, to set in motion an impulse which, resisted it may be for a time, yet gathering in intensity, becomes too strong for volition; the demoniacal impulse is freed from its domination, and the fiendish act is perpetrated.¹

The picture is complete, and even if the symptoms alleged to have been feigned by the experts of the prosecution were so, the physical symptoms above enumerated at least admit of no intelligent doubt as to her insanity. Notwithstanding this, and the fact that two expert alienists, Drs. Allison and S. H. Talcott, under

¹ Dr. H. E. Allison, Superintendent Matteawan State Hospital, and who now has her in charge, believes that her crimes have been committed when she was or had recently been pregnant, and there is much to substantiate this view.

whose charge she had been when in asylum, testified that she was insane, this woman, principally upon the testimony of *one* so-called expert, was sentenced to be executed, and had it not been for the Executive, who in clemency appointed the commission¹ that declared her insane, another name would have been added to the list of judicial homicides.

We have seen by the above that both Prendergast and Lizzie Halliday belonged to a class of degenerate criminals and were both suffering from what may be termed conscious-impulsive insanity, and that both cases were decided by the courts through the agency of certain medical expert testimony, adjusting itself to suit the demand of an excited and clamorous public, in direct opposition to what we have seen to be the facts. In both cases the error seems to have arisen from a common misapprehension by the courts of just what mental responsibility means. The courts have repeatedly held that the question to decide, as touching a man's mental responsibility under the law, is his ability to distinguish between right and wrong; that is, to be able to understand his moral and legal responsibility. While this applies to certain forms of insanity it is not all that is necessary in the way of a test, nor does it cover the whole ground, for it will readily be seen that by the application of this test alone to the cases above cited a rank injustice was done. The question to decide in any given case of insanity is not alone as to whether the mental perceptions admit the knowledge of the right or wrong for which a person is held to trial, for it may be a question of the individual's power to control his impulses, a question of volition, not of a nice adjustment of moral equities. Consciousness must not be confounded with control, because, as we have seen, an insane person may be perfectly conscious of his acts, conscious of his responsibility to the law, conscious of the penalty, conscious to a degree, enabling him to use his powers of cunning to avoid the infliction of penalty, and yet in no way more responsible for the act than would be the man who, hurled from the top of some high building, falls upon a passing pedestrian and crushes him to death.

The power of controlling the acts is more or less the essential factor in insanity and irresponsibility, and more so than is the knowledge of their nature and consequences. *Insanity is a disease and not a legal question.* We should not allow ourselves to be

¹ This commission consisted of Drs. G. A. Blumer, J. M. Lee, and J. D. Spencer.

misled by the shrewd tactics of manipulators of the law, or be influenced by the popular distrust of the plea of insanity as a defence for crime, in common parlance called *the insanity dodge*.

If it is conceded that insanity is to lessen responsibility and to mitigate punishment, why, then, there is no half-way ground to be taken. This mantle of attenuation cannot justly cover only a certain type of the mentally deficient, but must extend over all forms and types, the inherently deficient and the degenerate as well as the demented and the melancholic. The fact that the law does not afford protection to the former class, who need it so much more than the latter against an exasperated public sentiment, is due, as before intimated, to the failure of medical expert testimony as at present introduced so to protect them, and in the light of these cases there has apparently been little, if any, advance made toward a more reasonable and more definite method of introducing such testimony.

It is true that occasionally a step in the right direction is taken in eliminating much that is objectionable and harmful in such trials, as was the case in a recent trial which took place in the District of Columbia.¹ But to my knowledge *nothing consistent* with an improved revision of the whole system of medical expert testimony has been undertaken. The question at once arises: *By whom shall this needed reform be undertaken and to whom shall we look for a first movement in the right direction?*

If we listen intently, we may hear the indefinable mutterings of an arousing public sentiment in this regard, and I firmly believe that the first indictment lodged by that most exacting of tribunals, an awakened public mind, will be against the medical profession, and the courts will join hands with them in a mutual flagellation. The courts themselves have a way of avoiding such indictments unknown to us. Aside from this aspect of the case, there remains to us, as a profession, the much more important necessity of preserving our professional dignity and inspiring confidence in our integrity and ability. The testifying of medical experts to diametrically opposite views in a given case is not a spectacle calculated to enhance the prestige of the profession from any point of view, or likely to increase the confidence of a critical public in the efficiency of our art. It then remains for us to act with prompt-

¹ See Medical Record, November 17, 1894.

ness and determination, and unite in an effort toward a change in this whole method of giving medical expert testimony.

My own belief is that this whole system should be radically changed, and *the right to give medical expert testimony in any court in this State should be lodged in a non-partisan State board*, appointed by the Governor, and subject to approval by the Senate. I will not presume upon your time, nor upon my legal acquisitions, more than to outline roughly what seems to me would be most likely to meet the requirements of the situation.

This Board should act in the capacity of instructors and advisers to the courts. It should consist of a sufficient number to provide amply for all criminal trials likely to take place at any time, and should be subject to the call of the proper courts. The members of this Board should be chosen from the ranks of our most expert alienists, men ripe in experience and judgment, and having an ascertained qualification. The functions and powers of this Board to be to examine with reference to the sanity or insanity of the accused, and should, therefore, be empowered to call and examine any witnesses it may deem necessary, be they professional or lay. It should have access to all evidence throwing any light upon the case, and it should also be provided that both prosecution and defence should, by showing reasonable cause, have the privilege of appealing to the courts for the calling of additional members of the said Board also to examine the accused, where the decision by the first experts called seems inconsistent. In no case should any physician, not a member of this Board, be allowed to testify as an expert in insanity cases other than through the Board itself, and in open court his evidence should be restricted to his knowledge of the facts in the case. The Board should receive its remuneration from the State. If it should be urged that the creation of a special Board by the State is unwise, there seems little objection to the designation of such a Board from the ranks of qualified alienists already in the State service.

I believe it is only through some such method of procedure that the whole system of giving medical expert testimony can be purged of its incompetency, venality, sensationalism, and confusion, and that a trained, thoroughly experienced, and efficient class of medical experts can be secured. Thereby the ends of true justice can be most nearly meted out by the courts, and the medical profession even here, as in other branches of its work,

sustain the high position it so deservedly holds as a conservator of the human weal.

MR. PRESIDENT: I would suggest including in the discussion of this paper the advisability of the appointment of a committee to consider and report upon the most feasible plan for an improvement in the present method of introducing medical expert testimony in cases where insanity is made the plea for the defence.

DISCUSSION.

DR. H. E. ALLISON, of Matteawan: I hardly think that this Society would record itself on the affirmative side of this question—that the insane criminal should be executed. There are two classes of insane criminals, one of which is made up of the inmates of our gaols, reformatories, and penal institutions; these may properly be called insane criminals. They may have been insane, though unrecognized as such at the time of the commission of the criminal act, or they may have become insane during the term of their imprisonment while undergoing sentence. The law provides that such patients shall be sent to the Matteawan State Hospital, and upon recovery be returned to the institution whence they were sent. Should they remain insane after the expiration of their sentence, they are retained at the hospital. Out of a total population of about four hundred and eighty patients, 25 per cent. is made up of insane criminals whose terms have expired, and who, being still insane, are held at the hospital as dangerous to society and unfit to be at large. There often arises a doubt, however, in the mind of the medical superintendent, whose province it is to determine this fact, whether some of the patients even apparently recovered are proper cases to be returned to the prisons. They constitute a dangerous class. They are defective not only by heredity but by all the influences of early training and surroundings, and although they may have been very much improved by virtue of good care and returned to their normal condition, yet they are unsafe people to be at large, by reason of natural or acquired mental defects. I think such cases should originally be committed to the various penal institutions upon indeterminate sentences. No man should be at liberty, whether sane or insane, who is a menace to the public safety.

The paper of Dr. Ransom, however, concerns particularly insane persons who are charged with homicide. Their acts are the product of disease and they form a second class not properly criminal. There are in the prisons of this State, I am informed, about two hundred inmates

under life-sentences. Seventeen per cent. of this number are at the Matteawan State Hospital. Out of this number 70 per cent. were adjudged sane at the time of their trial and sentenced to life-imprisonment. Many were condemned to death, but through the intervention of the Governor their sentences have been commuted to imprisonment for life, so that the courts are not infallible in judging of the sanity or insanity of insane criminals. Many patients we receive from the prisons—insane criminals properly so-called—are convicts that have passed through the prisons of the old world, and having become very troublesome factors there are sent by the prisoners' aid societies and by emigrant societies to this country; and while it is difficult always to obtain the history of these cases, I am safe in saying that 8 per cent. of the insane criminals at Matteawan State Hospital are properly and directly chargeable to foreign countries, many having been sent here in order to rid their native country of the burden of their support.

Such criminals, whether sane or insane, manage to get into our penal institutions, and if they do not, by marriage they give rise to a very degenerate class of beings. Our emigrant laws in regard to this matter should be more stringently enforced. The class of people such as Prendergast and Mrs. Halliday, and other notorious homicidal creatures, do not belong to the criminal class. They are not insane criminals by choice; but by reason of their insanity they have committed some criminal act or a series of acts, but cannot properly be held responsible for so doing. Now the infliction of the death penalty upon any such case is manifestly wrong.

Judge Stephen, in his *Criminal Law of England*, strongly recommends that the insane criminal shall be put to death, and says there should be various grades of responsibility. "The law ought to recognize these various effects of madness. It ought, where madness is proved, to allow the jury to return any one of three verdicts: Guilty; guilty, but his power of self-control was diminished by insanity; not guilty on the ground of insanity."

This position I do not think any medical man would for a moment hold if the accused were insane. It is true many of these insane people can temporarily restrain themselves. They know their impulses are wrong and they try to refrain from yielding to them. Sometimes they have kept back impulses to homicide for weeks, months, or years, but finally the disease becomes through its progress so overmastering that they are not capable of further self-control. In that respect they are irresponsible.

DR. CARLOS F. MACDONALD, of New York: I may say that I fully concur in the main with the propositions contained in the paper, namely, that the acts of violence, so-called criminal acts of persons manifestly

insane, whose insanity can be established, are not punishable either by imprisonment in penal institutions or by execution.

In regard to the question of medical expert testimony, to which Dr. Ransom has so ably referred, there is no question that our methods of obtaining expert testimony are radically defective. They should be reformed. The question of how to bring about such reforms in obtaining expert testimony is a very difficult one indeed. We have different opinions as to what constitutes responsibility for criminal acts on the part of the medical profession and the legal profession. Lawyers and courts hold that a man is responsible for his acts if he knows the nature and quality of the act, and if he knows the act to be wrong. The medical profession has held for a long time that it is not a question of right and wrong, but a question of health and disease. In other words, if the act of the individual is the offspring of his mental disease, he is not responsible. In this respect I think the medical profession has been progressive, whereas the legal profession clings to the traditions of the past.

There are a variety of causes for this disrepute into which medical expert testimony has been brought in recent years. First, in the methods of obtaining expert testimony. They are not of a character to secure the best quality of expert testimony. Experts are constantly put into false positions before the courts, and made apparently to contradict each other and themselves. It has not infrequently happened in my own experience on the witness-stand that I have answered hypothetical questions in the affirmative put by counsel on one side and in the negative put by counsel on the other side. Experts are seldom permitted to express their opinion in regard to a case, but to express an opinion upon a supposed state of facts. The hypothetical question does not represent the case fairly, and the expert is put in the attitude of inconsistency, and contradicts not only himself, but the experts on the other side. If the method of selecting experts were left to the courts, it would be the proper way, rather than to counsel on either side, who usually select an expert without reference to his standing, but with reference to the opinion he is willing to give, an opinion which shall be favorable to his side of the case. If the answer of the expert, on being presented with a certain state of facts, shows he is not able to express an opinion such as is desired, he is not called on that side of the question. As a rule, lawyers do not select experts with reference to showing the truth, but with reference to winning their case. Oftentimes the cross-examination of experts is ridiculous, often not intended for the elucidation of the subject for the benefit of the court and jury, but rather for their confusion and to bring the expert testimony into disrepute, so that the jury would thus regard it.

If provision were made by the State for the selection of experts, in

the higher courts, they could be relied upon to select fit men, men of repute in that particular branch of medicine, alienists of recognized ability in the community and standing in the profession. I do not agree with the suggestions in the paper that a State board of experts should be created. Unfortunately in this country, owing to our peculiar political methods, I think it would be impossible to select a board of experts uninfluenced by partisan considerations. The danger would be that the experts so selected would not be of the class of the medical profession who would be regarded as representative.

Another source of disrepute of expert testimony is due to the wrong notions in the public mind, and possibly in the minds of some medical men, as to what insanity is. The so-called popular delusion is that the lunatic must be a raving maniac, violent, destructive, and all that sort of thing; whereas it is well known by those of us who are experienced in the care and treatment of the insane and in observing the manifestations of insanity, not 2 per cent. of the insane in hospitals represent this class. The majority are orderly, well behaved, amenable to control. The whole theory is based on this fact that the majority know the difference between right and wrong. I have known of instances where the patients have deliberately committed crimes, knowing it to be wrong in the abstract, but have done it in order to get attention to their acts before the courts, feeling that if they could get a hearing they would be able to satisfy the courts they were not insane.

Another public delusion in regard to this question, which ought not to be thrown upon expert testimony, is that the insanity dodge is a thing which succeeds very frequently. It is wrongfully put forth in a certain number of cases, but it is a well-known fact that it seldom succeeds where it is wrongfully offered. I have known, in an experience now of nearly twenty-five years, of but two cases where the plea of insanity succeeded. In one of these the physician, the only expert called, did not regard the patient as insane, but had to acknowledge as much in answer to a hypothetical question. The man was discharged from the asylum within three weeks and is now occupying a public position. Another case is one in which an individual had been wrongfully declared insane, and who but for great social and political influence would undoubtedly to-day be behind prison-bars in this State. If he had been an obscure individual he certainly would be.

We have frequent instances of conviction of manifest lunatics. In my experience as superintendent of an asylum for insane criminals during a period of nearly fourteen years, many cases have come to my notice whose history shows them to have been undoubtedly insane at the time of conviction, insanity having been overlooked, or for certain purposes on the part of the local authorities conviction was secured.

It is the duty of the medical profession to set its face against this sort of procedure, and answer the question as to whether the punishment of an insane person or of an insane criminal would have a deterrent effect upon other insane persons, and prevent them from committing acts of violence. It is the concensus of opinion of all acquainted with the subject that it would not. Every lunatic regards himself as not being insane. The most common delusion is that he is commissioned to commit crime for some reason based upon his insanity, some reason actuated by his insanity. The fact that some other lunatic had been executed or punished for the commission of crime would have no influence on him. What a lamentable spectacle, the public clamoring for the blood of a lunatic who believed that he was commissioned of heaven to commit an act of murder! Urged on by the public press, he is convicted and executed in the face of the most unanswerable evidence that he was insane.

Insanity is a medical question, to be determined by the medical profession. We shall have this trouble about medical experts until the lawyers and courts can be brought to the view which is held by medical science in this regard.

There is another popular delusion in regard to the insane, namely, that they are speedily released. As a matter of fact, such persons in this State are very seldom released. During my service as superintendent of the criminal asylum but two persons were released who were convicted and committed to that institution. They were cases in which absolute recovery was established, and they have been at large for a number of years. The medical profession should set its face against releasing these persons as a rule. Where a person escapes the consequence of his crime on the ground of insanity, unless absolute recovery can be established, he should not be released. Where such cases recover, it would be a great hardship to keep them in either a prison or an asylum.

DR. BURT G. WILDER, of Ithaca: I was not assigned to discuss this, but, since I have been called upon, I may be permitted to say that one of the most signal reproaches which may be brought against science in general and neurological and alienist science in particular, in this country, is the case in which some experts testify one way and some another. The people and the officers of the law clamored for the blood of Guiteau. Whether or not he was insane, whether or not he was responsible, was decided so far as he was concerned; and whether or not his brain manifested those peculiarities which whether we know them now with certainty we shall know them in the future, will never be known. His brain was never preserved whole. I borrowed from the custodian thereof what there is left of it. There was not a piece much

bigger than my thumb. There is nothing left us to determine between the criminal and the insane brain. Practically there never has been.

We need to-day two things. In the first place, a standard of the moral respectable educated normal brain, which at present nobody knows, and it is for that I am personally on the still-hunt among my friends and acquaintances. I have been already promised twenty-five brains of people who are known to be respectable, intelligent, well educated, and normal as you and I. Some are graduates of Cornell University, some professors, and one is a man of such eminence that were it permitted me to name him here, I should expect a surplus of the richest brains of ordinary people to be offered me for preservation alongside his. That is what we want for a standard. We have it not at present. After it has been decided what is a normal brain, then we can tell something about an abnormal one.

DR. W. J. MORTON, of New York: As to whether or not the criminal insane should be put to death, I believe there is no dissent among medical men on the subject. What seems to me to be the practical point is to provide for some way of getting proper expert opinion in the case of insane criminals. Two directions offer: The one put forth by the reader of the paper, by a State board, the other proposed by Dr. MacDonald, having the judge appoint proper experts. I should like to hear an expression of opinion on the part of this Society as to one or other method. If the Committee on Legislation will bring out a suggestion and expression, I would be in favor of referring it to that committee.

I was interested in what Dr. Wilder said about brains. I was appointed by the New York Neurological Society of a committee to represent them at the autopsy of the executed Guiteau. So far as the execution went I saw Guiteau hung. I am sure that my feeling at that time was influenced by public clamor to that extent that I did not feel that any very great injustice had been done when I saw him executed. Maturer thought has shown me that I was wrong. Guiteau, in my humble opinion, was insane, thoroughly so. In regard to the relics of his brain, at that time we were not so far advanced in neurology, but he has helped us to learn a great deal since that time. I have thirty or forty sections, microscopic slides of the brain, which I would be very happy to submit for examination. It has so far gone by that it lost to a great extent its interest. I hope that this Society in some manner will put itself on record and express an opinion as to how expert testimony can be properly had. More than ten years ago I used frequently to go into court, but I became so utterly indignant at the manner in which experts were treated, in a way that it seemed

to lead to a stultification of justice, that I refused to go to court as a medical expert. Many of my friends have taken the same stand.

DR. E. D. FISHER, of New York: I suppose if I say anything it will be in opposition to the general medical opinion. The question of insanity and responsibility, in a legal sense, is the question really at issue. Is an insane person ever responsible? What is that form or degree of insanity we have to deal with? I certainly believe an insane person in certain forms of his insanity is responsible for his acts against the safety of the community, and that these so-called insane persons belonging to the insane class should be punished for the insane act they commit. Any person acquainted with the insane, with the conduct of the insane persons in asylums, knows that punishment, or the fear of punishment, will restrain them. The class which these various gentlemen have spoken of are those who have already committed acts, already have passed beyond a certain degree to a more marked one. They are in the asylum. But we have in the community a large class impulsive in their natures. They do not commit overt acts to make them responsible to the law, but may at any time. Their impulse is for homicide and cruelty of all kinds. To say that they cannot reason, that they cannot say, "If I commit that act I will get off simply on the ground that I am insane," is a mistake. They do reason just that way. If they are sure they will not be punished, that class will be more likely to commit crime. They do say, "Oh, well, I can murder that man, I will never be hung." The dangerous class is this impulsive class, secretive in carrying out their plans. It is absolutely for the safety of the community that such men should be put to death, not punished by imprisonment; for when they commit such an act, as we have seen in the case of Guiteau or again in Prendergast, they are sufficiently responsible to bear the punishment of their crime for the good of the community, not with any desire of vengeance. It would be fatal to the safety of society to remove that protection which is implied in capital punishment for an offence of that nature.